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# Editorial Board





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[2024] 11 S.C.R. 325 : 2024 INSC 828

# Anoop M. and Others
**v.**
# Gireeshkumar T.M. and Others Etc.

(Civil Appeal Nos. 12173-12174 of 2024)

04 November 2024

**[Pamidighantam Sri Narasimha and Sanjay Kumar,* JJ.]**

## Issue for Consideration

Candidates with Diploma in Computer Applications-DCA/higher qualifications, if could be considered for selection to the post of Lower Division Clerk in the Kerala Water Authority, when the qualification prescribed was Certificate in Data Entry and Office Automation from the named Institute or from a similar/equivalent government approved institution.

## Headnotes†

**Service law – Recruitment – Recruitment to the posts of Lower Division Clerk-LDC in the Kerala Water Authority – Notification by Kerala Public Service Commission-KPSC – Qualification prescribed was Certificate in Data Entry and Office Automation from the named Institute or from similar/equivalent government approved institution – Stand of KPSC, in the earlier round that DCA was not a qualification to be considered eligible for appointment to the post of LDC – However, later, KPSC adopted a stand that a higher qualification was not barred, and considered candidates with DCA/higher qualification also while preparing the probability list – Candidates with Diploma in Computer Applications-DCA/higher qualifications, if eligible for appointment to the post of LDC:**

**Held:** A State instrumentality seized of the solemn responsibility of making selections to public services must maintain a high standard of probity and transparency and is not expected to remain nebulous as to its norms or resort to falsehoods before the Court, contrary to what it had stated in its earlier sworn affidavits – KPSC, with its vacillating and dithering stance, largely responsible for this long-pending litigation, impacting the lives, hopes and aspirations of nearly twelve hundred candidates – KPSC, changed its stance,

* Author

without any foundational inquiry to determine the superiority of the so-called higher qualifications over the prescribed qualification – It was a purely whimsical and arbitrary exercise of discretion on its part without actual application of mind as per required parameters – KPSC to desists, from trifling with the lives, hopes and aspirations of candidates who seek public employment – Furthermore, on basis of the Rules of 2011 and the Notification, it is clear that a Certificate in Data Entry and Office Automation from a Government approved similar/equivalent institution would be valid – Equivalence is, not of the qualification itself but of the institution from which the said Certificate in Data Entry and Office Automation is obtained – Thus, no error committed by the Division Bench of the High Court in confirming the view taken by the Single Judge of the High Court, non-suiting candidates with DCA/higher qualifications who aspired for selection to the post of LDC – Kerala Water Authority (Administrative, Ministerial and Last Grade) Service Rules, 2011. [Paras 15-17, 21, 25, 27, 28]

**Kerala State and Subordinate Service Rules, 1958 – Kerala Water Authority (Administrative, Ministerial and Last Grade) Service Rules, 2011 – Applicability, in matter pertaining to selection to the post of Lower Division Clerk in the Kerala Water Authority:**

**Held:** Rules of 2011 are Special Rules for the Kerala Water Authority – Thus, to the extent the Rules of 2011 make special provision as to the qualification required for a particular post, the same would prevail over the general rule pertaining to qualifications in Part II of the Rules of 1958, subject to r. 10(a)(ii) of the Rules of 1958 which, prevails over the Special Rules also – Furthermore, given the phraseology of the Rules of 2011, the Rules of 1958 will not have general and all-pervasive applicability at the stage of direct recruitment even before a candidate is selected and appointed to any of the posts in the categories covered by the Rules of 2011, i.e., before he/she becomes an 'employee' of the Kerala Water Authority – Also, Rule 2 in Part II of the Rules of 1958, titled 'Relation to the Special Rules', states that if any provision in the General Rules contained in Part II thereof is repugnant to a provision in the Special Rules applicable to any particular service contained in Part III thereof, the latter shall, in respect of that service, prevail over the provision in the General Rules in Part II of the Rules of 1958. [Para 13]

## Case Law Cited

*Jyoti K.K. and Others v. Kerala Public Service Commission* **(2010) 15 SCC 596 – distinguished.**

*Ajith K and others v. Aneesh K.S. and Others* [2019] 11 SCR 495 **: (2019) 17 SCC 147;** *Sheo Shyam v. State of U.P.* [2004] 2 SCR 406 **: (2005) 10 SCC 314;** *Sivanandan C.T. and Others v. High Court of Kerala and Others* [2017] 13 SCR 226 **: (2024) 3 SCC 799;** *State of Bihar and others v. Shyama Nandan Mishra* [2022] 11 SCR 1136 **: 2022 SCC OnLine SC 554 – referred to.**

## List of Acts

Kerala State and Subordinate Service Rules, 1958; Kerala Water Authority (Administrative, Ministerial and Last Grade) Service Rules, 2011; Kerala High Court Rules.

## List of Keywords

Diploma in Computer Applications-DCA; Higher qualifications; Selection to the post of Lower Division Clerk in Kerala Water Authority; Qualification prescribed; Certificate in Data Entry and Office Automation; Named Institute; Similar/equivalent government approved institution; Lal Bahadur Shastri Centre for Science and Technology, Institute of Human Resources Development; Eligible qualification; Equivalent qualifications; Special Rules; General Rules; Acquisition of lesser qualification; Whimsical and arbitrary exercise of discretion; State instrumentality; Solemn responsibility; Public services; High standard of probity and transparency; Public employment; Direct recruitment.

## Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 12173-12174 of 2024

From the Judgment and Order dated 30.01.2024 of the High Court of Kerala at Ernakulam in WA Nos. 1941 and 1945 of 2023

With

Civil Appeal Nos. 12175-12176,12177-12178 and 12179-12180 of 2024

## Appearances for Parties

V.Giri, Shaji P Chaly, Sr. Advs., Vipin Nair, M.R. Ramya, Mohd Aman Alam, P.B. Sashaankh, Aditya Narendranath, Roy Abraham, Ms. Reena Roy, Adithya Koshy Roy, Yaduinder Lal, Ms. Rajni

Ohri Lal, Shrey Kumar, Himinder Lal, Mohammed Sadique T.A., Kaleeswaram Raj, Ms. Thulasi K Raj, Ms. Aprana Menon, Ms. Aparna Menon, Ms. Chinnu Maria Antony, P. Nandakumar, Abdulla Naseeh V.T., Shivam Sharma, Ms. Abreeda Banu, Nishe Rajen Shonker, Mrs. Anu K Joy, Alim Anvar, Ajith Anto Perumbully, M.B. Ramya, Advs. for the appearing parties.

**Judgment / Order of the Supreme Court**

**Judgment**

**Sanjay Kumar, J.**

**1.** Leave granted.

**2.** With a tortuous trajectory spanning over a dozen years, this weary litigation craves closure. Hanging in balance is recruitment to several posts of Lower Division Clerk (LDC) in the Kerala Water Authority. A notification was issued by the Kerala Public Service Commission (KPSC) in this regard on 16.07.2012 for filling up 102 existing vacancies and 43 anticipated vacancies in the said post. 1192 applications were received in response thereto. The qualifications prescribed in the notification were:

(i) Degree in any discipline and

(ii) Certificate in Data Entry and Office Automation of minimum 3 months (120 hours) duration awarded by Lal Bahadur Shastri Centre for Science and Technology (LBS), Institute of Human Resource Development (IHRD), or from similar/equivalent institution approved by the Government.

**3.** While so, one Shebin A.S., who held a Diploma in Computer Applications (DCA), filed WP (C) No. 24279 of 2012 before the High Court of Kerala contending that the qualifications, as prescribed, would eliminate candidates who held higher qualifications as it restricted the zone of consideration to certificate holders only. By judgment dated 01.08.2014, a learned Judge agreed with him and allowed the writ petition. The learned Judge opined that the notification should have been more transparent with regard to the qualifications, specifying whether equivalent/higher qualifications could also be accepted. The KPSC was accordingly directed to issue a revised notification, keeping this aspect in mind.

**4.** Aggrieved thereby, the KPSC filed Review Petition No. 884 of 2014 pointing out that there was no stipulation in the notification or in the Special Rules applicable to the post of LDC that a higher/equivalent qualification is also acceptable. The KPSC further stated that it had examined the issue in detail and decided that applications of persons with DCA qualification could not be accepted for the said post. It specifically averred that 590 applications of persons having DCA qualification had been received but were not treated as valid. Asserting that the judgment, if complied with, would go against the Rules as DCA was not a notified qualification, the KPSC sought review of the direction to issue a revised notification. However, the Review Petition was dismissed on 24.02.2015.

**5.** The KPSC, thereupon, filed Writ Appeal No. 1501 of 2015. It asserted that, as an equivalent or higher qualification was not prescribed under the Rules, it was not accepting DCA qualification for the post of LDC. It further asserted that, at no point of time had it taken any decision to accept applications of candidates with DCA qualification as the qualification prescribed and notified for the post did not indicate that persons with DCA qualification would also be permitted to participate in the selection process. Accepting the stand of the KPSC, a Division Bench of the Kerala High Court allowed its writ appeal, *vide* judgment dated 13.06.2022. The Division Bench took note of the KPSC's contention that it had never notified any change in the qualifications and that it had already decided that DCA was not an equivalent qualification for the post in question as the equivalence mentioned in the notification was only with respect to the institution. The Division Bench, therefore, opined that, as no change had been made by the KPSC with regard to the qualification after issuance of the notification and, as a matter of fact, the KPSC had decided that DCA was not an equivalent qualification for the post in question, there was no warrant for allowing the writ petition and issuing a direction to revise the notification. The Division Bench noted that even if a person with higher qualification had applied, the same would have been rejected during the scrutiny before shortlisting of candidates for interviews. The Division Bench accordingly set aside the judgment of the learned Judge and dismissed the writ petition.

**6.** Despite this judgment in its favour, the KPSC surprisingly chose to shortlist candidates in a ranked list by including persons who held DCA qualification or other higher qualifications. Aggrieved thereby,

Gireeshkumar T.M. and six others, who held the prescribed Certificates in Data Entry and Office Automation, filed WP (C) No. 23679 of 2023 before the Kerala High Court. Their prayer therein was to quash the KPSC's ranked list, which included candidates who did not possess the prescribed qualification, and to direct the KPSC to publish a modified ranked list, including only such candidates who had the prescribed qualification. They also sought a declaration that only candidates who had the prescribed qualification were entitled to be appointed as LDCs in the Kerala Water Authority. WP (C) No. 19463 of 2023 was filed on the same lines and with similar prayers by Sajitha S. and three others. It may be noted that, by the date of disposal of these cases, 29 candidates with DCA/higher qualification figured as respondents in WP (C) No. 23679 of 2023, while 72 such candidates were shown as respondents in WP (C) No. 19463 of 2023.

**7.** Notably, the KPSC filed a counter affidavit taking a position contrary to its earlier stand. According to it, after the Division Bench judgment, selection to the posts of LDC was taken up and an OMR examination was conducted. On the basis of the results thereof, a probability list was published on 03.06.2023 of candidates who had secured 40 marks or above. The KPSC claimed that, as a higher qualification was not barred, it had considered such candidates also while preparing the probability list and those with DCA/higher qualification were also included therein. Reference was made by the KPSC to Rule 10(a)(ii) of the Kerala State and Subordinate Service Rules, 1958.

**8.** A learned Judge of the Kerala High Court noted that the KPSC had changed its stance despite carrying the matter in appeal on the earlier occasion and held that the KPSC could not be permitted to alter its stand, as permitting such reversal of position by it would mean reopening the previously concluded judgments. The learned Judge was of the opinion that, even if erroneous, an inter-party judgment would bind the parties thereto. The learned Judge, accordingly, allowed the writ petitions on 30.10.2023 and directed the KPSC to recast and rework the ranked list, by excluding candidates who were not qualified, and to publish a modified ranked list by including therein only those candidates who possessed the requisite qualification as prescribed in the Notification dated 16.07.2012.

**9.** The correctness of this common judgment dated 30.10.2023 was canvassed in Writ Appeal Nos. 1941 and 1945 of 2023 before a

Division Bench of the Kerala High Court. Writ Appeal No. 1941 of 2023 was filed by Rikha Susheel and four candidates, who held DCA/ higher qualifications, while Writ Appeal No. 1945 of 2023 was filed by Rikha Susheel and fifteen such other candidates. All of them had figured as respondents in the two writ petitions. These writ appeals were dismissed, *vide* common judgment dated 30.01.2024. The Division Bench held therein that there was no error in the reasoning of the learned Judge.

**10.** It is this judgment that is subjected to challenge before us. One set of appeals was filed by the KPSC while the other three sets of appeals were filed by candidates holding DCA/higher qualifications. One such set of appeals was filed by Anoop M and twenty-nine candidates who were not parties to the subject proceedings before the Kerala High Court.

**11.** We may note, at this stage, that the issue of non-impleadment of all the affected candidates was not argued before us. However, as it has been raised in the grounds, we deem it proper to consider the same also. Rule 148 of the Kerala High Court Rules states that all persons directly affected should be made parties to the petition but where such persons are numerous, one or more of them may, with the permission of the Court, be impleaded on behalf of or for the benefit of all persons so affected, but notice of the original petition, on admission, should be given to all such persons either by personal service or by public advertisement. As already noted, several candidates possessing DCA/higher qualifications were either impleaded or got impleaded in the two writ petitions. In all, 101 of them figured as parties therein. This aspect was noted by the Division Bench and it was held that there was sufficient representation of their collective interest. Further, the very purpose of Rule 148 is to protect the interest of those affected persons who may be ignorant of the litigation and would be taken by surprise by the adverse developments therein. Given the long history of this litigation, none of the affected candidates can be presumed to have remained unaware of it. We, therefore, find no merit in this ground.

**12.** The qualification set out in the Notification dated 16.07.2012 for the post of LDC was strictly in keeping with the qualification prescribed therefor at Category No.27 in 'Wing II – Ministerial Service' in the Kerala Water Authority (Administrative, Ministerial and Last Grade)

Service Rules, 2011 (for brevity, 'the Rules of 2011'). Rule 6 of the Rules of 2011 provides that the rules relating to reservation of appointments, i.e., General Rules 14 to 17 of the Kerala State and Subordinate Service Rules, 1958 (for brevity, 'the Rules of 1958'), shall apply to the appointments by direct recruitment to the categories of posts therein. Rule 10 of the Rules of 2011 speaks of the applicability of Parts I, II and III of the Rules of 1958 to the 'employees' of the Kerala Water Authority in matters of pay fixation, joining time, travelling allowances, leave, pension, other retirement benefits, etc.

**13.** Given the phraseology of the Rules of 2011, the Rules of 1958 will not have general and all-pervasive applicability at the stage of direct recruitment even before a candidate is selected and appointed to any of the posts in the categories covered by the Rules of 2011, i.e., before he/she becomes an 'employee' of the Kerala Water Authority. It is relevant to note that Rule 2 in Part II of the Rules of 1958, titled 'Relation to the Special Rules', states that if any provision in the General Rules contained in Part II thereof is repugnant to a provision in the Special Rules applicable to any particular service contained in Part III thereof, the latter shall, in respect of that service, prevail over the provision in the General Rules in Part II of the Rules of 1958. The Rules of 2011 are Special Rules for the Kerala Water Authority. Therefore, to the extent the Rules of 2011 make special provision as to the qualification required for a particular post, the same would prevail over the general rule pertaining to qualifications in Part II of the Rules of 1958. However, this would be subject to Rule 10(a)(ii) of the Rules of 1958 which, as specifically provided therein, prevails over the Special Rules also.

**14.** Rule 10 in Part II (General Rules) of the Rules of 1958 deals with qualifications. It reads as follows:

> *'**10. Qualifications.- (a) (i)** The educational or other qualifications, if any, required for a post shall be as specified in the Special Rules applicable to the service in which that post is included or as specified in the executive orders of Government in cases where Special Rules have not been issued for the post/service.*
>
> ***(ii)** Notwithstanding anything contained in these rules or in the Special Rules, the qualifications recognized by*

*executive orders or standing orders of Government as equivalent to a qualification specified for a post, in the Special Rules or found acceptable by the Commission as per rule 13 (b) (i) of the said rules in cases where acceptance of equivalent qualifications is provided for in the rules and such of those qualifications which pre-suppose the acquisition of the lower qualification prescribed for the post, shall also be sufficient for the post.*

**15.** Pertinently, insofar as the post of LDC is concerned, the Rules of 2011 do not speak of a qualification 'equivalent' to a Certificate in Data Entry and Office Automation from Lal Bahadur Shastri Centre for Science and Technology, Institute of Human Resources Development, also being eligible. What is stated therein is that a Certificate in Data Entry and Office Automation from a similar/equivalent institution, approved by the Government, would be accepted as an eligible qualification. The equivalence is, thus, not of the qualification itself but of the institution from which the said Certificate in Data Entry and Office Automation is obtained.

**16.** Significantly, where they so intend, the Rules of 2011 specifically provide for 'equivalent qualifications' being eligible in relation to particular posts. For instance, for the post of Legal Assistant in 'Wing II – Ministerial Service' a Degree in Law from a University in Kerala or from a University recognized by any of the Universities in Kerala is the prescribed qualification, but its equivalent is also acceptable. Similarly, for the post of Confidential Assistant Grade II, equivalent qualifications to those prescribed are acceptable. So is the case with the post of Lower Division Typist, where equivalent qualifications are explicitly shown to be acceptable. In effect, the failure to mention an 'equivalent qualification' being acceptable for the post of LDC clearly manifests the deliberate design and intent of the Rules of 2011 to limit the equivalence in that context only to the institution from which the Certificate in Data Entry and Office Automation is obtained and not to enlarge the eligibility by encompassing equivalent qualifications also.

**17.** Given the aforestated rule position in the Rules of 2011 and the verbatim reproduction of the same in the Notification dated 16.07.2012, it is clear and certain that a qualification equivalent to a Certificate in Data Entry and Office Automation from Lal Bahadur Shastri

Centre for Science and Technology, Institute of Human Resource Development, is not acceptable but a Certificate in Data Entry and Office Automation from a Government approved similar/equivalent institution would be valid. Without the prescription of an equivalent qualification being recognized, the first part of Rule 10(a)(ii) of the Rules of 1958 would not be attracted, as it speaks of applicability only in cases where acceptance of equivalent qualifications is provided for in the Special Rules. On the other hand, the latter part of Rule 10(a)(ii) speaks of qualifications that presuppose acquisition of the prescribed lower qualification being treated as sufficient. It is the case of the appellants before us that they would fall in this category as they possess either a Diploma in Computer Applications or other higher qualifications, such as a Diploma in Computer Engineering/ Diploma in Data Entry and Console Operation/MCA/M.Sc. in Software Engineering, etc.

**18.** The Secretary of the KPSC filed an additional affidavit on 20.04.2024 before us, wherein he brazenly stated that the submission before the High Court earlier was never that qualifications such as DCA from all institutions would be rejected. This statement is incorrect on the face of it as the KPSC had categorically stated, both in its review petition as well as the grounds of appeal in the earlier round, that DCA qualification would not be accepted by it as a qualification for selection to the notified post. It had also asserted that it examined the issue in detail and decided that applications of persons with DCA qualification could not be accepted.

**19.** The KPSC then filed an additional affidavit on 02.09.2024. Therein, it was stated by its Secretary that recognition of DCA as a higher qualification was not a one-time isolated decision but a well-considered practice that the KPSC consistently applied in various selections over several years. Instances were given of the KPSC accepting DCA as a higher qualification in selections made during the years 2017, 2018, 2019, 2023 and 2024. He stated that this practice was consistently implemented by the KPSC even before issuance of the subject ranked list. He pointed out that this 'equivalence' principle had been applied to selections made for a variety of posts, such as Data Entry Operator, Typist Grade-II, Lower Division Clerk, Computer Operator and Confidential Assistant Grade-II. According to him, while finalizing the selections for the LDC posts, DCA/higher qualifications from institutions which were not recognized by the Government were

rejected. He furnished the list of unrecognized institutions and said that about 120 institutions, offering DCA/PGDCA, were recognized by the Government. He gave the names of fifteen such institutions. He concluded by stating that 590 applications from candidates with DCA/higher qualifications from unrecognized institutions had been rejected, on the one hand, but more than 175 applications from candidates with DCA/higher qualifications from recognized institutions had been accepted. Reference was made to internal correspondence dated 13.06.2017 in relation to the selections for the post of Data Entry Operator in District Cooperative Banks, wherein the higher qualifications, which were to be accepted in lieu of a Certificate in Data Entry, were furnished. Reference was also made to File No. DR V(1)1223/13/GW, pertaining to the above mentioned post of Data Entry Operator, adverting to the acceptability of 38 qualifications and 8 experience certificates.

**20.** Notwithstanding this change in its approach, there is no getting over the fact that in the earlier round of this litigation, the KPSC was uncompromising in its refusal to consider DCA as an eligible qualification for appointment to the post of LDC in the Kerala Water Authority. So much so that it felt aggrieved by the direction of a learned Judge to the contrary and went to the extent of filing a review petition and also a writ appeal thereafter. The Memorandum of Grounds filed by the KPSC in the said writ appeal clearly demonstrated its adamant stand that DCA was not a qualification to be considered eligible for appointment to the subject post. It is apparent that the KPSC did a *volte-face* thereafter, be it for whatever reason, and now seeks to adopt a stand that DCA should be treated as a higher qualification which presupposes the lesser qualification of the prescribed Certificate in Data Entry and Office Automation.

**21.** However, no material has been placed before us to demonstrate that the KPSC undertook any exercise to study the curriculum of each of the courses in question to assess and decide whether any of the so-called 'higher qualifications' can be said to presuppose acquisition of the lesser qualification prescribed for the post. The qualification prescribed, being a Certificate in Data Entry and Office Automation from the named Institute or from a similar/equivalent government approved institution, it was necessary for the KPSC to ascertain the number of hours of actual data entry and office automation that is put in by a candidate who possesses the so-called higher qualification to

decide whether he/she can be treated as superior to a candidate with the prescribed qualification. Without undertaking this exercise, the KPSC cannot straightaway assume that, merely because the higher qualification is a Degree/Diploma in a computer-related subject, a candidate possessing the same would have more experience and expertise in data entry and office automation than a candidate with the prescribed Certificate in Data Entry and Office Automation.

**22.** Useful reference in this regard may be made to the judgment of this Court in ***Ajith K and others vs. Aneesh K.S. and others***.[1] That was also a case from the State of Kerala and involved the post of Junior Health Inspector Grade-II in Municipal Common Service. Minimum qualifications were prescribed for the post in the alternative. While so, candidates possessing a Diploma in Health Inspector Course, a two-year course which was not included in the prescribed qualifications, also aspired for selection. In this context, this Court considered whether the said Diploma could be treated as a higher qualification which presupposed acquisition of the prescribed lower qualification. Relevantly, the KPSC did not undertake any exercise to come to a sustainable finding that acquisition of the Diploma would presuppose acquisition of the prescribed lesser qualification, ultimately leading to this Court rejecting such a claim. Similar is the position presently as the KPSC, except for furnishing data of the institutions offering DCA that were treated as eligible due to Government recognition, did not undertake an independent assessment of the higher qualifications to determine whether candidates who possessed those qualifications would have put in equivalent or more number of hours in data entry and office automation than a candidate who underwent a three months course to obtain the prescribed Certificate in Data Entry and Office Automation.

**23.** The decision of this Court in ***Jyoti K.K. and others vs. Kerala Public Service Commission***[2] is distinguishable on facts, as that was a case where the higher qualification clearly presupposed acquisition of the lesser qualification. The prescribed qualification for the post in question in that case was a Diploma/Certificate in Electrical Engineering, whereas the higher qualifications which

1 [2019] 11 SCR 495 : (2019) 17 SCC 147

2 (2010) 15 SCC 596

were under consideration were B.Tech/B.E Degrees in Electrical Engineering. The same cannot be said to be the case presently, as every computer-related Degree/Diploma course cannot be assumed to impart similar experience or expertise in data entry and office automation as the prescribed Certificate course.

**24.** In ***Sheo Shyam vs. State of U.P.***,[3] this Court considered a recruitment process undertaken by the Union Public Service Commission. There was lack of consensus between the Commission and the State Government and the career of eleven candidates stood at risk owing to such inconsistent and varying stands adopted by the State Government and the Commission at different stages for different purposes. In this context, this Court observed that, though there cannot be any estoppel in law, yet a statutory body like the Commission could not blow hot and cold in the same breath, as there has to be consistency in its view. To rule out unfortunate situations like the one in that case recurring again, this Court cautioned the State Government and the Commission to be more vigilant and constructive in their approach. This Court observed that, when dealing with careers of a large number of candidates, their stands have to be consistent and not varied to avoid giving room for unsavoury suspicions and to ensure that the system works more transparently.

**25.** Presently also, it is manifest that it is the KPSC, with its vacillating and dithering stance, that is largely responsible for this long-pending litigation, impacting the lives, hopes and aspirations of nearly twelve hundred candidates. The KPSC, as already noted *supra*, was steadfast in its stand in the earlier round that DCA was not a qualification to be considered eligible for appointment to the subject post of LDC in the Kerala Water Authority. Thereafter, the change in its stance, without any foundational inquiry to determine the superiority of the so-called higher qualifications over the prescribed qualification, leaves this Court with no doubt that it was a purely whimsical and arbitrary exercise of discretion on its part without actual application of mind as per required parameters.

**26.** Recently, in ***Sivanandan C.T. and others vs. High Court of Kerala and others***,[4] a Constitution Bench held thus:

3 [2004] 2 SCR 406 : (2005) 10 SCC 314

4 [2017] 13 SCR 226 : (2024) 3 SCC 799

> 'In a constitutional system rooted in the rule of law, the discretion available with public authorities is confined within clearly defined limits. The primary principle underpinning the concept of rule of law is consistency and predictability in decision-making. A decision of a public authority taken without any basis in principle or rule is unpredictable and is, therefore, arbitrary and antithetical to the rule of law. [*S.G. Jaisinghani* v. *Union of India*, 1967 SCC OnLine SC 6] The rule of law promotes fairness by stabilising the expectations of citizens from public authorities. This was also considered in a recent decision of this Court in *SEBI* v. *Sunil Krishna Khaitan* [*SEBI* v. *Sunil Krishna Khaitan* (2023) 2 SCC 643], wherein it was observed that regularity and predictability are hallmarks of good regulation and governance. [*SEBI* v. *Sunil Krishna Khaitan* (2023) 2 SCC 643] This Court held that certainty and consistency are important facets of fairness in action and non-arbitrariness: (*Sunil Krishna Khaitan case, SCC pp 678-679, para 59*)
>
> *"59..... Any good regulatory system must promote and adhere to principle of certainty and consistency, providing assurance to the individual as to the consequences of transactions forming part of his daily affairs. ..... This does not mean that the regulator/ authorities cannot deviate from the past practice, albeit any such deviation or change must be predicated on greater public interest or harm. This is the mandate of Article 14 of the Constitution of India which requires fairness in action by the State, and non-arbitrariness in essence and substance. Therefore, to examine the question of inconsistency, the analysis is to ascertain the need and functional value of the change, as consistency is a matter of operational effectiveness."*'

Earlier, in ***State of Bihar and others vs. Shyama Nandan Mishra***,[5] this Court observed that the State cannot be allowed to change course and belie legitimate expectation as regularity, predictability, certainty and fairness are necessary concomitants of governmental action.

5 [2022] 11 SCR 1136 : 2022 SCC OnLine SC 554

**27.** We, therefore, have no hesitation in placing the blame for this entire imbroglio on the KPSC as it laid the genesis for this litigation owing to its changing stances at different points of time. A State instrumentality seized of the solemn responsibility of making selections to public services must maintain a high standard of probity and transparency and is not expected to remain nebulous as to its norms or resort to falsehoods before the Court, contrary to what it had stated in its earlier sworn affidavits. We can only hope that the Kerala Public Service Commission learns from this experience and desists, at least in future, from trifling with the lives, hopes and aspirations of candidates who seek public employment.

**28.** On the above analysis, we hold that no error was committed by the Division Bench of the Kerala High Court in confirming the view taken by the learned Judge, non-suiting candidates with DCA/higher qualifications who aspired for selection to the post of Lower Division Clerk in the Kerala Water Authority.

The appeals are accordingly dismissed.

Pending applications, if any, shall stand disposed of.

Parties shall bear their own costs.

*Result of the case:* Appeals dismissed.

†*Headnotes prepared by:* Nidhi Jain

[2024] 11 S.C.R. 340 : 2024 INSC 829

# The Madhya Pradesh Madhya Kshetra Vidyut Vitran Company Limited & Ors.
**v.**
# Bapuna Alcobrew Private Limited & Anr.

(Civil Appeal No. 1095 of 2013)

04 November 2024

**[Dipankar Datta* and Pankaj Mithal, JJ.]**

## Issue for Consideration

Issue arose as to whether s.56(2) of the Electricity Act, 2003 has application to a demand raised by appellants-distributor on the first respondent for recovery of sums payable under the Electricity Act, 1910 and, whether demand, if it be treated as one under the 1910 Act, is sustainable having regard to long delay.

## Headnotes†

**Electricity Act, 2003 – s.56(2) – Electricity Act, 1910 – Limitation Act, 1963 – Matter pertaining to electricity consumption – Appellants-distributor and first respondent entered into an agreement for supply of electrical energy to the first respondent's unit, with the first respondent guaranteeing a minimum consumption – Also permission accorded to the respondent to install turbo generating set on the condition that it would be used only as a stand-by and not parallel with the appellants' supply system – However, on failure to abide the condition, appellant issued a notice, cancelling the permission – Writ petition filed wherein the High Court stayed the notice, subject to respondent depositing the minimum guarantee charges – Thereafter, appellant issued notice demanding Rupees seventy lakh, for not having utilised the minimum guaranteed consumption for the period between June 1996 and May 2000 – Respondent filed miscellaneous petition in the first writ petition, which was disposed of holding the first respondent liable to pay the 'minimum guarantee charges', irrespective of electricity consumed – However, later the respondent withdrew the writ petition – Issuance of second show cause notice for the same amount – Writ**

* Author

**petition thereagainst, partly allowed – Thereafter, writ appeal allowed quashing the second show cause notice upon application of s.56(2) of the 2003 Act, claim being time barred, as it was issued beyond the two years period of limitation – Sustainability:**

**Held:** Limitation period of two years prescribed for recovery of dues u/s.56 of the 2003 Act would apply to liabilities arising under the 2003 Act, and not prior to the enforcement thereof – Thus, Division Bench erred in holding that the liability incurred by the first respondent prior to the enforcement of the 2003 Act would still be barred by the provisions of s.56(2) thereof – Furthermore, orders having become final, leave no room for the first respondent to escape its statutory liability by arguing bar of limitation, when the statute itself did not prescribe such bar – Challenge to the first show cause notice having failed the principle of issue estoppel operated as a bar for the first respondent to raise a challenge to the second show cause notice, which had been issued for precisely the same due amount – Also, point even if wrongly decided binds the party against whom it is decided and the same point cannot be urged in a subsequent suit or proceeding at the same level – Issue of liability accruing to the first respondent for non-payment of minimum guarantee charges had been decided previously and such decision, not being subjected to any appeal, had attained finality in the eyes of law estopping the first respondent from reagitating the issue – Second writ petition at the instance of the first respondent was not maintainable and, ought not to have been entertained at all – However, since the appellants accepted the order of the Single Judge and issued fresh demand for reduced amount and which has since been recovered by encashing the bank guarantee, no order made for changing the position flowing from the said order – Thus, on conjoint reading of all the orders, the liability of the first respondent to pay the minimum guarantee charges is clear and such orders having attained finality, bound the first respondent; and no submission by the first respondent, either on delay in raising the demand or merit-based review of the action of the appellants, in the second writ petition was open to persuade the High Court to hold in favour first respondent – Thus, the impugned judgment and order of the High Court being unsustainable in law and set aside – Electricity (Supply) Act, 1948. [Paras 13, 24-40]

**Electricity Act, 1910 – s.24 – Discontinuance of supply to consumer neglecting to pay charge – Limitation period:**

**Held:** Although s.24 prescribes no period of limitation, it does allow the licensee to discontinue supply of energy upon a consumer neglecting to pay charges that are demanded by raising a bill, irrespective of the fact that a suit for recovery of unpaid charges would be barred if not instituted within three years of the liability accruing – There appears to be no limitation as regards the period within which notice u/s.24(1) has to be issued, evincing the intention of the licensee to disconnect supply for non-payment of claimed dues – However, if in case, despite the consumer not paying the charges demanded and the notice thereunder is not issued within a reasonable period or at any time within which a suit for recovery could be instituted, whether the right of the licensee to claim the unpaid charges would lapse will have to be decided by the court before whom the lis is brought upon consideration of the defence that is raised and the explanation for the delay – It must depend on the facts of each particular case whether the demand by reason of mere delay should be interdicted or not – Furthermore, s.17 of the 1963 Act is meant to save suits from being dismissed as time-barred, which could not be filed due to bona fide mistakes or errors – If a suitor alleges that the suit could not be instituted by him within the prescribed period of limitation because of some mistake, which came to be discovered beyond the period prescribed for institution of a suit, it is open to such suitor to claim exemption from limitation in terms of Ord. VII r. 6 CPC and such exemption can be granted in an appropriate case – However, if a suitor alleges to have discovered a mistake later but it is proved on evidence being led that exercise of reasonable diligence could have resulted in the mistake being discovered on an earlier date, limitation would begin to count from that earlier date; and, in case, the count from the said earlier date takes the date of institution of the suit beyond the prescribed period of limitation, the bar of limitation would get attracted – Mistake is, thus, not a circumstance which can be used as a shield to save negligence in all cases – Absence of due diligence or lack of bona fides would not clothe suitor to take undue advantage of beneficent provision like s.17 – Limitation Act, 1963 – s.17 – Electricity Act, 2003 – s.56(2). [Paras 16, 17, 19, 20]

**The Madhya Pradesh Madhya Kshetra Vidyut Vitran Company Limited & Ors. v. Bapuna Alcobrew Private Limited & Anr.**

## Case Law Cited

*Raymond Limited v. State of M.P.* [2000] Supp. 4 SCR 668 : **(2001) 1 SCC 534;** *K.C. Ninan v. Kerala SEB* [2023] 9 SCR 637 : **2023 SCC OnLine SC 663;** *Kusumam Hotels (P) Ltd. v. Kerala SEB* [2008] 9 SCR 752 : **(2008) 13 SCC 213;** *Ajmer Vidyut Vitran Nigam Ltd. v. Rahamatullah Khan* [2020] 2 SCR 929 : **(2020) 4 SCC 650;** *Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd.* [2021] 8 SCR 645 : **(2021) 20 SCC 200;** *State of Orissa v. Madan Gopal Rungta* [1952] 1 SCR 28 : **1951 SCC 1024;** *Hope Plantations Ltd. v. Taluk Land Board* [1998] Supp. 2 SCR 514 : **(1999) 5 SCC 590;** *Bhanu Kumar Jain v. Archana Kumar* [2004] Supp. 6 SCR 1104 : **(2005) 1 SCC 787 – referred to.**

## List of Acts

Companies Act, 1956; Electricity Act, 2003; Electricity (Supply) Act, 1948; General Clauses Act, 1897; Electricity Act, 1910; Limitation Act, 1963.

## List of Keywords

Delay; Electricity consumption; Agreement for supply of electrical energy; Guaranteed minimum consumption; Install turbo generating set; Minimum guarantee charges; Limitation; Recovery of dues; Liability; Estoppel; Discontinuance of supply to consumer neglecting to pay charge; Bona fide mistakes or errors; Mistake; Absence of due diligence or lack of bona fides.

## Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1095 of 2013

From the Judgment and Order dated 13.10.2011 of the High Court of M.P. at Gwalior in WA No.550 of 2009

## Appearances for Parties

Ms. Liz Mathew, Sr. Adv., Rohit K. Singh, Uday Nath Tiwari, Prakhar Srivastava, Advs. for the Appellants.

Jayant K. Mehta, Sr. Adv., Kuber Dewan, Ms. Anuradha Dutt, Ms. Neeharika Aggarwal, Kaushtubh Srivastava, Raghav Dutt, Ms. B. Vijayalakshmi Menon, Raghav Sharma, Jaskirat Pal Singh, Pranjal Pandey, Salvador Santosh Rebello, Advs. for the Respondents.

**Judgment / Order of the Supreme Court**

**Judgment**

**Dipankar Datta, J.**

THE CHALLENGE

**1.** The final judgment and order dated 13th October, 2011[1] of the High Court of Madhya Pradesh,[2] allowing the writ appeal[3] presented by the first respondent, is under assail in the present appeal by special leave.

BRIEF RESUME OF FACTS

**2.** The factual matrix of the case, insofar as is relevant for the purpose of deciding the present appeal, is noted hereinbelow:

I. The first appellant is the state electricity distribution utility for the State of Madhya Pradesh, while the second and the third appellants are its officers. The first respondent is a company registered under the Companies Act, 1956. It is engaged in the business of manufacturing rectified spirit, extra neutral alcohol and bottling of Indian made foreign liquor. The second respondent is the Madhya Pradesh Pollution Control Board, which had asked the first respondent to submit a proposal with respect to its plans for a bio-gas electricity generation unit. The first respondent did not pursue any communication with the second respondent thereafter and, thus, no relief has been sought in this appeal against the latter.

II. The appellants and the first respondent entered into an agreement dated 18th November, 1991, for supply of electrical energy to the first respondent's unit at Gwalior, with the first respondent guaranteeing a minimum consumption that would yield an annual revenue of Rs. 34,747/- (Rupees thirty four thousand seven hundred and forty seven rupees only).

III. Thereafter, supplementary agreements were executed between the appellants and the first respondent, increasing

1 impugned judgment, hereafter

2 High Court, hereafter

3 Writ Appeal No. 550/2009

the consumption of electrical energy. *Vide* agreement dated 17th November, 1992, the quantum was initially increased from 136 kVA to 169 kVA and *vide* agreement dated 30th March, 1995, there was a further increase to 305 kVA.

IV. The first respondent sought permission from the appellants to install and run an 807 kVA biogas turbo generating set[4] for captive use. On 30th May, 1996, the second appellant granted permission to the first respondent on the condition that the TG set does not run parallel with the appellants' supply system, and that the TG set would be used only as a stand-by measure upon the failure of the appellants to supply power. Most importantly, in what would give birth to the dispute, the first respondent was bound to a monthly minimum consumption of units, with 35% load factor in case of no power cut, and 39% load factor in cases of power cut.

V. A third supplementary agreement was executed by and between the appellants and the first respondent on 01st June, 1996, which provided for supply of an additional 560 kVA to the first respondent thereby increasing the total contract demand to 1170 kVA.

VI. Alleging that the first respondent was running the TG set as a parallel source of power notwithstanding the supply of power provided by the first appellant, a notice dated 28th March, 2000[5] was served by the appellants upon the first respondent cancelling the permission accorded to the first respondent to run the TG set.

VII. Challenging the cancellation notice, the first respondent knocked the doors of the High Court by invoking its writ jurisdiction. On the writ petition,[6] the High Court passed an interim order dated 04th May, 2000 staying operation of the cancellation notice, subject to the condition, *inter alia*, that the first respondent would deposit the 'minimum guarantee charges' payable as against the load of 807 kVA to be assessed by the appellants.

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4 TG set, hereafter

5 cancellation notice, hereafter

6 W.P. No. 677/2000; first writ petition, hereafter

VIII. Consequently, the appellants issued a show cause notice[7] dated 14th July, 2000 to the first respondent quantifying its liability in a sum of Rs 70,50,000/- (Rupees seventy lakh fifty thousand only). The first show cause notice provided a time of fifteen (15) days to the first respondent to submit a representation with respect to the notice.

IX. The first respondent promptly challenged the first show cause notice by filing a miscellaneous petition[8] in the first writ petition. The High Court, *vide* order dated 14th February, 2001, disposed of the miscellaneous petition by holding the first respondent liable to pay the 'minimum guarantee charges', irrespective of whether the corresponding amount of electricity had been consumed or not.

X. On 21st October, 2006, the first respondent withdrew the first writ petition, seeking to represent the matter before the appellants themselves on account of a change in the policy of the State Government, which no longer required a party to seek permission to install a T.G. set.

XI. After a long interlude of two years, new life was breathed into the dispute by the appellants *vide* issuance of a show cause notice dated 07th January, 2009[9] through Rs 70,50,000/- (Rupees seventy lakh fifty thousand only) was once again quantified as the first respondent's liability for not having utilised the minimum guaranteed consumption for the period between June 1996 and May 2000. The second show cause notice provided a time of thirty (30) days to the first respondent to submit a representation in regard thereto, failing which demand would be raised without further communication.

XII. Thereafter, demand was raised in the form of an energy bill dated 04th March, 2009, wherein the pre-existing liability of Rs 70,50,478/- (Rupees seventy lakhs fifty thousand four hundred and seventy eight only) was mentioned as "Other Chars. (sic, charges)".

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7 first show cause notice, hereafter

8 M(W)P No. 230 of 2000; miscellaneous petition, hereafter

9 second show cause notice, hereafter

XIII. Subsequently, the appellants issued a demand-cum-disconnection notice dated 18th March, 2009[10] threatening that if the amount of Rs 70,50,478/- (Rupees seventy lakhs fifty thousand four hundred and seventy eight only) was not paid within 15 days, the supply would be disconnected without prior notice.

XIV. Aggrieved by the issuance of the second show cause notice, the first respondent invoked the jurisdiction of the High Court yet again *vide* a writ petition,[11] seeking quashing of the second show cause notice.

XV. A learned Single Judge of the High Court, *vide* interim order dated 06th April, 2009, stayed operation of the second show cause notice, conditional upon the first respondent furnishing a bank guarantee of the equivalent amount. It is a matter of record that bank guarantee was furnished by the first respondent on 20th April, 2009.

XVI. The learned Single Judge of the High Court, *vide* order dated 16th July, 2009,[12] partly allowed the writ petition. His Lordship held that the first respondent was obligated to consume the monthly minimum units on the load factor since it had agreed to the terms and conditions laid down in the letter dated 30th May, 1996. However, the retrospective application of the enhanced contract demand[13] was struck down and the appellants were directed to re-calculate the demand, with the enhanced demand being applicable only from 14th October, 1996.

XVII. Consequently, *vide* communication dated 13th November, 2009, the appellants informed the first respondent that a revised demand of Rs 56,81,977.58P (Rupees fifty six lakh eighty one thousand nine hundred seventy seven and fifty eight paise only) had been raised, which would be recovered against the bank guarantee furnished by the first respondent. On 16th November, 2009, the appellants promptly encashed

10 disconnection notice, hereafter

11 Writ Petition No. 1382/2009; second writ petition, hereafter

12 writ court's 's order, hereafter

13 560 kVA enhanced to 1170 kVA w.e.f. 14th October, 1996

the bank guarantee and issued a cheque refunding the excess amount. Against such encashment, the first respondent had initiated proceedings for contempt by filing a petition[14] on 18th November, 2009.

XVIII. Also, aggrieved by the writ court's order, the first respondent carried the same to the Division Bench of the High Court by presenting the relevant intra-court appeal. It is the judgment and order of disposal of such appeal that has given rise to the present civil appeal.

IMPUGNED JUDGMENT

**3.** As noted at the beginning, the Division Bench allowed the writ appeal. The second show cause notice was quashed upon application of section 56(2) of the Electricity Act, 2003.[15]

**3.1** On the question of whether the first respondent was liable to pay the charges for minimum guaranteed consumption, the High Court relied upon the decision in ***Raymond Limited v. State of M.P.***[16] to observe that the first appellant was within its right to demand minimum guarantee charges but there also existed a corresponding duty upon such appellant to supply electrical energy to such an extent, fulfilment of which duty had not been proved in the present case.

**3.2** The High Court then embarked upon the issue of limitation, i.e., whether the appellants could recover dues for the period between June, 1996 and May, 2000, *vide* the second show cause notice. The question before the High Court was whether the liability which accrued to the first respondent under the Electricity (Supply) Act, 1948,[17] i.e., when the first show cause notice was issued, could be enforced after coming into effect of the 2003 Act, i.e., when the second show cause notice was issued. The pivotal difference between the two legislations is that while the former did not prescribe a limitation period for the recovery of dues, the 2003 Act specifically prescribed such a period in the form of section 56(2), providing as follows:

14 Contempt Petition No. 559/2009

15 2003 Act, hereafter

16 [2000] Supp. 4 SCR 668 : (2001) 1 SCC 534

17 1948 Act, hereafter

> **Section 56. Disconnection of supply in default of payment –**
>
> (1) ***
>
> (2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

**3.3** The High Court observed that since the 2003 Act had not been enforced retrospectively, the liability would continue to accrue to the first respondent well after the 2003 Act came into force. However, this liability, w.e.f. 10th June, 2003 could not have been enforced beyond a period of two (2) years, keeping in mind section 56(2) read with section 174 of the 2003 Act.

**3.4** Consequently, the High Court observed that the first respondent's writ petition having been disposed on 21st June, 2006, a period of two (2) years therefrom would be 09th June, 2008 whereas the appellants had only issued the second show cause notice on 07th January, 2009, which was evidently beyond the period of limitation.

**3.5** In the result, the Division Bench reversed the judgment and order dated 16th July, 2009 passed by the writ court and quashed the second show cause notice issued by the appellants.

CONTENTIONS OF THE PARTIES

**4.** Ms. Liz Mathew, learned senior counsel for the appellants, in assailing the impugned judgment, advanced the following submissions:

A. The Division Bench erred in interpreting section 174 of the 2003 Act to extend the applicability of such Act and its limitation clause to the existing proceedings.

B. The Division Bench erred in applying section 174 of the 2003 Act to the present case since this was not a case of inconsistency with any other law, rather, it concerned the liabilities incurred under the 1910 Act in view of section 185(5) of the 2003 Act.

C. ***K.C. Ninan v. Kerala SEB***[18] was relied on to argue that section 56(2) of the 2003 Act would not apply to a liability which was incurred prior to the enforcement of the 2003 Act.

D. The High Court erred in not appreciating the purport of section 185 of the 2003 Act which saved the application of section 6 of the General Clauses Act, 1897.[19]

**5.** Mr. Jayant Mehta, learned senior counsel for the first respondent, while supporting the impugned judgment submitted as under:

A. The first and the second show cause notices were not 'demands' but merely notices for the purposes of quantification and raising of demand in the future.

B. There was nothing which prevented the appellants from raising a demand during the pendency of the first writ petition since the High Court had not passed any order of stay.

C. Assuming that the 2003 Act had no application to dues arising during a period of time prior to its enforcement w.e.f. 10th June, 2003 and even though section 24 of the Indian Electricity Act, 1910[20] did not prescribe a period of limitation, the process of recovery of dues, if any, had to be initiated within the period for institution of a suit, i.e., three (3) years from the date of the appellant's awareness of the sum due, and, at any rate, must be initiated within a reasonable period, which cannot be nine (9) years.

D. Allowing the appellants to raise a demand nine (9) years later would lead to injustice and arbitrariness, more so when in the absence of any demand the question of the first respondent neglecting to pay charges did not arise.

E. Encashment of bank guarantee by the appellants immediately after the revised demand was raised on the first respondent without giving any opportunity to the first respondent to pursue legal remedies, in the circumstances, must be held to be arbitrary.

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18 [2023] 9 SCR 637 : 2023 SCC OnLine SC 663

19 1897 Act, hereafter

20 1910 Act, hereafter

ISSUES

**6.** Not too many issues arise for decision on the facts of the present appeal. The task before us is limited to determining whether section 56(2) of the 2003 Act has any application to a demand raised by the appellants on the first respondent for recovery of sums payable under the 1910 Act and, hence, the impugned judgment is sustainable on this score; if not, whether the demand, if it be treated as one under the 1910 Act, is sustainable having regard to the long delay.

ANALYSIS

**7.** We have heard learned senior counsel for the parties and perused the impugned judgment as well as the other materials on record.

**8.** An analysis of the enactments governing the dispute would be of profit.

**9.** The 1910 Act came into force w.e.f. 01st January, 1911, with the objective of amending the law relating to supply and use of electrical energy. The 1948 Act, however, was enacted with the purpose of facilitating the establishment of regional co-ordination in the development of electricity, or as the long title of the said Act states, *"to provide for the rationalisation of the production and supply of electricity, and generally for taking measures conducive to electrical development"*. Thus, both these enactments had their own spheres of application, and existed concurrently. However, w.e.f. 10th June, 2003, the 2003 Act came into force to *"consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto"*.[21] The 2003 Act, by virtue of section 185(1), repealed, *inter alia*, the 1910 Act and the 1948 Act. The 1948 Act, since it related primarily to the statutory powers of the central electricity authority, state electricity authorities and generating companies, would be of minimal relevance while deciding the present dispute.

21 Long title of 2003 Act

**10.** We shall first answer the issue of applicability of section 56(2) of the 2003 Act raised by the appellants, which was the turning point of the decision of the Division Bench, i.e., whether the limitation period of two (2) years prescribed by section 56(2) of the 2003 Act bars the appellants from raising demand for the period between June 1996 and May 2000. Though the Division Bench answered this question in the affirmative, in light of two subsequent contrary decisions rendered by this Court precisely on the point, this finding is rendered indefensible and would necessarily have to be set aside.

**11.** In ***Kusumam Hotels (P) Ltd. v. Kerala SEB***,[22] this Court, while examining the issue of retrospective discontinuance of tariff concessions for the tourism industry, held that the liability accruing to the licensee being statutory in nature would continue to survive even after the enforcement of the 2003 Act in the following terms:

> "43. Whereas the bills are issued only in respect of the dues arising in terms of the law as was applicable prior to the coming into force of the 2003 Act, sub-section (2) of Section 56 shall apply after the said Act came into force. The Board could have even framed a tariff in terms of the provisions appended to Section 61 of the Act. The appellants incurred liability to pay the bill. The liability to pay electricity charges is a statutory liability. The Act provides for its consequences. Unless therefore, the 2003 Act specifically introduced the bar of limitation as regards the liability of the consumer incurred prior to coming into force of the said Act; in our opinion, having regard to Section 6 of the General Clauses Act, the liability continues.
>
> (emphasis supplied)

**12.** This decision has been affirmed by a decision of three (3) Judges in ***K.C. Ninan*** (supra) and is the sheet-anchor of the argument of Ms Mathew. There, this Court affirmed the principle that liabilities which arose prior to the 2003 Act coming into force would escape the limitation period prescribed by section 56(2) of the 2003 Act:

> "130. Before we deal with the implication of Section 56(2) on the civil remedies available to a licensee, it is important

22 [2008] 9 SCR 752 : (2008) 13 SCC 213

> to clarify that when the liability incurred by a consumer is prior to the period when the 2003 Act came into force, then the bar of limitation under Section 56(2) is not applicable. In Kusumam Hotels Pvt Ltd. v. Kerala State Electricity Board, this Court has held that Section 56(2) applies after the 2003 Act came into force and the bar of limitation under Section 56(2) would not apply to a liability incurred by the consumer prior to the enforcement of the Act. In terms of Section 6 of the General Clauses Act, 1897, the liability incurred under the previous enactment would continue and the claim of the licensee to recover electricity would be governed by the regulatory framework which was in existence prior to the enforcement of the 2003 Act.
>
> 134. The period of limitation under Section 56(2) is relatable to the sum due under Section 56. The sum due under Section 56 relates to the sum due on account of the negligence of a person to pay for electricity. Section 56(2) provides that such sum due would not be recoverable after the period of two years from when such sum became first due. The means of recovery provided under Section 56 relate to the remedy of disconnection of electric supply. The right to recover still subsists."
>
> (emphasis supplied)

**13.** As settled by this Court, section 185(5) of the 2003 Act read with section 6 of the 1897 Act would lead to the inescapable conclusion that the limitation period of two (2) years prescribed for recovery of dues under section 56 of the 2003 Act would apply to liabilities arising under the 2003 Act, and not prior to the enforcement thereof. Thus, we hold that the Division Bench manifestly erred in holding that the liability incurred by the first respondent prior to the enforcement of the 2003 Act would still be barred by the provisions of section 56(2) thereof.

**14.** The first question is, thus, answered against the first respondent.

**15.** We now endeavour to examine, whether the demand raised by the appellants ought to fail on the ground of delay and/or whether the amount due is still recoverable in the manner ordained by section 24 of the 1910 Act. Imperative for us to complete this exercise

of analysing the legal position is to read the section itself. To the extent relevant, it reads:

> **24. Discontinuance of supply to consumer neglecting to pay charge.**
>
> (1) Where any person neglects to pay any charge for energy or any sum, other than a charge for energy, due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charger or other sum, together with ally expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.
> (2) ***

**16.** Section 24 in clear terms authorised a licensee to disconnect supply of energy to any person, if he neglected to pay any charge for energy or sum, other than a charge for energy, due from him. The condition precedent for such disconnection was issuance of a clear seven days' prior notice. This, in our opinion, is an *in terrorem* measure which is apart from the right of the licensee to recover the sum due by instituting a suit. Noticeably, section 24 did not refer to any period of limitation as in section 56(2) of the 2003 Act. If the licensee were to opt for institution of a suit, it cannot be contended with any degree of conviction that since section 24 does not prescribe a period of limitation or does not refer to the Limitation Act, 1963,[23] a suit can be instituted at any time as per the convenience of the licensee. Electrical energy is a saleable commodity or goods, which we find usually to be sold on credit. That is, the licensee first supplies the energy and a bill is raised by the licensee specifying the date by which the charges are to be paid, whereafter it is the liability of the consumer to pay it. On neglect to pay, the consequences in section 24(1) are attracted. Having regard to such state of affairs, a

23 1963 Act

suit for recovery of the price of electrical energy supplied, or sold, by the licensee and consumed by the consumer would be governed by Article 15 of the 1963 Act, reading as follows:

Part II – Suits relating to Contracts

| Description of suit | Period of Limitation | Time from which period begins to run |
|---|---|---|
| **15.** For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit. | Three years | When the period of credit expires. |

**17.** The position in law would have been otherwise, if section 24(1) itself had prescribed a period of limitation different from the one in Article 15 (supra). Since section 24 does not prescribe any period of limitation than that prescribed by the 1963 Act, as is done by the new avatar thereof in the 2003 Act, limitation would set in immediately upon the consumer's neglect to pay the amount mentioned in the bill raised by the licensee. This Court, in ***Ajmer Vidyut Vitran Nigam Ltd. v. Rahamatullah Khan,***[24] followed by ***Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd.,***[25] has held that a consumer can be said to have neglected to pay any sum due to the licensee only after a demand is raised by the licensee and if no demand is raised by the licensee, the question of a consumer neglecting to pay any sum due to the licensee does not and cannot arise. Thus, a licensee acquires the right of action to institute a suit immediately after the consumer neglects to pay the amount mentioned in the bill raised by it.

**18.** There could be situations like the one in ***Rahamatullah Khan*** (supra) where the licensee might have committed a mistake. In such a case, the period of limitation would begin only from the point of discovery of the mistake and not earlier; and, such a case could be covered by section 17 of 1963 Act.

**19.** It cannot be overemphasized that section 17 of the 1963 Act is meant to save suits from being dismissed as time-barred, which could not

24 [2020] 2 SCR 929 : (2020) 4 SCC 650

25 [2021] 8 SCR 645 : (2021) 20 SCC 200

be filed due to *bona fide* mistakes or errors. If a suitor alleges that the suit could not be instituted by him within the prescribed period of limitation because of some mistake, which came to be discovered beyond the period prescribed for institution of a suit, it is open to such suitor to claim exemption from limitation in terms of Order VII Rule 6 of the Code of Civil Procedure, 1908 and such exemption can be granted in an appropriate case. However, if a suitor alleges to have discovered a mistake later but it is proved on evidence being led that exercise of reasonable diligence could have resulted in the mistake being discovered on an earlier date, limitation would begin to count from that earlier date; and, in case, the count from the said earlier date takes the date of institution of the suit beyond the prescribed period of limitation, the bar of limitation would get attracted. Mistake is, thus, not a circumstance which can be used as a shield to save negligence in all cases. Absence of due diligence or lack of *bona fides* would not clothe a suitor to take undue advantage of a beneficent provision like section 17; it is for the relevant court to separate the grain from the chaff.

**20.** The upshot of the aforesaid discussion is that although section 24 of the 1910 Act prescribes no period of limitation, it does allow the licensee to discontinue supply of energy upon a consumer neglecting to pay charges that are demanded by raising a bill, irrespective of the fact that a suit for recovery of unpaid charges would be barred if not instituted within three (3) years of the liability accruing. There appears to be no limitation as regards the period within which notice under section 24(1) has to be issued, evincing the intention of the licensee to disconnect supply for non-payment of claimed dues. However, if in case, despite the consumer not paying the charges demanded and the notice thereunder is not issued within a reasonable period or at any time within which a suit for recovery could be instituted, whether the right of the licensee to claim the unpaid charges would lapse will have to be decided by the court before whom the *lis* is brought upon consideration of the defence that is raised and the explanation for the delay. We only say that it must depend on the facts of each particular case whether the demand by reason of mere delay should be interdicted or not.

**21.** Be that as it may, in this case, no suit was instituted within the period of limitation or beyond. We need not examine here whether the remedy by way of a suit for the appellants stood foreclosed, because of the

contention of the first respondent that no demand had been raised and the show cause notices cannot be construed as demands. However, did issuance of the second show cause notice (on 07th January, 2009) afford a fresh cause of action for the first respondent to invoke the writ jurisdiction of the High Court and did it turn out to be fatal for the appellants? We shall endeavour to find an answer to this question by first reading the show cause notices issued by the appellants.

**22.** The operative portion of the first show cause notice (dated 14th July, 2000) is extracted hereinbelow:

> "On going through the past consumption, i.e. w.e.f. June 1996 to till date it is observed that units consumed by you are not up to the mark as units worked out on 35% or 39% load factor as and when applicable.
>
> It shows that you fails (sic, failed) to fulfil the condition no.5 of the said permission letter dt. 30.5.96 by not consuming units equivalent to units worked out on load factor as above. The consumption found is on The consumption found is on lower side in various months. The liability accrued on this account comes to Rs. 70.50.lacs. Statement of liability is enclosed.
>
> Therefore, please take this as Notice of Show Cause as to why not the supplementary demand towards less consumption, as per statement enclosed, be raised against your HT connection.
>
> Your representation in this regard, may be please be submitted within 15 days from the date of receipt of this letter"
>
> (emphasis supplied)

**23.** Thereafter, the second show cause notice was issued on 07th January, 2009, the operative portion whereof is extracted hereinbelow:

> "It shows that you fails (sic, failed) to fulfil the condition no.5 of the said permission letter dt. 30.5.96 by not consuming units equivalent to units worked out on load factor as above. The consumption found is on lower side in various months. The liability accrued on this account comes to Rs. 70.50.lacs. Statement of liability is enclosed.

> Therefore, please take this as Notice of Show Cause as to why not the supplementary demand towards less consumption, as per statement enclosed, be raised against your HT connection.
>
> You had earlier filed W.P. No. 677/2000 before Hon'ble High Court in connection with some other dispute relating to TG set permission. You had withdrawn aforesaid writ petition with liberty to represent the matter before the respondent (Board) and in case further grievances are left liberty to assail the same in accordance with law. Accordingly Hon'ble High Court had disposed off (sic, of) the same on 21.2.2006 with the aforesaid liberty to you.
>
> Your reply / representation, if any, in this regard, may be please be submitted within 30 days from the date of issue of this letter, failing which the demand shall be raised without any further communication."
>
> (emphasis supplied)

**24.** Ironing out the creases of when the amount first became due for the first respondent to pay, upon a demand being raised by the appellants, need not detain us for long having regard to certain admitted facts, to which we turn at this juncture. Perusal of two orders passed by the High Court, which intervened in course of the longstanding litigation between the parties, is essential. These orders passed on the first writ petition and an interlocutory petition filed therein, seemingly innocuous, have a decisive influence in the present appeal.

**25.** The first of these is the interim order dated 04th May, 2000 of the High Court on the first writ petition, reading as follows:

> "Heard.
>
> Admit.
>
> Issue notice returnable at an early date.
>
> Requisite steps in this regard be taken within 3 days.
>
> The question in regard to the grant of interim relief will be considered after notices are served.
>
> In the meanwhile, considering the facts and circumstances as brought on record, it is directed that the operation of

> the impugned order dated 28.3.2000 a true copy of which has been filed as annexure P/1 to the writ petition shall remain stayed till the next date of listing subject to the following conditions:
>
> The petitioner shall deposit the minimum guarantee charges payable as against the load of 807kVA which shall be assessed by the respondent Board and intimated to the petitioner within a week.
>
> ***"
>
> (emphasis supplied)

**26.** The position that emerges from the above extract is that the order dated 28th March, 2000 cancelling permission to run the T.G. set was stayed, subject to the first respondent depositing the minimum guarantee charges. It was open to the first respondent not to pay but that would have involved the risk of not operating the T.G. set. If, indeed, the first respondent was not interested in running the T.G. set, it could have withdrawn the writ petition then and there; or, it could have subjected such order to an appeal. The first respondent did not carry the order in appeal and, thus, the order attained finality.

**27.** That the first respondent was duly interested in the outcome of the first writ petition and to obtain an order for running the T.G. set is clear from what happened thereafter. The first show cause notice was issued demanding Rs 70,50,478/- (Rupees seventy lakhs fifty thousand four hundred and seventy eight only). This was the trigger for the miscellaneous petition which the first respondent filed, subjecting the first show cause notice to challenge. Although the miscellaneous petition is not on record, the first respondent in its 'List of Dates' handed over to us at the time of hearing conceded that the *"Respondent Company challenged the First Show Cause Notice by way of M(W)P 230/2000 in WP 677/2000, which was disposed of vide Order dated 14 February 2001 ...".* While disposing of the miscellaneous petition in favour of the appellants and against the first respondent, the High Court *vide* its order dated 14th February, 2001 held as follows:

> "Earlier on 4.5.2000 this court has categorically ordered that petitioner shall pay the respondents minimum guarantee charge as per agreement with respondents. The petitioner

> is bound to pay the minimum guarantee amount whether electricity is consumed or not. This order is subject to modification if some rules for generating sets are framed by the respondents electricity board. The question of recovery of bill on T.G. set is not warranted unless the rules for recovery are produced.
>
> Petition is disposed of."
>
> (emphasis supplied)

**28.** This order too went unchallenged by the first respondent and was allowed to attain finality with the effect that the first show cause notice stood upheld by the High Court, though by an interim order.

**29.** There is, also, no record of the first respondent having made payment pursuant to the aforementioned orders, despite acceptance thereof (the orders) by conduct. In fact, it is an undisputed position as would appear from the aforesaid factual narrative that the first respondent did not obey the orders foisting liability on it for payment of the minimum guarantee charges; on the contrary, on 21st February, 2006, the first respondent withdrew the first writ petition, with liberty to represent the matter before the appellants owing to some change in policy with regard to running of T.G. sets. In effect, despite the orders dated 04th May, 2000 and 14th February, 2001 staring at its face, the first respondent avoided a decision on the merits of the writ petition and effectively foreclosed its right to have the demand towards minimum guarantee charges nullified. As per the counter affidavit, which the appellants as respondents filed in the second writ petition, no representation was also filed by the first respondent for which leave was obtained as recorded in the order passed on 21st February, 2006. Thus, the orders having become final, leave no room for the first respondent to escape its statutory liability by arguing a bar of limitation, when the statute itself did not prescribe such a bar.

**30.** There cannot be any doubt that once an interim order is passed in a suit or a proceeding, the interim relief granted to the party seeking interim relief could either be confirmed or vacated at the time of final disposal of the suit or proceedings, as the case may be. If the disposal is by way of an order of dismissal, interim relief which is granted as an aid of or ancillary to the final relief cannot continue

beyond termination of such suit or proceedings. This is the position of law flowing from the decision in ***State of Orissa v. Madan Gopal Rungta***.[26]

**31.** However, if in a particular suit or proceeding, interim relief is sought in respect of a development subsequent to institution of the suit/ proceedings, as in the present case (where the first show cause notice came into existence after the first writ petition was filed), and the challenge to such subsequent development is spurned, the party who has approached the court cannot be heard to say that the effect of spurning of the challenge would come to an end with the disposal of the suit/proceedings. The effect of the challenge being spurned would continue till such time it is reversed in appeal or reviewed in a manner known to law.

**32.** The situation in such a case, adversely affecting the party whose challenge has been spurned, cannot be sought to be overcome by contending that the suit or proceedings has/have not been dismissed on merits but was/were merely withdrawn. By seeking a withdrawal, the Court before whom the *lis* was brought is requested not to decide the *lis* and if the Court while granting the prayer for withdrawal does not grant leave for institution of a fresh suit on the same cause of action, or even if leave is granted and a fresh suit/ proceeding is instituted, that would not have the effect of negating the order spurning challenge passed in the earlier suit/ proceedings. The same would remain operative till set aside or varied.

**33.** It was, therefore, incumbent upon the first respondent to challenge the order dated 14th February, 2001; and having failed to do so, it would not be of any merit for the first respondent to contend that until the disconnection notice had been issued on 18th March, 2009, the liability had not crystallised so as to render the first respondent liable to pay the same. The challenge to the first show cause notice having failed, as noticed above, the principle of issue estoppel operated as a bar for the first respondent to raise a challenge to the second show cause notice, which had been issued for precisely the same due amount of Rs 70,50,478/- (Rupees seventy lakhs fifty thousand four hundred and seventy eight only).

26 [1952] 1 SCR 28 : (1951) SCC 1024

**34.** We consider it apposite to refer to a three-Judge Bench decision of this Court in ***Hope Plantations Ltd. v. Taluk Land Board***,[27] where the principle of issue estoppel was expounded thus:

> "26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are 'cause of action estoppel' and 'issue estoppel'. These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice."
>
> (emphasis supplied)

27 [1998] Supp. 2 SCR 514 : (1999) 5 SCC 590

**35.** Another bench of three Judges of this Court in ***Bhanu Kumar Jain v. Archana Kumar***[28] had the occasion to survey several decisions of English courts and explained that there was a distinction between res judicata and issue estoppel in the following words:

> "30. Res judicata debars a court from exercising its jurisdiction to determine the lis if it has attained finality between the parties whereas the doctrine issue estoppel is invoked against the party. If such an issue is decided against him, he would be estopped from raising the same in the latter proceeding. ***"
>
> (emphasis supplied)

**36.** To recount, the order of the High Court dated 14th February, 2001, though interim in the sense that it disposed of an interlocutory application, was a conclusive determination of the issue raised by the first respondent itself and which went against it. The first and second show cause notices were similarly worded and identical in the demands that they raised on the first respondent. Challenge to the first show cause notice having failed and notwithstanding that the appellants did not require payment by threatening the first respondent with disconnection of supply, which the appellants were authorised as per section 24(1), the first respondent was certainly estopped from agitating the same issue of demand *vide* its second writ petition.

**37.** The issue of demand arising from the first respondent's failure to consume the monthly minimum units may have been decided *vide* the order dated 04th May, 2000 without assigning sufficient reasons or, for that matter, even wrongly. The learned Single Judge simply went by the terms of the contract between the parties without examining whether there was any substantial ground for the first respondent to urge that the jurisdictional fact for demanding payment of minimum guarantee charges did not exist and, hence, it was not liable to pay. Such order had also been reiterated by the subsequent order dated 14th February, 2001 of another learned Single Judge, again without due examination of what the case was on behalf of the first respondent and without assignment of any reason. However, does anything turn on it? The answer is an emphatic 'NO'. As has been

28 [2004] Supp. 6 SCR 1104 : (2005) 1 SCC 787

held in ***Hope Plantations*** (supra) and ***Bhanu Kumar Jain*** (supra), a point even if wrongly decided binds the party against whom it is decided and the same point cannot be urged in a subsequent suit or proceeding at the same level. The crux of the matter is that the issue of liability accruing to the first respondent for non-payment of minimum guarantee charges had been decided previously and such decision, not being subjected to any appeal, had attained finality in the eyes of law estopping the first respondent from reagitating the issue. In our considered opinion, the second writ petition at the instance of the first respondent was not maintainable and, accordingly, ought not to have been entertained at all.

**38.** However, since the appellants accepted the order of the learned Single Judge dated 16th July, 2009 and issued a fresh demand for a reduced amount and which has since been recovered by encashing the bank guarantee, we make no order for changing the position flowing from the said order.

CONCLUSION

**39.** The inevitable result, on conjoint reading of all the judicial orders on/in connection with the first writ petition together with the conduct of the first respondent, is that the orders dated 04th May, 2000 and 14th February, 2001, so to say, judicially crystallised the liability of the first respondent to pay the minimum guarantee charges and such orders having attained finality, bound the first respondent; and no amount of argument by the first respondent, either on the point of delay in raising the demand or a merit-based review of the action of the appellants, in the second writ petition was open to persuade the High Court hold in its (first respondent) favour by allowing the intra-court appeal.

**40.** The impugned judgment and order of the High Court allowing the intra-court appeal being unsustainable in law has to be and is, accordingly, set aside with the result that the civil appeal stands allowed. Parties are, however, left to bear their own costs.

*Result of the case:* Appeal allowed

†*Headnotes prepared by:* Nidhi Jain

[2024] 11 S.C.R. 365 : 2024 INSC 831

# Anjum Kadari & Anr.
# v.
# Union of India & Ors.

(Special Leave Petition (C) No. 8541 of 2024)

05 November 2024

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

## Issue for Consideration

Issue arose as to correctness of the order passed by the High Court holding the Uttar Pradesh Board of Madarsa Education Act, 2004 to be unconstitutional on the ground that it violates the principle of secularism and Articles 14 and 21A of the Constitution.

## Headnotes†

**Uttar Pradesh Board of Madarsa Education Act, 2004 – Constitutional validity – Madarsa Act established the Uttar Pradesh Board of Madarsa Education, to regulate, among other things, the standards of education, qualifications for teachers, and conduct of examinations in Madarsas in the State of Uttar Pradesh – High Court struck down the entirety of the Act – Correctness:**

**Held:** Madarsa Act regulates the standard of education in Madarsas recognized by the Board for imparting Madarsa education – Madarsa Act is consistent with the positive obligation of the State to ensure that students studying in recognised Madarsas attain a level of competency which will allow them to effectively participate in society and earn a living – Art.21-A and the RTE Act have to be read consistently with the right of religious and linguistic minorities to establish and administer educational institutions of their choice – Board with the approval of the State government can enact regulations to ensure that religious minority institutions impart secular education of a requisite standard without destroying their minority character – Thus, Madarsa Act is within the legislative competence of the State legislature and traceable to Entry 25 of List III – However, the provisions of the Madarsa Act seeking to regulate higher-education degrees, such

* Author

as Fazil and Kamil unconstitutional as they are in conflict with the UGC Act, enacted under Entry 66 of List I – Judgment of the High Court set aside. [Para 104]

**Uttar Pradesh Board of Madarsa Education Act, 2004 – Legislative competence – Madarsa Act, if within the legislative competence of the State under Entry 25, List III – Provisions of Madrasa Act, if in conflict with the UGC Act enacted under entry 66, List I – Entire Madrasa Act, if need to be struck down as some of its provisions contravened the provisions of the UGC Act:**

**Held:** Provisions of the Madarsa Act seek to "regulate" Madarsas which are educational institutions run by religious minority – While the Madarsas do impart religious instruction, their primary aim is education – Mere fact that the education which is sought to be regulated includes some religious teachings or instruction, does not automatically push the legislation outside the legislative competence of the state – No jurisprudential basis to read Entry 25, List III to be limited to only education that is devoid of any religious teaching or instruction – Thus, cannot be said that the Madarsa Act (in its entirety) which seeks to regulate the functioning of Madarsas in Uttar Pradesh is outside the competence of the state legislature – Madarsa Act has been enacted pursuant to Entry 25 of List III – UGC Act enacted by Parliament pursuant to Entry 66, occupies the field with regard to the coordination and determination of standards in Universities – Thus, State legislation which seeks to regulate higher education, in conflict with the UGC Act, would be beyond the legislative competence of the State legislature – Madarsa Act to the extent to which it seeks to regulate higher education, including the 'degrees' of Fazil and Kamil, is beyond the legislative competence of the State Legislature since it conflicts with s.22 of the UGC Act – UGC Act governs the standards for higher education and a state legislation cannot seek to regulate higher education, in contravention of the provisions of the UGC Act – Furthermore, entire statute does not need to be struck down each time that certain provisions of the statute are held to not meet constitutional muster – Statute is void to the extent that it contravenes the Constitution – On an examination of the Madarsa Act, it is clear that prescribing the instructional material, conducting exams and conferring degrees for Fazil and Kamil were only a part of the functions of the Board – Infirmity lies in the said provisions which can be severed from the rest of the Madarsa Act – Severance of these functions from the Board does

not impact its entire character, the Act can continue to be enforced in a real and substantial manner – Thus, only the provisions which pertain to Fazil and Kamil are unconstitutional, and Madarsa Act otherwise remains valid. [Paras 85, 90, 93, 99, 101, 103]

**Uttar Pradesh Board of Madarsa Education Act, 2004 – Regulatory legislation:**

**Held:** Enactment of the Act of 2004 is to regulate the standard of education in Madarsas recognized by the Board for imparting Madarsa education – Madarsa Act grants recognition to Madarsas to enable students to sit for an examination and obtain a degree, diploma, or certificate conferred by the Board – Statute envisages granting recognition to Madarsas which fulfil the prescribed standards for staff, instructions, equipment and buildings – Grant of recognition imposes a responsibility on the Madarsas to attain certain standards of education laid down by the Board – Failure of the Madarsas to maintain the standards of education will result in the withdrawal of their recognition – Regulations pertaining to standards of education or qualification of teachers do not directly interfere with the administration of the recognized Madarsas – Such regulations are "designed to prevent maladministration of an educational institution" – Provisions of the Madarsa Act are "conducive to making the institution an effective vehicle of education for minority community" without depriving the educational institutions of their minority character – Madarsa Act secures the interests of the minority community in Uttar Pradesh because it regulates the standard of education imparted by the recognised Madarsas; and it conducts examinations and confers certificates to students, allowing them the opportunity to pursue higher education – Madarsa Act is consistent with the positive obligation of the State to ensure that students studying in the recognised Madarsas attain a minimum level of competency which will allow them to effectively participate in society and earn a living – Thus, the Madarsa Act furthers substantive equality for the minority community – State legislature has established a Board to recognise and regulate Madarsa education is not violative of Art.14. [Paras 58, 65, 72, 73]

**Constitution of India – Art.21-A and 30 – Interplay of Art.21-A and Art.30 – Explanation:**

**Held:** Art.21-A provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine – It

imposes a constitutional obligation on the State to impart elementary and basic education – Art.30(1) guarantees the right to establish and administer educational institutions of their choice to religious and linguistic minorities – However, the State has an interest in ensuring that the minority educational institutions impart secular education along with religious education or instruction – State generally strikes a balance by enacting regulations accompanying the recognition of minority educational institutions – High Court erred in holding that education provided under the 2004 Act is violative of Art.21A because RTE Act which facilitates the fulfilment of the fundamental right u/Art.21 contains a specific provision by which it does not apply to minority educational institutions; the right of a religious minority to establish and administer Madarsas to impart both religious and secular education is protected by Art.30; and Board and State Government have sufficient regulatory powers to prescribe and regulate standards of education for the Madarsas – Uttar Pradesh Board of Madarsa Education Act, 2004 – Right of Children to Free and Compulsory Education Act, 2009. [Paras 74-79]

**Education/Educational Institutions – Madarasas – History of Madarsas – Teaching in Madarsas – Elucidated**. [Paras 2-23]

**Constitution of India – Arts.25-30, 14-16 – Secularism in the constitutional context – Secularism and regulation of minority educational institutions – Stated.** [Paras 37-45]

**Constitution of India – Art.30(1) – Secularism – Concept of positive secularism**:

**Held:** In the spirit of positive secularism, Art.30 confers special rights on religious and linguistic minorities because of their numerical handicap and to instil in them a sense of security and confidence – Positive concept of secularism requires the State to take active steps to treat minority institutions on par with secular institutions while allowing them to retain their minority character – Positive secularism allows the State to treat some persons differently to treat all persons equally – Concept of positive secularism finds consonance in principle of substantive equality. [Para 70]

**Constitution of India – Basis structure doctrine – Testing the validity of a statute for violation of the basic structure:**

**Held:** Statute can be struck down only for the violation of Part III or any other provision of the Constitution or for being without

legislative competence – Constitutional validity of a statute cannot be challenged for the violation of the basic structure of the Constitution since the concepts such as democracy, federalism, and secularism are undefined concepts – Allowing courts to strike down legislation for violation of such concepts will introduce an element of uncertainty – Challenge to the constitutional validity of a statute for violation of the basic structure is a technical aspect because the infraction has to be traced to the express provisions of the Constitution – Thus, in a challenge to the validity of a statute for violation of the principle of secularism, it must be shown that the statute violates provisions of the Constitution pertaining to secularism – High Court erred in holding that a statute is bound to be struck down if it is violative of the basic structure. [Para 55]

**Constitution of India – Minority educational institutions – Regulation of, by the State:**

**Held:** State has an interest in ensuring that minority educational institutions provide standards of education similar to other educational institutions – State can enact regulatory measures to promote efficiency and excellence of educational standards – Regulations about standards of education do not directly bear upon the management of minority institutions – State can regulate aspects of standards of education such as course of study, qualification and appointment of teachers, health and hygiene of students, and facilities for libraries – Affiliation or recognition of minority educational institutions by the Government secures the academic interests of students studying in such institutions to pursue higher education. [Paras 58, 62]

**Constitution of India – Legislative competence of the state legislature – Interpretation of the entries in the Seventh Schedule – Relevant principles – Elucidated.** [Para 84]

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**List of Keywords**

Constitutionality of Uttar Pradesh Board of Madarsa Education Act, 2004; Principle of secularism; Regulate standards of education, qualifications for teachers, and conduct of examinations

in Madarsas; Standard of education in Madarsas; Imparting Madarsa education; Positive obligation of State; Level of competency; Religious and linguistic minorities to establish and administer educational institutions; Religious minority institutions; Secular education; Minority character; Legislative competence; Higher-education degrees; Fazil and Kamil degrees; Religious teachings or instruction; Coordination and determination of standards in Universities; Regulatory legislation; Interplay of Art. 21-A and Art. 30 of Constitution; Impart elementary and basic education; Madarasas; History of Madarsas; Teaching in Madarsas; Secularism in constitutional context; Secularism and regulation of minority educational institutions; Secularism; Positive secularism; Basis structure doctrine; Constitutional validity of statute; Democracy; Federalism; Element of uncertainty; Regulatory measures to promote efficiency and excellence of educational standards; Legislative competence of state legislature; Interpretation of entries in Seventh Schedule.

**Case Arising From**

CIVIL APPELLATE/ ORIGINAL JURISDICTION: Special Leave Petition (C) No. 8541 of 2024

From the Judgment and Order dated 22.03.2024 of the High Court of Judicature at Allahabad, Lucknow Bench in WC No. 6049 of 2023

With

Special Leave Petition (C) Nos. 7857, 7821, 7878, 7890 and 13038 of 2024, Contempt Petition (C) No. 591 of 2024 In SLP (C) No. 7878 of 2024 and Transfer Petition (C) No. 2697 of 2024

**Appearances for Parties**

Tushar Mehta, SG, KM Nataraj, A.S.G., Sharan Dev Singh Thakur, Sr. A.A.G., Ms. Swarupama Chaturvedi, M.R. Shamshad, P. Chidambaram, Dr. Abhishek Manu Singhvi, Mukul Rohatgi, P. S. Patwalia, Salman Khurshid, Dr. Menaka Guruswamy, Ms. Madhavi Divan, Nachiketa Joshi, Guru Krishna Kumar, M.R. Shamshad, Sr. Advs., Abhaid Parikh, Mohd Kumail Haider, Arijit Sarkar, Syed Jafar Raza Zaidi, Ms. Zeb Hasan, Mohd. Waquas, Shariq Ahmed, Talha Abdul Rahman, Tariq Ahmed, Vinay Vats, Faizan Ahmad, M/s. Ahmadi Law Offices, Rohit Amit Sthalekar, Sankalp Narain, M.A. Ausaf, Hritudhwaj Pratap Sahi, H.P. Sahi, Srivats Narain, Ms. Ranjeeta Rohatgi, Yash Johri, Ms. Lubna Naaz,

Pradeep Kumar Yadav, Gopal Singh, Vishal Thakre, Ms. Anjale Patel, Ms. Chhaya, Utkarsh Pratap, Ms. Arunima Das, Gagan Kumar, Sanjeev Malhotra, Mahesh Thakur, Santosh Kumar, Mrs. Santosh Kumar, Praneet Pranav, Ms. Sindoora Vnl, Sai Shashank, Ms. Aarushi Singh, Amit Sharma, Vikash Chandra Shukla, Rahul G. Tanwani, Ms. Bhavya Tyagi, Ms. Aishaani Narain, Ms. Nidhi Khanna, Ms. Aditi Tripathi, Ms. Ruchira Goel, Siddharth Thakur, Ms. Indira Bhakar, Amrish Kumar, Kanu Agrawal, Sansriti Pathak, Aaditya Dixit, Amit Sharma V, Ms. Rajeshwari Shankar, Gurmeet Singh Makker, Anas Tanwir, Ebad Ur Rahman, Afzal Ahmad Siddiqui, Ms. Masoom Raj Singh, Mohd. Asif Abbas, Tadimalla Bhaskar Gowtham, Subodh S. Patil, Alabhya Dhamija, Pulkit Shrivastava, Shuvodeep Roy, Gautam Singh, Bhakti Vardhan Singh, Ashwin K., Ranjeet Mishra, Krishna Kant Dubey, Mohneesh Pratap Singh, Ms. Saumya Kapoor, Aayush Shivam, Ms. Kavita Chaturvedi, Manoj Ranjan Sinha, Vishal Agrawal, Advs. for the appearing parties.

**Judgment / Order of the Supreme Court**

**Judgment**

**Dr Dhananjaya Y Chandrachud, CJI.**

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* Ed. Note: Pagination as per the original Judgment.

## A. Introduction

1. The High Court of Judicature at Allahabad[1] has held the Uttar Pradesh Board of Madarsa Education Act, 2004[2] to be unconstitutional on the ground that it violates the principle of secularism and Articles 14 and 21A of the Constitution. The Madarsa Act established the Uttar Pradesh Board of Madarsa Education,[3] to regulate, among other things, the standards of education, qualifications for teachers, and conduct of examinations in Madarsas in the State of Uttar Pradesh. The entirety of the Act has been struck down by the High Court.

## B. Background

a. History of Madarsas

2. The term 'madarsa' refers to any school or college where any sort of education is imparted.[4] The history of the establishment of Madarsas

1 "High Court"

2 "Madarsa Act"

3 "Board"

4 Yoginder Sikand, Bastions of the Believers: Madrasas and Islamic Education in India (Penguin Books, 2005)

in the Indian subcontinent may be traced to the rule of the Tughlaqs.[5] The pre-colonial Madarsas were of two types: (i) the Maktabs which were attached to mosques and imparted elementary education; and (ii) the Madarsas which were centres of higher learning and contributed to the administrative, religious, and cultural needs of the prevalent society.[6] During colonial rule, the relative importance of Madarsas diminished with the introduction of English as the language of the colonial administration.[7]

3. The colonial government formulated the Education Code of 1908 to recognize Madarsas in Uttar Pradesh for conducting Arabi-Pharsi examinations. The Arabic institutions preparing candidates for Maulvi, Alim, and Fazil examinations and the Persian institutions preparing candidates for Munshi and Kamil examinations were required to make an application to the Registrar of Arabic and Persian Examinations.

4. After Independence, the Department of Education of the UP government issued the Madrasa Education Rules 1969 to bring Madarsas under the domain of the Education Department. Subsequently, the State government framed the UP Non-Government Arabic and Persian Madrasa Recognition Rules 1987[8] to govern the procedure for recognition and the terms and conditions of service of teachers in the Madarsas. According to the 1987 Rules, recognition to Madarsas was granted by the Recognition Committee and confirmed by the Registrar of Arabic and Persian Exams. The 1987 Rules also prescribed requirements for the quality of buildings and eligibility qualifications for teaching staff as a precondition to the grant of recognition. In 1996, the management of Madarsas was transferred to the Minority Welfare and Waqf Department of the UP government.

5. The Central government has also framed schemes to modernize education imparted in Madarsas. In 1993-1994, the Central Government implemented the Area Intensive and Madrasa Modernization Programme[9] to encourage Madarsas and Maktabs

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5 ibid

6 Arshad Alam, 'Understanding Madrasas' (2003) 38(22) Economic and Political Weekly 2123

7 Padmaja Nair, The State and madrasas in India (Working Paper 15, University of Birmingham 2009) 11

8 "1987 Rules"

9 "Madrasa Modernization Programme" (Under the Madrasa Modernization Programme, the government covered the salary of two madrasa teachers who taught modern subjects. It also provided one-time grants for purchase of science and math kits and book-banks for the madrasa libraries. *See* PIB,

to teach modern subjects such as Science, Mathematics, English, Hindi, and Social Studies alongside the traditional curriculum. The Madrasa Modernization Programme subsequently became a part of the Sarva Shiksha Abhiyan. During the 11th Five Year Plan (2007 to 2011), the Ministry of Human Resource Development implemented the Scheme for Providing Quality Education in Madrasas to encourage and incentivize Madarsas and Maktabs to impart education in modern subjects by providing them financial assistance.[10] Only Madarsas which have been in existence for at least three years and registered under central or state legislation, Madarsa boards, or waqf boards are eligible to apply for assistance under this scheme.[11]

b. Teaching in Madarsas

6. According to the data placed on record in the affidavit filed by the State of Uttar Pradesh, there are presently around thirteen thousand Madarsas catering to more than twelve lakh students in the state. The following table is instructive:

| Type of Madarsas | Number of Madarsas | Number of students |
|---|---|---|
| State funded | 560 | 1,92,317 |
| Permanently recognized (non-state funded) | 3,834 | 4,37,237 |
| Temporarily recognized (non-state funded) | 8,970 | 6,04,834 |
| Total | 13,364 | 12,34,388 |

7. The state government has an annual budget of Rupees one thousand and ninety-six crores for the salaries of teaching and non-teaching staff working in the state-aided Madarsas. The state government also provides books and midday meals to students of state-funded Madarsas. Moreover, it also operates Industrial Training Institutes in

Ministry of Human Resource Development, Centre Releases Rs. 5.9 crore for madrasa modernization (12 December 2003) https://archive.pib.gov.in/archive/releases98/lyr2003/rdec2003/12122003/r1212200330.html)

10 Department of School Education and Literacy, https://dsel.education.gov.in/spemm

11 Central Sponsored Scheme for Providing Quality Education in Madrasa, https://www.education.gov.in/sites/upload_files/mhrd/files/upload_document/SPQEM-scheme.pdf

recognised Madarsas to teach trades such as welding, mechanics, and stenography.

8. Academic education in Madarsas is broadly divided into four levels: (i) Tathania (equivalent of elementary classes I to V); (ii) Fauquania (equivalent to upper elementary classes VI to VIII); (iii) Maulvi or munshi (equivalent to a certificate of secondary school or Xth standard); and (iv) Alim (certificate of senior secondary level examination or XIIth standard).

9. The syllabus until the Alim classes is in accordance with the syllabus of the Uttar Pradesh State Council of Educational Research and Training.[12] For the Munshi/Maulvi and Alim levels, the Madarsas teach subjects such as theology (Sunni and Shia), Arabic literature, Persian literature, Urdu literature, General English, General Hindi, and optional subjects such as Mathematics, Home Sciences, Logic and Philosophy, Social Sciences, Science, Tibb (medical science), and Typing. The Munshi/Maulvi and Alim certificates are treated equivalent to High School and Intermediate levels respectively by the Uttar Pradesh government and the Government of India. The Sachar Committee Report suggests that most students study in Madarsas only till primary and middle classes.[13]

10. A few Madarsas also award certificates of Kamil (undergraduate degree) and Fazil (post-graduate degree). The State of Uttar Pradesh has stated in its affidavit that Kamil and Fazil degrees awarded by Madarsas are not recognised as alternatives to graduate and post-graduate degrees respectively. The government further states:

> "At the undergraduate and post graduate level, the U.P Madrasa Board grants the Qamil and Fazil degrees respectively, specialized courses for the education of Arabic-Persian and Deenyat subjects, which are the minimum educational qualifications required for imparting education of Arabic-Persian and Deenyat subjects in Madrasas. These courses have not been given equivalence by the Government of Uttar Pradesh/Government of India/

12 "SCERT"

13 Social, Economic and Educational Status of the Muslim Community of India: A Report (Prime Minister's High Level Committee, Cabinet Secretariat, Government of India) Appendix Table 4.4 (293)

> any university established by law, nor has the education of these courses been recognized as an alternative to the graduation/post-graduation degree of a university established by law for employment at the level of Uttar Pradesh Government or Government of India."

11. Consequently, students educated in Madarsas are only eligible for occupations that have High School or Intermediate as qualification requirements. While Kamil and Fazil are not considered to be alternatives to the regular undergraduate and post-graduate degrees, a notification issued by the University Grants Commission[14] in March 2014 which lists the degrees governed by the University Grants Commission Act 1956[15] includes both Fazil and Kamil under the title of 'Specification of Degrees with Urdu/Persian/Arabic nomenclature'. The effect of the notification shall be considered in the course of the judgment.

c. Madarsa Act

12. The State legislature of Uttar Pradesh enacted the Madarsa Act which was deemed to come into force on 3 September 2004. The long title of the Madarsa Act states that it is "an Act to provide for the establishment of a Board of Madarsa Education in the State and for the matters connected therewith and incidental thereto". The Statement of Objects and Reasons indicates the reason for the enactment:

> "In para 55 of the Education Code the Registrar, Arabi-Pharasi Examinations, Uttar Pradesh, Allahabad had been authorised to recognise the Arabi-Pharasi Madarsas in the State and for conducting the examinations of such Madarsas. These Madarsas were managed by the Education Department. But with the creation of the Minority Welfare and Wakfs Department in 1995 all the works relating to such Madarsas were transferred from Education Department to the Minority Welfare Departments by virtue of which all the works relating to Madarsas are being performed under the control of the Director, Minority

14 "UGC"

15 "UGC Act"

Welfare, Uttar Pradesh and the Registrar/Inspector Arabi-Pharasi Madarsas, Uttar Pradesh. The Arabi-Pharasi Madarsas were being administered under the Arabi-Pharasi Madarsas Rules, 1987 but since the said rules have not been made under an Act, many complication [sic] arose in running the Madarsas under the said rules. **Therefore, with a view to removing the difficulties arisen in running the Madarsas, improving the merit therein and making available the best facility of study to the students studying in Madarsas it was decided to make a law to provide for the establishment of a Board of Madarsa Education in the state and for the matters connected therewith or incidental thereto.**

…"

(emphasis supplied)

13. Section 2 provides definitions. The expressions "institution", "Madarsa Education" and "recognition" have been defined as follows:

"**2. Definitions. —** In this Act unless the context otherwise requires: —

…

(j) "institution" means the Government Oriental College, Rampur and includes a Madarsa or an Oriental College established and administered by Muslim Minorites and recognized by the Board for imparting Madarsa-Education;

(h) "Madarsa-Education" means education in Arabic, Urdu, Parsian, Islamic studies, Tibb Logic, Philosophy **and includes such other branches of learning as may be specified by the Board from time to time;**

…

(j) "recognition" means, recognition for the purpose of preparing candidates for admission to the Board's Examination;

…"

(emphasis supplied)

14. Section 3 provides the constitution of the Board. Sub-section (1) of Section 3 provides that the Board shall be established at Lucknow on the date declared by the State government by a notification. Sub-section (2) states that the Board shall be a body corporate, while Sub-section (3) details the composition of the Board. The majority of the members of the Board are either part of the State Government (or the legislature) or nominated by the State Government. The Board consists of the following members:

    a. a renowned Muslim educationist in the field of Madarsa Education, nominated by the State Government, who is the **Chairperson**;

    b. the Director, Minority Welfare, Uttar Pradesh, who is the **Vice Chairperson**;

    c. principal, Government Oriental College, Rampur;

    d. one Sunni-Muslim Legislator to be elected by both houses of the State Legislature;

    e. one Shia-Muslim Legislator to be elected by both houses of the State Legislature;

    f. one representative of the National Council for Educational Research and Training (NCERT);

    g. two heads of institutions established and administered by Sunni Muslims, **nominated by the State Government**;

    h. one head of institution established and administered by Shia Muslims, **nominated by the State Government**;

    i. two teachers of institutions established and administered by Sunni Muslims **nominated by the State Government**;

    j. one teacher of an institution established and administered by Shia Muslims, **nominated by the State Government**;

    k. one Science or Tibb teacher of an institution **nominated by the State Government**;

    l. the Account and Finance Officer in the Directorate of Minority Welfare, Uttar Pradesh;

m. the Inspector;[16] and

n. an officer not below the rank of Deputy Director nominated by the State Government, who is the **Registrar**.

15. Sub-section (4) of Section 3 deals with the issuance of a notification by the State Government that the Board has been duly constituted, after the election and nomination of the members. Sub-section (5) pertains to the procedure to nominate or elect members who are Sunni-Muslim or Shia-Muslim legislators in certain special circumstances. Sub-section (6) stipulates that from the date of the establishment of the Board, the erstwhile Arbi and Farsi Education Board shall stand dissolved.

16. Section 4 pertains to the power of the State Government to remove members, other than *ex-officio* members, from the Board. This removal may be ordered, if in the opinion of the State Government, the member has "so flagrantly abused his position … as to render his continuance on the Board detrimental to the public interest". Section 5 specifies the term of office of the members and Section 6 mandates that the State Government take steps to reconstitute the Board before the expiry of the terms of office of the members. Section 7 governs the procedural specificities of the meetings of the Board, while Section 8 clarifies that no acts of the Board or its committees may be invalidated on the ground of a vacancy or defect in its constitution.

17. Section 9 which enunciates the functions of the Board, is relevant to the constitutional challenge before us. The functions of the Board are wide-ranging and relate to *inter alia* prescribing the course material, granting degrees or diplomas, conducting examinations, recognizing institutions to conduct exams, conducting research and training, and other incidental functions. These functions are exercised at various levels of education detailed above – Tahtania, Fauquania, Munshi, Maulvi, Alim, Kamil, Fazil, and other courses. The provision reads thus:

16 "Inspector" has been defined in S.2(e) of the Act as: "(e) ''Inspector'' means the inspector, Arabic Madarsas, Uttar Pradesh and includes an officer authorised by the State Government to perform all or any of the functions of the inspector under this Act"

"**9. Functions of the Board. —** Subject to the other provisions of this Act the Board shall have the following functions, namely: —

(a) to prescribe course of instructions, textbooks, other books and instructional material, if any, for Tahtania, Fauquania, Munshi, Maulavi, Alim, Kamil, Fazil and other courses;

(b) prescribe the course books, other books and instruction material of courses of Arbi, Urdu and Pharsi for classes up to High School and Intermediate standard in accordance with the course determined there for by the Board of High School and Intermediate Education;

(c) to prepare manuscript of the course books, other books and instruction material referred to in clause (b) by excluding the matters therein wholly or partially or otherwise and to publish them;

(d) prescribe standard for the appointment of Urdu translators in the various offices of the State and ensure through the appointing authority necessary action with respect to filling up of the vacant posts;

(e) to grant Degrees, Diplomas, Certificates or other academic distinctions to persons, who—

  (i) have pursued a course of study in an institution admitted to the privileges or recognition by the Board;

  (ii) have studied privately under conditions laid down in the regulations and have passed an examination of the Board under like conditions;

(f) to conduct examinations of the Munshi, Maulavi, Alim and of Kamil and Fazil courses;

(g) to recognize institutions for the purposes of its examination;

(h) to admit candidates to its examination;

(i) to demand and receive such fee as may be prescribed in the regulations;

(j) to publish or withhold publication of the result of its examinations wholly or in part;

(k) to co-operate with other authorities in such a manner and for such purposes as the Board may determine;

(l) to call for reports from the Director on the condition of recognised institutions or of institutions applying for recognition;

(m) to submit to the State Government its views on any matter with which it is concerned;

(n) to see the schedules of new demands proposed to be included in the budget relating to institutions recognised by it and to submit if it thinks fit its views thereon for the consideration of the State Government;

(o) to do all such other acts and things as may be requisite in order to further the objects of the Board as a body constituted for regulating and supervising Madarsa-Education up to Fazil;

(p) to provide for research or training in any branch of Madarsa-Education viz, Darul Uloom Nav Uloom, Lucknow, Madarsa Babul lim, Mubarakpur, Azamgarh, Darul Uloom Devband, Saharanpur, Oriental College Rampur and any other institution which the State Government may notify time to time.

(q) to constitute a committee at district level consisting of not less than three members for education up to Tahtania or Faukania standard, to delegate such committee the power of giving recognition to the educational institutions under its control.

(r) to take all such steps as may be necessary or convenient for or as may be incidental to the exercise of any power, or the performance or discharge of any function or duty, conferred or imposed on it by this Act."

18. Section 10 pertains to the 'Powers of the Board'. Sub-section (1) defines these powers in general terms and stipulates that the Board shall have all such powers as may be necessary for the performance of its functions and the discharge of its duties under the Madarsa Act or the allied rules and regulations. Sub-section (2) details specific powers of the Board, without prejudice to the generality of the powers of the Board detailed in sub-section (1). These powers *inter alia* include the power to cancel or withhold the result of an examination, prescribe fees for the examinations conducted, refuse recognition of an institution, call for reports from and inspect institutions to ensure compliance with the prescribed rules and regulations and fix the maximum number of students to be admitted to a course. Sub-section (3) clarifies that the decision of the Board with regard to the matters dealt with in this provision shall be final. Section 11 allows the Board, to recognize an institution "in any new subject or group of subjects for a higher class", with the prior approval of the State government. Section 12 deals with the proper utilization of donations by the institutions.

19. Section 13 details the 'Power of the State Government' to *inter alia* issue directions and orders which are binding on the Board. Sub-section (1) states that the State Government shall have the right to address and to communicate its views to the Board on any matter with which it is concerned. Sub-section (2) requires the Board to report to the State Government if any action has been taken pursuant to the communications or proposals made by the State Government. Sub-section (3) stipulates that in circumstances where the Board does not act within a reasonable time to the satisfaction of the State Government, after considering the explanation or representation by the Board, the State Government may issue necessary directions with which the Board shall comply. Sub-section (4) states that in cases, where the State Government is of the opinion that it is necessary or expedient to take immediate action, it may, without making any reference to the Board, pass an order or take other action consistent with the Act, including modifying, rescinding or making any regulation. Sub-section (5) stipulates that such actions by the State Government shall not be called into question in any court.

20. Section 14 deals with officers and other employees of the Board and provides that they are appointed by the Board, with the prior approval of the State Government. Sections 15 and 16 pertain to

the powers and duties of the Chairperson and Registrar of the Board, respectively, while Section 17 deals with the appointment and constitution of committees and sub-committees.

21. Section 20 stipulates the power of the Board to make regulations.[17] Sub-section (1) provides this power in general terms and empowers the Board to make regulations "for carrying out the purposes of the Act". Sub-section (2) details particular matters for which the Board may make regulations, without prejudice to the generality of its powers. This includes subjects such as *inter alia* the conferment of degrees, diplomas and certificates, conditions for recognition of institutions, the course of study, and the conduct of examinations. Section 21 mandates that these regulations shall be made with the prior approval of the State Government and published in the Gazette. The State Government may approve the regulations with or without modifications. Pursuant to these provisions, the Board has framed the Uttar Pradesh Non-Governmental Arabic and Persian Madarsa Recognition, Administration and Services Regulations, 2016, with the approval of the State Government.[18]

22. Sections 22 to 26 deal with subjects such as the requirement of a 'scheme of administration' for every institution; the procedure for appointment and conditions of service of heads of institutions, teachers, and other employees; casual vacancies; and the power of the Board and Committees to make by-laws, respectively. Section 27 states that no suit, prosecution or legal proceedings shall lie against the State Government, the Board or any of its committees/sub-committees in respect of anything which is done in good faith or under

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17 Section 20 reads: "20. (1) The Board may make regulations for carrying out the purposes of this Act.
(2) In particular and without prejudice to the generality of the foregoing powers, the Board may make regulations providing for all or any of the following matters, namely:–
(a) constitution, power and duties of committees and sub-committees;
(b) the conferment of Degrees, Diplomas and Certificates;
(c) the conditions of recognition of institutions;
(d) the courses of study to be laid down for all Degrees, Diplomas and Certificates;
(e) the conditions under which candidates shall be admitted to the examinations and research programme of the Board and shall be eligible for Degrees, Diplomas and Certificates;
(f) the fees for admission to the examination of the Board;
(g) the conduct of examination;
(h) the appointment of examiners, moderators, collators, scrutinisers, tabulators, Centre inspectors, Superintendents of Centres and invigilators and their duties and powers in relation to the Board's examinations and the rates of their remuneration;
(i) the admission of institutions to the privilege of recognition and the withdrawal of recognition;
(j) all matters which are to be, or may, provided for by regulations."

18 "2016 Regulations"

the Madarsa Act and its allied rules, regulations, by-laws, orders or directions. Section 28 bars the jurisdiction of Courts and states that no order or decision of the Board or its committees/sub-committees shall be called into question in any court.

23. Section 32 confers on the State Government the power to make rules for carrying out the purposes of the Madarsa Act.[19]

d. Steps taken by the State Government and the Board pursuant to the Madarsa Act

24. The provisions of the Madarsa Act grant the Board and the State Government wide-ranging powers to frame regulations, directions and rules and to regulate education in the Madarsas. After the enactment of the Madarsa Act, both the Board and the State Government have in fact taken various steps. Some of the steps detailed below indicate that there is a marked shift by the State Government and the Board towards including modern subjects in the curriculum and adopting the established curriculum (such as the NCERT curriculum). These steps are:

a. On 15 May 2018, the Board issued a circular with the stated aim of "bringing educational upgradation in standardization and uniformity" in the Madarsas. The circular states that it has been decided that for education in the Madarsas in Mathematics, Science, English, Hindi, Computer Science and Social Science, the curriculum will be based on the available textbooks of NCERT. Subsequently, by a letter dated 30 May 2018, the State Government sent a copy of the Circular and directed all the District Minority Welfare Officers to include the books prescribed by the NCERT in the syllabus of Madarsa Education from the Academic Session of 2018-19. The District Minority Welfare Officers were directed to take steps to ensure that there are sufficient NCERT Books and to apprise the Board if training is required for the teachers in the Madarsas in the district;

b. Pursuant to Section 20, the Board has framed the 2016 Regulations with the approval of the State Government. Two amendments were made to the 2016 Regulations in 2017 and

19 Section 32 reads: "32. The State Government may, by notification, make rules for carrying out the purposes of this Act."

2018, respectively. The latter amended the provision which dealt with the medium of instruction in the Madarsas. Originally, the Regulations provided that while all subjects could be taught, the medium of education should be Urdu, Arabic and Persian. However, the provision was amended to stipulate that while the medium of instruction in "Deenayat and other Arabic, Persian subjects" shall remain in Urdu, Arabic and Persian, the medium of instruction for "Maths, Science, Social Science, Computer etc." may be Urdu, Hindi or English, as the case may be;[20] and

c. The functions of the Board under the Madarsa Act include prescribing the course of instruction, textbooks and instructional material for courses at various educational levels and classes. For this purpose, the Board has held several meetings from time to time. The Minutes of one such meeting dated 12 October 2021 have been placed on record before this Court, which contains a discussion on the curriculum to be implemented in Madarsas. It is noted in the Minutes of the Meeting that the Board has approved the inclusion of Elementary Math and Elementary Science, History and Civics as compulsory subjects from Class 1 to secondary level in accordance with the NCERT curriculum.

e. Proceedings before the High Court and Impugned Judgment

25. In 2019, a Writ Petition was instituted before the High Court by an individual appointed as a part-time assistant teacher in one of the Madarsas.[21] He sought regularization of his services and salary at par with regular teachers, relying on several provisions of the Madarsa Act and the allied Regulations. By an Order dated 23 October 2019, a Single Judge of the High Court issued notice on the Writ Petition and observed that certain questions related to the vires of the Madarsa Act arose for consideration, which warranted consideration by a larger bench. The Single Judge observed as follows:

> "…
>
> 7. From perusal of the same, following questions arise for consideration: -

20 Uttar Pradesh Non-governmental Arabic and Persian Madarsa Recognition, Administration and Services (Second Amendment) Regulations, 2018

21 Writ A No. 29324 of 2019.

(i) Since the Madarsa Board is constituted for education in 'Arabic, Urdu, Parsian, Islamic-studies, Tibb Logic, Philosophy and includes such other branches of learning as may be specified by the Board from time to time', how come persons of a particular religion are provided to be member of the same? It does not talks about exponence (sic) in the aforesaid fields, for the purposes of which the Board is constituted, but persons of specific religion. It was put to learned Additional Chief Standing Counsel as to whether the purpose of the Board is to impart religious education only, to which he submits that a perusal of the Madarsa Education Act, 2004 does not indicate so.

(ii) With a secular constitution in India can persons of a particular religion be appointed/nominated in a Board for education purposes or it should be persons belonging to any religion, who are exponent in the fields for the purposes of which the Board is constituted or such persons should be appointed, without any regard to religion, who are exponent in the field for the purposes of which the Board is constituted?

(iii) The Act further provides the Board to function under the Minority Welfare Ministry of State of U.P., hence, a question arises as to whether it is arbitrary for providing the Madarsa education to be run under the Minority Welfare Department while all the other education institutions including those belonging to other minorities communities like Jains, Sikhs, Christians etc being run under the Education Ministry and whether it arbitrarily denies the benefit of experts of education and their policies to the children studying in Madarsa?

**8. All these questions impacts the vires of the Madarsa Act, 2004 and are important questions to be decided before looking into the application of the Madarsa Act, 2004 and the regulations framed thereunder. Thus, I**

> **find it appropriate that the matter may be placed before the Larger Bench for decision on the aforesaid issue.**
>
> ..."
>
> (emphasis supplied)

26. Other similar Writ Petitions were also referred to a larger bench and the Chief Justice of the High Court constituted a bench to hear the reference. During the pendency of the reference, another Writ Petition was filed challenging the *vires* of the Madarsa Act on the ground that it violates the principle of secularism and Articles 14, 15 and 21-A of the Constitution.[22] A challenge was also mounted on the constitutionality of Section 1(5) of the Right of Children to Free and Compulsory Education Act, 2009,[23] which *inter alia* states that the Act does not apply to Madarsas.[24] This petition was filed by an advocate practicing before the High Court.

27. All these petitions were tagged together and placed before the Division Bench of the High Court. By an Order dated 14 July 2023, the High Court appointed three *amici curiae* to assist the Court. Several organizations, some of whom are before this Court in the present proceedings, moved intervention applications before the High Court. In the Impugned Judgement, the Division Bench recorded the position of the State of Uttar Pradesh and the Madarsa Board, to the effect that the Madarsas impart not only religious education but also "religious instruction and teachings." Accordingly, the reference was re-framed by the High Court in the following terms:

> "Whether the provisions of the Madarsa Act stand the test of Secularism, which forms a part of the basic structure of the Constitution of India."[25]

28. By a judgment dated 22 March 2024, the High Court rejected the preliminary objections raised by some of the parties with respect to the *locus standi* of the petitioner and the purported absence of adequate pleadings on the subject. On the merits, the High Court

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22 Writ (C) No. 6049 of 2023 - Anshuman Singh Rathore versus Union of India and others.

23 "RTE Act"

24 Section 1(5) reads: "(5) Nothing contained in this Act shall apply to Madrasas, Vedic Pathsalas and educational institutions primarily imparting religious instruction."

25 Para 9, Impugned Judgment.

held that the Madarsa Act violates the principle of secularism and Articles 14, 21 and 21-A of the Constitution of India and is *ultra vires* Section 22 of the UGC Act. According to the High Court, the object and purpose of the Madarsa Act itself violated the principle of secularism, and thus, it is not possible to segregate or save any portion of the legislation.

29. The High Court held that the Madarsa Act in its entirety was unconstitutional and directed that the State Government take steps to accommodate all students studying in the Madarsas in regular schools recognized under the Primary Education Board and the High School and Intermediate Education Board of the State of Uttar Pradesh. The State Government was directed to establish a sufficient number of additional seats and new schools, if required for this purpose and to ensure that no child between the ages of six and fourteen is left without admission in a duly recognized institution.

    f. Steps taken by the State Government and the proceedings before this Court

30. In view of the Impugned Judgement, the Government of Uttar Pradesh took steps to implement the directions. On 4 April 2024, a Government Order was issued by the Chief Secretary, Government of Uttar Pradesh, with the following directions:

    a. Madarsas eligible to get recognition from the education boards, at the state or central level, based on various parameters, can run primary or secondary schools after getting recognized by the concerned education boards; and

    b. Madarsas which cannot get formal recognition because of "sub-standard" facilities will be closed. Committees are to be set up at the district level to ensure that the students studying in such Madarsas are admitted to the schools run by the education department.[26]

31. Special leave petitions were instituted by the appellant(s) before this Court assailing the correctness of the Impugned Judgement. On 5 April 2024, this Court heard the counsel for the various parties and issued notice on the lead petition. While staying the implementation

26 G.O. No. 43/52-3-3034-2099/4/2024.

of the Impugned Judgement, this Court recorded the brief reasons for issuing the interim direction. Accordingly, on 12 April 2024, in view of the stay on the Impugned Judgement, the above Government Order issuing directions for implementation were withdrawn by the State Government.

### C. Submissions

32. Dr Abhishek Manu Singhvi, Mr Salman Khurshid, and Dr Menaka Guruswamy, senior counsel assailed the Impugned Judgment and advanced the following submissions:

a. The State legislature is empowered under Article 246 read with Entry 25 of List III of the Seventh Schedule to enact legislation to regulate Madarsa education. The Madarsa Act principally deals with the regulation of Madarsas concerning curriculum, instruction, standard of education, conduct of examination, and qualifications for teaching. The enactment of laws for regulating secular activities of minority institutions or prescribing standards of education is consistent with Articles 25 to 30;

b. In **S R Bommai v. Union of India**,[27] it was held that secularism is a positive concept of equal treatment of all religions. Articles 25 to 30 secure the rights of religious and linguistic minorities, including their right to establish and administer educational institutions. By recognizing and regulating the Madarsa education, the State legislature is taking positive action to safeguard the educational rights of the minorities;

c. Article 28 prohibits religious instructions in educational institutions wholly maintained out of state funds. Madarsas impart education based on modern curriculum such as Mathematics, Social Sciences, and Science. Additionally, Madarsas impart education about religion and not "religious instructions." Article 28 does not bar the State from funding schools providing religious education;

d. Article 21-A recognizes the fundamental right of children between the ages of six to fourteen to free and compulsory education. Section 1(5) of the RTE Act excludes Madarsas from

27 [1994] 2 SCR 644

the purview of the legislation. The law enacted by the State in pursuance of Article 21-A cannot violate the fundamental rights of minorities to establish and administer educational institutions; and

e. Striking down the Madarsa Act will create a legislative vacuum and result in the deregulation of Madarsas. This will affect the future of more than twelve lakh students studying across the Madarsas in UP. Further, the direction of the High Court to relocate students studying in Madarsas to regular schools will effectively shut down all Madarsas in the state and result in violation of Article 30.

33. Mr KM Natraj, Learned Additional Solicitor General, appeared for the State of Uttar Pradesh. In its Counter Affidavit, the State of Uttar Pradesh states that it had accepted the decision in the Impugned Judgement and taken steps to implement it. However, it would comply with the final decision of this Court and has accordingly, withdrawn the government order which sought to implement the Impugned Judgement. Mr Nataraj contended that while some provisions of the Madarsa Act may be unconstitutional, the High Court erred in striking down the entire Madarsa Act without severing the invalid provisions from the rest of the Madarsa Act.

34. Mr Guru Krishna Kumar, learned Senior Counsel made the following submissions:

a. The Act does not make any provisions to impart secular subjects as part of the curriculum and is a measure undertaken by the state to recognize and regulate "religious instruction" traceable to a particular community;

b. Article 28 *inter alia* prohibits institutions which receive funds from the state from imparting 'religious instruction'. Thus, as a corollary, the state cannot seek to regulate and thereby, recognize religious instruction;

c. The preamble which specifies that India is a "secular" republic, Article 21-A, Article 25, Article 28, Article 30 and Article 41 all point to the "pervasive principle" of secularism underlying the Constitution. This principle militates against the state regulating religious instruction;

d. The striking down of the Act would only discontinue the functioning of the Board and the consequent state recognition of religious instruction. The education provided in the Madarsas and their existence would continue to be protected by Article 30;

e. The word "education" in Entry 25, List III of the Seventh Schedule must be construed to mean "secular education" and cannot include "religious instruction". Thus, the state legislature only has the competence to enact a law that regulates educational institutions, but no power to recognize and regulate religious instruction; and

f. Entry 25, List III is subject to Entry 66 List I, which pertains to higher education and standards. The Parliament has enacted the UGC Act under Entry 66, List I. Section 22 of the UGC Act provides that no degrees can be conferred by any institution other than the institutions defined under the UGC Act. Thus, the provisions of the Madarsa Act which regulate higher education, at the undergraduate, graduate and grant the Board power to grant equivalent degrees are beyond the legislative competence of the state legislature.

35. Ms Madhavi Divan, learned Senior Counsel, advanced the following submissions:

a. The Madarsa Act deprives students enrolled in such institutions of the benefits of mainstream, holistic, secular education, thereby violating Articles 21 and 21A;

b. The Madarsa Act divests students of equal opportunity in relation to future employment opportunities (Articles 14, 15, 16) and the right to practice any profession, occupation, trade or business of their choice (Article 19(1)(g). It creates two classes of children — the first, who receive secular, mainstream education, and the second, who receive religious instruction, which prohibits them from even attempting to adopt professions which are easily available for the former class. This deprivation of choice also violates the constitutional value of dignity and deprives students of the liberty of thought and expression protected under Article 19;

c. The Madarsa Act violates the constitutional value of 'fraternity' as the dissemination of Madarsa education creates intellectual

and outlook barriers, which prevent students from integrating into a pluralistic society;

d. The definition of "Madarsa Education" in Section 2(h) indicates that the focus on "other branches of learning" is only tertiary. The focus of the statute and the competence of the Board is restricted to religious instruction;

e. The Board is disproportionately populated by persons whose competence is in the field of religious instruction. As decisions of the Board are taken by a majority of members, present and voting, the views of the "non-secular" members would prevail and the curriculum is likely to be skewed in favour of religious education. The functions of the Board delineated in Section 9 also indicate disproportionate weightage to religious instruction; and

f. The qualifications for teachers in the Madarsas laid down in the regulations are not adequate to ensure quality education. The qualifications are rooted in the "same Madarsa echo chamber", and the minimum requirements for teaching in regular educational institutions are not prescribed.

36. The National Commission for the Protection of Child Rights (NCPCR) supported the arguments of the respondents and assailed the constitutional validity of the Madarsa Act.

### D. Secularism and regulation of minority educational institutions

37. The preamble to the Constitution enshrines the declaration to constitute India into a sovereign, socialist, secular, democratic, republic. The 42nd Amendment to the Constitution incorporated the expression 'secular' in the preamble. However, the constitutional amendment merely made explicit what is implicit according to the scheme of the Constitution.[28]

a. Secularism in the constitutional context

38. Articles 14, 15, and 16 mandate the State to treat all people equally irrespective of their religion, faith, or belief.[29] Article 14 provides that

28 S R Bommai, [304] Justice BP Jeevan Reddy (for himself and Justice Agrawal)

29 S R Bommai (supra) [304] (Justice BP Jeevan Reddy)

the State shall not deny to any person equality before the law or equal protection of laws within the territory of India. Article 15 provides that the State shall not discriminate against any citizen on grounds only of **religion**, race, caste, sex, place of birth or any of them. Article 16 mandates that there shall be equality of opportunity for all citizens in matters relating to public employment or appointment to any office under the State. Article 16(2) further provides that no citizen shall be discriminated against in respect of any employment or office under the State on the grounds of **religion**, race, caste, sex, descent, place of birth, residence, or any of them.

39. Secularism is one of the facets of the right to equality.[30] The equality code outlined in Articles 14, 15, and 16 is based on the principle that all persons, irrespective of their religion, should have equal access to participate in society. The State cannot give preference to persons belonging to a particular religion in matters of public employment. As a corollary, the equality code prohibits the State from mixing religion with any secular activity of the State.[31] However, the Constitution recognizes that equal treatment of persons is illusionary unless the State takes active steps in that regard. Therefore, the equality code imposes certain positive obligations on the State to provide equal treatment to all persons irrespective of their religion, faith, or beliefs.[32]

40. Articles 25 to 30 contain the other facet of secularism, that is, the practice of religious tolerance by the State.[33] Article 25 provides

30 Dr M Ismail Faruqui v. Union of India (1994) 6 SCC 360 [37]

31 S R Bommai (supra) [148] Justice Sawant ["148. One thing which prominently emerges from the above discussion on secularism under our Constitution is that whatever the attitude of the State towards the religions, religious sects and denominations, religion cannot be mixed with any secular activity of the State. In fact, the encroachment of religion into secular activities is strictly prohibited."]

32 S R Bommai (supra) [304] (Justice B P Jeevan Reddy) ["148. […] Articles 14, 15 and 16 enjoin upon the State to treat all its people equally irrespective of their religion, caste, faith or belief. While the citizens of this country are free to profess, practice and propagate such religion, faith or belief as they choose, so far as the State is concerned, i.e., from the point of view of the State, the religion, faith or belief of a person is immaterial. To it, all are equal and all are entitled to be treated equally. How is this equal treatment possible, if the State were to prefer or promote a particular religion, race or caste, which necessarily means a less favourable treatment of all other religions, races and castes. How are the constitutional promises of social justice, liberty of belief, faith or worship and equality of status and of opportunity to be attained unless the State eschews the religion, faith or belief of a person from its consideration altogether while dealing with him, his rights, his duties and his entitlements? Secularism is thus more than a passive attitude of religious tolerance. It is a positive concept of equal treatment of all religions. This attitude is described by some as one of neutrality towards religion or as one of benevolent neutrality. This may be a concept evolved by western liberal thought or it may be, as some say, an abiding faith with the Indian people at all points of time."]

33 S R Bommai (supra) [183] Justice K Ramaswamy ["183. […] Constitution made demarcation between

that all persons are equally entitled to freedom of conscience and the right to freely profess, practise, and propagate religion subject to public order, morality, health, and other provisions of Part III. The provision allows the State to make any law to regulate or restrict any economic, financial, political or other secular activity associated with religious practice. The Constitution distinguishes between religious and secular activities, permitting the State to regulate the latter.[34]

41. Article 26 guarantees every religious denomination the right to establish and maintain institutions for religious and charitable purposes. It further guarantees religious and charitable institutions the right to manage their own affairs in matters of religion; own and acquire movable and immovable property; and administer the property in accordance with law. The right of management given to a religious body is a fundamental right that cannot be abridged by any legislation. On the other hand, the State can regulate the administration of property owned or acquired by a religious denomination through validly enacted laws.[35]

42. Article 27 provides that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. The rationale underlying Article 27 is that public funds should not be utilized for the promotion or maintenance of any particular religion or religious denomination.[36]

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religious part personal to the individual and secular part thereof. The State does not extend patronage to any particular religion, State is neither pro particular religion nor anti particular religion. It stands aloof, in other words maintains neutrality in matters of religion and provides equal protection to all religions subject to regulation and actively acts on secular part."]

34 Seshammal v. State of Tamil Nadu (1972) 2 SCC 11 [19]; Bijoe Emmanuel v. State of Kerala (1986) 3 SCC 615 [19]

35 Ratilal Panachand Gandhi v. State of Bombay (1954) 1 SCC 487 [16] ["16. […] The language of the two clauses (b) and (d) of Article 26 would at once bring out the difference between the two. In regard to affairs in matters of religion, the right of management given to a religious body is a guaranteed fundamental right which no legislation can take away. On the other hand, as regards administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property but only in accordance with law. This means that the State can regulate the administration of trust properties by means of laws validly enacted; but here again it should be remembered that under Article 26(d), it is the religious denomination itself which has been given the right to administer its property in accordance with any law which the State may validly impose. A law, which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority, would amount to violation of the right which is guaranteed by Article 26(d) of the Constitution."]

36 S R Bommai [304] (Justice BP Jeevan Reddy)

43. Article 28 prohibits the imparting of "religious instruction" in any educational institutions wholly maintained out of State funds. The provision further provides that no person attending any educational institution recognised by the State or receiving aid from the State funds should be compelled to take part in any religious instruction without their consent. Religious instruction is the inculcation of tenets, rituals, observances, ceremonies, and modes of worship of a particular sect or denomination.[37] Article 28 does not prohibit educational institutions maintained out of State funds from imparting religious education. Religious education is imparted to children "to make them aware of thoughts and philosophies in religions without indoctrinating them and without curbing their free-thinking, right to make choices for conducting their own life and deciding upon their course of action according to their individual inclinations."[38] Article 28 does not prohibit educational institutions from teaching about the philosophy and culture of a particular religion or a saint associated with that religion.[39] Article 28 does not prohibit the State from granting recognition to educational institutions imparting religious instruction in addition to secular education.[40]

44. Articles 29 and 30 deal with the cultural and educational rights of minorities. Article 29(1) provides that Indian citizens have a right to conserve their distinct language, script, or culture. Article 29(2) guarantees that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. A citizen who has requisite academic qualifications cannot be denied admission into any educational institution funded by the State on grounds of religion.[41]

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37 D A V College v. State of Punjab (1971) 2 SCC 269 [26]

38 Aruna Roy v. Union of India (2002) 7 SCC 368 [78] (Justice D M Dharmadhikari)

39 D A V College (supra) [26] [26. […] To provide for academic study of life and teaching or the philosophy and culture of any great saint of India in relation to or the impact on the Indian and world civilizations cannot be considered as making provision for religious instructions."]

40 Ahmedabad St Xavier's College Society v. State of Gujarat (1974) 1 SCC 717 [139] (Justice K K Mathew and Justice Y V Chandrachud) ["139. We fail to see how affiliation of an educational institution imparting religious instruction in addition to secular education to pupils as visualized in Article 28(3) would derogate from the secular character of the state. Our Constitution has not erected a rigid wall of separation between church and state. We have grave doubts whether the expression "secular state" as it denotes a definite pattern of church and state relationship can with propriety be applied to India. It is only in a qualified sense that India can be said to be a secular state. There are provisions in the Constitution which make one hesitate to characterize our state as secular."]

41 *See* In re Kerala Education Bill 1957, 1958 SCC OnLine SC 8 [22]

45. Article 30 pertains to the right of minorities to establish and administer educational institutions. It provides that all minorities, whether based on religion or language, have the right to establish and administer educational institutions of their choice. Article 30(2) enjoins the State not to discriminate against any educational institution in granting aid on the ground that it is under the management of a minority, whether based on religion or language. Article 30 confers a special right on religious and linguistic minorities to instill in them a sense of security and confidence.[42] It secures equal treatment of majority and minority institutions and preserves secularism[43] by allaying all apprehensions of interference by the executive and legislature in matters of religion.[44] The constitutional scheme under Articles 25 to 30 distinguishes between the right of an individual to practice religion and the secular part of religion, which is amenable to State regulation.[45]

b. Testing the validity of a statute for violation of the basic structure of the Constitution

46. The provisions discussed in the above segment indicate that secularism is embodied in the constitutional scheme, particularly Part III. In **Kesavananda Bharati v. State of Kerala**, this Court held that Article 368 does not enable Parliament to alter the basic structure or framework of the Constitution.[46] It was held that the power of Parliament to amend the Constitution cannot have the effect of destroying or abrogating the basic structure or framework of the Constitution.[47] Further, the judges constituting the majority

42 T M A Pai Foundation v. State of Karnataka (2002) 8 SCC 481 [157]

43 Ahmedabad St Xavier's College Society (supra) [9]; T M A Pai Foundation (supra) [138] ["138. As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-à-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down."]

44 Ahmedabad St Xavier's College Society (supra) [75] (Justice H R Khanna)

45 S R Bommai (supra) [183]

46 [1973] Supp. 1 SCR 1 : (1973) 4 SCC 225

47 Kesavananda Bharati (supra) [1426] (Justice H R Khanna) ["1426. […] The word "amendment" postulates that the old Constitution survives without loss of its identity despite the change and continues even though it has been subjected to alterations. As a result of the amendment, the old Constitution

enumerated certain basic features of our Constitution, including the secular character of the Constitution.[48] In **S R Bommai v. Union of India**,[49] a nine-Judge Bench held that secularism is a basic feature of the Constitution. The issue that arises for our consideration is whether the basic structure doctrine can be applied to invalidate ordinary legislation.

47. The Constitution imposes certain limitations on the legislative powers of Parliament and the State legislatures. Article 13(2) provides that the State shall not make any law that takes away or abridges the rights conferred by Part III. Statutes enacted by the State legislatures must be consistent with the fundamental rights enumerated under Part III of the Constitution. Further, Article 246 defines the scope and limitations of the legislative competence of Parliament and State legislatures. A statute can be declared ultra vires on two grounds alone: (i) it is beyond the ambit of the legislative competence of the legislature; or (ii) it violates Part III or any other provision of the Constitution.[50]

48. In **Indira Nehru Gandhi v. Raj Narain**,[51] the Allahabad High Court disqualified the then Prime Minister for indulging in corrupt practices according to the Representation of the People Act, 1951. To nullify the decision of the High Court, Parliament enacted the Representation of the People (Amendment) Act 1974 and Election Laws (Amendment) Act 1975 and placed them under the Ninth

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cannot be destroyed and done away with; it is regained though in the amended form. What then is meant by the retention of the old Constitution? It means the retention of the basic structure or framework of the old Constitution. A mere retention of some provisions of the old Constitution even though the basic structure or framework of the Constitution has been destroyed would not amount to the retention of the old Constitution. Although it is permissible under the power of amendment to effect changes, howsoever important, and to adapt the system to the requirements of changing conditions, it is not permissible to touch the foundation or to alter the basic institutional pattern. The words "amendment of the Constitution" with all their wide sweep and amplitude cannot have the effect of destroying or abrogating the basic structure or framework of the Constitution."]

48 Kesavananda Bharati (supra) [292] (Chief Justice Sikri); [487] (Justice Shelat and Grover); [1426] (Justice H R Khanna).

49 [1994] 2 SCR 644 : (1994) 3 SCC 1; [29] (Justice AM Ahmadi); [151] (Justice P B Sawant (for himself and Justice Kuldip Singh)); [182] (Justice K Ramaswamy); [304] (Justice B P Jeevan Reddy (for himself and Justice S C Agrawal))

50 State of A P v. McDowell & Co. (1996) 3 SCC 709 [43] ["43. […] The power of Parliament or for that matter, the State Legislatures is restricted in two ways. A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision."]; State of Kerala v. Peoples Union for Civil Liberties (2009) 8 SCC 46 [45]

51 [1978] 2 SCR 405 : 1975 Supp SCC 1

Schedule of the Constitution. The issue before this Court was whether the amendments violated the basic structure of the Constitution.

49. Chief Justice A N Ray held that the constitutional validity of a statute depends entirely on the existence of the legislative power and the express provision in Article 13. Since the legislation is not subject to any other constitutional limitation, applying the basic structure doctrine to test the validity of a statute will amount to "rewriting the Constitution."[52] The learned Judge further observed that application of the undefinable theory of basic structure to test the validity of a statute would denude legislatures of the power of legislation and deprive them of laying down legislative policies.[53] Justice K K Mathew similarly observed that the concept of a basic structure is "too vague and indefinite to provide a yardstick to determine the validity of an ordinary law."[54] Justice Y V Chandrachud (as the learned Chief Justice then was) observed that constitutional amendment and ordinary laws operate in different fields and are subject to different limitations.[55]

50. The majority in **Indira Nehru Gandhi** (supra) held that the constitutional validity of a statute cannot be challenged for the violation of the basic structure doctrine. However, Justice M H Beg (as the learned Chief Justice then was) dissented with the majority view by observing that the basic structure test can be used to test

52 Indira Nehru Gandhi (supra) [134] and [137]

53 Indira Nehru Gandhi (supra) [136] ["136. The theory of basic structures or basic features is an exercise in imponderables. Basic structures or basic features are indefinable. The legislative entries are the fields of legislation. The pith and substance doctrine has been applied in order to find out legislative competency, and eliminate encroachment on legislative entries. If the theory of basic structures or basic features will be applied to legislative measures it will denude Parliament and State Legislatures of the power of legislation and deprive them of laying down legislative policies. This will be encroachment on the separation of powers."]

54 Indira Nehru Gandhi (supra) [357]

55 Indira Nehru Gandhi (supra) [691] and [692]. ["691 […] The constitutional amendments may, on the ratio of the Fundamental Rights case, be tested on the anvil of basic structure. But apart from the principle that a case is only an authority for what it decides, it does not logically follow from the majority judgment in the Fundamental Rights case that ordinary legislation must also answer the same test as a constitutional amendment. Ordinary laws have to answer two tests for their validity: (1) The law must be within the legislative competence of the legislature as defined and specified in Chapter I, Part XI of the Constitution, and (2) it must not offend against the provisions of Article 13(1) and (2) of the Constitution. "Basic structure", by the majority judgment, is not a part of the fundamental rights nor indeed a provision of the Constitution. The theory of basic structure is woven out of the conspectus of the Constitution and the amending power is subjected to it because it is a constituent power. "The power to amend the fundamental instrument cannot carry with it the power to destroy its essential features — this, in brief, is the arch of the theory of basic structure. It is wholly out of place in matters relating to the validity of ordinary laws made under the Constitution.]

the validity of statutes because statutes cannot go beyond the range of constituent power.[56]

51. In **State of Karnataka v. Union of India**,[57] Justice N L Untwalia (writing for himself, Justice P N Shingal, and Justice Jaswant Singh) reiterated that the validity of a statute cannot be tested for violation of the basic structure of the Constitution. Justice Y V Chandrachud (as the learned Chief Justice then was) also observed that a statute cannot be invalidated on supposed grounds so long as it is within the legislative competence of the legislature and consistent with Part III of the Constitution.[58] However, Chief Justice M H Beg observed that testing a statute for violation of basic structure does not "add to the contents of the Constitution."[59] He held that any inference about a limitation based on the basic structure doctrine upon legislative power must co-relate to the express provisions of the Constitution.[60]

52. In **Kuldip Nayar v. Union of India**,[61] a Constitution Bench held that ordinary legislation cannot be challenged for the violation of the basic structure of the Constitution. Statutes, including State legislation, can only be challenged for violating the provisions of the Constitution.[62] However, in **Madras Bar Association v. Union of India**,[63] a Constitution Bench applied the basic structure doctrine to test the validity of Parliamentary legislation seeking to transfer judicial

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56 Indira Nehru Gandhi (supra) [622]

57 [1978] 2 SCR 1 : (1977) 4 SCC 608 [238]

58 State of Karnataka (supra) [197]

59 State of Karnataka (supra) [128]

60 State of Karnataka (supra) [123]

61 [2006] Supp. 5 SCR 1 : (2006) 7 SCC 1 ["107. The basic structure theory imposes limitation on the power of Parliament to amend the Constitution. An amendment to the Constitution under Article 368 could be challenged on the ground of violation of the basic structure of the Constitution. An ordinary legislation cannot be so challenged. The challenge to a law made, within its legislative competence, by Parliament on the ground of violation of the basic structure of the Constitution is thus not available to the petitioners."]

62 Ashok Kumar Thakur v. Union of India (2008) 6 SCC 1 [116]

63 Madras Bar Association v. Union of India (2014) 10 SCC 1 [109] ["This Court has repeatedly held that an amendment to the provisions of the Constitution would not be sustainable if it violated the "basic structure" of the Constitution, even though the amendment had been carried out by following the procedure contemplated under "Part XI" of the Constitution. This leads to the determination that the "basic structure" is inviolable. In our view, the same would apply to all other legislations (other than amendments to the Constitution) as well, even though the legislation had been enacted by following the prescribed procedure, and was within the domain of the enacting legislature, any infringement to the "basic structure" would be unacceptable."]

power from High Courts to tribunals. Justice J S Khehar (as the learned Chief Justice then was), writing for the Constitution Bench, held that the basic structure of the Constitution will stand violated if Parliament does not ensure that the newly created tribunals do not "conform with the salient characteristics and standards of the court sought to be substituted."[64]

53. In **Supreme Court Advocates-on-Record Association** v. **Union of India**,[65] this Court had to decide the constitutional validity of the Constitution (Ninety-ninth Amendment) Act 2014 and the National Judicial Appointments Commission Act 2014. Justice J S Khehar (as the learned Chief Justice then was) built upon his reasoning in **Madras Bar Association** (supra) by observing that a challenge to ordinary legislation for violation of the basic structure would only be a "technical flaw" and "cannot be treated to suffer from a legal infirmity."[66] He observed that the determination of the basic structure of the Constitution is made exclusively from the provisions of the Constitution. The observations of the learned Judge are instructive and extracted below:

> "381. […] when a challenge is raised to a legislative enactment based on the cumulative effect of a number of articles of the Constitution, it is not always necessary to refer to each of the articles concerned when a cumulative effect of the said articles has already been determined as constituting one of the "basic features" of the Constitution. Reference to the "basic structure" while dealing with an ordinary legislation would obviate the necessity of recording the same conclusion which has already been scripted while interpreting the article(s) under reference harmoniously. We would therefore reiterate that the "basic structure" of the Constitution is inviolable and as such the Constitution cannot be amended so as to negate any "basic features" thereof, and so also, if a challenge is

64 Madras Bar Association (supra) [136]. ["136. (iii) The "basic structure" of the Constitution will stand violated if while enacting legislation pertaining to transfer of judicial power, Parliament does not ensure that the newly created court/tribunal conforms with the salient characteristics and standards of the court sought to be substituted."]

65 (2016) 5 SCC 1

66 Supreme Court Advocates-on-Record Association (supra) [381]

> raised to an ordinary legislation based on one of the "basic features" of the Constitution, it would be valid to do so. If such a challenge is accepted on the ground of violation of the "basic structure", it would mean that the bunch of articles of the Constitution (including the Preamble thereof, wherever relevant), which constitute the particular "basic feature", had been violated. We must however credit the contention of the learned Attorney General by accepting that it would be technically sound to refer to the articles which are violated, when an ordinary legislation is sought to be struck down as being ultra vires the provisions of the Constitution."

54. However, Justice Lokur differed with Justice Khehar on the issue of testing the validity of a statute for violation of the basic structure doctrine. Justice Lokur followed the view of the majority in the **State of Karnataka** (supra)[67] that a statute cannot be challenged for violating the basic structure doctrine.

55. From the above discussion, it can be concluded that a statute can be struck down only for the violation of Part III or any other provision of the Constitution or for being without legislative competence. The constitutional validity of a statute cannot be challenged for the violation of the basic structure of the Constitution. The reason is that concepts such as democracy, federalism, and secularism are undefined concepts. Allowing courts to strike down legislation for violation of such concepts will introduce an element of uncertainty in our constitutional adjudication. Recently, this Court has accepted that a challenge to the constitutional validity of a statute for violation of the basic structure is a technical aspect because the infraction has to be traced to the express provisions of the Constitution. Hence, in a challenge to the validity of a statute for violation of the principle of secularism, it must be shown that the statute violates provisions of the Constitution pertaining to secularism.

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67 Supreme Court Advocates-on-Record Association (supra) [795] ["795. For the purposes of the present discussion, I would prefer to follow the view expressed by a Bench of seven learned Judges in *State of Karnataka v. Union of India* [*State of Karnataka v. Union of India* (1977) 4 SCC 608 (Seven-Judge Bench)] that it is only an amendment of the Constitution that can be challenged on the ground that it violates the basic structure of the Constitution—a statute cannot be challenged on the ground that it violates the basic structure of the Constitution. [The only exception to this perhaps could be a statute placed in the Ninth Schedule of the Constitution.] The principles for challenging the constitutionality of a statute are quite different."]

c. Regulation of minority educational institutions

56. The right of minorities to administer educational institutions includes the right to manage the affairs of the institution in accordance with the ideas and interests of the community in general and the institution in particular.[68] The right to administer minority educational institutions encompasses: (i) the right to constitute the managing or governing body; (ii) the right to appoint teachers; (iii) the right to admit students subject to reasonable regulations; and (iv) the right to use property and assets for the benefit of the institution.[69] However, the right to administer minority educational institutions is not absolute. The right to administer educational institutions implies an obligation and duty of minority institutions to provide a standard of education to the students.[70] The right to administer is, it is trite law, not the right to maladminister.

57. **In re Kerala Education Bill 1957**,[71] this Court classified minority educational institutions into three categories: (i) those which do not seek either aid or recognition from the State; (ii) those which want aid; and (iii) those which want only recognition but not aid. The first category of institutions is protected by Article 30(1).[72] As regards the second and third categories, Chief Justice S R Das observed that the "minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification,

68 State of Kerala v. Very Rev. Mother Provincial (1970) 2 SCC 417 [9].

69 Ahmedabad St Xavier's College Society (supra) [19] (Chief Justice A N Ray) ["19. […] The right to administer is said to consist of four principal matters. First is the right to choose its managing or governing body. It is said that the founders of the minority institution have faith and confidence in their own committee or body consisting of persons elected by them. Second is the right to choose its teachers. It is said that minority institutions want teachers to have compatibility with the ideals, aims and aspirations of the institution. Third is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications. Fourth is the right to use its properties and assets for the benefit of its own institution."]

70 Ahmedabad St Xavier's College Society (supra) [30] ["30. […] The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. The right to administer is to be tempered with regulatory measures to facilitate smooth administration."]

71 [1959] 1 SCR 995 : 1958 SCC OnLine SC 8 [23]

72 In re Kerala Education Bill (supra) [24]

and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars."[73]

58. The State has an interest in ensuring that minority educational institutions provide standards of education similar to other educational institutions.[74] The State can enact regulatory measures to promote efficiency and excellence of educational standards.[75] Regulations about standards of education do not directly bear upon the management of minority institutions.[76] The State can regulate aspects of the standards of education such as the course of study, the qualification and appointment of teachers, the health and hygiene of students, and facilities for libraries.[77]

59. The State may impose regulation as a condition for grant of aid or recognition. Such regulation must satisfy the following three tests: (i) it must be reasonable and rational; (ii) it must be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it; and (iii) it must be directed towards maintaining the excellence of education and efficiency of administration to prevent it from falling standards.[78] To determine the issue of the reasonableness of a regulation, the court has to determine whether the regulation is calculated to subserve or will in effect subserve the purpose of recognition or affiliation.[79]

60. In **P A Inamdar v. State of Maharashtra**, this Court held that the considerations for granting recognition to a minority educational institution are subject to two overriding conditions: (i) the recognition is not denied solely on the ground of the educational institution being one belonging to minority; and (ii) the regulation is neither aimed at nor has the effect of depriving the institution of its minority status.[80]

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73 In re Kerala Education Bill (supra) [31]

74 Very Rev Mother Provincial (supra) [10]

75 All Saints High School v. Government of AP (1980) 2 SCC 478 [63]; Dayanand Anglo Vedic (DAV) College Trust and Management Society v. State of Maharashtra (2013) 4 SCC 14 [32]

76 Ahmedabad St Xavier's College Society (supra) [90]

77 Very Rev Mother Provincial (supra) [10]; St Xavier's College (supra) [18]

78 Sidhajbhai Sabhai v. State of Bombay, 1962 SCC OnLine SC 150 [15]; P A Inamdar v. State of Maharashtra (2005) 6 SCC 537 [94], [122]

79 Ahmedabad St. Xavier's College Society (supra) [176] (Justice KK Mathew and Justice Y V Chandrachud)

80 P A Inamdar (supra) [103]

61. In **Ahmedabad St Xavier's College Society v. State of Gujarat**,[81] the issue before a Bench of nine Judges was whether religious and linguistic minorities who have the right to establish and administer educational institutions of their choice have a fundamental right to affiliation or recognition. Chief Justice A N Ray held that minority educational institutions have no fundamental right to recognition. The learned Chief Justice observed that the primary purpose of recognition is to ensure that students reading in minority educational institutions have "qualifications in the shape of degrees necessary for a useful career in life."[82] He further observed that a minority educational institution seeking affiliation must follow the statutory educational standards and efficiency, the prescribed courses of study, courses of instruction, qualification of teachers, and educational qualifications for entry of students.[83] However, the learned Chief Justice held that a law providing for recognition should not result in abridgement of the right of linguistic and religious minorities to administer and establish educational institutions of their choice under Article 30(1).[84]

62. Justice K K Mathew (writing for himself and Justice Y V Chandrachud), in his concurring opinion stated that the principle of juridical equality ensures the "co-existence of several types of schools and colleges including affiliated colleges" with proportionate equal encouragement and support from the State.[85] The learned judge further held that the State's interest in the education of religious minorities would be served if minority educational institutions impart secular education accompanied by religious education. He also observed:

> "**145.** The State's interest in secular education may be defined broadly as an interest in ensuring that children within its boundaries acquire a minimum level of competency in skills, as well as a minimum amount of information and knowledge in certain subjects. Without such skill and knowledge, an individual will be at a severe disadvantage both in participating in democratic self-Government and in earning a living. No one can question the constitutional

81 [1975] 1 SCR 173 : (1974) 1 SCC 717

82 Ahmedabad St. Xavier's College Society (supra) [14]

83 Ahmedabad St. Xavier's College Society (supra) [16]

84 Ahmedabad St. Xavier's College Society (supra) [14]

85 Ahmedabad St. Xavier's College Society (supra) [144]

> right of parents to satisfy their State-imposed obligation to educate their children by sending them to schools or colleges established and administered by their own religious minority so long as these schools and colleges meet the standards established for secular education."

The State has an interest in maintaining the standards of education in minority educational institutions. Affiliation or recognition of minority educational institutions by the Government secures the academic interests of students studying in such institutions to pursue higher education.[86]

d. The Madarsa Act is a regulatory legislation

63. The Statement of Objects and Reasons of the Madarsa Act indicates that it is enacted to remove difficulties in running Madarsas and improve the merit of students studying in Madarsas by making available to them facilities of study of the requisite standard. Section 3 provides for the constitution of the Board. The Board comprises persons who are related to or know about education in Madarsas. The Board has been statutorily empowered to: (i) prescribe courses of instruction and text-books for courses; (ii) grant degrees, diplomas, certificates and other academic distinctions; (iii) conduct examinations; (iv) recognise institutions for examination; (v) admit candidates for examinations; (vi) publish the results of the examination; and (vii) to provide for research and training in any branch of Madarsa education.

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86 In re Kerala Education Bill 1957 (supra) [32] ["32. […] The minorities evidently desire that education should be imparted to the children of their community in an atmosphere congenial to the growth of their culture. Our Constitution makers recognised the validity of their claim and to allay their fears conferred on them the fundamental rights referred to above. But the conservation of the distinct language, script or culture is not the only object of choice of the minority communities. They also desire that scholars of their educational institutions should go out in the world well and sufficiently equipped with the qualifications necessary for a useful career in life. But according to the Education Code now in operation to which it is permissible to refer for ascertaining the effect of the impugned provisions on existing state of affairs, the scholars of unrecognised schools are not permitted to avail themselves of the opportunities for higher education in the university and are not eligible for entering the public services. Without recognition, therefore, the educational institutions established or to be established by the minority communities cannot fulfil the real objects of their choice and the rights under Article 30(1) cannot be effectively exercised. The right to establish educational institutions of their choice must, therefore, mean the right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions. There is, no doubt, no such thing as fundamental right to recognition by the State but to deny recognition to the educational institutions except upon terms tantamount to the surrender of their constitutional right of administration of the educational institutions of their choice is in truth and in effect to deprive them of their rights under Article 30(1)."]; Milli Talimi Mission v. State of Bihar (1984) 4 SCC 500 [4]

64. Section 10 empowers the Board to: (i) cancel an examination or withhold the result of an examination; (ii) prescribe fees for conducting examinations; (iii) refuse recognition to institutions that do not fulfil the standards of staff, instructions, equipment, or buildings laid down by the Board; (iv) withdraw recognition to an institution not able to adhere to the standards of staff, instructions, equipment, or buildings laid down by the Board; and (v) inspect an institution to ensure due observance of the prescribed courses of study and facilities for instruction.

65. The legislative scheme of the Madarsa Act suggests that it has been enacted to regulate the standard of education in Madarsas recognized by the Board for imparting Madarsa education. The Madarsa Act grants recognition to Madarsas to enable students to sit for an examination and obtain a degree, diploma, or certificate conferred by the Board. The statute envisages granting recognition to Madarsas which fulfil the prescribed standards for staff, instructions, equipment and buildings. The grant of recognition imposes a responsibility on the Madarsas to attain certain standards of education laid down by the Board. Access to quality teachers, course materials, and equipment will allow Madarsa students to achieve stipulated educational and professional standards.[87] Failure of the Madarsas to maintain the standards of education will result in the withdrawal of their recognition.

66. In **Bihar State Madarasa Education Board v. Madarasa Hanfia Arabic College**,[88] the State legislature enacted the Bihar State Madarasa Education Board Act 1982 to constitute an autonomous State Madarasa Education Board to grant recognition, aid, and to supervise and control the academic efficiency in the Madarsas aided and recognized by it. Section 7(2)(n) of the legislation empowered the Board to dissolve the managing committee of a Madarsa for non-compliance with its directions. The issue before this Court was

87 Frank Anthony Public School Employees' Association v. Union of India (1986) 4 SCC 707 [16] ["16. The excellence of the instruction provided by an institution would depend directly on the excellence of the teaching staff, and in turn, that would depend on the quality and the contentment of the teachers. Conditions of service pertaining to minimum qualifications of teachers, their salaries, allowances and other conditions of service which ensure security, contentment and decent living standards to teachers and which will consequently enable them to render better service to the institution and the pupils cannot surely be said to be violative of the fundamental right guaranteed by Article 30(1) of the Constitution."]

88 [1989] Supp. 2 SCR 399 : (1990) 1 SCC 428

whether the provision was violative of Article 30(1) of the Constitution. This Court observed that the State has the power to regulate the administration of minority educational institutions in the interests of educational needs and discipline of the institution. However, it was observed that the State has no power to frame rules to completely take over the management of such institutions by superseding or dissolving their management. Hence, Section 7(2)(n) was declared invalid for violating Article 30(1).

67. The other issue before this Court was whether a statutory Board established for recognition of minority educational institutions must only comprise of persons belonging to the minority community. It was held that there is no constitutional obligation that such a Board must exclusively consist of members belonging to the minority community. It was observed:

> "7. [...] Article 30(1) does not contemplate that an autonomous Educational Board entrusted with the duty of regulating the aided and recognised minorities institution, should be constituted only by persons belonging to minority community. Article 30(1) protects the minorities' right to manage and administer institutions established by them according to their choice, but while seeking aid and recognition for their institutions there is no constitutional obligation that the Board granting aid or recognition or regulating efficiency in minority institution should consist of members exclusively belonging to minority communities. In the instant case the constitution of the Board under Section 3 of the Act ensures that its members are only those who are interested in teaching and research of Persian, Arabic and Islamic studies. This provision fully safeguards the interest of Madarasa of the Muslim community."

68. The Madarsa Act allows the Board to prescribe curriculum and textbooks, conduct examinations, qualifications of teachers, and standards of equipment and buildings geared to ensure the maintenance of standards of education in Madarsas. The provisions of the Madarsa Act are reasonable because they subserve the object of recognition, that is, improving the academic excellence of students in the recognised Madarsas and making them capable to sit for examinations conducted by the Board. The statute also enables

the students studying in the recognised Madarsas to pursue fields of higher education and seek employment.

69. Regulations pertaining to standards of education or qualification of teachers do not directly interfere with the administration of the recognized Madarsas. Such regulations are "designed to prevent maladministration of an educational institution".[89] The Madarsa Act does not directly interfere with the day-to-day administration of the recognized Madarsas.[90] Further, the provisions of the Madarsa Act are "conducive to making the institution an effective vehicle of education for minority community" without depriving the educational institutions of their minority character.

70. Fundamental rights consist of both negative and positive postulates. They require the State to restrain its exercise of power and create conducive conditions for the exercise of rights.[91] The essence of Article 30(1) is the recognition and preservation of different types of people, with diverse languages and different beliefs, while maintaining the basic principle of equality and secularism.[92] In the spirit of positive secularism, Article 30 confers special rights on religious and linguistic minorities "because of their numerical handicap and to instil in them a sense of security and confidence".[93] The positive concept of secularism requires the State to take active steps to treat minority institutions on par with secular institutions while allowing them to retain their minority character. Positive secularism allows the State to treat some persons differently to treat all persons equally.[94] The

89 Ahmedabad St. Xavier's College Society (supra) [92]

90 P A Inamdar (supra) [121] ["121. […] the urge or need for affiliation or recognition brings in the concept of regulation by way of laying down conditions consistent with the requirement of ensuring merit, excellence of education and preventing maladministration. For example, provisions can be made indicating the quality of the teachers by prescribing the minimum qualifications that they must possess and the courses of studies and curricula. The existence of infrastructure sufficient for its growth can be stipulated as a prerequisite to the grant of recognition or affiliation. However, there cannot be interference in the day-to-day administration. The essential ingredients of the management, including admission of students, recruiting of staff and the quantum of fee to be charged, cannot be regulated."]

91 Supriyo v. Union of India, 2023 SCC OnLine SC 1348 [158]

92 T M A Pai Foundation (supra) [160-161]

93 T M A Pai Foundation (supra) [157]

94 St Stephens College v. University of Delhi (1992) 1 SCC 558 [97] ["97. The Constitution establishes secular democracy. The animating principle of any democracy is the equality of the people. But the idea that all people are equal is profoundly speculative. It is well said that in order to treat some persons equally, we must treat them differently. We have to recognise a fair degree of discrimination in favour of minorities. But it is impossible to have an affirmative action for religious minorities in religious neutral way. In order to get beyond religion, we cannot ignore religion. We must first take account of religion. It

concept of positive secularism finds consonance in the principle of substantive equality.

71. In **Joseph Shine v. Union of India**,[95] one of us (Justice D Y Chandrachud) held that the notion of formal equality is contrary to the constitutional vision of a just social order. On the contrary, substantive equality is aimed at producing equality of outcomes through different modes of affirmative actions or state support.[96] Substantive equality is directed at eliminating individual, institutional and systemic discrimination against disadvantaged groups which effectively undermines their full and equal social, economic, political, and cultural participation in society.[97] Enactment of special provisions or giving preferential treatment by the State allows the disadvantaged individual or community to overcome social and economic barriers and participate in society on equal terms.[98]

72. The Madarsa Act secures the interests of the minority community in Uttar Pradesh because: (i) it regulates the standard of education imparted by the recognised Madarsas; and (ii) it conducts examinations and confers certificates to students, allowing them the opportunity to pursue higher education. The Madarsa Act is consistent with the positive obligation of the State to ensure that students studying in the recognised Madarsas attain a minimum level of competency which will allow them to effectively participate in society and earn a living.[99] Therefore, the Madarsa Act furthers substantive equality for the minority community.

73. The High Court erred in holding that a statute is bound to be struck down if it is violative of the basic structure. Invalidation of a statute on the grounds of violation of secularism has to be traced to express provisions of the Constitution. Further, the fact that the State legislature has established a Board to recognise and regulate

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is exactly in the spirit of these considerations that this Court in its advisory opinion in Kerala Education Bill case [1959 SCR 995 : AIR 1958 SC 956] recognised a fair degree of discrimination in favour of religious minorities. In this respect the Court seems to have acted on the same principle which is applied to socially and educationally backward classes, that is the principle of protective discrimination."]

95 [2018] 11 SCR 765 : (2019) 3 SCC 39

96 Ravinder Kumar Dhariwal v. Union of India (2023) 2 SCC 209 [37]

97 Joseph Shine (supra) [171]

98 Neil Aurelio Nunes v. Union of India (2022) 4 SCC 1 [33]

99 Ahmedabad St. Xavier's College Society (supra) [145] (Justice K K Mathew and Justice Y V Chandrachud)

Madarsa education is not violative of Article 14. The Madarsa Act furthers substantive equality.

e. Interplay of Article 21-A and Article 30

74. Article 21-A provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. It imposes a constitutional obligation on the State to impart elementary and basic education. Parliament enacted the RTE Act to provide full-time elementary education of satisfactory and equitable quality to every child in pursuance of Article 21-A. The RTE Act seeks to provide a "quality education without any discrimination on economic, social, and cultural grounds."[100] Section 3 makes the right of children to free and compulsory education justiciable.[101]

75. In **Society for Unaided Private Schools of Rajasthan v. Union of India**,[102] a three-Judge Bench of this Court upheld the constitutional validity of the RTE Act. It further held that the statute applies to an aided school including a minority school receiving aid or grant to meet whole or part of its expenses from the appropriate Government or local authority. Subsequently, Parliament amended the RTE Act to exempt its application to Madarsas, vedic pathsalas and educational institutions primarily imparting religious instruction.[103]

76. In **Pramati Educational and Cultural Trust v. Union of India**,[104] a Constitution Bench had to determine the constitutional validity of Article 21-A. One of the issues before this Court was whether Article 21-A conflicts with Article 30. This Court held that the law enacted by Parliament under Article 21-A cannot abrogate the right of minorities to establish and administer schools of their choice. It held that application of the RTE Act to minority educational institutions, whether aided or unaided, "may destroy the minority character of

100 State of Tamil Nadu v. K Shyam Sunder (2011) 8 SCC 737 [21]; Bharatiya Seva Samaj Trust v. Yogeshbhai Ambalal Patel (2012) 9 SCC 310 [26]

101 Section 3, RTE Act

102 [2012] 2 SCR 715 : (2012) 6 SCC 1 [64]

103 Section 1(4) and (5), RTE Act. [It reads:
"[(4) Subject to the provisions of Articles 29 and 30 of the Constitution, the provisions of this Act shall apply to conferment of rights on children to free and compulsory education.
(5) Nothing contained in this Act shall apply to Madrasas, Vedic Pathsalas and educational institutions primarily imparting religious instruction."]

104 [2014] 11 SCR 712 : (2014) 8 SCC 1

the school."[105] Therefore, it held that the RTE Act is ultra vires the Constitution to the extent it applied to minority educational institutions.

77. The purpose of education is to provide for the intellectual, moral, and physical development of a child. A good education system is correlated to the social, economic, and political needs of our country.[106]

78. Article 30(1) guarantees the right to establish and administer educational institutions of their choice to religious and linguistic minorities. However, the State has an interest in ensuring that the minority educational institutions impart secular education along with religious education or instruction.[107] The constitutional scheme allows the State to strike a balance between two objectives: (i) ensuring the standard of excellence of minority educational institutions; and (ii) preserving the right of the minority to establish and administer its educational institution.[108] The State generally strikes a balance by enacting regulations accompanying the recognition of minority educational institutions.

79. The High Court erred in holding that education provided under the 2004 Act is violative of Article 21A because (i) The RTE Act which facilitates the fulfilment of the fundamental right under Article 21 – A contains a specific provision by which it does not apply to

105 Pramati Educational and Cultural Trust (supra) [55] ["55. When we look at the 2009 Act, we find that Section 12(1)(b) read with Section 2(n)(ii) provides that an aided school receiving aid and grants, whole or part, of its expenses from the appropriate Government or the local authority has to provide free and compulsory education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent. Thus, a minority aided school is put under a legal obligation to provide free and compulsory elementary education to children who need not be children of members of the minority community which has established the school. We also find that under Section 12(1)(c) read with Section 2(n)(iv), an unaided school has to admit into twenty-five per cent of the strength of Class I children belonging to weaker sections and disadvantaged groups in the neighbourhood. Hence, unaided minority schools will have a legal obligation to admit children belonging to weaker sections and disadvantaged groups in the neighbourhood who need not be children of the members of the minority community which has established the school. While discussing the validity of clause (5) of Article 15 of the Constitution, we have held that members of communities other than the minority community which has established the school cannot be forced upon a minority institution because that may destroy the minority character of the school. In our view, if the 2009 Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Therefore, the 2009 Act insofar it is made applicable to minority schools referred in clause (1) of Article 30 of the Constitution is ultra vires the Constitution. We are thus of the view that the majority judgment of this Court in Society for Unaided Private Schools of Rajasthan v. Union of India [(2012) 6 SCC 1] insofar as it holds that the 2009 Act is applicable to aided minority schools is not correct."]

106 Maharashtra State Board of Secondary and Higher Secondary Education v. K S Gandhi (1991) 2 SCC 716 [13]

107 Ahmedabad St. Xavier's College Society (supra) [138] (Justice K K Mathew and Justice Y V Chandrachud)

108 P A Inamdar (supra) [122]

minority educational institutions; (ii) The right of a religious minority to establish and administer Madarsas to impart both religious and secular education is protected by Article 30; and (iii) the Board and the state government have sufficient regulatory powers to prescribe and regulate standards of education for the Madarsas.

**E. Legislative Competence**

a. The Madarsa Act is within the legislative competence of the State under Entry 25, List III

80. The distribution of legislative powers is contained in Part XI of the Constitution. Article 246(2) confers exclusive power on Parliament to make laws "with respect to" any of the matters enumerated in List I (the Union List) of the Seventh Schedule. Clause (1) is prefaced with a non-obstante provision which gives it precedence over Clauses (2) and (3). Article 246(2) enunciates the legislative principles with regard to List III (the Concurrent List) and states that both Parliament and State legislatures have concurrent powers of legislation "with respect to" the matters enumerated in this list. This clause also begins with a non-obstante provision giving it precedence over clause (3). Finally, Article 264(3) states that the State Legislature has exclusive power to make laws on the matters enumerated in List II (the State List).

81. When the Constitution was enacted, the subject of "education" was part of List II (the State List) of the Seventh Schedule. This followed the scheme of distribution of powers in the Government of India Act 1935, whereby, the entry titled "Education" was placed in the Provincial List. At the time of the enactment of the Constitution, Entry 11 of List II read as follows:

> "**11.** Education including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III."

82. At this time, Entry 25 of List III read as follows:

> **"25.** Vocational and technical training of labour**."**

83. With effect from 3 January 1977, by the Constitution (Forty-Second Amendment Act),[109] Entry 11 of List II was omitted, and Entry 25 of

109 Constitution (Forty-second Amendment) Act, 1976, s. 57 (w.e.f. 3-1-1977).

List III was amended to account for it. In other words, the legislative entry pertaining to "education" was moved from the State List to the Concurrent List. Entry 25, List III now reads as follows:

> **"25.** Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

84. To address the contention raised by the respondents regarding the legislative competence of the state legislature, the following settled principles governing the interpretation of the entries in the Seventh Schedule are relevant[110]:

a. The entries are legislative heads and not sources of legislative powers. The legislative entries use general words to define and delineate the legislative powers of Parliament and State legislatures, and the words should receive their ordinary, natural, and grammatical meaning;

b. The legislative entries should not be read in a narrow or pedantic sense but must be given their "broadest meaning and the widest amplitude". The ambit of the entries extends to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in them;

c. There is a possibility of an overlap and conflict between two or more entries. In such cases, the doctrine of pith and substance comes into play to determine whether the legislature in question has the competence to enact a law;

d. There may arise situations where a legislature may frame a law that in substance and reality transgresses its legislative competence. Such a piece of legislation is called "colourable legislation". The substance of the legislation is material. If the subject matter is in substance beyond the legislative powers of the legislature, the form in which the law is clothed would not save it from being declared unconstitutional; and

e. In certain entries, such as Entry 25 in List III, the Constitution uses specific expressions such as "subject to" in order to

110 Mineral Area Development Authority & Anr. vs Steel Authority of India & Anr, 2024 INSC 554 [40-42]

resolve potential overlaps between entries in the three lists. This is used in cases where the Constitution stipulates that the exercise of power traceable to certain legislative entries overrides the exercise of power traceable to another entry in a different list.

85. The provisions of the Madarsa Act seek to "regulate" Madarsas. These are educational institutions run by a religious minority. There is a distinction between "religious instruction" and "religious education". While the Madarsas do impart religious instruction, their primary aim is education. Legislative entries must be given their widest meaning, and their ambit also extends to ancillary subjects which may be comprehended within the entry. The mere fact that the education which is sought to be regulated includes some religious teachings or instruction, does not automatically push the legislation outside the legislative competence of the state.

86. Article 28 is titled "Freedom as to attendance at religious instruction or religious worship in certain educational institutions". Article 28(1) states that no religious instruction shall be provided in any educational institution wholly maintained out of State funds. Article 28(3) provides that no person who is attending any educational institution recognised by the state or receiving aid out of state funds shall be compelled to take part in religious instruction or attend religious worship without their consent. The corollary to this provision is that religious instruction may be imparted in an educational institution which is recognized by the state, or which receives state aid but no student can be compelled to participate in religious instruction in such an institution. However, the dissemination of religious instruction does not change its fundamental character as an institution that imparts education. To read Entry 25, List III in the manner proposed by the respondent, would render it inapplicable to all legislation which deal with any institution "established and administered" by minorities, which may provide some religious instruction. This runs contrary to the constitutional scheme in Article 30, which recognizes the right of minorities to establish and administer educational institutions. Merely because an educational institution is run by a minority or even a majority community and professes some of its teachings, does not mean that the teachings in such institutions fall outside the ambit of the term "education".

87. In fact, reference was made to an eleven-judge bench of this Court in **T.M.A. Pai Foundation v. State of Karnataka**,[111] on the "scope of the right of minorities to establish and administer educational institutions of their choice under Article 30(1) read with Article 29(2)" in view of the inclusion of Entry 25 in List III of the seventh schedule.[112] One of the questions before this Court was whether the "minority status" of an institution under Article 30(1) would be determined with the unit being the state or the entire country, since both the state and the union can legislate on the subject of "education". Therefore, it is beyond the pale of doubt that the regulation of minority institutions was assumed to fall within the ambit of Entry 25, List III by an eleven-judge bench of this Court.

88. Further, Entry 25, List III itself provides specific carve-outs. The entry is subject to entries 63, 64, 65 and 66 of List I. None of these entries in the Union List seek to regulate 'religious education'. Further, Mr Guru Krishna Kumar, Senior Counsel has not indicated any other entry in List I with which there is a conflict so as to indicate that the legislation is a "colourable legislation" within the competence of the Parliament and not within the competence of the state legislature.

89. With respect to the concurrent exercise of power by the State Legislature and the Parliament with respect to matters in List III (the Concurrent List), the Constitution also provides for the doctrine of repugnancy to resolve inconsistencies between laws made by the Parliament and the state legislatures.[113] In such cases, the law made by the State legislature gives way to the law made by the Parliament, subject to certain exceptions.[114] In the present instance, the question of repugnancy does not even arise as there is no central law which purports to regulate the functioning of Madarsas. As noted above, the RTE Act, which is the legislation framed by Parliament pursuant to Entry 25, specifically states that it is inapplicable to Madarsas, and thus, there is no issue of a conflict or repugnancy between the two Acts.

90. In view of the above, there is no jurisprudential basis to read Entry 25, List III to be limited to only education that is devoid of any religious

111 [2002] Supp. 3 SCR 587 : (2002) 8 SCC 481

112 *Ibid* [3-4].

113 Article 254, Constitution of India.

114 Forum for People's Collective Efforts v. State of W.B. (2021) 8 SCC 599 [116]

teaching or instruction and to contend that the Madarsa Act (in its entirety) which seeks to regulate the functioning of Madarsas in Uttar Pradesh is outside the competence of the state legislature. The challenge on the ground of legislative competence fails.

b. Certain provisions of the Madarsa Act conflict with the UGC Act enacted under Entry 66, List I

91. As noted above, Entry 25 of List III has been made subject to certain entries in List I. One of these entries is Entry 66 of List I, which reads as follows:

> "**66.** Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

92. In ***Mineral Area Development Authority & Anr. vs. Steel Authority of India & Anr.***,[115] a Constitution Bench of this Court had occasion to observe the purport of the legislative entries in List II using the phrase "subject to" in the following terms:

> "**44.** Where the entries have used the phrase "subject to", the legislative power of the State is made subordinate to Parliament with respect to either the Union List or the Concurrent List. **The expression "subject to" conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject. Therefore, where the Constitution intends to displace or override the legislative powers of the States, it has used specific terminology – "subject to".** However, the Constitution has also indicated the extent to which a particular legislative entry under List II is subordinated. For instance, the subjection is either with respect to provisions of List I or List III, or it can also be to the extent of "any limitations" imposed by Parliament by law. Thus, it is imperative that the entries in List II must be read and interpreted in their proper context to understand the extent of their subordination to Union powers."
>
> (emphasis supplied)

115 [2024] 8 SCR 540 : 2024 INSC 607

93. The UGC Act has been enacted by Parliament pursuant to Entry 66 and seeks to make provisions for the "co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission."[116] The Madarsa Act has been enacted pursuant to Entry 25 of List III. This Court has held in a consistent line of precedent that the UGC Act occupies the field with regard to the coordination and determination of standards in higher education. Therefore, state legislation which seeks to regulate higher education, in conflict with the UGC Act, would be beyond the legislative competence of the State legislature.[117]

94. In **Prof. Yashpal & Anr vs. State of Chhattisgarh**,[118] a three-Judge Bench of this Court adjudicated on the constitutionality of the provisions of a state legislation in Chhattisgarh, which *inter alia*, granted the state government the power to recognise and establish universities, which offered degrees that were not recognised by the UGC. The state relied on Entry 32 of List II which pertains to the incorporation of universities and Entry 25 of List III, to justify the legislative competence of the state legislature. This Court declared that the provisions of the state legislation which conflict with the provisions of the UGC Act are unconstitutional as the UGC Act was validly enacted by Parliament under Entry 66 of List I. After considering the consistent line of precedent on this question, this Court observed thus:

> "**45.** The State Legislature can make an enactment providing for incorporation of universities under Entry 32 of List II and also generally for universities under Entry 25 of List III. The subject "university" as a legislative head must be interpreted in the same manner as it is generally or commonly understood, namely, with proper facilities for teaching of higher level and continuing research activity. An enactment which simply clothes a proposal submitted

116 Long Title, UGC Act.

117 Osmania University Teachers' Association vs. State of Andhra Pradesh (1987) 4 SCC 671; Dr Preeti Srivastava and another vs. State of M.P. (1999) 7 SCC 120; Prof. Yashpal & Anr vs. State of Chhattisgarh (2005) 5 SCC 420; Annamalai University, Represented by Registrar vs. Secretary to Government, Information and Tourism Department (2009) 4 SCC 590; Kalyani Mathivanan versus K.V. Jeyaraj (2015) 6 SCC 363.

118 [2005] 2 SCR 23 : (2005) 5 SCC 420

by a sponsoring body or the sponsoring body itself with the juristic personality of a university so as to take advantage of Section 22 of the UGC Act and thereby acquires the right of conferring or granting academic degrees but without having any infrastructure or teaching facility for higher studies or facility for research is not contemplated by either of these entries. Sections 5 and 6 of the impugned enactment are, therefore, wholly ultra vires, being a fraud on the Constitution.

**46.** […] The impugned Act which enables a proposal on paper only to be notified as a university and thereby conferring the power upon such university under Section 22 of the UGC Act to confer degrees has the effect of completely stultifying the functioning of the University Grants Commission insofar as these universities are concerned. Such incorporation of a university makes it impossible for UGC to perform its duties and responsibilities of ensuring coordination and determination of standards. In the absence of any campus and other infrastructural facilities, UGC cannot take any measures whatsoever to ensure a proper syllabus, level of teaching, standard of examination and evaluation of academic achievement of the students or even to ensure that the students have undergone the course of study for the prescribed period before the degree is awarded to them."

95. Section 22 of the UGC Act pertains to the right to confer degrees and reads as follows:

**"22. Right to confer degrees –** (1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

> (3) For the purposes of this section, "degree' means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the official Gazette."

96. Sub-section (1) expressly restricts the right to confer or grant degrees to (i) universities established or incorporated by a Central or State statute; or (ii) an institution deemed to be a university under Section 3;[119] or (iii) an institution specially empowered by an Act of Parliament to confer degrees. Sub-section (2) provides the same in the negative and stipulates that no person or authority, except those stipulated in sub-section (1) is entitled to confer or grant a degree or present himself as entitled to confer or grant a degree. Sub-section (3) provides that, for the application of Section 22, "degree" includes those degrees which are specified in this regard by the UGC by a notification issued in the Official Gazette, after previous approval of the Central Government.

97. During the course of the hearing, in response to queries posed by this Court, the Standing Counsel for the UGC clarified on instructions that the notification referred to in sub-section (3) of Section 22 has been issued. The latest notification in this regard, which currently holds the field, was issued by the UGC in March 2014.[120] The notification lists the nomenclature of all the degrees which fall within the ambit of Section 22 of the UGC Act. Under the title of 'Specification of Degrees with Urdu/Persian/Arabic nomenclature', the following degrees are specified:

| | Specification of Degrees with Urdu/Persian/Arabic nomenclature | | | |
|---|---|---|---|---|
| Sl. No. | Specified Degrees | Level | Minimum duration (Years) | Entry Qualification |
| 126. | Fazil | BACHELOR'S | 3 years | 10+2 (Alim/ Afzal- Ul- Ulema Preliminary) |

119 Section 3 reads: "**Application of Act to institutions for higher studies other than Universities** – The Central Government may, on the advice of the Commission, declare by notification in the Official Gazette, that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of section 2"

120 NO. F. 5-1/2013 (CPP-II).

| | | | | |
|---|---|---|---|---|
| 127. | Afzal-Ul-Ulma | BACHELOR'S | 3 years | 10+2 (Alim/ Afzal- Ul- Ulma Preliminary) |
| 128. | Kamil | MASTER'S | 2 years | Fazil/Afzal-Ul-Ulma (BA) |
| 129. | Mumtaz. (Mumtazul Tafseer. Mumtazul Mohaddisin, Mumtazul Fiqh, Mumtazul Adah etc.) | M.PHIL. | 1 year | Kamil (MA) |
| The universities shall be free to write English equivalent of these degrees, if they so desire in the mark sheet/degree certificates either in parentheses or slash. | | | | |

98. Section 9 of the Madarsa Act specifies the functions of the Board under the Madarsa Act. Several of these functions pertain to the regulation of the Fazil and Kamil degrees, which correspond to a bachelor's level and a post-graduate degree, respectively. In particular, the following provisions deal with regulating these higher education degrees:

a. Sub-clause (a) empowers the Board to prescribe courses of instructions, textbooks and other material for *inter alia* the Kamil and Fazil courses;

b. Sub-clause (e) empowers the Board to grant degrees, diplomas, certificates and academic distinctions to those who have either studied in institutions recognized by the board or studied privately under the conditions mandated by regulations and passed an examination conducted by the Board;

c. Sub-clause (f) empowers the Board to conduct the examinations of *inter alia* the Kamil and Fazil courses. Sub-clauses (g), (h) and (j) further empower the Board to recognize institutions for the purpose of examinations, admit candidates for the examinations, and publish or withhold the publication of the examination results; and

d. Sub-clause (o) empowers the Board to carry out all acts which are required to further the object of the Board, which is a body

> constituted to regulate and supervise "Madrasa-Education up to Fazil".

Pursuant to the above provisions, several provisions in the Regulations framed by the Board also seek to regulate the Kamil and Fazil courses and degrees.

99. The Madarsa Act to the extent to which it seeks to regulate higher education, including the 'degrees' of Fazil and Kamil, is beyond the legislative competence of the State Legislature since it conflicts with Section 22 of the UGC Act. Entry 25 of List III, pursuant to which the Madarsa Act has been enacted, has been expressly made subject to Entry 66 of List I. The UGC Act governs the standards for higher education and a state legislation cannot seek to regulate higher education, in contravention of the provisions of the UGC Act.

c. The entire Madarsa Act need not be struck down on the above ground

100. In the foregoing sections of this Judgment, we have upheld the constitutionality of the Madarsa Act on various grounds, that were urged before the High Court and subsequently, before this Court. However, certain provisions of the Madarsa Act which pertain to the regulation of higher education and the conferment of such degrees have been held to be unconstitutional on the ground of lack of legislative competence. Thus, the question that arises is whether the entire legislation must be struck down on this ground. In our view, it is in failing to adequately address this question of severability that the High Court falls into error and ends up throwing the baby out with the bathwater.

101. The entire statute does not need to be struck down each time that certain provisions of the statute are held to not meet constitutional muster. The statute is only void to the extent that it contravenes the Constitution. This position may be derived from the text of Article 13(2) itself, which states:

> "(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

102. Although Article 13(2) upholds this proposition in the context of laws which abridge the fundamental rights in Part III, the same doctrine is equally applicable to provisions of a statute which are set aside on the ground of lack of legislative competence. This position has also been affirmed by a steady line of precedent of this Court. We may helpfully refer to the observations in the *locus classicus* on the subject. In **R.M.D. Chamarbaugwalla v. Union of India**,[121] a Constitution bench of this Court adjudicated on the constitutionality of certain provisions of the Prize Competitions Act, 1956 and its allied rules. This Court, speaking through Justice TL Venkatarama Ayyar, had occasion to lay down the contours of the doctrine of severability and held that when a statute is in part void, it will be enforced as regards the rest, if that part is severable from what is invalid. It was clarified that it is immaterial whether the invalidity of the statute arises by reason of its subject matter being outside the competence of the legislature or by reason of its provisions contravening other constitutional provisions. To determine whether the specific provisions or the portion of the statute which is invalid is severable from the rest of the statute, this Court adopted certain rules of construction, which are as follows:

> "**22. […]**
>
> 1. In determining whether the valid parts of a statute are separable from the invalid parts thereof, it is the intention of the legislature that is the determining factor. **The test to be applied is whether the legislature would have enacted the valid part if it had known that the rest of the statute was invalid**. **[…]**
>
> 2. If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion must result in the invalidity of the Act in its entirety. On the other hand, **if they are so distinct and separate that after striking out what is invalid, what remains is in itself a complete code independent of the**

121 [1957] 1 SCR 930 : 1957 SCC OnLine SC 11

**rest, then it will be upheld notwithstanding that the rest has become unenforceable**. **[…]**

3. Even when the provisions which are valid are distinct and separate from those which are invalid, if they all form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole. **[...]**

4. Likewise, when the valid and invalid parts of a statute are independent and do not form part of a scheme but what is left after omitting the invalid portion is so thin and truncated as to be in substance different from what it was when it emerged out of the legislature, then also it will be rejected in its entirety.

5. The separability of the valid and invalid provisions of a statute does not depend on whether the law is enacted in the same section or different sections; **[…] it is not the form, but the substance of the matter that is material, and that has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provision therein.**

6. If after the invalid portion is expunged from the statute what remains cannot be enforced without making alterations and modifications therein, then the whole of it must be struck down as void, as otherwise it will amount to judicial legislation. **[…]**

7. In determining the legislative intent on the question of separability, it will be legitimate to take into account the history of the legislation, its object, the title and the preamble to it. **[…]**

**(emphasis supplied)**

103. Having already disagreed with the High Court on the question of whether the entire Madarsa Act suffers from an infirmity on the principle of secularism and other contentions, the only infirmity lies in those provisions which pertain to higher education, namely Fazil and Kamil. These provisions can be severed from the rest of the Madarsa Act. As noted earlier, the purpose behind the Madarsa Act

was to remove the difficulties in running the Madarsas, improve their merit and provide adequate facilities to students studying in these institutions. The purpose was not limited to only regulating Fazil and Kamil, and the legislature would have still enacted the statute if it were aware that the portions pertaining to higher education were invalid. Further, if the provisions relating to higher education are separated from the rest of the statute, the Act can continue to be enforced in a real and substantial manner. On an examination of the Madarsa Act, it is clear that prescribing the instructional material, conducting exams and conferring degrees for Fazil and Kamil were only a part of the functions of the Board. The severance of these functions from the Board does not impact its entire character. Thus, only the provisions which pertain to Fazil and Kamil are unconstitutional, and the Madarsa Act otherwise remains valid.

**F. Conclusion**

104. In view of the above discussion, we conclude that:

a. The Madarsa Act regulates the standard of education in Madarsas recognized by the Board for imparting Madarsa education;

b. The Madarsa Act is consistent with the positive obligation of the State to ensure that students studying in recognised Madarsas attain a level of competency which will allow them to effectively participate in society and earn a living;

c. Article 21-A and the RTE Act have to be read consistently with the right of religious and linguistic minorities to establish and administer educational institutions of their choice. The Board with the approval of the State government can enact regulations to ensure that religious minority institutions impart secular education of a requisite standard without destroying their minority character;

d. The Madarsa Act is within the legislative competence of the State legislature and traceable to Entry 25 of List III. However, the provisions of the Madarsa Act which seek to regulate higher-education degrees, such as Fazil and Kamil are unconstitutional as they are in conflict with the UGC Act, which has been enacted under Entry 66 of List I.

105. The judgment of the High Court of Judicature at Allahabad dated 22 March 2024 is accordingly set aside and the petitions shall stand disposed of in the above terms.

106. Pending applications, if any, stand disposed of.

*Result of the case:* Petitions disposed of.

†*Headnotes prepared by:* Nidhi Jain

[2024] 11 S.C.R. 428 : 2024 INSC 832

**Mukul Kumar Tyagi**
**v.**
**The State of Uttar Pradesh and Others**

Miscellaneous Application No. 2399 of 2024
in
(Civil Appeal No. 9026 of 2019)

05 November 2024

**[B.R. Gavai* and K.V. Viswanathan, JJ.]**

**Issue for Consideration**

Issue arose as to whether the services of such of the candidates who were selected in the select list and had produced the Course on computer concepts-CCC certificate at the time of the interview could have been terminated.

**Headnotes†**

**Service law – Termination – Selection to the post of Technician Grade-II – Course on computer concepts certificate or its equivalent computer qualification certificate mandatory educational qualification to be submitted at the time of interview – Written exam and interview held and final select list prepared – Issuance of appointment letters to the applicants – Challenge to, by unsuccessful candidates – Single Judge of the High Court quashed the select list insofar as it included candidates who did not hold CCC certificate conferred or recognized by NIELIT – Also directed the Corporation to re-draw the select list – Thereafter, Electricity Service Commission published the list of candidates whose selection was not found to be in accordance with the eligibility as per the direction of the Single Judge – Consequently, their services were terminated – List contained names of the applicants – Writ appeal by applicants – Division Bench allowed the same setting aside the judgment and order passed by the Single Judge – Appeal thereagainst wherein this Court set aside the judgment passed by the Division Bench upholding that of the Single Judge – Writ Petition by applicants seeking re-instatement which was dismissed – Correctness:**

**Held:** When the advertisement as well as the 1995 Regulations required the CCC certificate to be produced at the time of interview,

* Author

if it is permitted to produce the same subsequent to the date of interview, it would be contrary to the advertisement and the 1995 Regulations – Corporation misinterpreted the judgment of the Single Judge and terminated the services of the applicants who were otherwise entitled to be continued as per the judgment – Services of such of the candidates who were selected in the select list and had produced the CCC certificate at the time of the interview could not have been terminated – Corporation grossly erred in terminating their services – Furthermore, this Court held that the object and purpose of the direction by the Single Judge was to scrutinize the qualifications of those candidates, who had claimed equivalent certificate, those who were found possessing equivalent computer qualification so as to retain their names in the select list – Direction given by the Single Judge was applicable, apart from the candidates who were having CCC certificate from DOEACC/NIELIT, to the candidates who were covered under the guidelines and were also treated as equivalent to CCC certificate – Corporation has been taking contradictory stands – Before the High Court, it took a stand that not only such candidates having CCC certificate issued by DOEACC/NIELIT but also such candidates who had submitted certificate by self-certification were entitled to be considered and thereafter, took a stand that the candidates who did not have CCC certificate on the last date of application could not be considered as eligible candidates – Stand was contrary not only to the advertisement but also to the office memorandum of the Board – Submission of the candidates who did not have CCC certificate even on the date of their interview but have obtained the same subsequently cannot be accepted – Thus, fit case to exercise extraordinary jurisdiction u/Art.142 of the Constitution – Applicants who found place in the select list and who possessed/ produced the CCC certificate at the time of their interview to be reinstated forthwith. [Paras 20-29]

**Case Law Cited**

*Mukul Kumar Tyagi v. The State of Uttar Pradesh and Others* [2019] 16 SCR 1145 **: (2020) 4 SCC 86 : 2019 INSC 1380 – referred to.**

**List of Acts**

Uttar Pradesh Electricity Reforms Act, 1999; Uttar Pradesh Electricity (Supply) Act, 1948; U.P. State Power Parishad Operative Employees Cadre Service Regulations, 1995; Constitution of India.

**List of Keywords**

Termination; Selection to the post of Technician Grade-II; Course on computer concepts certificate; Equivalent computer qualification certificate; Educational qualification; Select list; Appointment letters; Unsuccessful candidates; CCC certificate conferred or recognized by NIELIT; Re-draw the select list; Electricity Service Commission; Re-instatement; Eligible candidates; Extraordinary jurisdiction u/Art.142 of the Constitution.

**Case Arising From**

CIVIL APPELLATE JURISDICTION: Miscellaneous Application No. 2399 of 2024

In

Civil Appeal No. 9026 of 2019

From the Judgment and Order dated 16.12.2019 of the Supreme Court of India in C.A. No. 9026 of 2019

With

M.A. 2400 of 2024 in C.A. No. 9026 of 2019, 2401 of 2024 in C.A. No. 9026 of 2019, C.A. 12197 of 2024.

**Appearances for Parties**

Dama Seshadri Naidu, Jayant Nath, Amit Anand Tiwari, Sanjay Nuli, Rana Mukherjee, S.K. Saxena, Ms. Garima Prasad, Sanjay Hegde Sr. Advs., Ms. Deepti Singh, Krishna M. Singh, Rajivkumar, Ms. Gargi Srivastava, Ms. Daisy Hannah, Arpit Shukla, Abhinav Sharma, Vikas Jain, Aviral Saxena, Shashank Shekhar Singh, Abhinav Singh, Prathvi Raj Chauhan, Ms. Priya Sharma, Ms. Rajeshri Nivuratirao Reddy, Pradeep Misra, Daleep Dhyani, Suraj Singh, Ms. Kumud Lata Das, Manoj Singh, Mohit Garg, Harsh Ajay Singh, Ms. Pooja Rathore, Advs for the appearing parties.

**Judgment / Order of the Supreme Court**

**Judgment**

**B.R. Gavai, J.**

**1.** Leave granted in appeal arising out of SLP(C) No. 23273 of 2023.

**2.** The present applications/appeal have been filed praying for a direction to the concerned authority to re-appoint the applicants on the post

of Technical Grade-II (Electrical) in Uttar Pradesh Power Corporation Limited (hereinafter referred to as "respondent-Corporation") who were appointed pursuant to the advertisement dated 6th September 2014, by setting aside the termination letter dated 13th May 2018 issued by the respondent-Corporation against the applicants herein.

**3.** The facts, *in brief*, giving rise to the present applications/appeal are as given below:

**3.1** The erstwhile Uttar Pradesh State Electricity Board under the Uttar Pradesh Electricity (Supply) Act, 1948, promulgated the U.P. State Power Parishad Operative Employees Cadre Service Regulations, 1995 (hereinafter referred to as "1995 Regulations").

**3.2** With the enactment of Uttar Pradesh Electricity Reforms Act, 1999, the U.P. State Electricity Board ceased to exist and was replaced by the respondent-Corporation.

**3.3** The respondent-Corporation adopted the 1995 Regulations which prescribed the method of filling-up posts of Technician Grade-II and set out the educational qualifications in relation thereto.

**3.4** By an office memorandum dated 29th January 2011, the Board of Directors of the respondent-Corporation amended the 1995 Regulations thereby prescribing that all incumbents seeking selection to the post of Technician Grade-II would be liable to hold a Certificate of 80 Hours Course on Computer Concepts (hereinafter referred to as "CCC certificate") issued by Department of Electronics and Accreditation of Computer Courses (hereinafter referred to as "DOEACC") and would need to produce the same certificate at the time of interview.

**3.5** By an office memorandum dated 25th November 2011, the respondent-Corporation provided that an equivalent computer eligibility qualification to CCC certificate issued by DOEACC would also be accepted.

**3.6** On 6th September 2014, the respondent-Corporation issued an advertisement, thereby inviting applications for appointments against 2,211 posts of Technician Grade-II (Electrical). Possession of CCC certificate or its equivalent computer

qualification certificate was one of the mandatory educational qualifications prescribed in paragraph 2 of the advertisement. In terms of paragraph 7 of the advertisement, the candidates were required to submit the CCC certificate at the time of interview.

**3.7** On 8th November 2014, a written examination was conducted and the applicants herein qualified the written examination. The applicants herein, thereafter, appeared in the interview conducted during the period from December 2014 to July 2015.

**3.8** On 14th July 2015, the final selection list was prepared and published. The applicants herein were issued appointment letters.

**3.9** On 25th July 2015, the unsuccessful candidates preferred a Writ Petition before the Allahabad High Court being Writ-A No. 41750 of 2015 and other connected petitions seeking quashing of the select list dated 14th July 2015, and revision of the select list by excluding those candidates who had obtained CCC certificate on dates subsequent to 30th September 2014 as also those candidates who did not possess CCC certificate as awarded by DOEACC, since renamed as National Institute of Electronics and Information Technology (hereinafter referred to as "NIELIT").

**3.10** Vide final judgment and order dated 7th October 2017, the Single Judge of the Allahabad High Court quashed the select list in question insofar as it includes candidates who do not hold a CCC certificate conferred or recognized by NIELIT. Further, the Single Judge directed the respondents therein to re-draw the select list restricting it to the candidates who hold a recognized CCC certificate or a qualification recognized in law as being equivalent thereto.

**3.11** Accordingly, on 13th October 2017, the Electricity Service Commission, UPPCL, *directed* the Chief Engineer(s) and Superintending Engineer(s) to send the attested photocopies of CCC certificates of selected candidates on the 2,211 posts of Technician Grade-II (Electrical) and to check at their own level, whether the CCC certificate attached is issued by an institution recognized by NIELIT (formerly DOEACC) or its equivalent or not.

**3.12** Thereafter, on 13th May 2018, the Electricity Service Commission, UPPCL, published the list of candidates whose selection was not found to be in accordance with the eligibility as per the direction of the learned Single Judge of the Allahabad High Court contained in Writ-A No. 41750/2015 and other connected petitions. The aforesaid list contained the names of the applicants herein.

**3.13** Aggrieved thereby, the applicants herein filed a Writ Appeal before the Allahabad High Court being Special Appeal No. 585 of 2018 and connected petitions.

**3.14** Vide final judgment and order dated 9th May 2019, a Division Bench of the Allahabad High Court *allowed* the Special Appeals filed *inter-alia* by the applicants herein and set aside the judgment and order passed by the learned Single Judge. The Writ Petitions were dismissed. Further, the respondents therein were directed to restore the position relating to the entire process of selection including the appointments of selected incumbents as that was prior to acceptance of the writ petitions.

**3.15** Aggrieved by the judgment and order passed by the Division Bench of the Allahabad High Court, a number of appeals were filed before this Court.

**3.16** Vide final judgment and order dated 16th December 2019 in Civil Appeal No. 9026 of 2019 and other connected appeals titled ***Mukul Kumar Tyagi v. The State of Uttar Pradesh and Others***,[1] this Court *allowed* the appeals and set aside the judgment and order passed by the Division Bench of the Allahabad High Court. In paragraph 71, this Court observed that the direction of the Single Judge of the Allahabad High Court, indicates that select list insofar as the candidates, who had certificates from NIELIT/DOEACC was not quashed, their position in select list was not disturbed and select list was partly quashed only with regard to those candidates, who did not have CCC or NIELIT certificate.

**3.17** Thereafter, the applicants herein filed a Writ Petition under Article 32 of the Constitution being Writ Petition (C) No. 1144 of 2022 with a prayer for a direction to the respondents therein

1 [2019] 16 SCR 1145 : (2020) 4 SCC 86 : 2019 INSC 1380

to restore/re-instate them in their respective positions in their services, as the termination was against the true letter and spirit of the judgment dated 16th December 2019 passed by this Court in the case of ***Mukul Kumar Tyagi*** (supra).

**3.18** This Court, vide order dated 30th January 2023, *dismissed* the Writ Petition filed by the applicants herein, however, in the peculiar facts and circumstances, granted liberty to the applicants to file an appropriate application in the disposed of Civil Appeal (No. 9026 of 2019) with connected matters and *directed* the Registry to entertain the same.

**3.19** In such facts, the present applications/appeal have come up for hearing before this Court.

**4.** We have heard Shri Dama Seshadri Naidu, Shri Amit Anand Tiwari and Shri Rana Mukherjee, learned Senior Counsel appearing on behalf of the applicants. We have also heard Shri S.K. Saxena, learned Senior Counsel appearing on behalf of the respondent-Corporation and Electricity Service Commission.

**5.** The learned Senior Counsel appearing on behalf of the applicants submitted that, as a matter of fact, vide Office Memorandum dated 29th January 2011, the 1995 Regulations were amended thereby prescribing that all incumbents seeking selection to the post of Technician Grade-II would be required to produce the CCC certificate issued by DOEACC/NIELIT at the time of interview. It is submitted that all such candidates who were selected in pursuance to the said selection process and having the CCC certificate on the date of the interview were eligible to be continued. It is submitted that the interview process continued for a long period from December 2014 to July 2015. It is submitted that the learned Single Judge of the High Court vide its judgment and order dated 7th October 2017 had set aside the selection process only of such candidates who did not possess the CCC certificate.

**6.** It is therefore submitted on behalf of the applicants that the approach of the respondent-Corporation in setting aside the selection process even of such candidates who possessed the CCC certificate at the time of interview on the ground that they did not possess the same on the last date of application i.e. 30th September 2014 is totally erroneous.

**7.** Insofar as the plea of Shri Rana Mukherjee, learned Senior Counsel is concerned, he submitted that, as per the advertisement, even such of the candidates who did not possess the CCC certificate at the time of interview but had obtained the same prior to the last date of the interview i.e. 4th July 2015 are entitled to be continued in service and their selection could not have been set aside.

**8.** Shri Saxena, learned Senior Counsel appearing on behalf of the respondent-Corporation, on the contrary, submitted that, it is a settled position of law that the requisite qualification has to be obtained prior to the last date of submission of application. It is submitted that, as such, the candidates who possessed CCC certificate on the date of interview but did not possess the same on the last date of submission of application are not entitled to be continued. It is therefore submitted that the respondent-Corporation has rightly terminated the services of such of the candidates.

**9.** The present applications arise out of peculiar facts and circumstances. The Board of Directors of the respondent-Corporation, vide office memorandum dated 29th January 2011, amended the 1995 Regulations which provided that all incumbents seeking selection to the post of Technician Grade-II would be required to hold the CCC certificate issued by DOEACC/ NIELIT. The amended resolution required CCC certificate to be mandatorily possessed by the candidates at the time of interview.

**10.** By another office memorandum dated 25th November 2011, the respondent-Corporation provided that an equivalent computer eligibility qualification to CCC certificate issued by the DOEACC would also be accepted.

**11.** On 6th September 2014, the respondent-Corporation issued an advertisement thereby inviting applications for appointments against 2,211 posts of Technician Grade-II (Electrical). The said advertisement provided two mandatory qualifications. The first one being the High School or its equivalent examination of Board of Higher Secondary Education, U.P. passed with Science & Mathematics subjects and All India/State Professional Certificate in Electrical Trade. The second qualification required a CCC certificate or its equivalent computer qualification certificate. As per clause 7 of the said advertisement, merely permitting a candidate to appear in the written test would

not earn him/her a right to selection. It was also provided that the scrutiny of the certificates of the candidates would be carried out at different levels.

**12.** In pursuance of the said advertisement, a written examination was conducted on 8th November 2014. The interviews were held from December 2014 to July 2015. The final selection list was prepared and published on 14th July 2015.

**13.** Subsequent to the publication of the final selection list, the unsuccessful candidates challenged the selection process. The challenge was made on two grounds. Firstly, such of the candidates who had obtained CCC certificate after the last date of advertisement i.e. 30th September 2014 could not have been selected. Secondly, the candidates who did not possess the CCC certificate as awarded by DOEACC/ NIELIT but submitted certificates from private institutions with the self-certification about their equivalence to CCC certificate issued by DOEACC/NELIT could also not be selected.

**14.** It will be relevant to refer to the conclusions arrived at by the learned Single Judge of the High Court in its judgment and order dated 7th October 2017, which read thus:

> "**CONCLUSIONS**
> In the end, the Court records the following conclusions:-
>
> 1. **A recognised qualification is an essential facet of Article 16 of the Constitution**.
>
> 2. **No rights can be recognised in a candidate aspiring to enter public service on the strength of an unrecognized qualification or one granted by an institution which is not conferred the authority to grant the same in accordance with law**.
>
> 3. The qualification as prescribed by the respondents does not merit interference at the behest of the petitioners.
>
> 4. The decision of the Board of Directors of the Corporation dated 23 November 2015 was an act of ratification and therefore does not merit interference.

5. The Commission failed to undertalce any enquiry in respect of equivalence of qualifications. It undertook a wholly perfunctory exercise and that too prompted only by the interim directions of this Court.

6. Even in this exercise no accepted or legally sustainable norms were applied to adjudge the equivalence of certificates.

7. **The equivalence of qualifications cannot be left to depend or rest upon a self certification of candidates.**

8. **No certificate can possibly be accorded equivalence unless an enquiry is addressed towards its course content and syllabus.**

9. **None of the candidates holding other than CCC certificates were shown to hold qualifications recognisable in law. Their inclusion in the select list has clearly tainted the recruitment exercise. It has resulted in the induction of candidates who were not entitled to be selected or offered appointmen**t.

10. **Since their inclusion in the select list is invalid and would consequently merit the select list being redrawn, the petitioners are not liable to be non suited on the basis of the cut off marks prescribed by the Commission.**

Accordingly and in light of the above discussion and the conclusions recorded above, the select list prepared by the respondents is rendered unsustainable and must in consequence be set aside.

The writ petitions preferred by the non selected candidates are therefore allowed to the extent indicated below. The Court negatives the challenge to the decision of the Board of the Corporation dated 23 November 2015 and the condition of eligibility contained in the two advertisements. All interim orders operating on the writ petitions shall stand discharged in order to enable the Commission to proceed in the matter in light of the directions being issued herein after.

Writ Petition No. 18129 of 2017 shall stand disposed of in light of the above and the directions issued herein.

**The select list drawn up pursuant to the advertisements in question insofar as it includes candidates who do not hold a CCC certificate conferred or recognised by NIELIT is quashed.**

**The respondents shall in consequence redraw the select list restricting it to candidates who hold a recognised CCC certificate or a qualification recognised in 'law as being equivalent thereto. The Commission shall as a result of the above, reframe the merit list and publish the results thereof afresh. All consequences to follow.**"

[emphasis supplied]

**15.** It could thus be seen that the learned Single Judge held that a recognized qualification is an essential facet of Article 16 of the Constitution of India. It was held that no rights can be recognized in a candidate aspiring to enter public service on the strength of an unrecognized qualification or one granted by an institution which is not conferred the authority to grant the same in accordance with law. It was held that the equivalence of qualifications could not be left to depend or rest upon a self-certification of candidates. It was further held that no certificate could possibly be accorded with equivalence unless an enquiry is addressed towards its course content and syllabus.

**16.** The learned Single Judge, in unequivocal terms, has held that inclusion of such of the candidates who did not possess CCC certificate had clearly tainted the recruitment exercise. It is also pertinent to note that the learned Single Judge had set aside the select list only insofar as those candidates who did not hold the CCC certificate conferred or recognized by DOEACC/NIELIT. The learned Single Judge directed that the respondent-Corporation shall in consequence redraw the select list restricting it to candidates who hold a recognized CCC certificate or a qualification recognized in law as being equivalent thereto.

**17.** Subsequent to the judgment of the learned Single Judge, the Electricity Service Commission, on 13th October 2017, directed

the Chief Engineer(s) and Superintending Engineer(s) to send the attested photocopies of CCC certificates of selected candidates and to check at their own level, whether the CCC certificate attached is issued by an institution recognized by DOEACC/NIELIT or its equivalent or not. Subsequently on 13th May 2018, the Electricity Service Commission published a list of candidates whose selection was not found in accordance with the eligibility as per the direction of the learned Single Judge of the Allahabad High Court. The said list also contained the names of the candidates who were possessing the CCC certificate on the date of their interview. Consequently, their services also came to be terminated.

**18.** Various writ appeals came to be filed before the Division Bench of the High Court. The learned Division Bench, vide judgment and order dated 9th May 2019, held that the finding of the learned Single Judge that possession of CCC certificate from DOEACC/NIELIT was erroneous. It held that for computer literacy, self-certification was always acceptable and therefore, the CCC certificate having the self-certification could very well be accepted. The Division Bench thereby allowed the appeals reversing the judgment and order of the learned Single Judge and dismissing the writ petitions.

**19.** The judgment of the Division Bench of the High Court was carried to this Court in three appeals in the case of ***Mukul Kumar Tyagi*** (supra). It will be relevant to refer to the following observations of this Court:

> "**53. The candidates who had CCC certificate from NIELIT/DOEACC and who were included in the merit list dated 14-7-2015 were not affected by the judgment of the learned Single Judge dated 7-10-2017 [*Prashant Kumar Jaiswal* v. *State of U.P.* Writ A No. 41750 of 2015, order dated 7-10-2017 (All)] since the list was quashed only insofar as those candidates included in the merit list who did not have CCC certificate by NIELIT/DOEACC.** The Division Bench in the impugned judgment [*Deepak Sharma* v. *State of U.P.* Special Appeal No. 585 of 2018, order dated 9-5-2019 (All)] has erroneously held that employer after judgment dated 7-10-2017 [*Prashant Kumar Jaiswal* v. *State of U.P.* Writ A No. 41750 of 2015, order dated 7-10-2017 (All)] did not

take into consideration the CCC certificate of DOEACC or NIELIT. The following are the observations made by the Division Bench in this regard:

> "… Heard the learned counsel appearing on behalf of the rival parties. At the threshold, it would be appropriate to state that the employer after accepting the judgment given by the learned Single Bench has prepared a fresh select list and, while doing so, the certificate issued by DOEACC relating to "CCC" has not been taken into consideration…."

**54.** The Division Bench was not correct in making the above observations since neither the learned Single Judge vide its judgment dated 7-10-2017 [*Prashant Kumar Jaiswal* v. *State of U.P.* Writ A No. 41750 of 2015, order dated 7-10-2017 (All)] directed **for not taking into consideration CCC certificate by DOEACC nor Corporation or Commission deleted those names from the merit list who had CCC certificate from DOEACC**."

[emphasis supplied]

**20.** It can thus be seen that this Court has, in unequivocal terms, held that the candidates who had CCC certificate from DOEACC/ NIELIT and who were included in the merit list dated 14th July 2015 were not affected by the judgment of the learned Single Judge dated 7th October 2017, since the list was quashed only insofar as those candidates included in the merit list who did not have CCC certificate by DOEACC/NIELIT. This Court has, in unequivocal terms, held that the learned Single Judge, vide its judgment and order dated 7th October 2017, had neither restrained the respondent-Corporation from taking into consideration the CCC certificate issued by DOEACC/NIELIT nor had it directed that the respondent-Corporation delete those names from the merit list who had CCC certificate from DOEACC/NIELIT. From paragraph 55 of the said judgment, it would be clear that this Court was of the considered opinion that the CCC certificate as mentioned in the advertisement dated 14th September 2014 was CCC certificate as granted by DOEACC/NIELIT.

**21.** A perusal of the said judgment of this Court would reveal that this Court upheld the finding of the learned Single Judge that the advertisement dated 14th September 2014 did not envisage self-certification of the candidate of equivalence to CCC certificate. It further held that the self-certification by the candidates of their computer qualification was not sufficient to treat them having passed the required qualification. It will further be relevant to refer to the following observations of this Court in the said case:

> "**71.** The above direction indicates that select list insofar as the candidates, who had certificates from NIELIT/ DOEACC was not quashed, their position in the select list was not disturbed and select list was partly quashed only with regard to those candidates, who did not have CCC or NIELIT certificate. **The object or purpose of the direction was to scrutinise the qualifications of those candidates, who have claimed equivalent certificate. The above direction of the learned Single Judge was only for the purpose to scrutinise the qualification of those candidates, who are found possessing equivalent computer qualification so as to retain their names in the select list.** After the judgment of the learned Single Judge dated 7-10-2017 [*Prashant Kumar Jaiswal* v. *State of U.P.* Writ A No. 41750 of 2015, order dated 7-10-2017 (All)] , the Commission in revising the merit list accepted the guidelines given under the Government Order dated 3-5-2016. The guidelines prescribed under the Government Order dated 3-5-2016 are as follows:
>
> > "(*a*) *The qualification of High School or intermediate examination with an independent subject or Computer Science from Madhyamik Shiksha Parishad, Uttar Pradesh or from any Institution/Education Board/Council established by the Central or any State Government.*
> >
> > (*b*) *If any candidate has obtained diploma or degree in Computer Science then he shall also be eligible to be recruited as Junior Assistant/ Stenographer.*"

> **72. Thus, in the revised select list apart from candidates, who had CCC certificates from DOEACC/ NIELIT, the candidates who were covered under guidelines dated 3-5-2016 were also treated as equivalent to CCC and were given place in the merit list subject to marks secured by them in the written test and interview**."

**22.** It can be seen that this Court held that the object and purpose of the direction was to scrutinize the qualifications of those candidates, who had claimed equivalent certificate. It was only for the purpose to scrutinize the qualification of those candidates, who were found possessing equivalent computer qualification so as to retain their names in the select list. It is further clear that the direction given by the learned Single Judge was applicable, apart from the candidates who were having CCC certificate from DOEACC/NIELIT, to the candidates who were covered under the guidelines dated 3rd May 2016 and were also treated as equivalent to CCC certificate. Ultimately, this Court upheld the finding of the learned Single Judge and held that there was no reason to interfere with the finding of the learned Single Judge.

**23.** It can be seen from the said judgment that an appeal was made to this Court that since number of vacancies were still available, the candidates who were initially in the select list dated 14th July 2015 and went out of the select list due to redrawing of the select list, they could be accommodated. However, this Court did not issue any direction in that regard and permitted such candidates to make representation which was to be considered by the respondent-Corporation.

**24.** It is thus clear from the aforesaid that such of the candidates who were having CCC certificate issued by DOEACC/NIELIT on the date of interview and who were part of the select list dated 14th July 2015 could not have been terminated by the respondent-Corporation.

**25.** It also appears that the respondent-Corporation has been taking contradictory stands. Before the High Court, it took a stand that not only such candidates having CCC certificate issued by DOEACC/ NIELIT but also such candidates who had submitted certificate by self-certification were also entitled to be considered. It is only now that the respondent-Corporation is taking a stand that such of the candidates who did not have CCC certificate on 30th September 2014 i.e.,

the last date of application could not be considered as eligible candidates. The stand is contrary not only to its advertisement dated 6th September 2014 but also to the office memorandum of the Board dated 29th January 2011 vide which the 1995 Regulations were amended.

**26.** We have therefore no hesitation in holding that services of such of the candidates who were selected in the select list dated 14th July 2015 and had produced the CCC certificate at the time of the interview could not have been terminated. We find that the respondent-Corporation has grossly erred in terminating their services. At the same time, we are not inclined to accept the contention of those candidates who did not have CCC certificate even on the date of their interview but have obtained the same subsequently. When the advertisement as well as the 1995 Regulations required the CCC certificate to be produced at the time of interview, if it is permitted to produce the same subsequent to the date of interview, it would be contrary to the advertisement and the 1995 Regulations.

**27.** It was also sought to be urged on behalf of the respondent-Corporation that such a relief could not have been granted by the present applications. We clarify that, this Court itself vide order dated 30th January 2023, while disposing of the writ petition filed under Article 32 of the Constitution of India, granted a liberty to file an appropriate application in disposed of CA No. 9026 of 2019 with connected matters. This Court has subsequently observed that, in peculiar facts and circumstances, if such application was filed, the same would be entertained by the Registry of this Court.

**28.** We therefore find that the present case is a fit case wherein this Court should exercise its extraordinary jurisdiction under Article 142 of the Constitution of India. The respondent-Corporation has misinterpreted the judgment of the learned Single Judge and terminated the services of the applicants who were otherwise entitled to be continued as per the judgment. It is further pertinent to note that the view taken by the learned Single Judge has been affirmed in unequivocal terms by this Court. We find that if we fail to exercise our jurisdiction under Article 142 of the Constitution of India in these cases, it will be permitting continuation of illegality committed by the respondent-Corporation.

**29.** In the result, we pass the following order:

(i) The present applications/appeal are allowed;

(ii) Such of the applicants who found place in the select list dated 14th July 2015 and who possessed/produced the CCC certificate at the time of their interview are directed to be reinstated forthwith;

(iii) Though they would not be entitled to back wages for the period during which they were out of employment, they would be entitled to placement in the seniority list as per their positions as in the select list dated 14th July 2015 with continuity in service with all consequential benefits including pay fixation, terminal benefits etc.; and

(iv) Application(s) of impleadment/intervention are allowed.

**30.** Pending application(s), if any, shall stand disposed of in the above terms. No order as to costs.

*Result of the case:* Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain

[2024] 11 S.C.R. 445 : 2024 INSC 833

# Nabha Power Limited & Anr.
# v.
# Punjab State Power Coroporation Limited & Anr.

(Civil Appeal No. 8478 of 2014)

05 November 2024

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

## Issue for Consideration

Issue arose as to whether the press release of 01.10.2009 announcing the decision of the Union Cabinet about approval of certain modifications envisaged in the then existing mega power policy, is covered within the meaning of the expression "law as defined in Clause 1.1 of the Request For Proposal-RFP/Power Purchase Agreement-PPA and if so did the extant legal regime as on 01.10.2009 undergo a change from the said date.

## Headnotes†

**Electricity Act, 2003 – s. 63 – Customs Act – s. 25 – Mega Power Policy of 2006 – Press release 01.10.2009 – Effect – Change in law, when – Notification dated 01.03.2002 whereby goods imported for setting up a Mega Power Project granted certain exemptions from customs duty – Issuance of Request For Proposal (RFP) by appellant no. 1 for selection of developers through tariff-based bidding process for procurement of power from the power station to be set up – Second appellant emerged as successful bidder – Meanwhile issuance of Press Release of 1.10.2009 under the heading "Modification of Mega Power Policy" – Thereafter, on 11.12.2009, an amendment to Notification dated 01.03.2002 issued – Entry 400 from the notification of 2002 was substituted wherein there was no reference to the thermal plant being an inter-State thermal plant – Thereafter, on 14.12.2009, issuance of office memorandum under the subject "revised Mega Power Policy"– Power purchase agreement between the appellants and the respondent – Series of correspondences ensued regarding the issuance of Essentiality Certificate to allow customs duty exemptions based on the amended entry in the notification**

* Author

**dated 11.12.2009 – Disputes between the parties regarding the passing on the benefits – Appellant's case, that with the press release on 01.10.2009, a new legal regime commences and on that basis, the appellant in its bid of 09.10.2009 factored the altered position including the fiscal benefits due to customs duty exemptions – Respondent's case that the press release of 01.10.2009 only sets out the proposal for modification and the real modification happened on 11.12.2009 and 14.12.2009; and since the change of law having happened on 11.12.2009/14.12.2009 the benefits that have accrued to the appellant ought to be passed on:**

**Held:** 01.10.2009 Press Release not law under Clause 1.1 of the PPA – Press release did not alter/amend/repeal the existing law as on 01.10.2009 – It was at best the announcement of a proposal approved by the Cabinet which had to be given shape after fulfilment of the conditions mentioned therein – Notifications constituting change in law happened on 11.12.2009 and 14.12.2009 and thus no basis in the contention that on 01.10.2009 the old legal regime had given way – Press release of 01.10.2009 certainly does not fulfil the meaning of the word "order" as understood in legal parlance – Press Release with all its future eventualities and conditionalities is only a proposal and it is only after the undertakings were agreed to be given by the State Government that a final shape was given in the form of a customs notification on 11.12.2009 and by the policy document of 14.12.2009 – Press release announcing the cabinet approval of certain modifications envisaged in the existing Mega Power Policy is not law as defined in Clause 1.1 – Change in law occurred only on 11.12.2009/14.12.2009, and the respondent no. 1 rightly held entitled to the benefits, which ultimately would go to the consumers – Words of clause 13.1.1 read with the definition of law in Clause 1.1 are plain and clear – For a change in law to occur, the certain events ought to have happened seven days prior to the bid deadline – Law, as it stood prior to the press release of 01.10.2009 insofar as the financial implications for the matter is concerned, was the notification issued on 01.03.2002 and entry 400 thereof – That notification, subject to the conditions mentioned thereon in entry 400 granted exemption from customs duty for import of goods required for setting up of any Mega Power project if such Mega Power project was an inter-State power plant and if it fulfilled the other conditions mentioned in the notification – For an exemption under the Customs Act to operate thereon there has

to be a notification issued in the manner provided by the Customs Act and duly published in the official gazette – There was no duly constituted amendment notifications as on 01.10.2009 – Thus, interference with the concurrent judgments of courts below not called for. [Paras 43, 45, 50, 51, 55, 64, 71]

**Electricity laws – Mega Power Policy – Press release of 01.10.2009, under the heading "Modification of Mega Power Policy", if ordained a new legal regime:**

**Held:** Press release is a summary of the Cabinet decision – Press release makes it clear that it was a proposal that was envisaged and which was to come into force in future – Certainty is the hallmark of law, one of the essential attributes and an integral component of the rule of law – What was certain on 01.10.2009 was only the prevalent customs notification of 01.03.2002, duly notified and gazetted as well as the Mega Power Policy document promulgated on 07.08.2006 – Press release summarizing the Cabinet decision and beset with several conditions created no vested rights on any party to the power purchase agreement vis-a-vis the other party on 01.10.2009 – In fact, the press release itself contemplated certain contingencies – Right vests when all the facts have occurred which must by law occur in order for the person in question to have the right – It is only when the right vests will there be a co-relative duty on the other as far as nature of the right involved – Clauses in the Request For Proposal obligate the bidder to satisfy itself about the extant legal regime and those clauses cannot operate as a crutch to elevate the press release of 01.10.2009 to the status of law u/Clause 1.1. [Paras 57-59, 63-65]

**Interpretation – Interpretation of contract – Golden rule of interpretation – Business efficacy test – Invocation of:**

**Held:** Words of a contract should be construed in their grammatical and ordinary sense, except to the extent that some modification is necessary in order to avoid absurdity, inconsistency or repugnancy – Similarly, any invocation of the business efficacy test would arise only if the terms of the contract are not explicit and clear – Business efficacy test cannot contradict any express term of the contract and is invoked only if by a plain and literal interpretation of the term in the agreement or the contract, it is not possible to achieve the result or the consequence intended by the parties acting as prudent businessmen. [Para 41]

**Case Law Cited**

*Maharashtra State Electricity Distribution Company Limited v. Adani Power Maharashtra Limited and Others* [2023] 8 SCR 85 **: (2023) 7 SCC 401;** *Babu Verghese and Others v. Bar Council of Kerala and Others* [1999] 1 SCR 1121 **: (1999) 3 SCC 422 – relied on.**

*Uttar Haryana Bijli Vitran Nigam Limited and Another v. Adani Power (Mundra) Limited and Another* [2023] 4 SCR 1095 **: (2023) 7 SCC 623;** *Burn Standard Company Limited v. McDermott International INC and Anr.* [1991] 2 SCR 67 **: (1991) 2 SCC 669 – held inapplicable.**

*Nabha Power Limited (NPL) v. Punjab State Power Corporation Limited (PSPCL) and Another* [2017] 14 SCR 301 **: (2018) 11 SCC 508;** *Adani Power (Mundra) Limited v. Gujarat Electricity Regulatory Commission and Others* [2019] 8 SCR 1017 **: (2019) 19 SCC 9;** *Nazir Ahmad v. King Emperor,* **AIR 1936 PC 253;** *B.K. Srinivasan and Others v. State of Karnataka and Others* [1987] 1 SCR 1054 **: (1987) 1 SCC 658;** *GMR Warora Energy Limited v. Central Electricity Regulatory Commission [CERC] and Others* [2023] 8 SCR 183 **: (2023) 10 SCC 401;** *Energy Watchdog v. Central Electricity Regulatory Commission and Others* [2017] 3 SCR 153 **: (2017) 14 SCC 80;** *Lloyd Electric and Engineering Limited v. State of Himachal Pradesh and Others* [2015] 10 SCR 362 **: (2016) 1 SCC 560;** *Bachhittar Singh v. The State of Punjab* [1962] Supp. 3 SCR 713 **– referred to.**

*Taylor vs. Taylor* **(1875) 1 C h D 426 – referred to.**

**Books and Periodicals Cited**

Kim Lewison, The interpretation of Contracts, 3rd Edition; Black's Law Dictionary; Salmond on Jurisprudence, Twelfth Edition P.J. Fitzgeral page 245; Lord Bingham of Cornhill in his locus classicus 'The Rule of Law'.

**List of Acts**

Electricity Act, 2003; Customs Act, 1962; General Clauses Act, 1897.

**List of Keywords**

Press release of 01.10.2009; Mega power policy; Law as defined in Clause 1.1 of Request For Proposal/Power Purchase Agreement; Request For Proposal; Power Purchase Agreement; Mega Power Policy of 2006; Change in law; Notification dated 01.03.2002; Tariff- based bidding process; Procurement

of power from power station; Successful bidder; Modification of Mega Power Policy; Amendment to Notification dated 01.03.2002; Thermal plant; Inter-State thermal plant; Revised Mega Power Policy; Essentiality Certificate; Customs duty exemptions; Notification dated 11.12.2009; Fiscal benefits; Word "order"; Enact, adopt, promulgate, amend, modify or repeal any existing law or bring into effect any law; Legal regime; Continuing legal regime; Change in cost with the reduction of customs duty; Press release; Cabinet decision; Certainty, hallmark of law; Rule of law; Vested rights; Business efficacy test; Interpretation of contract; Golden rule of interpretation.

**Case Arising From**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8478 of 2014

From the Judgment and Order dated 30.06.2014 of the Appellate Tribunal for Electricity, New Delhi in Appeal No. 29 of 2013

**Appearances for Parties**

C.S. Vaidyanathan, ANS Nadkarni, Dama Sheshadari Naidu, Arvind Datar, Sr. Advs., Mahesh Agarwal, Shri Venkatesh, Rohan Talwar, Shashwat Singh, Avishkar Singhvi, Ms. Priya Dhankar, Keshav Dhingra, Salvador Santosh Rebello, Ms. Deepti Arya, Ms. Arzu Paul, Naved Ahmed, Nikunj Bhatnagar, Adarsh Singh, Rishikesh Haridas, Ms. Himanshi Nagpal, Ms. Manisha Gupta, Siddharth Nigotia, Yanthanshan, Siddharth Nigotia, E.C. Agrawala, Bharat Vinod Sharma, Vishrov Mukerjee, Pratyush Singh, Yashaswi Kant, Girik Bhalla, Raghav Malhotra, Ms. Juhisenguttuvan (for M/s. Trilegal), Advs. for the Appellants.

Balbir Singh, A.S.G., M.G. Ramachandran, Sr. Adv., K. V. Mohan, Mrs. Poorva Saigal, Shubham Arya, Mrs. Pallavi Saigal, Devyanshu Sharma, Ms. Shirin Gupta, Sakesh Kumar, Ms. Gitanjali N Sharma, Ms. Alpha M. Prasad, Ms. Anuradha Mutatkar, Ms. Sunieta Ojha, Ms. Gargi Kumar, Advs. for the Respondents.

**Judgment / Order of the Supreme Court**

**Judgment**

**K.V. Viswanathan, J.**

**1.** The present appeal arises from the judgment dated 30.06.2014 of the Appellate Tribunal for Electricity (for short the "APTEL") in Appeal

No. 29 of 2013. By the said judgement, the APTEL dismissed the appeal of the appellant and confirmed the order dated 12.11.2012 of the Punjab State Electricity Regulatory Commission (for short the "State Commission"), insofar as issue no. 1 discussed therein was concerned. That issue concerned the aspect of Mega Power Policy and the effect of the Press Release of 01.10.2009. We are only concerned with the said issue in this Appeal.

**FACTS OF THE CASE: -**

**A) Customs Notification No. 21/2002 dated 01.03.2002.**

**2.** To appreciate the issues involved, certain background facts need to be set out. Goods imported for setting up a Mega Power Project had, under a notification issued under Section 25 of the Customs Act dated 01.03.2002, been granted certain exemptions from customs duty. It will be useful to set out the relevant part of the 01.03.2002 notification.

> "**Exemption and effective rates of basic and additional duty for specified goods of Chapters 1 to 99**. - In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 17 /2001- Customs, dated the 1st March, 2001 [G.S.R. 116(E), dated the 1st March, 2001], the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading or sub-heading of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India, -
>
> (a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table;

(b) from so much of the additional duty leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act, as is in excess of the rate specified in the corresponding entry in column (5) of the said Table,

Subject to any of the conditions, specified in the Annexure to this notification, the condition No. of which is mentioned in the corresponding entry in column (6) of the said Table :

| S. No. | Chapter or Heading No. or sub-heading No. | Description of goods | Standard rate | Additional dduty rate | Condition no. |
|---|---|---|---|---|---|
| 400 | 98.01 | Goods required for setting up of any Mega Power Project specified in List 42, if such Mega Power Project is –<br>(a) an inter-State thermal power plant of a capacity of 1000 MW or more; or<br>(b) an inter-State hydel power plant of a capacity of 500 MW or more, as certified by an officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Power | Nil | Nil | 86 |

86. (a) If an officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Power certifies that-

(i) the power purchasing State has constituted the Regulatory Commission with full powers to fix tariffs;

(ii) the power purchasing State undertakes, in principle, to privatise distribution in all cities, in that State, each of which has a population of more than one million, within a period to be fixed by the Ministry of Power; and

(iii) the power purchasing State has agreed to provide recourse to that State's share of Central Plan allocations and other devolutions towards discharge of any outstanding payment in respect of purchase of power;

(b) In the case of imports by a Central Public Sector Undertaking, the quantity, total value, description and specifications of the imported goods are certified by the Chairman and Managing Director of the said Central Public Sector Undertaking; and

(c) In the case of imports by a Private Sector Project, the quantity, total value, description and specifications of the imported goods are certified by the Chief Executive Officer of such project."

**B) Mega Power Policy of 2006**

**3.** On 10.06.2009, when competitive bidding was initiated by the respondent, what was in vogue was the Mega Power Policy, 2006. If a thermal plant was covered as a Mega Power Project under the Mega Power Policy of 2006, it was entitled to the benefit of certain exemptions under the customs notification dated 01.03.2002 extracted hereinabove.

**4.** The Mega Power Policy, 2006 prescribed the following conditions to be fulfilled by the developer for grant of mega power status:-

"MEGA POWER PROJECTS: REVISED POLICY GUIDELINES

The following conditions are required to be fulfilled by the developer for grant of mega project status:-

(a) an inter-state thermal power plant of a capacity of 700 MW or more, located in the States of Jammu and Kashmir, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura; or

(b) an inter-state thermal power plant of a capacity of 1000 MW or more, located in States other than those specified in clause (a) above; or

(c) an inter-state hydel power plant of a capacity of 350 MW or more, located in the States of Jammu and Kashmir, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura; or

(d) an inter-state hydel power plant of a capacity of 500 MW or more, located in States other than those specified in clause (a) above.

Fiscal concessions/benefits available to the Mega Power Projects

**Zero Customs Duty:** In terms of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.21/2002-Customs dated 1st March, 2002 read together with No.49/2006-Customs dated 26th May, 2006, the import of capital equipment would be free of customs duty for these projects.

**Deemed Export Benefits:** Under Chapter 8(f) of the Foreign Trade Policy, Deemed Export Benefits is available to domestic bidders for projects both under public and private sector on following the stipulations prescribed therein.

**Pre-conditions for availing the benefits:** Goods required for setting up of any mega power project, qualify for the above fiscal benefits after it is certified by an officer not below the rank of a Joint Secretary to the Govt. of India in the Ministry of Power that-

(i) the power purchasing States have constituted the Regulatory Commissions with full powers to fix tariffs;

(ii) the power purchasing States undertakes, in principle, to privatize distribution in all cities, in that State, each of which has a population of more than one million, within a period to be fixed by the Ministry of Power.

> **Price preference to domestic PSUs bidders**: In order to ensure that domestic bidders are not adversely affected, price preference of 15% would be given for the projects under public sector. The domestic bidders would be allowed to quote in US Dollars or any other foreign currency of their choice.
>
> **Income Tax benefits:** In addition, the income-tax holiday regime as per Section 80-IA of the Income Tax Act 1961 can also be availed."

What is important is the phrase "Inter-State Thermal Power Plant" employed in the policy.

**C) Request For Proposal**

**5.** It was when this legal regime was in force that on 10.06.2009, the erstwhile Punjab State Electricity Board [now after unbundling-the distribution being known as Punjab State Power Corporation Limited (PSPCL)] through its then wholly owned subsidiary and a special purpose vehicle, appellant no. 1-Nabha Power Limited issued a Request For Proposal (RFP). The RFP was for selection of developers through tariff-based bidding process under Section 63 of the Electricity Act 2003, for procurement of power on long-term basis from the power station to be set up at village Nalash, near Rajpura, District Patiala, Punjab. This was as per the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licencees issued by the Ministry of Power, Government of India. In terms of RFP, the bidders were required to quote the Capacity Charge (i.e. capital cost component) and Station Heat Rate (i.e. amount of heat required by the plant to generate one unit of electrical energy/ efficiency of the plant) to convert the heat energy for the project and based on these components, a levelized tariff for each bidder was to be worked out. The bidder with the lowest levelized tariff was to be selected for the development of the project.

**6.** The term- "Successful Bidder or Selected Bidder" was to mean that the bidder selected pursuant to the RFP to set up the project and supply electrical output therefrom to the Procurer through the Seller as per the terms of the power purchase agreement (PPA) and other RFP project documents. Under Clause 2.7.2.1 and 2.7.2.2, the bidder was to make an independent enquiry and satisfy itself with respect

to all the required information, inputs, conditions and circumstances and factors that may have any effect on the bid. Under the said clauses, it was deemed that while submitting the bid, the bidder was to have inspected and examined the site conditions, the laws and regulations in force. The bidder was to acknowledge that on being selected as the successful bidder and on acquisition of the special purpose vehicle (the seller) the seller shall not be relieved from any of its obligations under the RFP project documents nor shall the seller be entitled for any extension of time or financial compensation by reason of the unsuitability of the site. Clauses 2.7.2.1 and 2.7.2.2 read as under.

> "2.7.2.1 The Bidder shall make independent enquiry and satisfy itself with respect to all the required information, inputs, conditions and circumstances and factors that may have any effect on his Bid. While submitting the Bid the Bidder shall be deemed to have inspected and examined the site conditions (including but not limited to its surroundings, its geological condition, the adequacy of the road and rail links to the Site and the availability of adequate supplies of water), examined the laws and regulations in force in India, the transportation facilities available in India, the grid conditions, the conditions of roads, bridges, ports, etc. for unloading and/or transporting heavy pieces of material and has based fts design, equipment size and fixed its price taking into account all such relevant conditions and also the risks, contingencies and other circumstances which may influence or affect the supply of power. Accordingly, the Bidder acknowledges that, on being selected as Successful Bidder and on acquisition of the Seller, the Seller shall not be relieved from any of its obligations under the RFP Project Documents nor shall the Seller be entitled to any extension of time or financial compensation by reason of the unsuitability of the Site for whatever reason.
>
> 2.7.2.2 In their own interest, the Bidders are requested to familiarize themselves with the Electricity Act, 2003, the Income Tax Act 1961, the Companies Act, 1956, the Customs Act, the Foreign Exchange Management Act, IEGC, the regulations framed by regulatory commissions

and all other related acts, laws, rules and regulations prevalent in India. The Procurer/Authorised Representative shall not entertain any request for clarifications from the Bidders regarding the same. Non-awareness of these laws or such information shall not be a reason for the Bidder to request for extension of the Bid Deadline. The Bidder undertakes and agrees that before submission of its Bid all such factors, as generally brought out above, have been fully investigated and considered while submitting the Bid."

**Press Release of 1.10.2009**

**7.** When the matter stood thus, a Press Release was issued by the Press Information Bureau, Government of India under the heading "Modification of Mega Power Policy". It will be safer to extract the entire Press Release as this is the fulcrum on which the entire case of the appellant revolves. The Press Release with certain portions emphasized by us, is extracted hereinbelow:

"PRESS INFORMATION BUREAU
GOVERNMENT OF INDIA

Press Release
Thursday, October 01, 2009

**Modification of Mega Power Policy**

The Union Cabinet today approved modifications in the existing mega power policy. This would encourage setting up of mega power plants to take advantage of economies of scale and improve their viability. It will simplify the procedure for grant of mega certificate and encourage capacity addition. It will also encourage technology transfer and indigenous manufacturing in the field of super critical power equipments.

The mega Power Policy was introduced in November 1995 for providing impetus to development of large size power projects in the country and derive benefit from economies of scale. These guidelines were modified in 1998 and 2002 and was last amended in April 2006 to encourage power development in Jammu & Kashmir and the North Eastern region.

In order to rationalize the Mega Power Policy and bring it in consonance with the National Electricity Policy 2005 and Tariff Policy 2006, the following modifications of the existing Mega Power Policy have been envisaged:

(i) The existing condition of privatization of distribution by power purchasing states **would be replaced** by the condition that power purchasing states shall undertake to carry out distribution reforms as laid down by the Ministry of Power.

(ii) The conditions requiring inter-state sale of power for getting mega power status **would be removed**.

(iii) The present dispensation of 15% price preference available to the domestic bidders in case of cost plus projects of PSUs would continue. However, the price preference will not apply to tariff based competitively bid projects of PSUs. A Committee would be set up under the Planning Commission, with DHI, MoP and DoR as members which would suggest options and modalities to take care of the disadvantages suffered by the domestic industry related to power sector keeping all factors in view.

(iv) The benefits of Mega Power Policy will also be extended to supercritical projects to be awarded through ICB with the mandatory condition of setting up indigenous manufacturing facility provided they meet the eligibility criteria.

(v) The requirement of undertaking international competitive bidding (ICB) by the developers for procurement of equipment for mega power projects would not be mandatory, if the requisite quantum of power has been tied up through tariff based competitive bidding or the project has been awarded through tariff based competitive bidding.

(vi) A basic custom duty of 2.5% only would be applicable on brown field expansion of existing mega projects. All other benefits under mega power policy available to Greenfield projects would also be available to expansion unit(s) (Brownfield projects) even if the total capacity of expansion unit(s) is less than the threshold qualifying capacity, provided the size of the unit(s) is not less than

that provided in the earlier phase of the project granted mega power project certificate. All other conditions for grant to the mega power status shall remain the same.

(vii) Mega Power Projects would be required to tie up power supply to the distribution companies/utilities through long term PPA(s) and may also sell power outside long term PPA(s) in accordance with the National Electricity Policy 2005 and Tariff Policy 2006, as amended from time to time, of Government of India."

(Emphasis supplied)

The Cabinet decision, as such, is not on record and admittedly what is available is the Press Release issued by the Press Information Bureau.

**8.** The final bidding date was on 09.10.2009 and as per clause 13.1 from the Format-1 Annexure-3 annexed to the RFP, 02.10.2009 was the cutoff date for consideration of change in law. Equally, under clause 2.5.3, 25.09.2009 was the last date for seeking clarification. Law is defined in Clause 1.1.

**D) BID RESULTS**

**9.** The second appellant L&T Power Development Limited emerged as the successful bidder and a Letter of Intent was issued on 19.11.2009 and the L&T Power Development Limited acquired the first appellant. The appellant contends that on 02.10.2009, the second appellant had addressed a letter to Nabha (then owned by the respondent) requesting an extension of the bid deadline to enable them to go through the changes pursuant to the Press Release of 01.10.2009 and ascertain the impact of the bid. It was followed up with a letter of 06.10.2009 setting out that the appellant had taken into consideration the benefits associated with the mega power status in evaluation of their project. According to the appellant, it was forced to withdraw the letter before submitting the bid. According to the respondent that letters were extraneous to the bid and were not entertained.

**E) Developments in December, 2009**

**10.** Certain rapid developments happened in December, 2009. On 3rd December, 2009, the Government of India in the Ministry of

Power addressed a letter to all the Principal Secretary/Secretary Energy of all the States/Union Territories under the subject "Distribution reforms under the modified Mega Power Policy". It was set out in the letter that in order to further liberalize the Mega Power Policy as issued on 2nd August, 2006 and also remove such provisions which had lost relevance, Government has made modifications in the Mega Power Policy and the revised policy guideline was being issued separately. It set out that one of the decisions taken in this regard was that the existing condition of privatization of distribution by power purchasing States would be replaced by the condition that power purchasing States were to undertake to carry out distribution reforms as laid down by the Ministry of Power. The letter proceeded to State that in this regard the matter was examined in the Ministry of Power and a follow up meeting was held on 28th October, 2009 with the representatives of State Power Departments. It was set out that in the said meeting various measures for distribution reforms that could be taken up by the State Governments were discussed in detail and the letter annexed the summary of the minutes of the meeting of 28.10.2009. An undertaking was to be taken from the States in a prescribed format and the operative portion of the letter, which is crucial, is extracted hereinbelow:

> "Accordingly, in pursuance of the Cabinet decision dated 1st October 2009 on the modification to the Mega Power Policy, following four distribution reform measures hereby laid down by the Ministry of Power required to be undertaken by the states purchasing power from the mega power projects:
>
> a) Timely release of subsidy as per Section 65 of Electricity Act 2003.
>
> b) Ensure that Discoms approach SERC for approval of annual revenue requirement/tariff determination in time according to the SERC regulations.
>
> c) Setting up special courts as provided in the Electricity Act 2003 to tackle related cases.
>
> d) Ring fencing of SLDCs.
>
> An undertaking in the enclosed format (Annexure- II) may be given to the Ministry of Power. The said undertaking

needs to be given at least, once and would be considered in all the cases where the concerned State Distribution Utility ties up procurement of power from a power project considered for grant of mega power state.

Receipt of this communication may please be acknowledged and the undertaking in the enclosed format may be sent to this Ministry at the earliest to facilitate processing of the Mega Power Policy case(s)."

**F) Amendment to the Customs Notification dated 11.12.2009**

**11.** Thereafter, on 11.12.2009, an amendment to the customs notification no. 21 of 2002 dated 01.03.2002 was issued. The notification is extracted hereinbelow.

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 21/2002-Customs, dated the 1st March, 2002, which was published in the Gazette of India, Extraordinary vide number G.S.R. 118(E), dated the 1st March, 2002, namely:-

In the said notification, -

A. in the Table,

(i) against S.No. 400, for the entry in column (3), the following entry shall be substituted namely:-

"Goods required for setting up of any Mega Power Project, so certified by an officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Power, that is to say -

(a) a thermal power plant of a capacity of 700 MW or more, located in the States of Jammu and Kashmir, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura: or

(b) a thermal power plant of a capacity of 1000 MWor more, located in States other than those specified in clause (a) above; or

(c) a hydel power plant of a capacity of 350MW or more, located in the States of Jammu and Kashmir, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura; or

(d) a hydel power plant of a capacity of 500MW or more, located in States other than those specified in clause (c) above":

(ii) after S.No. 400 and the entries relating thereto, the following S.No. and entries shall be inserted, namely :-

| 1 | 2 | 3 | 4 | 5 | 6 |
|---|---|---|---|---|---|
| 400A. | 9801 | Goods required for the expansion of any existing Mega Power Project so certified by an officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Power.<br>Explanation: for the purposes of this exemption, Mega Power project means a project as defined in S. No. 400 above. | 2.5% | Nil | 86 |

B. in the Annexure, in Condition No. 86, for sub-clause (ii) of clause (a), the following shall be substituted namely:

(ii) the power purchasing states shall undertake to carry out distribution reforms as laid down by Ministry of Power."

(Emphasis supplied)

**12.** It will be noticed that entry 400 from the notification of 2002 was substituted and in the substituted clause there is no reference to the thermal plant being an inter-State thermal plant.

**Mega Power Policy of 14.12.2009**

**13.** Close on the heels, on 14.12.2009, the Government of India and the Ministry of Power issued an office memorandum under the subject "revised Mega Power Policy", which reads as under:-

"No. A-118/2003-IPC
Government of India
Ministry of Power
Shram Shakti Bhavan, New Delhi
Dated 14th December, 2009

OFFICE MEMORANDUM

**Subject : Revised mega power project policy.**

**Policy guidelines for setting up of mega power projects were last revised and issued vide this Ministry's letter of even number dated 2nd August, 2006.** The Government of India has modified the Mega Power Policy to smoothen the Procedures further. The modified Mega Power Policy is as follows:

(i) The power projects with the following threshold capacity shall be eligible for the benefit of mega power policy:

(a) A thermal power plant of capacity 1000 MW or more; or

(b) A thermal power plant of capacity of 700MW or more, located in the States of J & K, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura; or

(c) A hydel power plant of capacity of 500 MW or more; or

(d) A hydel power plant of a capacity of 350 MW or more, located in the States of J&K, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura;

(e) Government has decided to extend mega policy benefits to brownfield (expansion) projects also. In case of the brownfield (expansion) phase of the existing mega project, size of the expansion units would not be not less than that provided in the earlier phase of the project granted mega power project certificate.

(ii) Mandatory condition of Inter-State sale of power for getting mega power status has been removed.

(iii) Goods required for setting up a mega power project, would qualify for the fiscal benefits after it is certified by an officer not below the rank of a Joint Secretary to the Govt. of India in the Ministry of Power that (i) the power purchasing States have constituted the Regulatory Commissions with full powers to fix tariffs and (ii) power purchasing states shall undertake to carry out distribution reforms as laid down by Ministry of Power.

(iv) Mega Power Projects would be required to tie up power supply to the distribution companies/utilities through long term PPA(s) in accordance with the National Electricity Policy 2005 and Tariff Policy 2006, as amended from time to time, of Government of India.

(v) There shall be no further requirement of ICB for procurement of equipment for mega projects if the requisite quantum of power has been tied up or the project has been awarded through tariff based competitive bidding as the requirements of ICB for the purpose of availing deemed export benefits under Chapter 8 of the Foreign Trade Policy would be presumed to have been satisfied. In all other cases, ICB for equipments shall be mandatory.

(vi) The present dispensation of 15% price preference available to the domestic bidders in case of cost-plus projects of PSUs would continue. However, the price preference will not apply to tariff based competitively bid projects of PSUs.

3. This issues with the approval of Secretary (Power).

Sd/-
(Puneet K Goel)

To

Principal Sectary/Secretary/ Energy of all States/UTs.

Copy to:

(i) Chairman, CEA,

(ii) CMDs of all PSUs of MOP

Copy for information to :-

PS to MOP/PS to MOS(P) / PS to Secretary(P) Sr. PPS to AS(AK)/ PPS to AS(GBP)/ All Joint Secretaries/ Directors in the Ministry of Power, Dir (PIB), MOP.

Copy also to Cabinet Secretariat, New Delhi

Copy for putting on website of Ministry of Power to NIC, MOP.

Sd/-
(Puneet K Goel)
Director (IPC)"

(Emphasis Supplied)

**14.** It will be noticed that the mandatory conditions of inter-State sale of power for getting mega power status was removed; it was decided that goods required for setting up a Mega Power Project would qualify for the fiscal benefits after it is certified by an officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Power that (i) the Power purchasing States have constituted the Regulatory Commissions with full powers to fix tariffs and (ii) Power purchasing States shall undertake to carry out distribution reforms as laid down by Ministry of Power apart from certain other conditions.

**Events Leading to the Dispute**

**15.** The appellant no. 1 Nabha Power Limited, which was now owned by appellant no. 2, entered into a Power Purchase Agreement on 18.01.2010 with the respondent PSPCL.

**16.** According to the appellant, thereafter a series of correspondence ensued between appellant no. 1 and the respondent with regard to the issuance of Essentiality Certificate so that the customs authorities allow import at the concessional duty in terms of the amended entry 400, in the Notification of 11.12.2009. The appellant has a case that apart from the other documents the respondent asked for an affidavit indemnifying the respondent against adverse consequences arising out of wrong claim of benefits by the appellant and also an affidavit stating that the benefits of mega power status granted to the appellant project will be passed on to the respondent as per clause 13.3 of the PPA.

**17.** The appellant claims that while it furnished the other documents, with regard to the affidavit for passing on the benefits of the mega power status, it wrote to the respondent on 17.02.2011 stating that it had already factored in the benefits available in view of the Cabinet decision dated 01.10.2009 and thereafter there is no basis for submission of the affidavit as called for.

**18.** The respondent replied by its letter of 04.03.2011 and insisted on the affidavit as sought for by setting out the following reasons:

> "(i) at the time of submission of bid, the Mega Policy 2006 was in vogue and therefore, the Project could not have qualified as a MPP;
>
> (ii) the Mega Policy 2009 was notified on 14.12.2009, post submission of the bids and therefore, the benefits could have only accrued post such notification;
>
> (iii) the mega power status is granted to a project subject to (a) project getting certified as a MPP from an officer not below the rank of Joint Secretary to the Ministry of Power; (b) the power purchasing States having constituted the Regulatory Commissions with full power to fix tariffs; (c) power purchasing States undertaking to carry out distribution reforms as laid down by the Ministry of Power;
>
> (iv) the distribution reforms took place in Punjab in April, 2010 and hence, the bidders could not have considered benefits available under the Mega Policy 2009 prior to the submission of the bid; and
>
> (v) in relation to the Project, the Petitioner No.1 had applied to the Ministry of Power for grant of mega power status to the Project on 11.05.2010 and the Ministry of Power had granted the said status vide its letter dated 30.07.2010."

**19.** Ultimately, after a lengthy exchange of correspondence with each party sticking to their respective position, the appellant no. 1 submitted an undertaking in the specified format (the factum of the undertaking being under protest and without prejudice as claimed by the appellant is disputed by the respondent) in order to avoid further delay in the

issuance of the Essentiality Certificate. The respondent replied by stating that the non-escalable capacity charge would stand reduced in terms of the Article 13 of PPA in proportion to the concession in custom duty on the consignment value of the imported goods. Ultimately, the appellant obtained the Essentiality Certificate on 16.06.2011. Similar affidavits were furnished for the further imports and the respondent granted Essentiality Certificate only on the condition that it would have the right to seek appropriate reduction in tariff on account of decrease in capital cost of the project.

**20.** On 22.05.2012, the appellants filed a Petition bearing Petition no. 30 of 2012 before the Punjab State Electricity Regulatory Commission, Chandigarh under Section 86(1)(f) of the Electricity Act, 2003, contending that appellant no. 2 had considered and factored the benefits available to the project under the Mega Power Policy of 2009, on 09.10.2009 when they submitted the bid and had passed on such benefits to the respondent by way of the tariff it quoted. The appellant contended that no change in law occurred in view of the notification of 11.12.2009 and 14.12.2009 and whatever change was there, happened on 01.10.2009 itself with the press release of the Cabinet decision. The following prayers were made in the claim petition:

> "In light of the facts and circumstances as stated above, the Petitioners are respectfully praying before this Hon'ble Commission:
>
> "(a) to declare that the Union Cabinet's decision dated 01.10.2009 modifying the Mega Policy 2006 reported vide Press Information Bureau on the same date does not amount to 'Change in Law' under Article 13 of the PPA;
>
> (b) following the declaratory relief sought by the Petitioners, to hold that consequential relief as set out under Article 13.2 of the PPA has not triggered and no consequential benefits under Article 13 have to be passed on to the Respondent by the Petitioner under the PPA on account of Union Cabinet's decision to change the Mega Policy 2006 dated 01.10.2009;

(c) in alternative, if reliefs sought under para (a) and (b) above are not granted, then to direct and allow that the Petitioners shall be entitled to claim 'Change in Law' against the Respondent's claim on the basis of withdrawal of fiscal benefits which were available to the Project under the FTP on the date of bidding on standalone basis, without considering Mega Policy, 2009;

(d) award cost in favour of the Petitioners;

(e) pass such other and further orders / directions as the Hon'ble Commission may deem appropriate in the facts and circumstances of the case."

Though the prayer are not happily worded, the issue raised with regard to the Mega Power Policy issue, as understood by both parties, is whether the legal regime was altered on 01.10.2009 or on 11.12.2009 and 14.12.2009 respectively.

**21.** The appellant's claim before the Commission was founded on twin basis. The main relief was on the aspect of the Mega Power Policy, the contention of the appellant being that the legal regime was altered on 01.10.2009, with the Cabinet Decision, as noticed in the Press Release of 01.10.2009. The alternative plea was based on the Foreign Trade Policy (in short 'FTP') and the appellants contention was that in the alternative, the appellant was entitled to claim change in law against the respondent on the basis of withdrawal of fiscal benefits which were available to the project under the Foreign Trade Policy on the date of bidding, on a standalone basis without considering the Mega Power Policy of 2009.

**Order of the State Commission**

**22.** By its Order of 12.11.2012, the State Commission rejected both the prayers. The State Commission held that the mega power status was made available to a project only when the State in which the project is being setup had undertaken the reforms mentioned in the Ministry of Power's letter dated 03.12.2009; that these reforms were undertaken by the Government of Punjab only on 16.04.2010 and intimated to the Central Government vide letter dated 30.04.2012; that the detailing in respect of the modified policy was not available in the press release dated 01.10.2009; that the same was covered

only in the letter dated 03.12.2009 of the Ministry of Power addressed to the States and in the notification of the Ministry of Power dated 14.12.2009. The Commission further held that the benefit of mega power status cannot be granted with effect from 01.10.2009 considering the fact that it was only after a gazette notification that the public at large were informed of the decisions of the Government and which gazette notification was issued only in December, 2009. That the press release itself provided a disclaimer that though all efforts have been made to ensure the accuracy and the currency and the content of the website of the Press Information Bureau, the same should not be construed as a statement of law or used for any legal purpose. On the FTP issue, it was held that the benefits under the FTP were never available to the appellant and if identical benefits were indeed available to them under the FTP, there was no need for them to claim the same benefit under the modified Mega Power Policy. It was further held that even if it was assumed for the sake of argument that the FTP benefits were available before the cutoff date, they have forfeited their right to these benefits by claiming similar benefits under the new Mega Power Policy.

**Proceedings before APTEL**

**23.** After the Order of the State Commission, the appellant filed Appeal No. 29 of 2013 in the APTEL. The APTEL in the impugned judgment denied benefits under the Mega Power Policy and confirmed the order of the State Commission on the said issue. Insofar as the FTP aspect was concerned, the issue was remanded to the Commission. According to the APTEL, the State Commission in the order impugned before it had not analyzed the question as to whether the benefits under the FTP were available to the appellant as on the cutoff date of 02.10.2009 and whether the subsequent withdrawal by the Government of India would amount to change in law.

**24.** Pursuant to the remand, the Commission revived petition No. 30 of 2012 and issued notice for rehearing on the appellant's alternative claim based on FTP. By its judgment of 16.12.2014, the Commission rejected the claim of the appellant based on the FTP by a majority order.

**25.** Aggrieved by the same, the appellants filed Appeal No. 47 of 2015 before APTEL. By a judgment of 04.07.2017, the APTEL dismissed the Appeal No. 47 of 2015 of the appellant. Against the said judgment

of APTEL dated 04.07.2017, appellant has filed Civil Appeal No. 8694 of 2017. We have in this judgment not touched upon the issues in Civil Appeal No. 8694 of 2017.

**26.** Coming back to the order of the APTEL dated 30.06.2014, the APTEL while dismissing the appeal insofar as the first issue of the Mega Power Policy discussed therein was concerned held that the press release did not indicate the terms and conditions on which the Mega Power Status could be made available; that the press release cannot be construed as a statement of law in view of the disclaimer; that the notification dated 11.12.2009 modifying the customs duty and specifying the terms and conditions for Mega Power is what is law under the definition in the power purchase agreement and that the Mega Power Status was received only on 30.07.2010. Certain other findings have also been recorded which are not directly germane in view of the decision that we have ultimately taken in this Appeal.

**27.** Aggrieved by the judgment of the APTEL on the issue of the Mega Power Policy, the appellants have filed Civil Appeal No. 8478 of 2014.

**Contentions:**

**28.** In support of the appeal, we have heard Mr. C.S. Vaidyanathan, learned Senior Advocate and in opposition thereof we have heard Mr. M.G. Ramachandran, learned Senior Advocate for the respondent no.1.

**Submissions of the Appellant**

**29.** Learned Senior Counsel for the appellant contends that the effect of the Cabinet Decision must be seen with respect to the contours of the definition of law in the Power Purchase Agreement; that the definition includes “any order” of any Indian Government instrumentality and hence it cannot be said that the decision of the highest constitutionally entrusted body for formulating binding national policy is not law for the purpose of the PPA; that the appellant could not be expected to ignore the decision of the Cabinet dated 01.10.2009 announced through the press release being a prudent bidder/businessmen; that even the respondent concedes that the Cabinet Decision could lead to promissory estoppel against the Government; that clause 2.7.2.1 of the RFP deems that the bidders have factored in all “Required information/factors that may have any effect on the bid” and that the Cabinet Decision is at least an information/factor for bidding purposes.

**30.** Learned senior counsel contended that the appellant factored in the fiscal benefits accruing from the Mega Policy in view of the Cabinet Decision of 01.10.2009; that the appellant informed PSPCL by way of letters dated 02.10.2009 and 06.10.2009 about the factoring in of the benefits; that the Mega Power Policy 2006 amendments stood approved on 01.10.2009 and hence the same amounted to law; that the implementing actions that followed the Cabinet Decision also accord the same understanding as would be clear from the Ministry of Power letter dated 03.12.2009, the Minutes of meeting dated 28.10.2009 annexed to the letter dated 03.12.2009, the Memorandum dated 14.12.2009 and the fact that each department was bound to carry out the policy in pursuance of the Cabinet Decision dated 01.10.2009.

**31.** Learned Senior Counsel further contended that to claim change in law (restitution), three essential ingredients are necessary namely (a) The event must be after the cutoff date (b) it must be an event stipulated in Article 13.1.1 (1 to 4) of the PPA and (c) it must result in change in cost of or revenue from the business of selling electricity under the PPA.

**32.** Learned Senior Counsel contends that the respondent to claim relief under, 'change in law' must establish with documentary proof that consequent to change in law there has been a decrease in capital cost and since the appellant in its bid submitted on 09.10.2009 had factored in the benefit derived from the Cabinet Decision in relation to Mega projects, it received no economic benefit and there was no change in the cost or revenue from the business of selling electricity under the PPA in view of the issuance of the notification on 11.12.2009.

**33.** Learned senior counsel contended that there was no notice for change in law issued by the respondent under Article 13.3.2; no proof of reduction in capital cost and no issuance of supplementary bill. Further, learned senior counsel contended that no petition claiming change in law or any counter claim to the same effect was filed by the respondent and it was the appellant which approached the State Commission contending that the Cabinet Decision dated 01.10.2009 is law as on the cutoff date and thus, there was no change in law event enuring to the advantage of the respondent. It is further contended for the appellant that the Mega Power Policy issued in 2006 was issued by way of an executive decision and

that the present Cabinet Decision is also issued under Article 77 of the Constitution of India; that the requirement to place the Cabinet Decision before the President is only for information and on this aspect no Presidential assent is a prerequisite. Lastly, it is contended that as per Rule 50(13) of the Central Secretariat, Manual of Office Procedure, the Press Communique/Note is the approved formal procedure of communication. Learned senior counsel relied on a large number of precedents in support of his submissions.

**Submission of the Respondent**

**34.** While stoutly defending the orders of the fora below, learned senior counsel for the respondent contends that change in law for the purpose of customs duty insofar as the appellant is concerned was brought into force only on 11.12.2009 with the issuance of customs notification under Section 25 of the Customs Act 1962; that Section 25(1) of the said Act provides for exemption from the payment of customs duty to be by notification; that Sub-Section 4 of Section 25 inter alia provides that every notification unless otherwise provided shall come into force on the date of its issue by the Central Government for publication in the Official Gazette and that Cabinet Decision by itself cannot therefore effect such a change without a notification under Section 25 since if something is specified to be done in a particular manner it needs to be done in that manner and in no other. In view thereof, it was contended that it was the customs notification dated 11.12.2009 which brought into force the 'change in law'.

**35.** Learned senior counsel for the respondent contended that without prejudice to the above submissions, the Cabinet Decision dated 01.10.2009 was only the intent or proposal to implement something in future and not to give effect to something on 01.10.2009 itself; the Cabinet Decision does not also provide that the benefits therefrom will be effective from 01.10.2009; that the Cabinet Decision/ Press release by no means can be said to be a regulation, notification, Code, Rule, or order having a force of law as specified in the definition of the term "Law" in the PPA; that under the Rules of Business of the Central Government, the decision taken in the Cabinet ought to get implemented in the manner provided or under the relevant statute such as by Notification, Rule, Regulation or Code in the case of the plenary legislation, such as the Customs Act; in the absence of any plenary legislation, the manner of implementation is provided

under Article 77 by the issuance of an authenticated instrument in the manner provided thereon; that the definition of the term "Law" in the PPA and the expression "Decision" is limited only with regard to the decision by the Appropriate Commission and not an Indian Governmental instrumentality. Learned senior counsel contends that there is no scope for the argument of the promissory estoppel in *inter-partes* disputes between the appellant and the respondent since the Union of India is not a party and the present proceeding is not a proceeding where a promise is sought to be enforced by a Court of law, against the promisor.

**36.** The learned senior counsel contends that the appellant under Clauses 2.7.2.1 and 2.7.2.2 ought to have considered only the applicable law. It is further contended that the Cabinet Decision of 01.10.2009 did not decide all the aspects of the distribution reforms to be undertaken by the concerned State Government to entitle the intra-state power projects in the State to be eligible for Mega Power benefits. To illustrate, it is contended that the Cabinet Decision stated that "Power Purchasing States" shall undertake to carry out distribution reforms as laid down by the Ministry of Power. Learned senior counsel contends that Ministry of Power laid down the conditions on 03.12.2009 including an undertaking to be given by the State Government to the Government of India as a pre-condition. In view of this, learned senior counsel contends that the Cabinet Decision was not in complete form and it was only after the conditions were laid down by the Ministry of Power on 03.12.2009 that the notification dated 11.12.2009 and office memorandum of 14.12.2009 was issued by the Central Government providing for exemption to Mega Power Projects specifically stating that "The Power Purchasing State shall undertake to carry out distribution reforms as laid down by the Ministry of Power". Learned senior counsel contends that the Mega Power Policy was issued only on 14.12.2009 with further additions. In view of the same, learned senior counsel for the respondents contend that there is no scope for interference with the concurrent judgments of the Courts below.

**Question for consideration:**

**37.** In the above background, the question that arises for consideration is: Whether the press release of 01.10.2009 announcing the decision of the Union Cabinet about approval of certain modifications

envisaged in the then existing mega power policy, is covered within the meaning of the expression "law as defined in Clause 1.1 of the RFP/PPA and if so did the extant legal regime as on 01.10.2009 undergo a change from the said date"?

**Analysis and reasons:**

**38.** The appellant's case, as set out above, is that with the press release on 01.10.2009, a new legal regime commences and on that basis, it is contended that the appellant in its bid of 09.10.2009 factored the altered position including the fiscal benefits due to customs duty exemptions. The respondent's case is that the press release of 01.10.2009 only sets out the proposal for modification and the real modification happened on 11.12.2009 and 14.12.2009 (preceded by the letter of 03.12.2009). According to them, since the change of law having happened on 11.12.2009/14.12.2009 the benefits that have accrued to the appellant ought to be passed on. This is the simple issue to be resolved.

**39.** To answer this question, certain clauses from RFP needs to be set out. The RFP carried the format of the power purchase agreement as Format 1 Annexure 3. There is no dispute that the same clauses occurred in the power purchase agreement executed on 18.01.2010. Clause 1.1 defines law as under :

> "Law: means, in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include all applicable rules, regulations, orders notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include all rules, regulations, decisions and orders of the Appropriate Commission."

**40.** The relevant Clauses read as under:-

> "**13 ARTICLE 1.3 Change in Law**
>
> 13.1 Definitions
>
> In this Article 13, the following terms shall have the following meanings.

13.1.1 " Change in Law" means the occurrence of any of the following events after the date, which is seven (7) days prior to the Bid Deadline;

(i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any law or (ii) a change in interpretation of any law by a competent court of law, tribunal or Indian Governmental instrumentality provided such Court of law, tribunal or Indian Governmental Instrumentality is final authority under law for such interpretation or (iii) change in any consents approvals or licenses available or obtained for the project, otherwise than for default of the seller, which results in any change in any cost of or revenue from the business of selling electricity by the seller to the procurer under the terms of this agreement or (iv) any change in the (a) declared price of land for the project or (b) the cost of implementation of the resettlement and rehabilitation package of the land for the project mentioned in the RFP or (c) the cost of implementing environmental management plan for the power station (d) deleted.

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission.

13.1.2 "Competent Court" means:

The Supreme Court or any High Court, or any tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to the Project.

13.2 Application and Principles for computing impact of Change in Law

While determining the consequence of Change in Law under this Article 13, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through Monthly Tariff payments, to the extent contemplated in this Article 13, the affected Party to the same economic position as if such Change in Law has not occurred.

a) Construction Period

As a result of any Change in Law, the impact of increase/decrease of Capital Cost of the Project in the Tariff shall be governed by the formula given below:

For every cumulative increase/decrease of each Rupees 16,50,00,000/-

(Rupees Sixteen crore fifty lakhs) in the Capital Cost over the term of this Agreement, the increase/decrease in Non Escalable Capacity Charges shall be an amount equal to 0.267% (percentage zero point two six seven) of the Non Escalable Capacity Charges. Provided that the Seller provides to the Procurer documentary proof of such increase/decrease in Capital Cost for establishing the impact of such Change in Law. In case of Dispute, Article 17 shall apply:

It is clarified that the above mentioned compensation shall be payable to either Party, only with effect from the date on which the total increase/decrease exceeds amount of Rupees 16,50,00,000/- (Rupees Sixteen crore fifty lakhs).

b) Operation Period

As a result of Change in Law, the compensation for any increase/decrease in revenues or cost to the Seller shall be determined and effective from such date, as decided by the Appropriate Commission whose decision shall be final and binding on both the Parties, subject to rights of appeal provided under applicable Law.

Provided that the above mentioned compensation shall be payable only if and for increase/decrease in revenues or cost to the Seller is in excess of an amount equivalent to 1% of the Letter of Credit in aggregate for a Contract Year.

**13.3 Notification of Change in Law**

13.3.1 If the Seller is affected by a Change in Law in accordance with Article 13.2 and wishes to claim a Change in Law under this Article, it shall give notice to the procurer

of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

13.3.2 Notwithstanding Article 13.3.1, the Seller shall be obliged to serve a notice to the Procurer under this Article 13.3.2 if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurer contained herein shall be material.

Provided that in case the Seller has not provided such notice, the Procurer shall have the right to issue such notice to the Seller.

13.3.3 Any notice served pursuant to this Article 13.3.2 shall provide, amongst other things, precise details of:

(a) the Change in Law; and

(b) the effects on the Seller of the matters referred to in Article 13.2.

**13.4. Tariff Adjustment Payment on account of Change in Law**

13.4.1 Subject to Article 13.2., the adjustment in Monthly Tariff Payment shall be effective from:

(i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or

(ii) the date of order/judgment of the Competent Court or tribunal of Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.

13.4.2 The payment for Changes in Law shall be through Supplementary Bill as mentioned in Article 11.8. However, in case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Seller after such change in Tariff shall appropriately reflect the changed Tariff."

**41.** The golden rule of interpretation is that the words of a contract should be construed in their grammatical and ordinary sense, except to the extent that some modification is necessary in order to avoid absurdity, inconsistency or repugnancy. (***See para 5.01 Kim Lewison, The interpretation of Contracts, 3rd Edition***). Similarly, any invocation of the business efficacy test as canvassed would arise only if the terms of the contract are not explicit and clear. The business efficacy test cannot contradict any express term of the contract and is invoked only if by a plain and literal interpretation of the term in the agreement or the contract, it is not possible to achieve the result or the consequence intended by the parties acting as prudent businessmen. [See ***Nabha Power Limited (NPL)*** vs. ***Punjab State Power Corporation Limited (PSPCL) and Another*** (2018) 11 SCC 508 (para 49) and ***Adani Power (Mundra) Limited*** vs. ***Gujarat Electricity Regulatory Commission and Others*** (2019) 19 SCC 9 (para 24).

**42.** The law as defined in Clause 1.1 was validly promulgated vide the notification of 01.03.2002 and the policy document dated 07.08.2006. The appellant seeks to contend that the press release of 01.10.2009 announcing the Cabinet decision approving the modified Mega Power Policy as envisaged tantamounts to "law" as defined in Clause 1.1 of the Request For Proposal. The appellant contends that *qua* the Power Purchase Agreement (PPA), the press release of 01.10.2009 would be an order and covered by the phrase "*and shall include all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality*". We are unable to accept this submission. First of all, the commonly understood meaning of the word "**order**" as defined in **Black's Law Dictionary** is as follows:-

> "Order – A command, direction or instruction. See MANDATE (1) 2. a written direction or command delivered by a government official, esp. a court or judge."

**43.** The press release of 01.10.2009 certainly does not fulfil the meaning of the word "order" as understood in legal parlance. As explained earlier, the Press Release with all its future eventualities and conditionalities is only a proposal and it is only after the undertakings were agreed to be given by the State Government that a final shape was given in the form of a Section 25 customs notification on 11.12.2009 and by the policy document of 14.12.2009.

The press release announcing the cabinet approval of certain modifications envisaged in the existing Mega Power Policy is not law as defined in Clause 1.1 of the PPA. Further, the press release does not enact, adopt, promulgate, amend, modify or repeal any existing law or bring into effect any law. This aspect has been elaborated hereinbelow. Hence, the appellant's would fail on the ground that the press release of 01.10.2009 is not law and as of 01.10.2009, the continuing legal regime was as per the notification of 01.03.2002 issued under Section 25 of the Customs Act and the Mega Power Policy of 07.08.2006 and there was no alteration of that legal regime on 01.10.2009. The change in law occurred only on 11.12.2009/14.12.2009, and the respondent no. 1 has rightly been held by the fora below to be entitled to the benefits, which ultimately will go to the consumers.

**44.** The argument feebly advanced by the appellant that no notice of change of law was issued by the respondent under Clause 13.3.1 and 13.3.2 does not impress us. The said clause expressly deals only with a seller having to issue the notice if it is beneficially affected by the change of law. In this case, PSPCL is the buyer. Further, post the change in law on 11.12.2009/14.12.2009 there is a change in cost with the reduction of customs duty which will enure to the benefit the appellant-seller and under 13.1.1. the benefit ought to be passed on to the respondent.

**45.** The words of clause 13.1.1 read with the definition of law in Clause 1.1 are plain and clear. For a change in law to occur, the following events ought to have happened seven days prior to the bid deadline that is on 02.10.2009 in our case; (i) the enactment brining into effect, adoption, promulgation, amendment, modification or repeal of any law or (ii) a change in interpretation of any law by a competent court of law, Tribunal or Indian Governmental instrumentality provided such court of law, Tribunal or Indian Governmental instrumentality is the final authority under law for such interpretation or (iii) change in any consents, approvals or licences available or obtained for the project, otherwise than for default of the seller, which results in any change in any cost or revenue from the business of selling electricity by the seller to the procurer under the terms of this agreement or (iv) any change in the (a) declared price of land for the project or (b) the cost of implementation of the resettlement and rehabilitation package of the land for the project mentioned in RFP or (c) the cost of implementing

environmental management plan for the power station but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission.

**46.** Considering the facts of the case and the arguments, we are very clear that the case of the parties is not based on any change in interpretation or change in consent, approval or licence so these sub clauses of the opening part of 13.1.1 is ruled out. Equally, the latter part dealing with price of land for the project and cost of implementation and rehabilitation package of land or cost of implementing environmental management plan is also not attracted.

**47.** The question that remains is the applicability of sub clause (i) of clause 13.1.1 namely, when did the change in law happen? For 13.1.1. (i) to be attracted there has to be an enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal of any law. Further, if there was a change in law the question would be, did it result in any change in any cost or revenue from the business of selling electricity by the seller to the procurer under the terms of the agreement.

**48.** It is important to keep in mind the definition of law which has been defined to mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule or any interpretation of any of them by an Indian Governmental instrumentality and having force of law and shall further include all applicable rules, regulations, orders, notification by an Indian Governmental instrumentality pursuant to or under any of them and shall include all rules, regulations, decisions and orders of the Appropriate Commission. We are convinced that the words "shall include all rules, regulations, decisions and orders of the Appropriate Commission", only refer to the rules, regulations, decisions and orders of the Appropriate Commission.

**49.** It is important to bear in mind that 'law' is one thing and 'change in law' is another, in the sense that the two are two different concepts. For the case in question, we need to understand what the extant law was on 01.10.2009 and then decide whether there was a legal regime alteration as defined under 13.1.1 on the said date.

**50.** The law, as it stood prior to the press release of 01.10.2009 insofar as the financial implications for the matter is concerned, was the notification under Section 25 of the Customs Act issued on 01.03.2002 and entry 400 thereof, extracted in the earlier part of this judgment. That notification, subject to the conditions mentioned thereon in entry 400 granted exemption from customs duty for import of goods required for setting up of any Mega Power project if such Mega Power project was an inter-State power plant and if it fulfilled the other conditions mentioned in the notification. Section 25(1) of the Customs Act under which the notification is issued reads as under:

> **"25. Power to grant exemption from duty.-** (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance), as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon."

**51.** It will be very clear that for an exemption under the Customs Act to operate thereon there has to be a notification issued in the manner provided by the Customs Act and duly published in the official gazette. It is so well settled that if a certain thing has to be done in a certain manner, it shall be done in that manner or not at all. [See ***Babu Verghese and Others*** vs. ***Bar Council of Kerala and Others*** (1999) 3 SCC 422, relying on ***Taylor*** vs. ***Taylor*** (1875) 1 C h D 426 and ***Nazir Ahmad*** vs. ***King Emperor***, AIR 1936 PC 253]. Further, Section 21 of the General Clauses Act, 1897 clearly prescribes as under:-

> **"21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.—**Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."
>
> (Emphasis Supplied)

There was no duly constituted amendment notification as on 01.10.2009.

**52.** The exemption notification has to be read with the then extant policy of 07.08.2006 under which Mega Power Policy, to obtain a Mega Power Status, the plant had to be an inter-State power plant of the prescribed dimensions and if it were so, certain financial concessions/benefits were to be available to it under the policy document. Admittedly, that policy of 07.08.2006 was duly promulgated by the Government of India through Ministry of Power and there is no dispute on this score.

**53.** What the appellant contends is that with the press release on 01.10.2009 and they having received no positive response to the letters of 02.10.2009 and 06.10.2009 (since withdrawn), they in their bid of 09.10.2009 factored in the benefits that would be available in view of the Cabinet decision as announced in the press release of 01.10.2009. According to the appellants, as such, when the notifications for amendment were issued on 11.12.2009 and when the policy document was amended on 14.12.2009, there was no change in law because the legal regime stood altered on 01.10.2009 with the press release. Respondents contended that any clarification for the bid ought to have been sought before 25.09.2009 and independent of that they also contend that press release of 01.10.2009 does not tantamount to law and that the change in law happened only on 11.12.2009/14.12.2009.

**54.** The scenario that emerges is that there was a legal regime operating, which continued to have force since there was no repeal of the notification of 01.03.2002 or the supersession of the Mega Power Policy document of 07.08.2006 on 01.10.2009. The press release clearly mentioned as to what was envisaged and the conditions that were to be replaced and removed.

**55.** In our considered opinion, the press release did not alter/amend/ repeal the existing law as on 01.10.2009. It was at best the announcement of a proposal approved by the Cabinet which had to be given shape after fulfilment of the conditions mentioned therein. Some of the conditions were that the power purchasing States were to undertake to carry out distribution reforms as laid down by the Ministry of Power and admittedly in that regard there was a meeting held on 28.10.2009; an undertaking was sought from the States in the prescribed formats and the four distribution reform measures

required to be undertaken were part of the undertaking. Those four measures are (a) timely release of subsidy as per Section 65 of the Electricity Act, 2003 (b) Ensure that discoms will approach SERC for approval of annual revenue requirement/tariff determination in time according to SERC regulations (c) Setting up of Special Courts as provided in the Electricity Act, 2003 to tackle the related cases and (d) ring fencing of SLDCs.

**56.** It was thereafter on 11.12.2009 in due compliance with the provisions of Section 25 of the Customs Act that the amendment notifications were issued which expressly specified the condition that the power purchasing States ought to have undertaken to carryout distribution reforms as laid out by the Ministry of Power. It is only with the promulgation of the 11.12.2009 notification that entry 400 of the 01.03.2002 notification issued earlier in 2002 was substituted to cover goods required for setting up of any Mega Power Project (as now defined and set out in the notification of 11.12.2009 and elaborated in the policy document of 14.12.2009) did the 'change in law' happen.

**57.** Could the appellant has assumed that the Press Release of 01.10.2009 ordained a new legal regime? We think not and we hold accordingly. The press release is a summary of the Cabinet decision. Even the press release makes it clear that it was a proposal that was envisaged and which was to come into force in future.

**58.** Certainty is the hallmark of law. It is one of its essential attributes. It is an integral component of the rule of law. What was certain on 01.10.2009 in the context of our case was only the prevalent customs notification of 01.03.2002 issued under section 25, duly notified and gazetted as well as the Mega Power Policy document admittedly promulgated on 07.08.2006.

**59.** The press release summarizing the Cabinet decision and beset with several conditions created no vested rights on any party to the power purchase agreement vis-a-vis the other party on 01.10.2009. In fact, the press release itself contemplated certain contingencies. A right vests when all the facts have occurred which must by law occur in order for the person in question to have the right (**see Salmond on Jurisprudence, Twelfth Edition P.J. Fitzgeral page 245**). It is only when the right vests will there be a corelative duty on the other as far as nature of the right involved in the present case is concerned.

**60.** Accepting the argument would also create tremendous uncertainties in the law. In the absence of any repeal of 01.03.2002 notification and the 07.08.2006 Mega Power Policy, between 01.10.2009 and 11.12.2009/14.12.2009 there will be two legal regime operating.

**61.** **Lord Bingham of Cornhill in his locus classicus 'The Rule of Law'** rightly identifies as one of the facets of rule of law, the following – "the law must be accessible and so far as possible intelligible, clear and predictable." The second and third reason given to support the principle makes for fascinating reading and are reproduced hereinbelow.

> "The second reason is rather similar, but not tied to the criminal law. If we are to claim the rights which the civil (that is, non-criminal) law gives us, or to perform the obligations which it imposes on us, it is important to know what our rights or obligations are. Otherwise we cannot claim the rights or perform the obligations. It is not much use being entitled to, for example, a winter fuel allowance if you cannot reasonably easily discover your entitlement, and how you set about claiming it. Equally, you can only perform a duty to recycle different kinds of rubbish in different bags if you know what you are meant to do.
>
> The third reason is rather less obvious, but extremely compelling. It is that the successful conduct of trade, investment and business generally is promoted by a body of accessible legal rules governing commercial rights and obligations. No one would choose to do business, perhaps involving large sums of money, in a country where the parties' rights and obligations were vague or undecided. This was a point recognized by Lord Mansfield, generally regarded as the father of English commercial law, around 250 years ago when he said: The daily negotiations and property of merchants ought not to depend upon subtleties and niceties; but upon rules easily learned and easily retained, because they are the dictates of common sense, drawn from the truth of the case."[1] In the same vein he said: 'In all mercantile transactions the great

1 Hamilton vs. Mendes (1761) 3 Burr 1198, 1214

object should be certainty: and therefore, it is of more consequence that a rule should be certain, than whether the rule is established one way or the other. Because speculators [meaning investors and businessmen] then know what ground to go upon."[2]

**62.** Explaining felicitously the said principle, O. Chinnappa Reddy, J. speaking for this Court in ***B.K. Srinivasan and Others*** vs. ***State of Karnataka and Others*** (1987) 1 SCC 658 ruled:-

> **"15.** There can be no doubt about the proposition that where a law, whether parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the "conscientious good man" seeking to abide by the law or from the standpoint of Justice Holmes›s "unconscientious bad man" seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known. We know that delegated or subordinate legislation is all-pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by parliamentary legislation. But unlike parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed.…"
>
> (Emphasis supplied)

2 Vallejo vs. Wheeler (1774) 1 Cowp 143, 153

**63.** The appellant has relied upon RFP to contend that the Press release of 01.10.2009 could not have been ignored by them. We do not find merit in this submission. Those clauses in the RFP obligate the bidder to satisfy itself about the extant legal regime and those clauses cannot operate as a crutch to elevate the press release of 01.10.2009 to the status of law under Clause 1.1. of the PPA.

**64.** We have also found that the terms of the contract to be clear and hence there is no scope for applying any business efficacy test to interpret the contract as was sought to be contended for the appellant.

**65.** One of the arguments advanced by the learned senior counsel for the appellants is based on the doctrine of promissory estoppel. The argument need not detain us since the respondent PSPCL which is the party to power purchase agreement is not the promisor, even if we assume the press release of 01.10.2009 as holding out the promise. The Union of India has not been arrayed in any duly constituted litigation to enforce the promise. The argument also belies the primary contention of the appellant since even according to their understanding, it was at best a promise by the Union of India and not any alteration of the law *proprio vigore* (by its own force). In any case, no steps have been taken to enforce the so-called promise and there is no order of any court of law enforcing the promise as on 02.10.2009. The appellant contends that since the promise was duly complied with, there was no need to enforce the promise. This is also an argument which cuts at the root of appellants main submission. The notifications constituting change in law happened on 11.12.2009 and 14.12.2009 and hence there is no basis in the contention that on 01.10.2009 the old legal regime had given way.

**66.** The judgments cited by learned Senior Counsel for the appellant also do not in any manner support the case of the appellant. In ***GMR Warora Energy Limited*** vs. ***Central Electricity Regulatory Commission [CERC] and Others*** (2023) 10 SCC 401, this Court found that busy season surcharge, development surcharge, and port congestion surcharge were increased by circular/notifications issued by the Ministry of Railways by virtue of the powers vested in them which were enforceable commands *proprio vigore*. Similarly, the letters carrying the decisions of Coal India on the aspect of charges for linkage coal and the direction to use beneficiated coal were held to be statutory documents having the force of law. The press release

of 01.10.2009 does not enjoy the same legal characteristics for the reasons already set out hereinabove.

**67.** Equally, for the same reason, the judgment in ***Energy Watchdog*** vs. ***Central Electricity Regulatory Commission and Others*** (2017) 14 SCC 80 will also not help the appellant. The appellant's main reliance has been on ***Lloyd Electric and Engineering Limited*** vs. ***State of Himachal Pradesh and Others*** (2016) 1 SCC 560. In ***Lloyd Electric*** ***(supra)***, the appellant therein was already enjoying the concessional rate in CST @ 1% up to 31.03.2009. Not only this, after the Cabinet note, a policy decision was taken to extend the period of concession up to 31.03.2013 or till CST was phased out. The Department of Industries had issued a notification extending concessions from 01.04.2009 to 31.03.2013 or till the time CST is phased out. The dispute arose because the Excise and Taxation Department issued a notification of 18.06.2009 granting benefit with immediate effect for the period ending 31.03.2013. It was in that context that this Court held that the State Government cannot speak in two voices and gave effect to the notification of the Industries Department so as to maintain continuity in exemption from 01.04.2009 and set aside the judgment of the High Court which denied exemption from 01.04.2009 till 18.06.2009 which was the date on which the Excise Department issued the notification. Unlike in ***Lloyd Electric*** ***(supra)***, in this case, there is only one voice of the government which has given the customs duty exemption for goods imported for use in thermal power plants, (without the requirement of the plant being an interstate power plant) with effect from 11.12.2009. The policy document also came on 14.12.2009. The press release of 01.10.2009 could not have been the basis for the appellant to have assumed that the notification of 01.03.2002 would stand amended and they would have the benefit from 01.10.2009 itself.

**68.** In ***Uttar Haryana Bijli Vitran Nigam Limited and Another*** vs. ***Adani Power (Mundra) Limited and Another*** (2023) 7 SCC 623, this Court held that the communication of 19.06.2013 in that case effected a modification to the mutual Fuel Supply Agreement and by force of the communication, transfer of coal, which was not allowed till then, was allowed between power plants. This Court held that the communication reflected the decision of the Coal India Limited which was an instrumentality of the Government of India. The said case has no application to the facts of the present case.

**69.** The judgment in ***Burn Standard Company Limited*** Vs. ***McDermott International INC and Anr.*** (1991) 2 SCC 669 also does not advance the case of the appellant. That case dealt with permission granted to an individual entity and whether on the facts of that case there existed a valid permission by the Reserve Bank of India. The issue involved in the present case is vastly different and we find the judgment in ***Burn Standard*** ***(Supra)*** of no relevance to this case.

**70.** The judgment closer to our facts is ***Maharashtra State Electricity Distribution Company Limited*** vs. ***Adani Power Maharashtra Limited and Others*** (2023) 7 SCC 401. In the said case, neither the decision of the Cabinet Committee on Economic Affairs dated 06.02.2013 nor the Press Release of 21.06.2013 was considered as the relevant date for change in law and only 26.07.2013 which was the date on which the Office Memorandum was issued providing further instructions regarding the implementation of the New Coal Distributional Policy [NCDP] was considered as the change in law event. Pursuant to the Office Memorandum of 26.07.2013, the Ministry of Power issued a communication of 31.07.2013 setting out the decision taken. This case clearly supports the case of the respondent that the press release of 01.10.2009 on the facts herein could not have been the basis for the appellant to assume that a new legal regime had commenced in with effect from that date.

**71.** Though several judgments were cited, including ***Bachhittar Singh*** vs. ***The State of Punjab*** [1962] Supp. 3 SCR 713, to contend that the press release of 01.10.2009 was not an "order", we do not propose to examine them as we are otherwise convinced for the reason set out above that the 01.10.2009 Press Release is not law under Clause 1.1. Equally, for that reason, we have not discussed the cases on Article 77 of the Constitution of India, dealing with authentication of orders.

**72.** The State Commission while rejecting the contention of the appellant has rightly recorded the following operative findings:-

> "In view of the above findings, the Commission holds that since the Mega Power Status was granted to the Project under the Mega Power Policy by the Ministry of Power on 30.07.2010 on the application dated 11.05.2010 filed by the respondent no.1, having become eligible on 16.04.2010, the benefits, if any, accruing thereunder

> to the Project would be applicable only from 30.07.2010 and not from any prior date, notwithstanding that the decision for granting the Mega Power Status was taken/ announced on 01.10.2009 or the notifications in respect of the said decision of the Union Cabinet were issued by the concerned Ministries of the Government of India on 11.12.2009 and 14.12.2009."

**73.** For the reasons set out hereinabove, we find no reason to interfere with the concurrent judgments of the courts below. The Civil Appeal is dismissed. No order as to costs.

*Result of the case:* Appeal dismissed.

†*Headnotes prepared by:* Nidhi Jain

[2024] 11 S.C.R. 489 : 2024 INSC 839

# Noida Special Economic Zone Authority
**v.**
# Manish Agarwal & Ors.

(Civil Appeal No(s). 5918-5919 of 2022)

05 November 2024

**[Abhay S. Oka and Augustine George Masih,* JJ.]**

## Issue for Consideration

The appellant-NOIDA Special Economic Zone Authority filed a claim of INR 06.29 Crores which was admitted by the Respondent No.01-Resolution Professional. The NCLT vide order dated 05.10.2020, granted only INR 50 Lakhs to the appellant against its admitted claim of INR 06.29 Crores. In the instant appeals, the challenge is to the judgment dated 14.02.2022 passed by NCLAT which were preferred by the appellant being the operational creditor impugning the order dated 05.10.2020 passed by the NCLT approving the Resolution Plan as presented on the approval by the Committee of Creditors.

## Headnotes†

**Insolvency and Bankruptcy Code, 2016 – ss.31(1) and 60(5) – Special Economic Zone Act, 2005 – Respondent No.02-Corporate Debtor was sub-leased a Plot at NOIDA Special Economic Zone by the Appellant-NOIDA Special Economic Zone Authority – Appellant's case that the Corporate Debtor had begun defaulting on lease payments and there was no performance or activity on the said land – In light of the defaults committed by corporate debtor, CIRP was initiated by the appellant before the NCLT – Appellant filed a claim of INR 6,29,18,121/- which was admitted by the Respondent No.01 – Resolution Professional (RP) – A Resolution plan prepared by the Respondent No. 03-Resolution applicant was put before the Committee of Creditors – An application was then filed u/ss.31(1) and 60(5) of the IBC before the NCLT by the RP, seeking an approval of the Resolution Plan on behalf of the Committee of Creditors – The same was allowed by NCLT vide order dated 05.10.2020, granting only INR 50 Lakhs to the appellant against its admitted claim of INR 06.29 Crores – Objections against the said order by appellant were dismissed by the NCLT by order dated 27.11.2020 – Appeals before**

* Author

**NCLAT were also dismissed vide the impugned Judgment dated 14.02.2022 – Correctness:**

**Held:** It is settled that the question of valuation is basically a question of facts, which does not call for any interference if it is based on relevant material on record – The average of the two closest estimates given by the valuers were taken into consideration as fair value and liquidation value respectively, which were found to be just and reasonable – This would be, keeping in view Section 35C of IBC 2016, where the powers and duties of the liquidator have been laid down – Since due process appears to have been followed no fault is found requiring interference – Sections 30 and 31 of IBC 2016, which deal with the submission of the Resolution Plan has rightly been evaluated and analysed NCLAT as per the ratio laid down by the Supreme Court in its various decisions – Conclusion as culled out and elucidated is correct that all the dues, including statutory dues owned by the Central Government, State Government and local authority, which is not the part of the Resolution Plan shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority had approved the Resolution Plan could be pressed into service or continues – These observations took care of the assertions of the appellant with regard to the statutory dues and the claims as have been made and put forth relatable to the areas of lease – Beside this, as regards the other claims pertaining to the transfer fees, etc. were not to be interfered with by courts or tribunals as the same stood related to the commercial wisdom of the Committee of Creditors for they being the best persons to determine their interests, and any such interference is non-justiciable except as provided by Section 30(2) of IBC 2016 – There is no such violation of the statute or the procedure – It has come on record and stands admitted that the Resolution Plan had already been implemented and the dues as found payable under the Resolution Plan have been disbursed to the concerned parties and also the appellant – In light of the records and various decisions of the Supreme Court, the claim of the appellant cannot be accepted – Thus, the orders dated 05.10.2020 and 27.11.2020, as passed by the NCLT and approved by the NCLAT vide its impugned Judgment dated 14.02.2022, do not call for any interference. [Paras 14, 15, 16, 20]

**Insolvency and Bankruptcy Code, 2016 – s.238 – Special Economic Zone Act, 2005 – Overriding effect of IBC, 2016:**

**Held:** As far as the submission that exemptions from NOIDA Special Economic Zone (NSEZ) payments, including any type of

fees or penalty for renewal of sub-lease and/or for transfer charges due with regard to the change of directorship or shareholding in favour of the Resolution Applicant has to be dealt with as per Clause 10.9 of the Resolution Plan cannot be accepted in the light of Section 238 of IBC 2016, which provides for the provisions of IBC 2016 to have an overriding effect over the other laws – If that be so, the obvious effect is that the same would prevail, leading to the provisions as contained in the SEZ Act 2005 giving way to IBC 2016. [Para 17]

**Case Law Cited**

*Duncans Industries Ltd. v. State of U.P. and Others* **(2000) 1 SCC 633;** *Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others* **[2020] 2 SCR 1157 : (2020) 11 SCC 467;** *Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited and Others* **[2021] 13 SCR 737 : (2021) 9 SCC 657;** *K. Sashidhar v. Indian Overseas Bank and Others* **[2019] 3 SCR 845 : (2019) 12 SCC 150;** *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Others* **[2019] 16 SCR 275 : (2020) 8 SCC 531;** *Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited and Another* **[2021] 14 SCR 321 : (2022) 2 SCC 401;** *DBS Bank Limited Singapore v. Ruchi Soya Industries Limited and Another* **[2024] 1 SCR 114 : (2024) 3 SCC 752 – referred to.**

**List of Acts**

Insolvency and Bankruptcy Code, 2016; Special Economic Zone Act, 2005.

**List of Keywords**

Section 31(1) of Insolvency and Bankruptcy Code, 2016; Section 60(5) of Insolvency and Bankruptcy Code, 2016; NOIDA Special Economic Zone Authority; Operational creditor; Resolution Plan.

**Case Arising From**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5918-5919 of 2022

From the Judgment and Order dated 14.02.2022 of the National Company Law Appellate Tribunal, Delhi in CAAT (I) Nos. 90 and 91 of 2021

**Appearances for Parties**

Manish Singhvi, Sr. Adv., Anshul Rawat, Saurabh George, Ms. Manju Jetley, Advs. for the Appellant.

Gopal Jain, Sr. Adv., Abhishek Anand, Ms. Mithu Jain, Karan Kohli, Krishna Sharma, Kunal Godhwani, Karan Batura, Ms. Kinjal Chadha, Advs. for the Respondents.

**Judgment / Order of the Supreme Court**

**Judgment**

**Augustine George Masih, J.**

1. In the present Appeals challenge is to the Judgment dated 14.02.2022 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi (hereinafter referred to as "NCLAT") which were preferred by the Appellant, i.e., NOIDA Special Economic Zone Authority, being the Operational Creditor (hereinafter referred to as "Appellant") impugning the Order dated 05.10.2020 passed by the Adjudicating Authority of National Company Law Tribunal, New Delhi Bench (hereinafter referred to as "NCLT") approving the Resolution Plan as presented on the approval by the Committee of Creditors, and also the Order dated 27.11.2020 vide which an application preferred by the Appellant, challenging the approval of the Resolution Plan, stood rejected.

2. Briefly, the facts are that the Respondent No.02, i.e., Shree Bhoomika International Limited, being the Corporate Debtor (hereinafter referred to as "Corporate Debtor") was sub-leased the Plot bearing No. 59-I admeasuring 16,100 square meters at NOIDA Special Economic Zone (hereinafter referred to as "NSEZ") by the Appellant, in capacity of lessee of the said land from the NOIDA Authority, vide Lease Deed dated 26.10.1995, and it was valid for a period of 15 years, i.e., up to 31.05.2010. It is the case of the Appellant that the Corporate Debtor had begun defaulting on lease payments in 1999, and moreover, there was no performance or activity on the said land since the year 2003-2004 leading to financial losses to the Government Exchequer, and same also being violative of the Special Economic Zone Rules and guidelines framed therein. Appellant has also made a reference to a Public Notice dated 06.02.2018 by the Stressed Assets Stabilization Fund for sale of immovable and movable assets

of the Corporate Debtor through an e-auction, fixing the total reserved price at INR 09.18 Crores.

3. In the light of the defaults committed by the Corporate Debtor, Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") was initiated by the Appellant before the NCLT. While admitting the said application on 11.07.2019, an Interim Resolution Professional (hereinafter referred to as "IRP") was appointed. The Committee of Creditors, which comprised of the Sole Financial Creditor, being the Stressed Assets Stabilization Fund – IDBI Bank Limited (hereinafter referred to as "sole Financial Creditor") was constituted by the IRP after making a public announcement on 17.07.2019 as per the prescribed procedure.

4. In pursuance thereto, the Appellant filed a claim of INR 6,29,18,121/- (Rupees Six Crores Twenty Nine Lakhs Eighteen Thousand and One Hundred Twenty One only) which was admitted by the Respondent No.01 – Resolution Professional (hereinafter referred to as "RP") in entirety. Valuation of the Corporate Debtor was thereby conducted by two different valuers, and an average thereof was carried out, leading to the fixing of the liquidation value of the Corporate Debtor at INR 04.25 Crores. The Appellant had put forth that the valuers had also observed that the valuations derived by them could be realised, subject to fulfilment of the rules of NSEZ and procedure of approval thereof.

5. The Resolution Plan dated 24.11.2019 (hereinafter referred to as "Resolution Plan"), which was prepared by the Respondent No. 03 – M/s Commodities Trading, being the Resolution Applicant (hereinafter referred to as "Resolution Applicant") was put before the Committee of Creditors, which approved it in its 4th Meeting dated 06.01.2020.

6. An application was then filed under Sections 31(1) and 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC 2016") before the NCLT by the RP, seeking an approval of the Resolution Plan on behalf of the Committee of Creditors. The same was allowed by NCLT vide Order dated 05.10.2020, granting only INR 50 Lakhs to the Appellant against its admitted claim of INR 06.29 Crores. Aggrieved, the Appellant put forth its objections before the RP to the Resolution Plan and claimed payment of the entire amount of INR 06.29 Crores from the Corporate Debtor,

leaving open the legal remedy to recover the full dues, in case the same was not accepted.

7. Being at loggerhead with the RP with respect to the payment of admitted claim, the Appellant moved an application before the NCLT challenging the Order dated 05.10.2020, which approved the Resolution Plan. This was dismissed vide Order dated 27.11.2020, observing that the said tribunal did not have the jurisdiction to accept the prayer made in the application, which would amount to setting aside of the Resolution Plan, and the Appellant had the remedy of filing an appeal before the NCLAT.

8. Thereafter, the Appellant moved appeals under Section 61 of IBC 2016 before the NCLAT, challenging both the orders, as referred to above. These appeals were also dismissed vide the impugned Judgment dated 14.02.2022.

9. The grievance put forth by the Appellant is with regard to the Appellant not being informed about the auction proceedings which were initiated at behest of the RP, thus, depriving it of its participation in the said proceedings. Once the total claim had been admitted by the RP, which was clearly indicated in the Resolution Plan, the said amount should have been disbursed to the Appellant prior to the claim of the other claimants, including the sole Financial Creditor.

10. Another aspect which has been pressed into service is with regard to Clause 10.9 of the Resolution Plan, as regards the exemptions from the NSEZ, asserted to be in direct contravention and contradiction to their established rules and principles of the functioning of the NSEZ. The Appellant, which works under the guidance of the Ministry of Commerce and Industry, Government of India, could not have been commanded relating to its functions by the RP, especially with regard to the charges or penalties relatable to the change in any business model for transfer of units by the original allottee. The attempt to by-pass the payment of statutory fee would be an unjust enrichment to the Resolution Applicant, thus, contradicting Section 34(2)(d) of the Special Economic Zone Act, 2005 (hereinafter referred to as "SEZ Act, 2005").

11. The Appellant even challenged the fair and liquidation valuation of the Corporate Debtor being conducted by the two valuers. It was so challenged on the ground that no physical inspection of the property

in question was carried out by the said valuers. A reference in this regard was made to Regulation 35(1)(a) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (hereinafter referred to as "IBBI Regulations 2016"), which required physical verification of the Corporate Debtor.

12. At the cost of reiteration, the Appellant invariably pressed over and over again assignment of only INR 50 Lakhs as against the admitted claim of INR 6,29,18,121/- (Rupees Six Crores Twenty Nine Lakhs Eighteen Thousand and One Hundred Twenty One only).

13. The learned Senior Advocate appearing for the Appellant has vehemently put forth the submissions as recorded above and has also referred to the statutory provisions before this Court. On considering the same, going through the impugned judgment dated 14.02.2022 passed by the NCLAT and the records, we are not persuaded to take a different view.

14. As regard the fair value and liquidation value of Corporate Debtor, as derived by the valuers is concerned, this Court in ***Duncans Industries Ltd. v. State of U.P. and Others***[1] held that the question of valuation is basically a question of facts, which does not call for any interference if it is based on relevant material on record. As stated above, the average of the two closest estimates given by the valuers were taken into consideration as fair value and liquidation value respectively, which were found to be just and reasonable. This would be, keeping in view Section 35C of IBC 2016, where the powers and duties of the liquidator have been laid down. Since due process appears to have been followed no fault is found requiring interference.

15. Sections 30 and 31 of IBC 2016, which deal with the submission of the Resolution Plan has rightly been evaluated and analysed NCLAT as per the ratio laid down by this Court in ***Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others***,[2] ***Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited and Others***,[3] and ***K. Sashidhar v. Indian Overseas Bank and Others***,[4] reference

1 (2000) 1 SCC 633

2 [2020] 2 SCR 1157 : (2020) 11 SCC 467

3 [2021] 13 SCR 737 : (2021) 9 SCC 657

4 [2019] 3 SCR 845 : (2019) 12 SCC 150

thereof has been made by the NCLAT in extenso. Conclusion as culled out and elucidated is correct that all the dues, including statutory dues owned by the Central Government, State Government and local authority, which is not the part of the Resolution Plan shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority had approved the Resolution Plan could be pressed into service or continues. These observations took care of the assertions of the Appellant with regard to the statutory dues and the claims as have been made and put forth relatable to the areas of lease.

16. Beside this, as regards the other claims pertaining to the transfer fees, etc. were not to be interfered with by courts or tribunals as the same stood related to the commercial wisdom of the Committee of Creditors for they being the best persons to determine their interests, and any such interference is non-justiciable except as provided by Section 30(2) of IBC 2016. We do not find violation of the statute or the procedure as also the norms fixed as per the decisions referred to above of this Court, the Resolution Plan as approved by the Committee of Creditors, and the same having been accepted deserves and has rightly been left untouched.

    Fundamentally, the financial decisions as have been taken by Committee of Creditors, especially with regard to viability or otherwise, while evaluating the plan would thus prevail.

17. As far as the submission of the Learned Senior Counsel that exemptions from NSEZ payments, including any type of fees or penalty for renewal of sub-lease and/or for transfer charges due with regard to the change of directorship or shareholding in favour of the Resolution Applicant has to be dealt with as per Clause 10.9 of the Resolution Plan cannot be accepted in the light of Section 238 of IBC 2016, which provides for the provisions of IBC 2016 to have an overriding effect over the other laws. If that be so, the obvious effect is that the same would prevail, leading to the provisions as contained in the SEZ Act 2005 giving way to IBC 2016.

18. It has come on record and stands admitted that the Resolution Plan had already been implemented and the dues as found payable under the Resolution Plan have been disbursed to the concerned parties. As regards the Appellant is concerned, the amount was disbursed vide Demand Draft dated 22.10.2020 which has been received and

accepted by the Appellant. Leading to the dismissal of the appeal vide impugned Judgment dated 14.02.2022.

19. In the light of above and having perused the record while bearing in mind the extensive observations made by 3-Judge Bench of this Court in ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Others***,[5] and its reiteration by numerous subsequent decisions of this Court such as the ***Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited and Another***[6] and in the latest decision in ***DBS Bank Limited Singapore v. Ruchi Soya Industries Limited and Another***,[7] we find ourselves not in a position to accept the claim of the Appellant as sought to be made and put forth in these appeals.

20. The Orders dated 05.10.2020 and 27.11.2020, as have been passed by the NCLT and approved by the NCLAT vide its impugned Judgment dated 14.02.2022, do not call for any interference in the present Appeals. The appeals being devoid of merit, stand dismissed.

21. There shall be no order as to costs.

22. Pending application(s), if any, also stand disposed of.

*Result of the case:* Appeals dismissed.

†*Headnotes prepared by:* Ankit Gyan

5 [2019] 16 SCR 275 : (2020) 8 SCC 531

6 [2021] 14 SCR 321 : (2022) 2 SCC 401

7 [2024] 1 SCR 114 : (2024) 3 SCC 752

[2024] 11 S.C.R. 498 : 2024 INSC 838

# Karakkattu Muhammed Basheer
# v.
# The State of Kerala

(Criminal Appeal No. 291 of 2023)

05 November 2024

**[Abhay S. Oka and Augustine George Masih,* JJ.]**

## Issue for Consideration

Issue as regards sustainability of the order of conviction and sentence of the accused, when the case not proved beyond reasonable doubt against the accused.

## Headnotes†

**Penal Code, 1860 – ss. 302, 201 – Murder – Circumstantial evidence – Main accused convicted and sentenced u/ss. 302, 201 for murder of one lady during night, at the house of other accused – Other accused convicted and sentenced u/s. 201 – Prosecution case that motive for murder was illicit relation between the two accused – Order of conviction and sentence upheld by the High Court – Sustainability:**

**Held:** When the evidence, as presented by the prosecution is tested upon the anvil of the principles and parameters laid down, the prosecution miserably failed to indicate the involvement of the appellant in the commission of the offence, for which he was charged – Chain of circumstances as regards statement of witnesses, presence of victim and the accused, recovery of bag and articles; discovery of blood stains, blood stained clothes and coconut scrapper used for murder, which were being sought to be projected by the prosecution to be complete has glaring holes and significant gaps, which leads to the conclusion that the prosecution failed in its endeavour of bringing home the guilt against the appellant – Thus, the case having not been proved beyond reasonable doubt against the appellant, the impugned judgments cannot sustained and are set aside. [Paras 20-28]

## Case Law Cited

*Ramreddy Rajesh Khanna Reddy and Another v. State of A.P.* [2006] 3 SCR 348 : (2006) 10 SCC 172 – **referred to.**

* Author

**List of Acts**

Penal Code, 1860.

**List of Keywords**

Murder; Circumstantial evidence; Motive; Illicit relation; Chain of circumstances; Statement of witnesses; Presence of victim and accused; Recovery of bag and articles; Discovery of blood stained clothes; Beyond reasonable doubt.

**Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 291 of 2023

From the Judgment and Order dated 18.10.1996 of the High Court of Kerala at Ernakulam in CRLA No. 679 of 1993

**Appearances for Parties**

Thomas P. Joseph, Sr. Adv., Dr. Linto K.B., Tom Joseph, Dinny Thomas, Advs. for the Appellant.

Harshad V. Hameed, Dileep Poolakkot, Mrs. Ashly Harshad, Farhad Tehmu Marolia, Amar Nath Singh, Shivam Sai, Advs. for the Respondent.

**Judgment / Order of the Supreme Court**

**Judgment**

**Augustine George Masih, J.**

1. This Appeal is preferred against the judgment and order dated 18.10.1996 passed by the High Court of Kerala at Ernakulam (hereinafter referred to as "the impugned judgment"), upholding the order of conviction and sentence passed by the Sessions Court, of the Appellant/Accused No. 01 under Sections 302 and 201 of IPC for the murder of one Gouri during the night of 16th-17th August 1989, at the house of Accused No. 02. The sentence included life imprisonment under Section 302 and seven years of rigorous imprisonment under Section 201 of IPC. The Accused No. 02 was found guilty under Section 201 of IPC receiving a sentence of four year rigorous imprisonment. Against the order of conviction and sentence, two separate appeals were preferred by the Appellant-

Accused No. 01 and Accused No. 02. These appeals came to be dismissed by the impugned judgment, upholding the conviction and sentence of both the accused/appellants therein. However, the present Appeal is preferred by Accused No. 01 only.

2. The story as made out by the prosecution is that the body of a woman was discovered in a paddy field by PW1-V.T. Manikandan, while he was going for work in the morning of 17.08.1989. He informed the police, and based on his statement, PW38-C.P. Vijayamani, a Sub Inspector, registered a case of unnatural death at the Parappanangadi Police Station. This witness visited the scene, took photographs, and collected fingerprints. The postmortem examination was conducted by PW33-Dr. M. Kunjukrishnan, on 18.08.1989, at 10:30 AM. He reported finding six antemortem injuries on the left side of the head fractured into multiple fragments, as well as abraded contusions on the right wrist and left knee. Injuries on the head were determined to be sufficient to cause death under ordinary circumstances and could have been inflicted with a weapon such as a coconut scraper (MO-20). According to the medical expert, the time of occurrence of death was approximately 30 to 35 hours before the postmortem examination. PW2-V.T Lakshmi and PW3-V.T Ambika, mother and sister of deceased with some local people identified the dead body of Gouri. The case was investigated by PW39- K.V Satheesan, who submitted the final report against the Appellant and Accused No. 02.

3. To prove the guilt of the accused, prosecution proceeded to establish motive for the murder by asserting that there was illicit relationship between the Appellant and Accused No. 02. This relationship had developed for the reason that the husband of Accused No. 02 was living abroad, leaving her to reside alone with her two children, which lead to the two accused coming close. The deceased, Gouri, was related to Accused No. 02 and since this accused was living alone, the deceased would frequently visit her house and even stayed there overnight.

4. When the relationship between the Appellant and Accused No. 02 was discovered and local opposition increased, the Appellant at the suggestion of Accused No. 02, entered into a registered marriage with Gouri on 17.05.1989, in an attempt to cover up his relationship with Accused No. 02. It is also brought on record, that the said marriage was dissolved by way of another deed dated 31.07.1989. It was

alleged that there were letters which were exchanged between the two accused indicating their intimacy and love for one another, *albeit* under assumed names. However, there was no evidence which was brought on record especially the factum that these letters were indeed written by these two accused in the form of some handwriting expert etc.

5. The narrative put forward by the prosecution is that on the date of incident both the accused and deceased Gouri were at the house of Accused No. 02. An altercation occurred between the Appellant and the deceased with reference to Appellant's relationship with Accused No. 02. It is alleged that during this confrontation, Appellant grabbed a coconut scrapper from the kitchen and hit Gouri on the head multiple times, leading to her death. The prosecution has further projected that the Appellant dragged the body out of the room and thereafter carried it outside the house to the paddy field, which is about 1KM away, where it was left. He then came back to the house of Accused No. 2 and left for his destination the following morning.

6. The Learned Senior Counsel for the Appellant contends that the case is solely based upon circumstantial evidence, with no eyewitness to the occurrence of the incident. He asserts that the courts below have misread the evidence and misguided themselves in coming to the conclusion that the prosecution established a convincing chain of circumstances based on material evidence and witnesses, leading to the Appellant's conviction and sentence. He argues that there exist glaring gaps in the evidence produced by the prosecution, creating a doubt regarding the incident much less the Appellant's involvement in the alleged offense.

7. He further submitted that for the prosecution to establish a case based on circumstantial evidence, must complete the chain of events that leads to an inescapable conclusion of accused's guilt, with no room for alternative explanation(s). He points out several shortcomings in the evidence presented by the prosecution with regard to the sequential occurrence of the incident and circumstances surrounding the death of Gouri. He has highlighted the said aspects with reference to the evidence including deposition and cross examination of the witnesses. Consequently, he asserts that the prosecution has failed to establish the guilt of the Appellant beyond reasonable doubt. Prayer has thus been made for allowing the present Appeal and acquittal of the Appellant.

8. On the other hand, the Learned Counsel for the State has made an effort to explain out the circumstances supporting the prosecution's case based on evidence led by the prosecution. He thus supported the findings of the courts below as also the conviction and sentence awarded to the Appellant. He prays for dismissal of the present Appeal.

9. Having heard the Learned Counsel for the parties and with their assistance having gone through the evidence carefully as presented by the prosecution, it is apparent and has not been disputed that there is no eyewitness of the incident in question, and therefore, the case of the prosecution is solely based upon circumstantial evidence. This casts an enhanced burden on the prosecution to demonstrate an unbroken chain of events that establishes the accused's guilt for the alleged offense. The prosecution is required to prove that there is continuity in the sequence of events leading to an ultimate conclusion of offense being committed by the accused and no one else.

10. Before proceeding further, it would be appropriate to mention the principles as have been enunciated and settled by this Court, which would determine the parameters within which the case of the prosecution, if based on circumstantial evidence, is to be tested with regard to the establishment of the offence stated to be committed by the Appellant.

This Court in the case of **Ramreddy Rajesh Khanna Reddy and Another v. State of A.P.**[1] while referring to the various earlier judgments which have been passed by this Court from time to time, summarized key principles which act as a guide for the courts to come to a conclusion with regard to the guilt of an accused in cases which are solely dependent on the circumstantial evidence. The same have been referred to as the *"panchsheel principles"* and are discussed in paragraph 26 to 28 of the said judgment, which read as follows:

> 26. It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence

1 [2006] 3 SCR 348 : (2006) 10 SCC 172

and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. (See Anil Kumar Singh v. State of Bihar [(2003) 9 SCC 67 : 2004 SCC (Cri) 1167] and Reddy Sampath Kumar v. State of A.P. [(2005) 7 SCC 603 : 2005 SCC (Cri) 1710] )

27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration.

28. In State of U.P. v. Satish [(2005) 3 SCC 114 : 2005 SCC (Cri) 642] this Court observed: (SCC p. 123, para 22)

> "22. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is

positive evidence that the deceased and the accused were seen together by witnesses PWs 3 and 5, in addition to the evidence of PW 2."

(See also Bodhraj v. State of J&K [(2002) 8 SCC 45: 2003 SCC (Cri) 201].)

11. Thereafter, the above principles have been reiterated in the subsequent judgments of this Court and hold the field till date.

Thus, these basic established principles can be summarized in the following terms that the chain of events needs to be so established that the court has no option but to come to one and only one conclusion i.e. the guilt of the accused person. If an iota of doubt creeps in at any stage in the sequence of events, the benefit thereof should flow to the accused. Mere suspicion alone, irrespective of the fact that it is very strong, cannot be a substitute for a proof. The chain of circumstances must be so complete that they lead to only one conclusion that is the guilt of the accused. Even in the case of a conviction where in an appeal the chain of evidence is found to be not complete or the courts could reach to any another hypothesis other than the guilt of the accused, the accused person must be given the benefit of doubt which obviously would lead to his acquittal. Meaning thereby, when there is a missing link, a finding of guilt cannot be recorded. In other words, the onus on the prosecution is to produce such evidence which conclusively establishes the truth and the only truth with regard to guilt of an accused for the charges framed against him or her, and such evidence should establish a chain of events so complete as to not leave any reasonable ground for the conclusion consistent with the innocence of accused.

12. It needs a mention here that although both the accused were put to trial to face charges under Section 302, 201 read with Section 34 of IPC, but they were acquitted of the charge of Section 34 of IPC, as it has been not established rather finding was returned that there was no common intention prior to the commission of the offence. Accused No. 02 was held guilty under Section 201 of IPC (causing disappearance of evidence) only, and was thus, sentenced to four years of imprisonment.

13. At this point, it is apposite to discuss the relevant testimonies and evidence presented by the prosecution aimed at establishing the guilt of the Appellant and Accused No. 02.

14. The prosecution presented the testimony of PW2-V.T Lakshmi and PW3-V.T Ambika (mother and sister of deceased respectively) who in their testimonies stated that the deceased Gouri told them that she was going to the house of Accused No. 02 and they saw the deceased going till the turn towards the house of Accused No. 02 at around 7:30 PM on the date of incident i.e., 16.08.1989. They also acknowledged the fact that Accused No. 02 is related to them and they regularly visited each other's house and had cordial relations.

15. The factum that the deceased had gone to the house of Accused No. 02 at around 7:30 PM on the date of incident is not disputed as the two children of Accused No. 02 who are PW10-T.K. Ramya and PW11- T.K. Radhesh have also stated in their statement that deceased was present in their house in the evening of 16.08.1989. However, they have added that she had left the house at around 9:00 PM and did not return thereafter.

16. As regards the Appellant, the evidence which has been brought on record by the prosecution to establish his presence in the house of Accused No. 02 is the statement of PW14-K.V. Raman, who had stated that he had seen the Appellant entering the house of Accused No. 02 at around 11:30 PM on the date of incident.

    PW20-K. Majeed, a taxi driver has been produced by the prosecution, who had stated that he saw the Appellant at 5:30 AM on 17.08.1989 at Parappanangadi bus stand, heading towards the railway station. He further stated that the Appellant was wearing a coffee brown shirt, white spotted lungi and a bath towel was tied around the head.

17. These are the two witnesses who have been produced to establish presence of the Appellant in the house of Accused No. 02 on the date of incident. PW-14 is stated to have seen the Appellant going to the house of Accused No. 02 at 11:30 PM in the night of incident and PW-20 has seen the Appellant leaving the town, the following morning. They are the two witnesses who can be said to be the star witnesses as far as the presence of the Appellant in the house of Accused No. 02 is concerned at the night of incident.

18. Another witness who can be said to be crucial for the prosecution case is PW18-Sirajudheen from whose possession and presence, recovery of a bag allegedly belonging to the Appellant was made

on 27.08.1989. Blood-stained clothes, a blanket and a head towel belonging to the Appellant are said to have been recovered from this bag. The prosecution claims that these articles belong to the Appellant and the recovery was made on his behest in the presence of PW-18 on 27.08.1989. This witness has actually blown off the lid and falsified the case of prosecution by stating that a police constable visited his shop on 23.08.1989 and took away the bag in question from him. Subsequently, on 27.08.1989 police came in a police jeep and handed him the same bag which was taken from him earlier and opened it, showing articles as stated above, and got his signatures on the prepared Mahazar. It was at this moment he saw the Appellant sitting in the police jeep. This discrepancy casts a serious doubt on the prosecution story regarding recovery of bag and articles contained therein at the behest of the Appellant in the presence of PW18 and that too on 27.08.1989.

19. As regards the discovery of blood stains, cloth stained with blood and coconut scrapper (MO 20) from the house of Accused No. 02 in the presence of of the three witnesses i.e., PW-26 to 28 is concerned, none of them have categorically stated that the police has seized anything in their presence, rather to the contrary they have stated that they were not taken to the spot and were only shown the cotton swabs stained with blood and other clothes which were said to have been recovered from the house of Accused No. 02. PW27-M. Muhammed in his statement stated that police showed him the coconut scrapper and cotton swab and he was told that same were taken from the rooms of Accused No. 02's house. A similar statement was made by PW28, V. Dasan, who stated that he did not know where the police obtained these material objects from.

20. When the evidence, as has been presented by the prosecution is tested on the standard of proof and parameters discussed above, we are unable to accept the conclusions as reached by the courts below while convicting and sentencing the Appellant.

21. As regards Accused No. 01-the Appellant, the first and foremost evidence which is required to be established is with regard to his presence in the house of Accused No. 02 at the time when deceased Gouri was also there. It is then and only then that it would have been possible for the Appellant to have committed murder of Gouri. Apropos, Gouri's presence in the house of Accused No. 02, there

is ample evidence to that effect, including the statements of PW10 and PW11, both children of Accused No. 02, who were very much present in the house. Their evidence, which has gone unchallenged clearly establishes the factum that deceased Gouri had left the house at around 9:00 PM on 16.08.1989. Nothing has come on record which would indicate to the contrary, that is with regard to she having returned or continued to stay back at the house of Accused No. 02.

22. The evidence which has been brought on record by the prosecution in the form of statement of PW14, who has claimed to have seen the Appellant entering the house of Accused No. 02 at 11:30 PM on 16.08.1989, belies the aspect of the Appellant having committed the murder of deceased, as prior thereto, the deceased had already left the house in question. Another aspect which needs to be pointed out is that this witness has not come face to face with the Appellant rather he stated that he had only seen the back of the Appellant. This witness acknowledges that he assumed that the person he had seen on the date of incident entering the house of Accused No. 02 was the Appellant as the Appellant typically has been doing so at odd hours. This creates doubt in the story of prosecution, as the presence of deceased and the Appellant in the house of Accused No. 02, at the same time on the day of the incident which was essential for commission of the murder of deceased by the Appellant in the said house, is not conclusively proved by the evidence led by the prosecution.

23. As regards the recoveries which have been affected especially with regard to the weapon of offence from the house of Accused No. 02, suffice to say that those being made not in the presence of independent witnesses, as has been so deposed by PW26 to PW28 and discussed above, the same cannot be relied upon.

24. Similar is the position with regard to the recovery of the bag from PW18, which contained the Appellant's blood-stained clothes, as well as a blanket with blood stains and other articles. PW18, the witness of recovery, has expressed a doubt with regard to the contents of the bag. He has testified that the bag was handed over to him by the Appellant, 2-3 days prior to 23.08.1989, and on this very date a police constable came and had taken the bag, and he was not shown the contents of the said bag. Thus, as per this witness the bag in question was handed over by him to the police on 23.08.1989

whereas, as per the recovery memo, this bag was recovered and seized on 27.08.1989, when the police party came along with the Appellant in a police jeep and opened it showing the articles contained therein and the witness was made to sign the Mahazar. The said recovery which is alleged to have been made at the instance of Appellant, thus cannot be accepted as the same is not borne out from the evidence of the witness. Rather the possibility of the articles having been planted in the bag cannot be ruled out.

25. Additionally, relying on the testimony of PW20, the prosecution suggested that after killing Gouri, the Appellant left the town in between 5:00-5:30 AM on 17.08.1989. As per the case of the prosecution, the Appellant having disposed of the body in the paddy field, returned to the house of Accused No. 02 and thereafter left again for his destination. A perusal of the testimony of PW20, does not indicate as to from where the Appellant was actually coming from when this witness saw him. Additionally, this witness has stated that he had seen the Appellant from a distance, that too very early in the morning. Assuming this testimony to be true, it is not established that the Appellant was coming from the house of Accused No. 02.

26. Another aspect that further casts a doubt with regard to the identity of Appellant is that the clothes which are alleged to have been worn by the Appellant while going to the house of Accused No. 02 as per PW14, and clothes he was wearing while returning as per PW20, were not produced in the court to be identified by these witnesses. It is not the case of the prosecution that these clothes were put to these two witnesses for identification thereof, which are alleged to have been worn by the Appellant at the time of commission of the offence.

27. As per the case of prosecution, the time of death of the deceased Gouri has got to be after 11:30 PM, as it has been held by the courts that it is the Appellant alone who had committed her murder. The body obviously would have been disposed of prior to 5 AM on 17.08.1989. It has come on record that the distance between the house of Accused No. 2 and the paddy field where the body was found is about 1 KM; in between there is a sawmill which runs 24 hours. If the case of the prosecution is to be accepted, according to which the Appellant had carried the dead body of the deceased Gouri on his shoulder from the house of Accused No. 02 to the paddy fields,

someone would have most likely seen him on the way, especially when there was a running mill in between from where the Appellant is said to have crossed. This further raises a doubt with regard to the credibility of the case as has been projected by the prosecution.

28. In the light of the above, when tested upon the anvil of the principles and parameters laid down by this Court, as referenced earlier, the prosecution has miserably failed to indicate the involvement of the Appellant in the commission of the offence, what to say of establish, for which he was charged. The chain of circumstances which are being sought to be projected by the prosecution to be complete has glaring holes and significant gaps, which leads this Court to come to the conclusion that the prosecution has failed in its endeavour of bringing home the guilt against the Appellant. The case having not been proved what to say of beyond reasonable doubt against the Appellant, the impugned judgments cannot sustain and are set aside.

29. The Appellant is acquitted of all the charges. In case the Appellant has been released on bail, the bail bonds and the sureties, if any, are hereby discharged. The Appellant be set free forthwith.

30. The Appeal is allowed in the above terms.

*Result of the case:* Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain

[2024] 11 S.C.R. 510 : 2024 INSC 843

# Directorate of Enforcement
**v.**
# Bibhu Prasad Acharya, etc.

(Criminal Appeal Nos. 4314-4316 of 2024)

06 November 2024

**[Abhay S. Oka* and Augustine George Masih, JJ.]**

## Issue for Consideration

The appellant filed complaints against the respondents and others u/s.44(1)(b) of the Prevention of Money Laundering Act, 2002. The Special Court took cognizance of the complaints and issued summons to the respondents and other accused persons. However, the High Court held that it was necessary to obtain prior sanction under sub-section (1) of s.197 of the Code of Criminal Procedure, 1973 and quashed the orders of taking cognizance passed by the Special Court on the complaints only as against the said respondents.

## Headnotes†

**Prevention of Money Laundering Act, 2002 – ss.3, 4, 44(1)(b), 65 and 71 – Code of Criminal Procedure, 1973 – s.197 – Respondents contended before the High Court that it was necessary to obtain prior sanction under sub-section (1) of s.197 of the CrP.C. before taking cognizance of the complaints – The High Court upheld the respondents' contentions and quashed the orders of taking cognizance passed by the Special Court on the complaints only as against the said respondents – Propriety:**

**Held:** There are two conditions for applicability of s.197(1) – The first condition is that the accused must be a public servant removable from his office by or with the government's sanction – The second condition is that the offence alleged to have been committed by the public servant while acting or purporting to act in the discharge of his duty – The first condition is satisfied in the case of both the respondents as they are civil servants – In the case of both respondents, the acts alleged against them are related to the discharge of the duties entrusted to them – It is not the allegation in the complaints that the two respondents were not

* Author

empowered to do the acts they have done – There is a connection between their duties and the acts complained of – The second condition for the applicability of s.197(1) also stands satisfied, and therefore, in this case, s.197(1) of CrPC applies to the respondents, assuming that s.197(1) of CrPC applies to the proceedings under the PMLA – As far as the applicability of s.197 of CrPC to the PMLA is concerned, there are two relevant provisions in the form of s.65 and 71 of the PMLA – S.65 makes the provisions of the CrPC applicable to all proceedings under the PMLA, provided the same are not inconsistent with the provisions contained in the PMLA – The words 'All other proceedings' in s.65 include a complaint u/s.44 (1)(b) of the PMLA – There is no provision therein which is inconsistent with the provisions of s.197(1) of CrPC – Therefore, the provisions of s.197(1) of CrPC are applicable to a complaint u/s.44(1)(b) of the PMLA – When a particular provision of CrPC applies to proceedings under the PMLA by virtue of s.65 of the PMLA, s.71 (1) cannot override the provision of CrPC which applies to the PMLA – In the instant case, the cognizance of the offence u/s.3, punishable u/s.4 of the PMLA, was taken against the respondents accused without obtaining previous sanction u/s.197(1) of CrPC – Therefore, the view taken by the High Court is correct. [Paras 11, 13, 15, 16, 17, 18, 19]

**Code of Criminal Procedure, 1973 – s.197 – Object of:**

**Held:** The object is to protect the public servants from prosecutions – It ensures that the public servants are not prosecuted for anything they do in the discharge of their duties – This provision is for the protection of honest and sincere officers – However, the protection is not unqualified – They can be prosecuted with a previous sanction from the appropriate government. [Para 6]

**Case Law Cited**

*Prakash Singh Badal and Another v. State of Punjab and Others* [2006] Supp. 10 SCR 197 **: (2007) 1 SCC 1;** *Centre for Public Interest Litigation v. Union of India* [2003] Supp. 3 SCR 746 **: (2005) 8 SCC 202 – relied on.**

*S.S. Dhanoa v. Municipal Corporation Delhi and Others* [1981] 3 SCR 864 **: (1981) 3 SCC 431;** *Mohd. Hadi Raja v. State of Bihar and Another* [1998] 3 SCR 22 **: (1998) 5 SCC 91;** *P.K. Pradhan v. State of Sikkim* [2001] 3 SCR 1119 **: (2001) 6 SCC 704 – referred to.**

**List of Acts**

Prevention of Money Laundering Act, 2002; Code of Criminal Procedure, 1973.

**List of Keywords**

44(1)(b) of the Prevention of Money Laundering Act, 2002; Section 65 of Prevention of Money Laundering Act, 2002; Section 71 of Prevention of Money Laundering Act, 2002; Section 197 of the Code of Criminal Procedure, 1973; Prior sanction; Protection of public servants; Discharge of duties; Protection of honest and sincere officers.

**Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 4314-4316 of 2024

From the Judgment and Order dated 21.01.2019 of High Court for the State of Telangana at Hyderabad in CRLP No. 3988 of 2016, CRLP No. 11942 of 2018 and WP No. 2253 of 2018

**Appearances for Parties**

Suryaprakash V Raju, A.S.G., Mrs. Sonia Mathur, Sr. Adv., Arvind Kumar Sharma, Kanu Agarwal, Annam Venkatesh, Zoheb Hussain, Mukesh Kumar Maroria, Advs. for the appellant.

Mrs. Kiran Suri, Sr. Adv., Abhaya Nath Das, Sunil Kumar Das, Ms. Vidushi Garg, B.C. Bhatt, Satish Kumar, Advs for the respondents

**Judgment / Order of the Supreme Court**

**Judgment**

**Abhay S. Oka, J.**

**FACTUAL ASPECT**

**1.** The appellant has filed complaints against the respondents and others under Section 44(1)(b) of the Prevention of Money Laundering Act, 2002 (for short, 'the PMLA'). The complaint is for an offence under Section 3 of the PMLA, which is punishable under Section 4. Both private respondents are accused in the complaints. They are Bibhu Prasad Acharya (described hereafter as the first respondent) and Adityanath Das (described hereafter as the second respondent).

The Special Court took cognizance of the complaints and issued summons to the respondents and other accused persons. Both of them filed writ petitions before the High Court challenging the cognizance taken by the Trial Court and inter alia prayed for quashing the complaints on the ground that both of them were public servants and, therefore, it was necessary to obtain prior sanction under sub-section (1) of Section 197 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC'). By the impugned judgment, the High Court upheld the respondents' contentions and quashed the orders of taking cognizance passed by the Special Court on the complaints only as against the said respondents.

**SUBMISSIONS**

**2.** Shri S.V. Raju, learned Additional Solicitor General for India, appeared for the appellant-Enforcement Directorate. He submitted that in view of Section 71 of the PMLA, the provisions thereof have an overriding effect over the provisions of the other statutes, including the CrPC. He submitted that considering the object of the PMLA, the requirement of obtaining a sanction under Section 197(1) of CrPC will be inconsistent with the provisions of the PMLA.

**3.** He pointed out from the assertions made in the complaints that at the relevant time, the first respondent was the Vice Chairman and Managing Director of Andhra Pradesh Industrial Infrastructure Corporation Ltd. (for short, 'the Corporation'). His submission is that he was not a public servant within the meaning of Section 197(1) of CrPC, as it cannot be said that while holding the said position, he was not removable from the office save by or with the sanction of the Government. He relied upon the decisions of this Court in the case of ***S.S. Dhanoa v. Municipal Corporation Delhi and Others***[1] and ***Mohd. Hadi Raja v. State of Bihar and Another***.[2] He submitted that the first respondent was not employed in connection with the affairs of the State Government at the time of the commission of the offence. He submitted that officers of such Corporations are not public servants within the meaning of Section 197(1). He also relied upon a decision of this Court in the case of ***Prakash Singh Badal***

1 [1981] 3 SCR 864 : (1981) 3 SCC 431

2 [1998] 3 SCR 22 : (1998) 5 SCC 91

*and Another v. State of Punjab and others*.[3] He submitted that the issue of the requirement of sanction will have to be decided at the time of the trial. He submitted that the respondents' act of money laundering cannot be considered to have been done in the discharge of their official duties.

**4.** Mrs Kiran Suri, learned senior counsel appearing for the respondents accused, invited our attention to the Memorandum and Articles of the Association (for short, "the Memorandum") of the said Corporation and, in particular, Clauses 70 and 71 (b) thereof and submitted that power to appoint a Director of the Corporation and power to remove him vested in the State Government. Therefore, the first respondent continued to be a public servant as contemplated by Section 197(1) of CrPC. She submitted that the plea of absence of sanction can be raised at any stage of the proceedings, and it is not necessary to wait till the final hearing of the complaint.

## CONSIDERATION OF SUBMISSIONS

**5.** Section 197 (1) of CrPC (which corresponds to Section 218 of Bhartiya Nagrik Suraksha Sanhita, 2023) reads thus:

> **"197. Prosecution of Judges and public servants.—(1)** When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction —
>
> (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;
>
> (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

3 [2006] Supp. 10 SCR 197 : (2007) 1 SCC 1

> [Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]
>
> [Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376 [section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB] or section 509 of the Indian Penal Code (45 of 1860).]

**6.** The object of Section 197(1) must be considered here. The object is to protect the public servants from prosecutions. It ensures that the public servants are not prosecuted for anything they do in the discharge of their duties. This provision is for the protection of honest and sincere officers. However, the protection is not unqualified. They can be prosecuted with a previous sanction from the appropriate government.

**7.** The expression "to have been committed by him while acting or purporting to act in the discharge of his official duty" has been judicially interpreted. A bench of three Hon'ble Judges of this Court in the case of ***Centre for Public Interest Litigation v. Union of India***,[4] in paragraph no 9, observed thus:

> "9…….. **This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the**

4 [2003] Supp. 3 SCR 746 : (2005) 8 SCC 202

**performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection.** The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case."

*(emphasis added)*

**8.** In the decision of this Court in the case of ***Prakash Singh Badal and Another***,[3] in paragraph 38, this Court held thus:

"38. **The question relating to the need of sanction under Section 197 of the Code is not necessarily to**

> **be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding.** The question whether sanction is necessary or not may have to be determined from stage to stage."
>
> *(emphasis added)*

In the present case, after completing the investigation, the appellant has filed exhaustive complaints under Section 44(1)(b) of the PMLA. Cognizance has been taken based on the complaints. Therefore, the issue of the absence of sanction will arise at this stage.

**9.** The second respondent was at the relevant time holding the post of Principal Secretary, I&CAD Department of the Government of Andhra Pradesh. It is not disputed that even the first respondent was a civil servant but was appointed on deputation as the Corporation's Vice Chairman and Managing Director during the relevant period. It is undisputed that as far as the second respondent is concerned, he was removable from his office by or with the sanction of the Government.

**10.** As far as the first respondent is concerned, we find from clause 71(a) of the Memorandum that the power to appoint Directors of the Corporation by nomination is vested in the Government of the erstwhile State of Andhra Pradesh. Under Clause 81 of the Memorandum, the State Government was empowered to appoint any of the Corporation's Directors to be the Corporation's Managing Director. Thus, the appointment of the first respondent as a Director and subsequently as the Managing Director has been made by the State Government. Sub-clause (b) of Clause 71 of the Memorandum provides that the Government shall have the power to remove any Director, including the Chairman, Vice Chairman and Managing Director. Therefore, at the relevant time, the State Government had the power to remove the first respondent from the post of Vice Chairman and Managing Director of the Corporation.

**11.** There are two conditions for applicability of Section 197(1). The first condition is that the accused must be a public servant removable from his office by or with the government's sanction. The second condition is that the offence alleged to have been committed by the public servant while acting or purporting to act in the discharge of his duty.

**12.** We have perused the decisions relied upon by learned ASG. In the case of ***Mohd. Hadi Raja*,**[2] this Court took the view that the protection of Section 197 of CrPC will not be available to the officer of the Government Companies or Public Sector Undertakings. The first respondent is a civil servant. As such, the State Government appointed him as the Corporation's Vice Chairman and Managing Director on deputation. Therefore, the decision in the abovementioned case will not apply to the first respondent.

**13.** The first condition is satisfied in the case of both the respondents as they are civil servants. The allegation in the complaint against the first respondent is that he, in conspiracy and connivance with Shri Y.S. Jagan Mohan Reddy (the then Chief Minister of the state), another accused, allotted 250 acres of land for the SEZ project to M/s. Indu Tech Zone Private Ltd. by violating the existing norms, regulations and procedures. Further allegation against the first respondent is that he was indirectly involved in the offence of money laundering by knowingly assisting M/s. Indu group of companies in the creation of vast proceeds of crime. The allegation against the second respondent, who was at the relevant time Principal Secretary, I & CAD Department of the State Government, is that in conspiracy with Shri Y.S.Jagan Mohan Reddy, he extended favour to India Cement Limited by allotting an additional 10 lakh litres of water from River Kagna without referring the matter to Interstate Water Resources Authority and by violating the existing norms, regulations and procedures.

**14.** A Bench of three Hon'ble Judges of this Court in the case of ***P.K. Pradhan v. State of Sikkim*,**[5] in paragraphs 5 and 15 held thus:

> **"5.** The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the

5 [2001] 3 SCR 1119 : (2001) 6 SCC 704

court itself. It is a prohibition imposed by the statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code: "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". **The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty**. No question of sanction can arise under Section 197, unless the act complained of is an offence; **the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of the situation"**

**"15.** Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped.

> **It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial."**
>
> *(emphasis added)*

Thus, there is no embargo on considering the plea of absence of sanction, after cognizance is taken by the Special Court of the offences punishable under Section 4 of the PMLA. In this case, it is not necessary to postpone the consideration of the issue.

**15.** We have carefully perused the allegations against the respondents in the complaint. The allegation against the second respondent is of allocating an additional 10 lakh litres of water to India Cement Ltd. Taking the averments made in the complaint against him as it is, the act alleged against him has been committed by him while purporting to act in the discharge of his official duties. The allegation against the first respondent is of the allotment of land measuring 250 acres to M/s. Indu Tech Zone Private Ltd. Taking the averments made in the complaint as correct, the act alleged against him has been done by him purporting to act in the discharge of his official duties. In the case of both respondents, the acts alleged against them are related to the discharge of the duties entrusted to them. It is not even the allegation in the complaints that the two respondents were not empowered to do the acts they have done. There is a connection between their duties and the acts complained of. The second condition for the applicability of Section 197(1) also stands

satisfied, and therefore, in this case, Section 197(1) of CrPC applies to the respondents, assuming that Section 197(1) of CrPC applies to the proceedings under the PMLA.

**16.** As far as the applicability of Section 197 of CrPC to the PMLA is concerned, there are two relevant provisions in the form of Section 65 and 71 of the PMLA which read thus:

> **"65. Code of Criminal Procedure, 1973 to apply.--** The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act."
>
> **"71. Act to have overriding effect.--** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

**17.** Section 65 makes the provisions of the CrPC applicable to all proceedings under the PMLA, provided the same are not inconsistent with the provisions contained in the PMLA. The words 'All other proceedings' include a complaint under Section 44 (1)(b) of the PMLA. We have carefully perused the provisions of the PMLA. We do not find that there is any provision therein which is inconsistent with the provisions of Section 197(1) of CrPC. Considering the object of Section 197(1) of the CrPC, its applicability cannot be excluded unless there is any provision in the PMLA which is inconsistent with Section 197(1). No such provision has been pointed out to us. Therefore, we hold that the provisions of Section 197(1) of CrPC are applicable to a complaint under Section 44(1)(b) of the PMLA.

**18.** Section 71 gives an overriding effect to the provisions of the PMLA notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 65 is a prior section which specifically makes the provisions of the CrPC applicable to PMLA, subject to the condition that only those provisions of the CrPC will apply which are not inconsistent with the provisions of the PMLA. Therefore, when a particular provision of CrPC applies to proceedings under the PMLA by virtue of Section 65 of the PMLA, Section 71(1) cannot override the provision of CrPC which applies to the PMLA.

Once we hold that in view of Section 65 of the PMLA, Section 197(1) will apply to the provisions of the PMLA, Section 71 cannot be invoked to say that the provision of Section 197(1) of CrPC will not apply to the PMLA. A provision of Cr. P.C., made applicable to the PMLA by Section 65, will not be overridden by Section 71. Those provisions of CrPC which apply to the PMLA by virtue of Section 65 will continue to apply to the PMLA, notwithstanding Section 71. If Section 71 is held applicable to such provisions of the CrPC, which apply to the PMLA by virtue of Section 65, such interpretation will render Section 65 otiose. No law can be interpreted in a manner which will render any of its provisions redundant.

**19.** In this case, the cognizance of the offence under Section 3, punishable under Section 4 of the PMLA, has been taken against the respondents accused without obtaining previous sanction under Section 197(1) of CrPC. Therefore, the view taken by the High Court is correct. We must clarify that the effect of the impugned judgment is that the orders of the Special Court taking cognizance only as against the accused B.P. Acharya and Adityanath Das stand set aside. The order of cognizance against the other accused will remain unaffected. However, it will be open for the appellant to move the Special Court to take cognizance of the offence against the two respondents if a sanction under Section 197(1) of CrPC is granted in future. This liberty will be subject to legal and factual objections available to the respondents. Hence, the appeals must fail and are dismissed subject to what is observed above.

*Result of the case:* Appeals dismissed.

†*Headnotes prepared by:* Ankit Gyan

[2024] 11 S.C.R. 523 : 2024 INSC 841

# Devendra Kumar & Ors.
# v.
# State of Chhattisgarh

(Criminal Appeal No. 328 of 2015)

06 November 2024

## [B.R. Gavai,* Prashant Kumar Mishra and K.V. Viswanathan, JJ.]

### Issue for Consideration

Whether the conviction would fall for the offence punishable u/s.302 IPC or under a lesser offence.

### Headnotes†

**Penal Code, 1860 – ss. 304 Part I, 302, 307 read with s.34 – Punishment for culpable homicide not amounting to murder – Previous enmity between the families of the appellants and the victim – Appellants assaulted the victim with weapons after making a threat that they would kill him and later the victim succumbed to his injuries – Courts below convicted the appellants u/s.302 and s.307 rw s.34 and sentenced accordingly – Interference with:**

**Held:** Evidence of the medical expert that the death of the deceased was homicidal death does not call for interference – In view of the credible testimony of the eyewitnesses, no reason to interfere with the finding of the courts below that it is on account of the injuries caused by the appellants that the deceased had died – There was previous enmity between the parties – From the evidence of Sarpanch of the village it is clear that there was a quarrel between the appellants and the deceased – Weapons used by the accused persons are axe and sticks, which are commonly used by the agriculturists – No material on record to show that there was any premeditation – Taking into consideration all these aspects, the possibility of offence being committed by the appellants without premeditation in a sudden fight in a heat of passion upon a sudden quarrel cannot be ruled out – From the nature of the injuries sustained by the deceased, it cannot be said that the appellants have taken undue advantage or acted in

* Author

a cruel or unusual manner – Thus, appellants entitled to benefit of doubt – Conviction of appellants u/s.302 altered to the one under Part I of s.304 – Appellants sentenced to the period already undergone. [Paras 18, 19, 20, 21, 23]

**List of Acts**

Penal Code, 1860.

**List of Keywords**

Previous enmity; Making threat of killing; Evidence; Medical expert; Homicidal death; Credible testimony; Eyewitnesses; Quarrel; Premeditation; Premeditation in a sudden fight in a heat of passion upon a sudden quarrel; Undue advantage; Acted in cruel or unusual manner; Benefit of doubt.

**Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 328 of 2015

From the Judgment and Order dated 04.10.2010 of the High Court of Chhattisgarh at Bilaspur in CRLA No. 15 of 2004

**Appearances for Parties**

Vikrant Narayan Vasudeva (A.C.), Adv. for the Appellants.

Ravi Kumar Sharma, D.A.G., Mrs. Prerna Dhall, Piyush Yadav, Ms. Akanksha Singh, Praphull Kumar, Prashant Singh, Advs. for the Respondent.

**Judgment / Order of the Supreme Court**

**Judgment**

**B.R. Gavai, J.**

**1.** This appeal challenges the judgment and order dated 4th October, 2010 passed by the Division Bench of the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No. 15 of 2004 whereby the High Court dismissed the Criminal Appeal preferred by the present appellants and upheld the order of conviction and sentence dated 17th October, 2003 passed by the Additional Sessions Judge (FTC), Kawardha (CG)[1] in S.T. No. 50 of 2003.

1 Hereinafter referred to as the 'trial court'.

**2.** The facts leading to the present appeal are as follows:-

**2.1** On 20th December 2002, at about 11 a.m., a complaint was lodged by one Dhannu Das (PW-2), the shopkeeper of a betel shop at Village Chhirha who had witnessed an incident near his shop wherein the appellants had assaulted the deceased, namely Bahal, with lathis, a rod and an axe after making a threat that they would kill him. On the receipt of the complaint, the Police Station at Kawardha registered a First Information Report[2] being Crime No. 262 of 2002 under Section 307 read with Section 34 of the Indian Penal Code, 1860[3] against the appellants.

**2.2** Pertinently, prior to the occurrence of the incident which ultimately led to this criminal appeal, a land dispute relating to certain agricultural land and crops therein was pending between the families of the present appellants and the deceased. In the pending *lis*, the Sub-Divisional Magistrate had passed an order in Criminal Case No. 216 of 2003 titled Bahalram v. Devendra on 17th December 2002, thereby closing the proceedings under Section 145 of the Code of Criminal Procedure, 1973 in view of the order passed by the High Court of Chhattisgarh at Bilaspur, directing the maintenance of status quo in respect of the agricultural fields which were in the possession of the present appellants.

**2.3** According to the prosecution story, at about 9 a.m. on 20th December 2002, Rajni Bai (PW-1) and her son Bahal, the deceased, reached Village Chhirha, having walked their way from Kawardha. Upon reaching Village Chhirha, the deceased stopped near the betel shop of Dhannu Das (PW-2). The deceased was showing the order passed by the Sub-Divisional Magistrate dated 17th December 2002 to Ghurwaram Patel (PW-4), the Sarpanch of Village Chhirha, when the present appellants arrived at the scene. Appellant No.1-Devendra and Appellant No. 2-Rohit were armed with lathis whereas Appellant No. 3-Banauram was carrying an axe and Appellant No.4-Kuleshwar was carrying a rod. After warning the deceased that they would kill him that day since he always quarreled in the

2 "FIR" for short

3 "IPC" for short

land matter and created litigation, the appellants engaged in a mar-peet with the deceased, resulting in several injuries being caused to the deceased. On seeing this, Rajni Bai (PW-1) intervened which led the appellants to fight with her as well whereupon she sustained several injuries as well. On the same day, at about 1:15 p.m., during the course of the treatment, the deceased succumbed to his injuries.

**2.4** Subsequently, the post-mortem was conducted wherein it was concluded that cause of death was coma caused by internal haemorrhage which was in turn caused by a fracture in the head leading to a brain injury.

**2.5** Upon the conclusion of the investigation, a chargesheet was filed before the Court of the Chief Judicial Magistrate, Kawardha. Since the case was exclusively triable by the Sessions Court, the same came to be committed to the trial court.

**2.6** Charges came to be filed by the trial court under Section 302 read with Section 34 of the IPC and in the alternate, Section 307 read with Section 34 of the IPC. The appellants pleaded not guilty and claimed to be tried.

**2.7** The prosecution examined 15 witnesses to bring home the guilt of the appellants. In their defence, the appellants denied the charges and stated that they had been falsely implicated owing to the agricultural land dispute.

**2.8** At the conclusion of the trial, the trial court found that the prosecution had proved the case against the appellants and accordingly, convicted them under Section 302 and Section 307 read with Section 34 of the IPC and sentenced them to undergo imprisonment for life.

**2.9** Being aggrieved thereby, the appellants preferred a Criminal Appeal before the High Court. The High Court vide the impugned judgment and order dismissed the Criminal Appeal and confirmed the order of conviction and sentence awarded by the trial court.

**3.** Being aggrieved thereby, the present appeal.

**4.** We have heard Mr. Vikrant Narayan Vasudeva, learned Amicus Curiae, and Mr. Ravi Kumar Sharma, learned Deputy Advocate General appearing on behalf of the respondent-State of Chhattisgarh.

**5.** Learned Amicus Curiae submits that it is an admitted fact that there has been a previous enmity between the family of the appellants and the family of the deceased. It is submitted that admittedly the appellants were in possession of the disputed land. However, the deceased was making an attempt to dispossess the appellants from the said land. It is submitted that one month prior to the date of the incident, the wife of the appellant No.1-Devendra Kumar lodged an FIR against the deceased with regard to forcible dispossession. It is, therefore, submitted that the appellants are entitled to be acquitted.

**6.** Learned Amicus Curiae, in the alternative, submitted that the possibility of the deceased trying to dispossess the appellants from the land in question and the appellants committing the crime without premeditation in a sudden fight in the heat of passion upon a sudden quarrel cannot be denied. It is, therefore, submitted that the offence, at the most, would fall under Part I or Part II of Section 304 IPC.

**7.** Learned counsel for the respondent-State, on the contrary, submits that both the learned trial court as well as the High Court, on correct appreciation of the evidence, have convicted the appellants for the offences punishable under Section 302 of the IPC. It is, therefore, submitted that no interference would be warranted.

**8.** It is further submitted that the present case is a case of direct evidence wherein a number of eyewitnesses have supported the prosecution version.

**9.** With the assistance of the learned counsel for the parties, we have perused the evidence placed on record.

**10.** From the evidence of the medical expert Dr. N.K. Yadu (PW-6), we do not find that any interference is warranted with the finding that the death of the deceased Bahal was homicidal death. The only question would be as to whether the conviction would fall for the offence punishable under Section 302 IPC or under a lesser offence.

**11.** Rajni Bai (PW-1) is the mother of the deceased Bahal. She has stated that on the date of the incident, when the deceased was showing the case related documents to Sarpanch, she saw the accused persons assaulting her son. She has also stated that the accused Devendra Kumar (Appellant No.1 herein) had assaulted her with bamboo stick.

**12.** The fact regarding the previous enmity and the ongoing dispute between the husband of Rajni Bai (PW-1) and the accused No. 1-Devendra Kumar and others has not been denied by her. She has also admitted in her cross-examination that the fight took place between her son and the appellants herein near the cart.

**13.** Rajni Bai's (PW-1's) evidence is corroborated by Dhannu Das (PW-2). He has stated in his cross-examination that his shop and the field of Devendra Kumar and others are adjacent to it. He has also admitted the fact regarding Devendra Kumar and others were cultivating the land adjacent to his shop.

**14.** Pusau (PW-3)-mason has also supported the prosecution version.

**15.** Ghurwaram (PW-4)-Sarpanch of the village has also supported the prosecution version. He has admitted in his cross-examination that when the deceased had come to him, he had read out the order of the SDO Rasandigoth and told him that he will harvest the crop of half the land.

**16.** In view of the credible testimony of the eyewitnesses, we have no reason to interfere with the finding of the trial court as well as the High Court that it is on account of the injuries caused by the appellants that the deceased had died.

**17.** The next question that requires to be considered is whether the case would fall under Section 302 IPC or not.

**18.** It is not in dispute that there was previous enmity between the parties. The accused persons were in possession of the land in question. A month prior to the date of the incident, an FIR was lodged by the wife of the appellant No.1-Devendra Kumar against the deceased since he had tried to dispossess the appellants.

**19.** From the evidence placed on record, specifically the evidence of Dhannu Das (PW-2) in the presence of whom the incident has occurred, it is clear that the place of the incident is adjacent to the field in possession of the appellants. From the evidence of Ghurwaram (PW4)-the Sarpanch of the village also it is clear that there was a quarrel between the appellants and the deceased. The weapons used by the accused persons are axe and sticks, which are commonly used by the agriculturists. There is no material on record to show that there is any premeditation.

**20.** Taking into consideration all these aspects, the possibility of offence being committed by the appellants without premeditation in a sudden fight in a heat of passion upon a sudden quarrel cannot be ruled out. From the nature of the injuries sustained by the deceased, it cannot be said that the appellants have taken undue advantage or acted in a cruel or unusual manner.

**21.** In that view of the matter, we find that the appellants would be entitled to benefit of doubt and the conviction under Section 302 IPC needs to be altered to the one under Part I of Section 304 IPC.

**22.** We are, therefore, inclined to partly allow the present appeal.

**23.** In the result, we pass the following order:

(i) The appeal is partly allowed.

(ii) The conviction of the appellants under Section 302 IPC is altered to the one under Part I of Section 304 IPC.

(iii) The appellants have already undergone a sentence of more than 12 years prior to their release on bail by the order of this Court dated 17th February 2015. We find that the said sentence would subserve the ends of justice. Therefore, the appellants are sentenced to the period already undergone.

(iv) The bail bonds, if any shall stand discharged.

**24.** We place on record our deep appreciation to Mr. Vikrant Narayan Vasudeva, learned Amicus Curiae for the valuable assistance rendered.

*Result of the case:* Appeal partly allowed.

†*Headnotes prepared by:* Nidhi Jain

[2024] 11 S.C.R. 530 : 2024 INSC 853

# Goqii Technologies Private Limited
# v.
# Sokrati Technologies Private Limited

(Civil Appeal No. 12234 of 2024)

07 November 2024

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

## Issue for Consideration

Issue arose, as to the correctness of the order passed by the High Court dismissing the appellant's application u/s.11 of the Act, 1996, seeking appointment of an arbitrator to adjudicate disputes and claims in terms of Clause 18.12 of the Master Services Agreement executed between the parties.

## Headnotes†

**Arbitration and Conciliation Act, 1996 – s.11 – Scope of inquiry under – Standard of judicial scrutiny – Master Services Agreement between the appellant and the respondent – Dispute between parties – Application by the appellant u/s.11 of the Act, seeking appointment of an arbitrator to adjudicate disputes and claims in terms of Clause 18.12 of the Master Services Agreement – Rejected by the High Court holding that although the audit report highlighted poor returns on investment and inconsistent metrics, yet it did not support the assertions made by the appellant regarding fraudulent practices of the respondent – Correctness:**

**Held:** Scope of inquiry u/s.11 is limited to ascertaining the *prima facie* existence of an arbitration agreement – On facts, the High Court exceeded this limited scope by undertaking a detailed examination of the factual matrix – High Court erroneously proceeded to assess the auditor's report in detail and dismissed the arbitration application – Such an approach does not give effect to the legislative intent behind the 2015 amendment to the 1996 Act, which limited the judicial scrutiny at the stage of s.11 – Frivolity in litigation too is an aspect which the referral

* Author

court should not decide at the stage of s.11 as the arbitrator is equally, if not more, competent to adjudicate the same – Limited jurisdiction of the referral Courts u/s.11 must not be misused by parties in order to force other parties to the arbitration agreement to participate in a time-consuming and costly arbitration process – Existence of the arbitration agreement in Clause 18.12 of the MSA not disputed by the respondent – Question whether there exists a valid dispute to be referred to arbitration can be addressed by the Arbitral Tribunal as a preliminary issue – Order passed by the High Court set aside. [Paras 18-21]

**Case Law Cited**

*Indian Oil Corporation v. NCC Ltd.* [2022] 13 SCR 660 **: (2023) 2 SCC 539;** *B & T AG v. Ministry of Defence* [2023] 7 SCR 599 **: 2023 SCC OnLine SC 657;** *Sushma Shiv Kumar Daga & Anr. v. Madhur Kumar Ramkrishnaji Bajaj & Ors* [2023] 15 SCR 909 **: 2023 SCC OnLine SC 1683;** *In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899* [2023] 15 SCR 1081 **: 2023 INSC 1066;** *SBI General Insurance Co. Ltd. v. Krish Spinning* [2024] 7 SCR 840 **: 2024 INSC 532 – referred to.**

**List of Acts**

Arbitration and Conciliation Act, 1996; Stamp Act, 1899; Insolvency and Bankruptcy Code, 2016.

**List of Keywords**

Scope of inquiry u/s.11 of the Arbitration and Conciliation Act, 1996; Standard of judicial scrutiny; Master Services Agreement; Appointment of arbitrator; Fraudulent practices; *Prima facie* existence of arbitration agreement; Arbitration application; Frivolity in litigation; Limited jurisdiction of the referral Courts; Arbitration agreement; Time-consuming and costly arbitration process; Judicial interference; Referral Courts; Arbitral Tribunal.

**Case Arising From**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 12234 of 2024

From the Judgment and Order dated 30.04.2024 of the High Court of Judicature at Bombay in CAA No. 6 of 2024

**Appearances for Parties**

H.D. Thanvi, Nikhil Kumar Singh, Achal Singh Bule, Rishi Matoliya, Advs. for the Appellant.

Ms. Shweta Bharti, Jyoti Kumar Chaudhary, Nicholas Choudhury, Jatin Chaddha, Vineet Dwivedi, Advs. for the Respondent.

**Judgment / Order of the Supreme Court**

**Judgment**

**J.B. Pardiwala, J.**

**1.** Leave granted.

**2.** This appeal arises from the final judgment and order dated 30.04.2024 ("**impugned judgment**") passed by the High Court of Judicature at Bombay in Commercial Arbitration Application No. 6 of 2024. The High Court dismissed the application preferred by Goqii Technologies Private Limited ("**the appellant"**) under Section 11 of the Arbitration and Conciliation Act, 1996 ("**the Act, 1996**") seeking appointment of an arbitrator to adjudicate disputes and claims in terms of Clause 18.12 of the Master Services Agreement ("**MSA**") executed between the appellant and Sokrati Technologies Private Limited ("**the respondent"**).

**A. FACTUAL MATRIX**

**3.** The appellant, a technology-based wellness venture *inter alia* providing life style consultancy services, executed the MSA with the respondent, an entity engaged in digital marketing services, and a subsidiary of Dentsu International Limited, to manage its digital advertising campaigns. The MSA was subsequently extended on 29.04.2022 for a period of three years, with certain amendments.

**4.** Between August 2021 and April 2022, the appellant paid a sum of Rs 5,53,26,690/- to the respondent for the services rendered by it. It is the case of the appellant that for the subsequent 10 invoices raised between 12.05.2022 and 07.10.2022, the appellant was in the process of initiating and making payments when, in September 2022, certain media reports alleged malpractices in the advertising industry implicating major players. It was later discovered by the appellant that the Economic Offences Wing, Mumbai had lodged a complaint

(EOW CR No. 08 of 2022) against Dentsu International Limited, the parent company of the respondent**,** and its senior officials alleging serious irregularities and malpractices in their service.

**5.** In light of the aforesaid developments, the appellant engaged an independent auditor in November 2022 to prepare a report on the activities of the respondent from April 2021 to 31.12.2022. The auditor submitted its report in February 2023. The conclusion given by the auditor is extracted hereinbelow:

> *"**CONCLUSION***
>
> *The average ROI for the campaigns analyzed has been abysmally low at 0.35x compared to industry benchmark of 3x to 4x. We estimate an overcharge of ₹4,48,53,580.*
>
> *The audit identified significant areas of concern within the media plan, including but not limited to:*
>
> - *Media buying cost of inventory, from different publishers at various points during the engagements have been found to be significantly more than the industry benchmarks.*
> - *Traffic was poor and exposed to the wrong audience.*
> - *Number of times the ad was shown (Frequency) has been increased as the reach numbers were being achieved, this only shows that the targeting of the customer/audience has been poor.*
> - *The clicks generated were fraudulent.*
> - *The leads garnered were junk.*
> - *Cost of acquisition was higher than the category competition.*
>
> *We also recommend further detailed investigation across all the media campaigns by Sokrati."*

**6.** On 22.02.2023, the respondent served a demand notice on the appellant under Section 8 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") seeking Rs 6,25,67,060/- towards the outstanding invoices. In response, on 04.03.2023, the appellant rejected the demand, citing the audit findings, and invoked arbitration under

Clause 18.12 of the MSA. The appellant also filed a counter claim, demanding a refund of Rs 5,53,26,690/- with 18% interest per annum and an additional Rs 6 crore by way of damages towards the alleged misrepresentations by the respondent.

**7.** Subsequently, upon failure of the respondent to comply with the arbitration notice, the appellant filed Commercial Arbitration Application No. 06 of 2024 before the High Court, seeking appointment of a sole arbitrator to adjudicate the disputes between the parties. However, on 05.10.2023, while the application was pending, the respondent filed Company Petition (IB) No. 27 of 2024 under Section 9 of the IBC before the National Company Law Tribunal, Mumbai (NCLT, Mumbai) for initiating the corporate insolvency resolution process of the appellant.

**8.** The High Court *vide* the impugned judgment, dismissed the application seeking the appointment of an arbitrator, observing that it lacked in merit and substance. The High Court noted that the independent audit report revealed significant concerns regarding the performance of the digital marketing campaigns executed by the respondent. The High Court was of the view that although the report highlighted poor returns on investment and inconsistent metrics, yet it did not support the assertions made by the appellant regarding fraudulent practices of the respondent. Further, the High Court observed that the appellant failed to demonstrate any substantial discrepancies in the report that would justify withholding payment for the invoices raised. It observed that while further investigation was suggested in the report, the appellant's attempt to invoke arbitration based on non-existent disputes constituted a manifestly dishonest claim and therefore dismissed the application. The relevant observations from the impugned judgment are extracted hereinbelow:

> *"19. It can be well understood that upon the further investigation, being directed to be carried out as indicated in the report, if it is concluded that the services were not rendered at all or they were deficient and the invoices do not deserve to be cleared, the demand of the money due and payable could have been resisted, but without any justification, by projecting the report of the independent auditor to be its shield to avoid the payment, the attempt on part of the applicant can only be described as 'dishonest'.*

*A manifestly dishonest claim or a contest, which is sought to be raised to a lawful demand of the money due and payable under the MSA, particularly, when, while availing the services, at no point of time, any deficiency in services is pointed out, but only by way of defence to the invoices raised, an independent agency's report is being projected, as a support to canvass the deficiency in service, by attributing fraudulent acts to the respondent which, in fact, is not the finding of the independent auditor.*

*Nonetheless, it is open for the applicant to follow the pursuit of detail investigation across all the media campaigns by Sokrati, as suggested in the report, however, without doing so, in order to avoid its liability for the claims under the invoices, the assertion of an arbitrable dispute, is an attempt to defeat the proceedings, which may be instituted on behalf of Sokrati before the Company Law Tribunal under the IBC.*

*Drawing guidance from the observations of the Apex Court in case of NTPC Ltd (supra) that the limited scrutiny through the eye of the needle is necessary and compelling, as it is the duty of the referral code to protect the parties from being forced to arbitrate, when the matter is demonstrably non- arbitrable. I am convinced that an attempt is made to create a dispute when there exist none at this stage. It is not just for the sake of invoking the arbitration clause, because the agreement between the parties provide so, the parties shall resort to arbitration, premised on the basis of a purported dispute, which infact, do not exist.*

*For the aforesaid reason, I am not inclined to consider the request of appointing an Arbitrator in exercise of power conferred on this Court, merely because the arbitration has been invoked by the applicant and it intend to take a non-existent dispute for arbitration. Being unconvinced with the submissions of Mr. Kanade, the application seeking appointment of Arbitrator is dismissed being found without any merit and substance."*

**9.** Aggrieved by the aforesaid order refusing to appoint an arbitrator for adjudicating the disputes between the parties, the appellant has come up before this Court with the present appeal.

## B. SUBMISSION ON BEHALF OF THE APPELLANT

**10.** Mr. H.D. Thanvi, the learned counsel appearing for the appellant, submitted that the scope of interference by a referral court acting in exercise of its jurisdiction under Section 11 of the Act, 1996 is limited. At this stage, the court is required to conduct a preliminary inquiry for the purpose of ascertaining whether a *prima facie* case exists for referring the dispute to arbitration. Contrary to this narrow scope, in the present case the High Court proceeded to erroneously undertake a full review of the contested facts, thereby exceeding in its jurisdiction at this stage.

**11.** He further submitted that the High Court failed to take into account the nature of the services rendered by the respondent, along with the technical details contained in the Audit Report, which require subject-matter expertise for accurate determination of the disputes. Given the technical complexity of the issues involved, the High Court ought to have referred the parties to arbitration.

**12.** He submitted that the finding of the High Court as regards the alleged dishonesty of the appellant rests on the erroneous assumption that the appellant had not raised any dispute prior to issuing the demand notice dated 22.02.2023. It was contended that this finding overlooks the sequence of events and also the undisputed fact that the Audit Report was provided to the appellant only in February 2023, i.e., the same month in which the Demand Notice was issued. Consequently, the appellant had no prior opportunity to raise the disputes, as they only came to light upon receiving the Audit Report in February 2023. The appellant argued that even otherwise, it had sent multiple emails to the respondent raising various objections regarding the invoices issued to the appellant prior to the issuance of the Audit Report.

## C. SUBMISSION ON BEHALF OF THE RESPONDENT

**13.** Ms. Shweta Bharti, the learned counsel appearing for the respondent, on the other hand, submitted that it is settled law that before referring the parties to arbitration, the High Court must reach to a *prima facie* satisfaction that a genuine dispute exists between the parties.

Furthermore, the mere inclusion of an arbitration clause in a contract or agreement does not render a matter automatically arbitrable and a *prima facie* case establishing the existence of a dispute must first be made. The Court must apply a *prima facie* test to weed out and dismiss claims that are *ex facie* meritless, frivolous, or dishonest. She submitted that seen thus the dispute raised in the present petition is nothing more than an afterthought.The counsel placed reliance on the decision of this Court in ***Indian Oil Corporation vs. NCC Ltd.***,[1] ***B&T AG v. Ministry of Defence***,[2] and ***Sushma Shiv Kumar Daga & Anr. vs. Madhur Kumar Ramkrishnaji Bajaj & Ors***[3] to fortify her submission.

**14.** She further submitted that the appellant is not entitled to any damages or refund for the alleged overcharges on the services rendered by the respondent as the appellant had previously not raised any concerns or identified deficiencies while utilizing these services. Furthermore, the claim now raised by the appellant is unfounded, vague, and lacks supporting documentation.

**15.** She submitted that the appellant has filed the present petition with a *mala fide* intent and has approached this Court with unclean hands, being fully aware of the ongoing legal proceedings before the NCLT, Mumbai. The petition of the appellant is an attempt to create duplicative legal proceedings aimed at evading liability for admitted dues and disrupting the CIRP process.

## D. ANALYSIS

**16.** Having heard the learned counsels appearing for the parties and having gone through the materials on record, the short question that falls for our consideration is whether the High Court committed any error in dismissing the appellant's application under Section 11 of the Act, 1996.

**17.** In a recent pronouncement, relying on the Constitution Bench judgment of this Court in ***In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian***

1 [2022] 13 SCR 660 : (2023) 2 SCC 539

2 [2023] 7 SCR 599 : 2023 SCC OnLine SC 657

3 [2023] 15 SCR 909 : 2023 SCC OnLine SC 1683

***Stamp Act 1899***,[4] this Court in ***SBI General Insurance Co. Ltd. vs. Krish Spinning*** reported in **2024 INSC 532**, summarised the law on the scope and standard of judicial scrutiny that an application under Section 11(6) of the Act, 1996 can be subjected to. The relevant parts are produced herein below:

> *"114. In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of "accord and satisfaction" under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re: Interplay (supra).*
>
> ***xxx xxx xxx***
>
> *125. We are also of the view that ex-facie frivolity and dishonesty in litigation is an aspect which the arbitral tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the arbitral tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the referral court. If the referral court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the arbitral tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material."*

**18.** The scope of inquiry under Section 11 of the Act, 1996 is limited to ascertaining the *prima facie* existence of an arbitration agreement. In the present case, the High Court exceeded this limited scope by undertaking a detailed examination of the factual matrix. The

4 [2023] 15 SCR 1081 : 2023 INSC 1066.

High Court erroneously proceeded to assess the auditor's report in detail and dismissed the arbitration application. In our view, such an approach does not give effect to the legislative intent behind the 2015 amendment to the Act, 1996 which limited the judicial scrutiny at the stage of Section 11 solely to the *prima facie* determination of the existence of an arbitration agreement.

**19.** As observed in ***Krish Spinning*** *(supra)*, frivolity in litigation too is an aspect which the referral court should not decide at the stage of Section 11 as the arbitrator is equally, if not more, competent to adjudicate the same.

**20.** Before we conclude, we must clarify that the limited jurisdiction of the referral Courts under Section 11 must not be misused by parties in order to force other parties to the arbitration agreement to participate in a time-consuming and costly arbitration process. This is possible in instances, including but not limited to, where the claimant canvasses the adjudication of non-existent and *mala fide* claims through arbitration. With a view to balance the limited scope of judicial interference of the referral Courts with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration. Having said that, it is clarified that the aforesaid is not to be construed as a determination of the merits of the matter before us, which the Arbitral Tribunal will rightfully be equipped to determine.

## E. CONCLUSION

**21.** The existence of the arbitration agreement in Clause 18.12 of the MSA has not been disputed by the respondent. The question whether there exists a valid dispute to be referred to arbitration can be addressed by the Arbitral Tribunal as a preliminary issue.

**22.** As a result, the appeal filed by the appellant is allowed and the impugned order passed by the High Court of Bombay is hereby set aside.

**23.** We appoint Mr. S.J. Vazifdar, former Chief Justice of the Punjab & Haryana High Court, as the sole arbitrator to adjudicate the disputes between the parties.

**24.** All legal contentions, including objections, if any, available to the respondent, are kept open to be taken up before the learned Arbitrator.

**25.** Pending application(s), if any, shall stand disposed of.

*Result of the case:* Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain

[2024] 11 S.C.R. 541 : 2024 INSC 840

# M/s Bajaj Alliance General Insurance Co. Ltd.
# v.
# Rambha Devi & Ors.

(Civil Appeal No. 841 of 2018)

06 November 2024

**[Dr Dhananjaya Y Chandrachud, CJI, Hrishikesh Roy,* Pamidighantam Sri Narasimha, Pankaj Mithal and Manoj Misra, JJ.]**

## Issue for Consideration

(i) Whether a driver holding a Light Motor Vehicle (LMV) license (for vehicles with a gross vehicle weight of less than 7,500 kgs) as per Section 10(2)(d), which specifies 'Light Motor Vehicle', can operate a 'Transport Vehicle' without obtaining specific authorization under Section 10(2)(e) of the MV Act, specifically for the 'Transport Vehicle' class; (ii) whether the second part of Section 3(1) which emphasizes the necessity of a driving license for a 'Transport Vehicle' overrides the definition of LMV in Section 2(21) of MV Act? Is the definition of LMV contained in Section 2(21) of MV Act unrelated to the licensing framework under the MV Act and the MV Rules; (iii) whether the additional eligibility criteria prescribed in the MV Act and MV Rules for 'transport vehicles' would apply to those who are desirous of driving vehicles weighing below 7,500 kgs and have obtained a license for LMV class under Section 10(2)(d) of the MV Act; (iv) what is the effect of the amendment made by virtue of Act 54 of 1994 w.e.f. 14.11.1994 which substituted four classes under clauses (e) to (h) in Section 10 with a single class of 'Transport Vehicle' in Section 10(2)(e); (v) whether the decision in Mukund Dewangan (2017) is per incuriam for not noticing certain provisions of the MV Act and MV Rules.

## Headnotes†

**Motor Vehicle Act, 1988 – ss.10(2)(d), 10(2)(e), 2(21), 2(47) – On reference, 3-Judge Bench in Mukund Dewangan v. Oriental Insurance Co. Ltd. [2017] 7 SCR 765 [Mukund Dewangan (2017)] held that the holder of a license for a 'Light Motor Vehicle' (LMV) class need not have a separate endorsement to drive a 'transport vehicle' if it falls under the 'Light Motor Vehicle'**

* Author

**class i.e. below 7,500 kgs – However, two-judge Bench in *M/s Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi & Ors.* (2019) 12 SCC 816 observed that Mukund Dewangan (2017) did not consider certain important provisions of the MV Act and MV Rules, referred the matter to a larger bench of three judges for reconsideration of the ratio in Mukund Dewangan (2017) – Said three judge Bench further referred the matter to a larger bench of five judges – A driver holding a Light Motor Vehicle (LMV) license for vehicles with a gross vehicle weight of less than 7,500 kgs, if can operate a 'Transport Vehicle' without obtaining specific authorization therefor:**

**Held:** Yes – For licensing purposes, LMVs and Transport Vehicles are not entirely separate classes and both overlap – Thus, a driver holding a license for LMV class u/s.10(2)(d) for vehicles with a gross vehicle weight under 7,500 kg, is permitted to operate a 'Transport Vehicle' without needing additional authorization u/s.10(2)(e) specifically for the 'Transport Vehicle' class – In the absence of any obtrusive omission, the decision in Mukund Dewangan (2017) is not per incuriam even if did not consider certain provisions of the MV Act and MV Rules and is upheld. [Paras 131(I), (II)]

**Motor Vehicle Act, 1988 – ss.2(10), 3, 10(e) to (h), Chapter II-s.10(2)(e) – Central Motor Vehicles Rules, 1989 – r.14 – Form 4 – 'Transport Vehicle' in s.3 – Purpose – 1994 amendment substituted four classes of 'medium goods vehicle', 'medium passenger vehicle', 'heavy goods vehicle', and 'heavy passenger vehicle' under clauses (e) to (h) in s.10 with a single class of 'Transport Vehicle' in s.10(2)(e) – Effect – Plea of insurance companies that in view of the 'transport vehicle' having been specifically mentioned after the amendment, a separate endorsement would be necessary to drive a 'transport vehicle' and that even before the 1994 amendment, the second part of s.3 always provided that a separate endorsement would be necessary:**

**Held:** The specific authorization does not mean that a person holding an LMV license which covers 'Transport vehicle', would be disentitled to drive a 'Transport Vehicle' – The emphasis in the second part of Section 3 is in relation to Medium and Heavy Vehicles in the statutory scheme even prior to the 1994 amendment – Second part of Section 3 pertains to a driving license for those driving 'medium goods vehicle', 'medium passenger vehicle',

'heavy goods vehicle', and 'heavy passenger vehicle' – Such an interpretation is logical because medium and heavy vehicles would require greater maneuverability and skill as compared to drivers of the LMV class – The subsequent amendment in Section 10 makes this position even clearer – 'Transport Vehicle' primarily targets vehicles exceeding 7,500 kgs, for the purpose of license regime – The intention of the legislature was to simplify the licensing framework for larger commercial vehicles and at the same time not interdict a LMV license holder to also drive a transport vehicle – National Insurance Co. Ltd. v. Annappa Irappa Nesaria [2008] 1 SCR 1061 holding that the 1994 amendment had a prospective operation, partially overruled – 'Transport Vehicle', does not exclude transport vehicles already classified as 'LMV', under Section 10 – Thus, 'Transport vehicles' mentioned in Section 10 would cover only those vehicles whose gross vehicle weight is above 7,500 kgs – Such an interpretation aligns with the broader purpose of the amendments and ensures that the licensing regime remains efficient and practical for vehicle owners and drivers – Section 10 is to be read with Section 2(21) which defines a 'Light Motor Vehicle'. [Paras 41, 42, 44.3, 45]

**Motor Vehicle Act, 1988 – Central Motor Vehicles Rules, 1989 – Whether the additional eligibility criteria prescribed in the MV Act and MV Rules for 'transport vehicles' would apply to those who are desirous of driving vehicles weighing below 7,500 kgs:**

**Held:** No – The additional eligibility criteria specified in the MV Act and MV Rules will apply only to such vehicle ('medium goods vehicle', 'medium passenger vehicle', 'heavy goods vehicle' and 'heavy passenger vehicle'), whose gross weight exceeds 7,500 Kg – This interpretation on how the licensing regime is to operate for drivers under the statutory scheme will not compromise the road safety concerns and will also effectively address the livelihood issues for drivers operating Transport Vehicles in legally operating "Transport vehicles" (below 7,500 Kg), with their LMV driving license. [Paras 131(III), 130]

**Motor Vehicle Act, 1988 – ss.3(1), 2(21), 10 – Harmonious construction – Various provisions were cited to contend that the legislature had placed LMVs and Transport Vehicles under separate classes and that the holder of a LMV license cannot drive a Transport Vehicle without a separate endorsement – Whether the second part of s.3(1) which emphasizes the**

**necessity of specific requirement of a driving license for a 'Transport Vehicle' overrides the definition of LMV in s.2(21) :**

**Held:** No – Section 3 is not a special provision overriding the strict and emphatic definition of LMV, given in Section 2(21) and the separate class of 'Light Motor Vehicle' provided in Section 10 – Section 2(21) uses the term 'means' and there is an affirmation of certainty in the wordings of the definition and it is to be recognized *sensu stricto* in a technical sense and must not be understood loosely – Section 3 does not disentitle the LMV license holders to drive transport vehicles of the permissible weight category – To say otherwise would be incompatible and would render the strict definition clause, sterile and a 'dead letter' – In view of a harmonious construction of both sections, for LMV licence holders, a separate endorsement under 'Transport Vehicle' class would be unnecessary for driving LMV class of vehicles – Additional licensing requirements will have no application for the LMV class of vehicles but will be needed only for such 'Transport Vehicles', which by virtue of their gross weight fall in the Medium and Heavy category – This construction also fulfills the legislative purpose to ensure road safety – Age restrictions outlined in Section 4, the requirement of a medical certificate, and the criteria under Section 7 should reasonably apply only for the medium and heavy transport vehicles whose gross weight will be above 7500 Kg – A person holding a LMV license is equally competent to drive a Transport Vehicle whose gross weight does not exceed 7,500 kgs – The reference to 'transport vehicle' in Section 3(1) and other sections of the Act and Rules apply to only those vehicles which fall beyond the scope of the *sensu stricto* definition under Section 2(21) – This interpretation would ensure that no provision or word is rendered otiose and the licensing regime remains coherent with the legislative intent. [Paras 74, 85]

**Motor Vehicle Act, 1988 – The ratio in Mukund Dewangan v. Oriental Insurance Co. Ltd. [2017] 7 SCR 765 [Mukund Dewangan (2017)], if per incuriam for not noticing inter alia ss.4(1), 7, 14, second proviso to s.15, ss.180, 181 of the Motor Vehicle Act, 1988 and Central Motor Vehicles Rules, 1989:**

**Held:** No – Answering the reference, 3 Judge Bench in Mukund Dewangan (2017) analysed key provisions of the Act and Rules and rightly concluded inter alia that the holder of a license for a

'Light Motor Vehicle' class need not have a separate endorsement to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg or a motor car or tractor or road-roller, the unladen weight of which does not exceed 7500 kg – Though, the judgment did not analyse the provisions that distinguish transport and non-transport vehicles however, the statutory scheme of Motor Vehicle Act is more nuanced than the simple weight-based distinction made in the said judgment – The Court also failed to notice ss.31(2) and (3) which specify 'Transport' and 'Non-Transport' vehicles however, the judgment gave due consideration to the important statutory provisions – The overlooked provisions would not alter the eventual pronouncement – There are no glaring error or omission that would alter the outcome of the case. [Paras 113-115]

**Motor Vehicle Act, 1988 – s.2(21) – Light Motor Vehicle (LMV) 'means' a 'Transport Vehicle' – 'means' – Meaning:**

**Held:** As per the definition clause of LMV, it inter-alia 'means' a 'Transport Vehicle' – The use of the word 'means' suggests specifics – When the statute says that a word or a phrase shall "mean" (instead of say "include"), it is quite certainly a 'hard and fast', strict and exhaustive definition – There is no distinction between the two classes of vehicles – Such a definition is an explicit statement of the full connotation of a term and there is no ambiguity. [Para 32]

**Interpretation of Statutes – Importance of definition sections – Discussed.**

**Motor Vehicle Act, 1988 – Purpose and objective – Discussed.**

**Interpretation of Statutes – Motor Vehicle Act, 1988 – Social welfare legislation – Interpretation:**

**Held:** 1988 Act is fundamentally a social welfare legislation providing a mechanism for victims and their families to seek compensation for loss or injury resulting from road accidents – Also, its provisions regarding licensing and penalties for traffic violations serve the broader purpose of promoting road safety – Thus, any interpretation of its provisions must ensure a mechanism for timely compensation and relief for victims of road accidents and also promote overall road safety. [Para 15]

**Motor Vehicle Act, 1988 – s.2(21) – Strict interpretation of:**

**Held:** A light motor vehicle would mean a transport vehicle, omnibus, road roller, tractor, or motor car, provided the weight does not exceed 7,500 kgs. [Para 35]

**Interpretation of Statutes – Principles of statutory interpretation – Discussed.**

**Motor Vehicle Act, 1988 – Compensation – Accidents involving 'transport vehicles' operated by individuals holding licenses to drive 'light motor vehicles' – Payment of claims disputed by insurance companies:**

**Held:** Compensation must not be denied for minor technical breaches of the licensing conditions – The emphasis on 'Transport Vehicle' in the licensing scheme has to be understood only in the context of the 'medium' and 'heavy' vehicles – This harmonious construction also aligns with the objective of the 1994 amendment in Section 10(2) to simplify the licensing procedure – This would prevent insurance companies from taking a technical plea to defeat a legitimate claim for compensation involving an insured vehicle weighing below 7,500 kgs driven by a person holding a driving license of a 'Light Motor Vehicle' class. [Paras 76, 126, 127]

**Judgments – Per incuriam – When:**

**Held:** A decision is per incuriam only when the overlooked statutory provision or legal precedent is central to the legal issue in question and might have led to a different outcome if those overlooked provisions were considered – It must be an inconsistent provision and a glaring case of obtrusive omission – The doctrine of *per incuriam* applies strictly to the *ratio decidendi* and not to *obiter dicta* – If a court doubts the correctness of a precedent, the appropriate step is to either follow the decision or refer it to a larger Bench for reconsideration – It has to be shown that some part of the decision was based on a reasoning which was demonstrably wrong, for applying the principle of per incuriam – In exceptional cases, where by obvious inadvertence or oversight, a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, the principle of per incuriam may apply. [Para 111]

**Motor Vehicle Act, 1988 – Impact of Mukund Dewangan (2017) that allowed Light Motor Vehicle (LMV) license holders to drive**

**M/s Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi & Ors.**

**Transport Vehicles below 7500 Kg, on road safety, if any – Plea of Insurance Companies that if Mukund Dewangan (2017) is not interfered with, unfit drivers will start plying Transport Vehicles putting at risk the lives of thousands of people:**

**Held:** Rejected – No empirical data was produced to show that road accidents in India have increased as a direct result of drivers with LMV license, plying a transport vehicle of LMV class of vehicles whose gross weight is within 7500 Kg – Road safety is indeed an important objective of the MV Act but Court's reasoning must not be founded on unverified assumptions without any empirical data – While the Court is mindful of issues of road safety, the task of crafting policy lies within the domain of the legislature – Court cannot dictate policy decisions or rewrite laws. [Para 117]

**Motor Vehicle Act, 1988 – Whether a driver holding a license for a 'Light motor vehicle' can operate a 'Transport Vehicle' without obtaining a specific endorsement – Various conflicting judgments for over 25 years:**

**Held:** Judgments in Ashok Gangadhar Maratha, Nagashetty, S. Iyyapan and Kulwant Singh holding that a separate endorsement for a 'transport vehicle' are not necessary are upheld however, judgments in Prabhu Lal, Roshanben Rahemansha Fakir and Angad Kol which held otherwise are overruled. [Para 96.3]

**Words and Phrases – "per incuriam" – Discussed.**

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**List of Acts**

Motor Vehicles Act, 1939; Central Motor Vehicles Rules, 1989; Motor Vehicles Act, 1988; English Road Traffic Act, 1930.

**List of Keywords**

Light Motor Vehicle (LMV) license; Vehicles with gross vehicle weight of less than/below 7,500 kgs; Transport Vehicle; Driving license; Learner's licenses; Licensing; 1994 amendment; Separate endorsement; Specific authorization; Additional authorization; Driver; Reference; Per incuriam; 'medium goods vehicle'; 'medium passenger vehicle'; 'heavy goods vehicle'; 'heavy passenger vehicle'; Commercial vehicles; Harmonious construction; Stare decisis; Road safety; Public welfare; Motor vehicles; Social welfare legislation; Compensation; Road accidents; Insured vehicles; Insurance companies; Policy domain; Transportation policy; Transportation sector.

**Case Arising From**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 841 of 2018

From the Judgment and Order dated 04.08.2017 of the High Court of Judicature for Rajasthan at Jodhpur in SBCMA No. 5127 of 2011

With

SLP(C) Nos. 10918, 9604 and 9613 of 2018, Diary Nos. 24834 and 25256 of 2018, SLP(C) No. 24671 of 2018, Diary Nos. 32753, 32756, 37055 and 39059 of 2018, SLP(C) No. 426 of 2019, SLP(C) Nos. 505-506 of 2019, SLP(C) No. 17506 of 2018, Diary Nos. 23638, 24137, 24530 and 24534 of 2018, SLP(C) Nos. 5958, 8918-8919 and 11503-11504 of 2019, SLP(C) No. 8277 of 2020, SLP(C) Nos. 8123-8124 of 2022, SLP(C) Nos. 14645-14646 and 35472-35473 of 2017, SLP(C) No. 6055 of 2018, SLP(C) Nos. 18849, 20449, 21547 and 23017-23018 of 2019, Civil Appeal Nos. 8001-8002 of 2024, SLP(C) No. 766 of 2020, SLP(C) Nos. 24545 and 30601 of 2019, SLP(C) No. 696 of 2021, Civil Appeal Nos. 1477, 842, 1479, 483, 1506 and 1478 of 2018, Diary No. 40406 of 2017, Civil Appeal No. 1476 of 2018, Diary No. 41949 of 2017, SLP(C) Nos. 2684-2685, 597 and 524 of 2018, Diary No. 2524 of 2018, SLP(C) Nos. 19242-19244 of 2018, Diary No. 23636 of 2018, SLP(C) No. 28906 of 2018, 13315, 14523-14524 of 2019, Diary No. 37270 of 2017, Civil Appeal No.1475 of 2018, SLP(C) No. 5065, 10459, 9908 and 6668 of 2018, Diary No. 4869, 6119 and 6264 of 2018, SLP(C) Nos. 8816, 9607, 9610, 9612, 9606 and 9609 of 2018, Diary Nos. 9963, 9970 and 990 of 2018, SLP(C) Nos. 5193, 5188, 9611, 9608 and 9605 of 2018, SLP(C) Nos. 20221, 19921 and 28961 of 2023

**Appearances for Parties**

Tushar Mehta, SG, Jayant Bhushan, Ms. Archana Pathak Dave, Anand Sanjay M. Nuli, Ms. Anita Shenoy, Sr. Advs., Ashutosh Ghade, Nimit Bhimjiyani, Ms. Sneha Balapure, Ms. Sakshi Mittal, Navneet Kumar, Harsh Sharan, Saurabh Tiwari, Parijat Kishore, Amit Kumar Singh, Ms. K Enatoli Sema, Ms. Chubalemla Chang, Prang Newmai, Abhishek Gola, Viresh B. Saharya, Rishabh Mathur, Akshat Agarwal, P.K. Seth, Ms. Manjeet Chawla, Mrs. Usha Pant Kukreti, Ms. Meenakshi Midha, Ms. Garv Singh, Aditya Parashar, Chander Shekhar Ashri, Ms. Hetu Arora Sethi, Rahul Jain, Anirudh Bhat, Rajeev Maheshwaranand Roy, Dr. Meera Agarwal, Ramesh Chandra Mishra, Anil Kumar, Sandeep Jha,

Ram Ekbal Roy, Ms. Priyanka Das, Ms. Neha Das, Aman Nihal, Ravi Shankar Ravi, Vikas Bharti, Binay Kumar Das, Raj Kishor Choudhary, Shakeel Ahmed, Paras Nath Singh, Ms. Pratibha Singh, Abhishek Kumar Gola, Ramneek Singh, Roop Chaudhary, Arun Kumar Nagar, Ms. Savita, Ms. Supriya, Sudhir Naagar, Ms. Amrreeta Swaarup, Gaurav Malhotra, Rajesh Kumar Gupta, Ms. Jyoti Kaushik, Manjunath Meled, Sandeep Sharma, Mrs. Vijayalaxmi Udapudi, Ganesh Kumar R., Sukant Vikram, Yojit Mehra, Amartya Bhushan, Tushar Bhushan, Ketan Paul, Sanjay Kumar Dubey, Shuchi Singh, Rakesh Kumar Tewari, Krishna Kant Dubey, Ujjwal Kumar Dubey, Vivek Kumar Pandey, Aman Kumar, Jainendra Kumar, Nirmit Bhalla, Devendra Kumar Mishra, Yasharth Kant, Ms. Sonal Kushwah, Suryaansh Kishan Razdan, Jagdish Chandra, Niteen Kumar Sinha, Vishal Meghwal, Ms. Aishwarya Sinha, Ms. Kirti Sinha, Ms. Ankita Chaudhary, Parmod Kumar Vishnoi, Kumar Prashant, Avnish Dave, Vaibhav Dwivedi, Raghav Sharma, Shreyas Balaji, Ram Lal Roy, Shiv Singh Yadav, Salil Paul, Sahil Paul, Sandeep Dayal, Ms. Kanupriya Mehta, Niranjan Sahu, Uma Kanta Mishra, Ms. Apoorva Sharma, Debabrata Dash, Anilendra Pandey, Manoj Kumar, Rajeev Kumar Ranjan, Ms. Priya Kashyap, Brijesh Pandey, Mallikarjun S. Mylar, Ashok Bannidinni, Ms. Betsara Mylliemngap, Tripurari Ray, Balwant Singh Billowria, Nithyananda Murthy P, Ms. Bhanu Prabha, Vivekanand Singh, Anirudh Ray, Rajinder Singh, Ms. Shilpa Singh, Ms. Shalini Kaul, Pushpinder Singh, Kumar Kartikay, Sukhmandeep Singh, Harsh Wadhwani, Nishanth Patil, Ayush P Shah, Vignesh Adithiya S, Sushil Kumar Sharma, Pahlad Singh Sharma, Virendra Kumar, Vikas Kakkar, Ms. Ankhi Sarkar, Ms. Akhila Wali, Suraj Kaushik, Nanda Kumar K. B., Dharm Singh, Shiva Swaroop, M/s. Nuli & Nuli, Devvrat, Ms. Harshita Sharma, Ms. Swati Setia, Ms. Charu Sangwan, Anup Kumar, Abhijit Banerjee, Devesh Kumar Agnihotri, Nitin Jain, Ms. Tanya Swarup, Shivam Singh, Manish Kumar, Ms. Bahuli Sharma, Ishwar Singh, Ms. Shaswati Parhi, Suyash Vyas, Divyansh Mishra, Gopal Singh, Subhro Sanyal, Kaustubh Shukla, C.B. Gururaj, Prakash Ranjan Nayak, Animesh Dubey, Debasis Jena, Apoorv Nautiyal, Anuj Bhandari, Rajat Gupta, Gaurav Jain, Mrs. Disha Bhandari, Mrs. Anjali Doshi, Sharanagouda Patil, Mrs. Supreeta Patil, M/s. S-legal Associates, K.R. Karthik, Pradeep Gaur, Amit Gaur, Ms. Sweta Sinha, Rameshwar Prasad Goyal, Ms. Fauzia Shakil, Vivek Mathur, Siddharth Agarwal, Ms. Mohini Priya, Ms. Namrata Sarah Caleb, Ms. Parita, Ms. Ayushma Awasthi, C. George Thomas, P.B. Suresh, Advs. for the appearing parties.

**Judgment / Order of the Supreme Court**

**Judgment**

**Hrishikesh Roy, J.**



**1.** On the perception of the capability of drivers on the road, the comedian George Carlin made the humorous observation to the effect that: *'Have you ever noticed that anybody driving slower than you is an idiot, and anyone going faster than you is a maniac?'.*[1] Concerns about road safety are often shaped by individual biases without the opinion being founded on any empirical data. It is easy to overlook the full spectrum of factors that contribute to road safety. In this context,

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*** Ed. Note:** Pagination as per the original Judgment.

1 George Carlin, 'Carlin on Campus' (HBO, 1984) <https://www.primevideo.com/detail/George-Carlin-Carlin-On-Campus/0ND548YT8ZBNFE9A56MJWHZ8PK> accessed 2 November 2024

the pivotal legal issue that this Constitution bench of five judges has to decide is whether under the existing legal framework of the *Motor Vehicle Act, 1988 (*for short "MV Act"*)* and the *Central Motor Vehicles Rules, 1989* (for short, "MV Rules"), a person holding a license for a 'Light Motor Vehicle' *class,* can drive a 'Transport Vehicle' without a specific endorsement, provided the 'Gross Vehicle Weight' of the vehicle does not exceed 7,500 kgs?. Besides road safety, the livelihood concern of a large number of drivers of transport vehicles in India also requires an answer from the bench. In this judgment, let us name our driver Sri, who is a 'Transport Vehicle' driver. As can be appreciated, Sri spends maximum hours behind the driving wheels and is arguably the most experienced one amongst Indian drivers, carrying goods and people, from destination A to B and so on.

**A.** BACKGROUND

**2.** Before we set out the relevant provisions, a brief overview of the legal journey that has led us to the above quest would be appropriate. The vexed question was first noticed by a 2-judge Bench of Justice Kurian Joseph and Justice Arun Mishra in *Mukund Dewangan v. Oriental Insurance Co. Ltd.*[2] (for short *"Mukund Dewangan(2016)"*. It took note of the conflicting views in 8 different judgments of this Court and framed the following questions for determination by a 3-judge bench:

> "59.1. What is the meaning to be given to the definition of "light motor vehicle" as defined in Section 2(21) of the MV Act? Whether transport vehicles are excluded from it?
>
> 59.2. Whether "transport vehicle" and "omnibus" the "gross vehicle weight" of either of which does not exceed 7500 kg would be a "light motor vehicle" and also motor car or tractor or a roadroller, "unladen weight" of which does not exceed 7500 kg and holder of licence to drive class of "light motor vehicle" as provided in Section 10(2)(*d*) would be competent to drive a transport vehicle or omnibus, the "gross vehicle weight" of which does not exceed 7500 kg or a motor car or tractor or roadroller, the "unladen weight" of which does not exceed 7500 kg?

2 (2016) 4 SCC 298

59.3. What is the effect of the amendment made by virtue of Act 54 of 1994 w.e.f. 14-11-1994 while substituting clauses (*e*) to (*h*) of Section 10(2) which contained "medium goods vehicle", "medium passenger motor vehicle", "heavy goods vehicle" and "heavy passenger motor vehicle" by "transport vehicle"? Whether insertion of the expression "transport vehicle" under Section 10(2)(*e*) is related to the said substituted classes only or it also excluded transport vehicle of light motor vehicle class from the purview of Sections 10(2)(*d*) and 2(41) of the Act?

59.4. What is the effect of amendment of Form 4 as to operation of the provisions contained in Section 10 as amended in the year 1994 and whether procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" has been changed?"

**3.** Speaking through Justice Arun Mishra, the reference was answered by a 3-Judge Bench of Justice Arun Mishra, Justice Amitava Roy, and Justice Sanjay Kishan Kaul in *Mukund Dewangan v. Oriental Insurance Co. Ltd.*[3] (for short *"Mukund Dewangan (2017)"*). The Bench concluded that the holder of a license for a 'Light Motor Vehicle' class need not have a separate endorsement to drive a 'transport vehicle' if it falls under the 'Light Motor Vehicle' class i.e. below 7,500 kgs. The reference was answered as under:

"60.1 'Light motor vehicle' as defined in section 2(21) of the Act would include a transport vehicle as per the weight prescribed in section 2(21) read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.

60.2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is

3 [2017] 7 SCR 765 : (2017) 14 SCC 663

competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. **That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above.** A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

60.3. The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and "heavy passenger motor vehicle" in section 10(2)(h) with expression 'transport vehicle' as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.

60.4. The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and **if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.**"

[emphasis supplied]

**4.** However, the above pronouncement did not put the matter to rest. On 3.5.2018, a two-judge Bench comprising Justice Kurian Joseph & Justice Mohan M. Shantanagoudar in *M/s. Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi & Ors.*[4] noted that while deciding

4 (2019) 12 SCC 816

the vexed question in *Mukund Dewangan (2017)*, the 3 Judge-bench had not considered important provisions of the *MV Act* and *MV Rules.* The bench noted that the following significant provisions were not placed before the Court in *Mukund Dewangan (2017)*:

> "3. It is the submission of Shri Jayant Bhushan and Shri Joy Basu, learned Senior Counsel that certain distinct provisions pertaining specifically to transport vehicles have unfortunately not been brought to the notice of the Court:
>
> 1. Section 4(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") provides that the minimum age of holding a driving licence for a motor vehicle is 18 years. Section 4(2) provides that no person under the age of 20 years shall drive a transport vehicle in a public place.
>
> 2. Section 7 provides that no person can be granted a learner's licence to drive a transport vehicle unless he has held a driving licence to drive a light motor vehicle for at least one year.
>
> 3. Section 14 deals with the currency of licence to drive motor vehicles. A driving licence issued or renewed under this Act, in case a licence to drive a transport vehicle will be effective for a period of three years. The proviso to Section 14(2)(*a*) provides that in case of a licence to drive a transport vehicle carrying goods of dangerous or hazardous nature, it shall be effective for a period of one year. However, in case of any other licence, it would be effective for a period of 20 years.
>
> 4. Rule 5 of the Central Motor Vehicles Rules, 1989 (hereinafter referred to as "the Rules") makes a medical certificate issued by a registered medical practitioner mandatory in case of a transport vehicle, whereas for a non-transport vehicle, only a self-declaration is sufficient.
>
> 5. Rule 31, specifically sub-rules (2), (3) and (4) provide for a difference in the syllabus and duration of training between transport and non-transport vehicles.
>
> It is also submitted that in these provisions, there does not appear to be any exception carved out for transport vehicles which come in the light motor vehicle category."

**5.** Being a two-judge bench, the Court deemed it appropriate to refer the prayer itself for reconsideration of the ratio in *Mukund Dewangan (2017)* to a larger bench of three judges. Subsequently, a three-Judge bench of Justice U.U. Lalit, Justice S. Ravindra Bhat, and Justice P.S. Narasimha on 8.3.2022[5] noted that the referral order rightly observed that certain provisions of the *MV Act* and *MV Rules* were not noticed in *Mukund Dewangan (2017)*. The 3-judge bench flagged certain additional provisions that were not noticed in *Mukund Dewangan (2017)*. Since such a view was expressed by a Bench of equal strength, it was considered appropriate to refer the matter to a larger bench of five judges. The reference order reads as under:

> "5. Mr. Jayant Bhushan, Mr. Gopal Sankaranaryanan, Mr. Siddhartha Dave, learned Senior Advocates as well as Mr. Amit Singh, Ms. Archana Pathak Dave, Mr. Kaustubh Shukla, Ms. Meenakshi Midha and Mr. Rajesh Kumar Gupta, learned Advocates, appearing for Insurance Companies have invited our attention to few other provisions, namely, the second proviso to Section 15 and Sections 180 and 181 of the Motor Vehicles Act, 1988 apart from those mentioned in the referral order. It is submitted that though Section 3 was quoted in the decision in Mukund Dewangan (supra), the latter part of Section 3 and the effect thereof was not noticed by the Court. The latter part of said Section 3 stipulates that "no person shall so drive a transport vehicle other than the motor cab or motor cycle hired for his own use or rented under any scheme made under any scheme made under sub-section (2) of Section 75 unless his driving licence specifically entitles him so to do."
>
> 6. It is thus submitted that the provisions contemplate different regimes for those having licence to drive Light Motor Vehicles as against those licensed to drive Transport Vehicles.
>
> 7. Having bestowed our attention to the contentions raised by the learned counsel and the issues which fall for consideration, in our view, the referral order was right

5 Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi (2023) 4 SCC 723

> in stating that certain provisions were not noticed by this Court in its decision in Mukund Dewangan (supra). We are prima facie of the view that in terms of the referral order, the controversy in question needs to be re visited. Sitting in a combination of Three Judges, we deem it appropriate to refer the matters to a larger bench of more than Three Judges as the Hon'ble the Chief Justice of India may deem appropriate to constitute"

**6.** For the benefit of the claimants, the reference order also pertinently notes that:

> "9. Before we part, we must note that all the learned counsel appearing for the Insurance companies have fairly submitted that the compensation in terms of the directions issued by the Courts below, that is to say, in following the principles laid down in Mukund Dewangan (supra) has either been paid in full or shall be paid in terms of such directions. Their statements are recorded."

**7.** Thus, the correctness of *Mukund Dewangan (2017)* is to be evaluated during this reference. At this juncture, we may note that during the final stage of hearing before this Court on 20.7.2023, it was brought to our notice that the Union Government had accepted the decision in *Mukund Dewangan (2017),* by issuing notifications dated 16.4.2018 and 31.3.2021. The Rules were also amended to bring them in conformity with the said judgment. Considering such compliance, we sought the assistance of the learned Attorney General, Mr. R. Venkataramani and desired to elicit the specific stand of the Union Government on the issue. When the matter was next heard on 13.9.2023,[6] the following order was passed by this 5-judge bench:

> "8. Mr. R Venkataramani, Attorney General for India, has appeared in response to the request of the Court and submitted a written note. The note submitted by the Attorney General indicates that:
>
> (i) Application of the ratio in Mukund Dewangan (supra) enables a person holding a licence for a light motor vehicle to drive a transport vehicle on the strength

6 Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi (2024) 1 SCC 818

of that licence without a separate transport vehicle licence; and

(ii) This interpretation of the provisions of the statute and the Rules in Mukund Dewangan (supra) does not appear to be in accord with the legislative intent.

9. The note also indicates that the letter dated 16 April 2018 was issued by the Union government taking note of the judgment in Mukund Dewangan (supra) as the law declared by this Court. Resultantly, the notification dated 31 March 2021 was issued to further amend the Rules to bring them in conformity with the judgment. However, the Attorney General has submitted that this may not be treated as a policy declaration by the Union Government and, as such, the letter and the notification may not have any bearing or conclusiveness on the state of law to be clarified.

10. At the same time, it has been submitted that the Union of India is open to the need, if any, to issue guidelines/ regulations to address the perceived gaps in law as understood in the judgment of this Court in Mukund Dewangan (supra).

11. Apart from the specific submission of the Union Government during the course of hearing, that it is open to re-evaluate the position in law, we are of the considered view that it would be necessary for the Union Government to have a fresh look at the matter. We are inclined to take this view for the following reasons:

(i) Since the enactment of the Motor Vehicles Act 1988, there has been a rapid evolution of the transport sector, particularly in the last few years with the emergence of new infrastructure and new arrangements for putting into place private transport arrangements;

(ii) Any interpretation or formulation of the law must duly take into account valid concerns of road safety bearing on the safety of users of public transport facilities;

(iii) Any change in the position of law as expressed in *Mukund Dewangan* (supra) would undoubtedly have an impact on persons who have obtained insurance relying on the law declared by this Court and who may be driving commercial vehicles with LMV licences. A large number of persons would be dependent on the sector for earning their livelihood; and

(iv) The decision in *Mukund Dewangan* (supra) has held the field for nearly six years and the impact of the reversal of the decision, at this stage, particularly on the social sector, is a facet which would have to be placed in balance by the policy arm of the Government.

12. The considerations which have been flagged above do not necessarily weigh in the same direction. However, all of them do raise important issues of policy which must be assessed and evaluated by the Union Government. Whether a change in the law is warranted is a matter which has to be determined by the Union Government after taking a considered decision bearing in mind the diverse considerations which fall within its remit in making policy choices and decisions.

13. Having regard to these features, we are of the view that the issue of interpretation which has been referred to the Constitution Bench by the referral order dated 8 March 2022 should await a careful evaluation of the policy considerations which may weigh with the Government in deciding as to whether the reversal of the decision as it obtains in Mukund Dewangan (supra) is warranted and, if so, the way forward that must be adopted bearing in mind the diverging interests, some of which have been noted in the earlier part of the order.

14. Hence, in view of the consequences which may arise by the reversal of the judgment in Mukund Dewangan (supra), it would be appropriate if the entire matter is evaluated by the Government before this Court embarks upon the interpretative exercise. Once the Court is apprised of the considered view of the Union Government, the proceedings before the Constitution Bench can be taken up.

15. We request the Union Government to carry out this exercise within a period of two months.

16. We clarify that we have not expressed any opinion on the merits of the referral order dated 8 March 2022 or on the correctness of the decision in Mukund Dewangan (supra) which would await further arguments once the considered view of the Union Government is placed before this Court."

**8.** In view of the consultative exercise being carried out by the government, the matter was deferred multiple times. On 16.4.2024, a note on the proposed set of amendments to the *MV Act* was submitted before this Court. On 21.8.2024, the learned Attorney General, R. Venkataramani had suggested that the matter be either deferred till the amendments are tabled before Parliament or the Court may conclude the pending hearing. We then proceeded to hear the part-heard matter on 21.8.2024.

**B.** SUBMISSIONS ON BEHALF OF INSURANCE COMPANIES

**9.** We have heard Mr. Tushar Mehta, learned Solicitor General; learned Senior Counsel Mr. Siddhartha Dave, Mr. Jayant Bhushan; Ms. Archana Pathak Dave, Mr. Neeraj Kishan Kaul, learned Senior Counsel; Mr. Amit Kumar Singh and Mr. Shivam Singh, Learned Counsel on behalf of the Insurance Companies. Mr. PB Suresh appeared as a supporting Intervenor for the 'The Society against Drunk Driving'.

**9.1.** Mr. Siddhartha Dave, learned Senior Counsel took us through those provisions of the *MV Act* and *MV Rules* that create a distinction between 'Light Motor Vehicles' and 'Transport Vehicles'.

**9.2.** The Counsel drew the Court's attention to Section 3 of the *MV Act* which stipulates the 'necessity for a driving license' to drive a motor vehicle. He referred to the second part of the provision which states that '*no person shall so drive a transport vehicle…unless his driving license specifically entitles him so to do.*' It was contended that *Mukund Dewangan (2017)* overlooked that there was a specific mention of 'transport vehicle' in Section 3 which would indicate that a license for a 'light motor vehicle' cannot be used for driving a 'transport vehicle'.

**9.3.** Mr. Dave further argued that the eligibility for obtaining a license for transport vehicles is more stringent than for Light Motor Vehicles. Since transport vehicles are primarily utilized for carrying passengers and goods, the additional requirements are essential for ensuring road safety. Adverting to Section 4 of the *MV Act*, which sets out the age limit, the Counsel highlighted that the minimum age for securing a driving license for 'motor vehicles' is 18 years but for driving 'transport vehicles', Section 4(2) provides that the minimum age would be 20. Moreover, to qualify even for a learner's license to drive a 'transport vehicle', Section 7(1) stipulates that a candidate must have held a driving license for a 'Light Motor Vehicle', for at least one year.

**9.4.** Section 8(3) mandates that an individual applying for a learner's license for a transport vehicle, must submit a medical certificate from a registered medical practitioner, attesting to the applicant's physical fitness to operate a transport vehicle. However, such a requirement is absent in the case of a Light Motor Vehicle for which only a self-declaration is sufficient. Additionally, the second proviso to Section 15 of *MV Act* stipulates that a medical certificate is also necessary for the renewal of a driving license for 'transport vehicles'. Section 9(4) requires that the applicant for a 'transport vehicle' license must possess a driving certificate from a driving school or establishment. It was further submitted that the 1994 amendment to Section 10 merged four classes of (i) 'medium goods vehicle', (ii) 'medium passenger vehicle', (iii) 'heavy goods vehicle' and (iv) 'heavy passenger vehicle', into a single class of 'transport vehicle' under Section10(2)(e) of *MV Act*. Section 10(2)(d) on the other hand provides for a separate class of 'Light Motor Vehicle'. Therefore, the retention of the separate classes of 'transport vehicle' and 'light motor vehicle' under Section 10(2) by the 1994 Amendment, implies that the two classes are not co-equals, and the license holder of a 'Light Motor Vehicle' is not eligible to drive a 'Transport Vehicle'. A separate license would be mandatory is the argument of the counsel.

**9.5.** Mr. Jayant Bhushan, learned Senior Counsel argued that *Mukund Dewangan (2017)* erred in two significant respects. The judgment overlooked Section 3, which mandates a separate

endorsement for driving a 'transport vehicle'. Reliance was placed on the decision in *Nathi Devi v. Radha Devi Gupta*,[7] where it was held that 'effort should be made to give effect to each and every word used by the Legislature.' Therefore, it was projected that the Court should not disregard any part of Section 3 in its interpretation.

**9.6.** The other reason why *Mukund Dewangan (2017)* was incorrect according to Mr. Bhushan, was because it focused on the general law, rather than the special provisions within the *MV Act.* It was therefore argued that it is a well-known principle that the general will not override the special (*Generalia Specialibus Non Derogant*) and the special will override the general (*Specialia Generalibus Derogant*). It was pointed out that Section 10(2) explicitly distinguishes between 'Transport Vehicles' and LMV, treating them as separate categories. *Mukund Dewangan (2017)* erroneously subsumed 'transport vehicles' under the broader category of 'Light Motor Vehicles'. It was also contended that the requirements for obtaining a transport vehicle license are distinct and more rigorous because the drivers of transport vehicles are entrusted with the safety of passengers including school children and strangers, who repose their trust in the driver of the transport vehicle.

**9.7.** In his turn, Mr. Neeraj Kishan Kaul, learned Senior Counsel emphasized that the classification of transport vehicles under 7500 kg within the definition of Light Motor Vehicles under Section 2(21) is a broad definition, based on weight. He contended that this classification does not imply that the licensing regime under the *MV Act* is also determined by weight. According to the Counsel, licensing under the *MV Act* is linked to the intended 'use' of the vehicle. Specific attention was drawn to the definition of a Transport Vehicle in Section 2(47), which refers to a 'public service vehicle', a 'goods carriage', an 'educational institution bus' or a 'private service vehicle'. Mr. Kaul argued that in the separate definition for each of these categories, one common factor is discernible as each provision uses words like 'use', 'used or adapted to

7 [2004] Supp. 6 SCR 1141 : (2005) 2 SCC 271

be used', 'constructed or adapted for use'. This shows that the licensing scheme is based on usage and not the weight of the vehicle.

**9.8.** Mr. Tushar Mehta, Learned Solicitor General submitted that the definition under Section 2(21) which includes transport vehicles is for a different regime, set under Section 113 and 115 of *MV Act.* These sections are contained in Chapter VII which is titled 'Control of Traffic' and pertain to 'limits of weight and limitations on use' and 'power to restrict the use of vehicles'. In this context, vehicles of specific weight may be prohibited from certain roads or areas thereby, making weight a relevant factor. Under the said definition of LMV, 'weight' has been kept as a factor for demarcation between 'LMV' and 'Transport' vehicles only for the purposes of determining the 'road tax'. Rule 31(2) and Rule 31(3) of the Rules prescribe the syllabus for training drivers for 'Non-Transport' and 'Transport' vehicles respectively. It was submitted that the said syllabuses are not the same. Also, the *MV Act* provides that the minimum period of training shall not be less than 21 days for 'Non-Transport' vehicles, as opposed to 'Transport' vehicles, for which the minimum period of training shall not be less than 30 days.

**9.9.** In her turn, Ms. Archana Pathak Dave, learned Senior Counsel presented to the Bench a photograph of a bus weighing 7450 kg, just below the limit of 7500 kg. She argued that if a school bus is operated by someone holding a Light Motor Vehicle license, it could be very risky. It was asserted that weight should not be a determining factor for licensing, rather it may be relevant in contexts such as taxes, permits, and other regulatory considerations. Ms. Dave pointed out that *Mukund Dewangan (2017)* failed to acknowledge the necessity of a Form 7 endorsement for LMV license holders to drive transport vehicles. This endorsement is crucial, as LMV license holders cannot legally drive transport vehicles without it. Furthermore, Section 9(6) requires competence testing, specific to the type of vehicle, necessitating separate licenses for LMV and Transport Vehicles to maintain the *MV Act*'s regulatory coherence.

**9.10.** Mr. P.B. Suresh, learned Counsel representing the Intervenor-The Society Against Drunken Driving, an NGO argued that road

safety is considered a fundamental right. He argued that the decision in *Mukund Dewangan (2017)* has led to unsafe roads by permitting untrained drivers to operate transport vehicles. It was submitted that Section 7 of the *MV Act* requires an individual to hold a driver's license for at least one year to obtain a learner's license for a transport vehicle, which is a critical safety measure.

**9.11.** Mr. Shivam Singh, learned Counsel argued that motor vehicle insurance policies had ensured adequate risk coverage only when accidents were caused by vehicles for which, drivers had valid licenses. However, in *Mukund Dewangan (2017)*, this court referred to the weight of the vehicle, rather than vehicle usage, as a relevant marker for statutory purposes. Consequently, insurance coverage through judicial decisions had to be extended to cases where drivers with LMV licenses were driving vehicles outside their licensing permits.

**C.** SUBMISSIONS ON BEHALF OF CLAIMANTS

**10.** On behalf of the Claimants, we have heard learned Senior Counsel, Ms. Anitha Shenoy, and the respective submissions of Mr. Devvrat, Mr. Kaustubh Shukla and Mr. Anuj Bhandari learned Counsel. While supporting the interpretation in *Mukund Dewangan (2017)* the Counsel would contend that the vehicles under the *MV Act* are differentiated according to their weight. They argue that the definition of 'light motor vehicle' in Section 2(21) is an inclusive definition which encompasses multiple variety of vehicles including transport vehicles, the weight of which does not exceed 7500 kg.

**10.1.** The learned Counsel, Mr. Devvrat contended that the licensing system under the *MV Act,* categorises motor vehicles into two primary groups i.e. Light and Heavy categories—LMV and HMV respectively. It was argued that if a motorcycle used for hire, weighing less than 200kg falls under the class of transport vehicles, countless drivers operating on platforms like Rapido, a bike-or-hire service, would be required to obtain fresh licenses if *Mukund Dewangan (2017)* is overruled.

**10.2.** Mr. Anuj Bhandari, learned Counsel arguing for the Claimants, took us through the history of the inclusion of "transport vehicles" as a class, under the *MV Act.* It was submitted that for the last

34 years, licenses have been granted in the country on the basis of weight of the vehicle. Even today, Form 2 specifies the grant of licenses based on weight, with exceptions being made for vehicles like road rollers, e-rickshaws, or a motorcycle. He pointed out that the original legislation identified four types of vehicles: (i) medium goods vehicles, (ii) medium passenger vehicles, (iii) heavy goods vehicles and (iv) heavy passenger vehicles. With the 1994 amendments to the *MV Act,* these categories were clubbed into a single classification of "transport vehicles." Building on this, Mr. Bhandari contended that "transport vehicles" under the *MV Act* meant medium and heavy vehicles. Therefore, individuals with an LMV license were entitled to drive a light transport vehicle weighing less than 7500 kilograms. Whereas, additional requirements of a medical certificate and experience would apply only to those medium and heavy transport vehicles which exceed the weight limit of 7,500 kgs. It was argued that the Parliament changed the nomenclature by merging the four categories into a single class of 'Transport Vehicles', to 'simplify' the licensing scheme.

**10.3.** Mr. Kaustubh Shukla, Learned Counsel projected that careful reading of all the definitions in Section 2 would make it clear that the definitions were primarily bifurcated as follows:

> "a. 'Class of vehicle,' which mandatorily referred to weight: LMV [Sec. 2(21)] up to 7500 KG, HMV (Passenger/Goods) [Sec. 2(16) & Sec. 2(17)] exceeding 12000 KG, MMV (Passenger/ Goods) [Sec. 2(23) & Sec. 2(24)] between 7500 to 12000 KG.
>
> b. 'Kind or Name' (Description) of vehicle, which had no reference to weight: [Sec. 2(7), 2(11), 2(14), 2(22), 2(25), 2(27), 2(28), 2(29), 2(33), 2(39), 2(40), 2(43), 2(44), 2(46), 2(47)]."

The legislature, according to the counsel, intended to demarcate vehicles depending upon the weight of the vehicle and not their description. Thus, according to him, the entire licensing scheme must take into account the weight classification, to ensure clarity. The earlier unamended act set the weight limit at 6000 kg which was further raised to 7500 kg by way of the 1994 amendment. Therefore,

the legislature intended to demarcate vehicles depending on the weight and not the description of vehicle. It was further argued that in the event of a conflict between the Act and the Rules, Schedules, or Forms, the provisions of the Act will take precedence. Reliance was placed on the decision of this Court in *Aphali Pharmaceuticals Ltd. v. State of Maharashtra*.[8]

**10.4.** Ms. Anitha Shenoy, Learned Senior Counsel additionally argued that on the strength of *Mukund Dewangan (2017)*, the auto drivers were permitted to operate taxis and motorcabs while holding a driving licence for LMV for the past 6 years. Reconsideration of the same is not merely an issue of insurance coverage, rather it would directly impact the livelihood of those driving transport vehicles with an LMV license. Their rights under Article 19(1)(g) of the Constitution of India should also be factored in for the interpretative exercise.

**D.** ISSUES

**11.** From the above submissions, the following specific issues fall for our consideration:

**(i)** Whether a driver holding an LMV license (for vehicles with a gross vehicle weight of less than 7,500 kgs) as per Section 10(2)(d), which specifies 'Light Motor Vehicle', can operate a 'Transport Vehicle' without obtaining specific authorization under Section 10(2)(e) of the *MV Act*, specifically for the 'Transport Vehicle' class;

**(ii)** Whether the second part of Section 3(1) which emphasizes the necessity of a driving license for a 'Transport Vehicle' overrides the definition of LMV in Section 2(21) of *MV Act?* Is the definition of LMV contained in Section 2(21) of *MV Act* unrelated to the licensing framework under the *MV Act* and the *MV Rules*;

**(iii)** Whether the additional eligibility criteria prescribed in the *MV Act* and *MV Rules* for 'transport vehicles' would apply to those who are desirous of driving vehicles weighing below 7,500 kgs and have obtained a license for LMV class under Section 10(2)(d) of the *MV Act ;*

8 [1989] Supp. 1 SCR 129 : (1989) 4 SCC 378

**(iv)** What is the effect of the amendment made by virtue of Act 54 of 1994 w.e.f. 14.11.1994 which substituted four classes under clauses (e) to (h) in Section 10 with a single class of 'Transport Vehicle' in Section 10(2)(e)?

**(v)** Whether the decision in *Mukund Dewangan (2017)* is *per incuriam* for not noticing certain provisions of the *MV Act* and *MV Rules*?

**E.** DISCUSSION

***(I)*** *The Purpose of the MV Act, 1988*

**12.** Prior to the enactment of the *MV Act 1988*, the legal framework governing motor vehicles was based on the *Motor Vehicle Act, 1939* which was incorporated from the English *Road Traffic Act, 1930.* In January 1984, a working group was constituted to review all provisions of the *Motor Vehicle Act, 1939* and to propose necessary amendments. This culminated in the enactment of the *MV Act, 1988* which has since undergone several amendments. The Statement of Objects and Reasons of the *MV Act, 1988* is extracted below for ready reference:

> "2. Various Committees, like, National Transport Policy Committee, National Police Commission, Road Safety Committee, Low Powered Two - Wheelers Committee, as also the Law Commission have gone into different aspects of road transport. They have recommended updating, simplification and rationalization of this law. Several Members of Parliament have also urged for comprehensive review of the Motor Vehicles Act, 1939, to make it relevant to the modern - day requirements.
>
> 3. A Working Group was, therefore, constituted in January, 1984 to review all the provisions of the Motor Vehicles Act, 1939 and to submit draft proposals for a comprehensive legislation to replace the existing Act. This Working Group took into account the suggestions and recommendations earlier made by various bodies and institutions like Central Institute of Road Transport (CIRT), Automotive Research Association of India (ARAI), and other transport organisations including, the manufacturers and the general public, Besides, obtaining comments of State Governments on the recommendations of the Working Group, these were discussed in a specially convened meeting of Transport

Ministers of all States and Union territories. Some of the more important modifications so suggested related for taking care of –

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

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

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

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

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

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

**13.** As per the Statement of Objects and Reasons, the important provisions addressed the following:

"(a) rationalization of certain definitions with additions of certain new definitions of new types of vehicles;

(b) stricter procedures relating to grant of driving licences and the period of validity thereof;

(c) laying down of standards for the components and parts of motor vehicles;

(d) standards for anti-pollution control devices;

(e) provision for issuing fitness certificates of vehicles also by the authorised testing stations;

(f) enabling provision for updating the system of registration marks;

(g) liberalised schemes for grant of stage carriage permits on non nationalised routes, all-India Tourist permits and also national permits for goods carriages;

(h) administration of the Solatium Scheme by the General Insurance Corporation;

(i) provision for enhanced compensation in cases of "no fault liability" and in hit and run motor accidents;

(j) provision for payment of compensation by the insurer to the extent of actual liability to the victims of motor accidents irrespective of the class of vehicles;

(k) maintenance of State registers for driving licences and vehicle registration;

(l) constitution of Road Safety Councils.

6. The Bill also seeks to provide for more deterrent punishment in the cases of certain offences."

**14.** The above would suggest that the enactment of the *MV Act, 1988* was driven, *inter alia,* by the rapidly increasing number of vehicles in the country, the development of the road sector and the need to promote the adoption of advanced technology in the automotive sector. It is also essential to note that the Law Commission, in particular, had made various recommendations concerning provisions of the *MV Act, 1939* and *MV Act, 1988* in its Report Nos. 85,[9] 106,[10] 119[11] and 149.[12] To further understand the objective of the *MV Act, 1988*, we may refer to the 149th Report of the Law Commission titled 'Removing Certain Deficiencies in the Motor Vehicle Act, 1988' which noted the challenges faced by victims and their families in seeking compensation under the *MV Act, 1988* and the rising frequency of road accidents in the following words:-

" The frequency of accidents caused by motor vehicles and the pitiable plight of the victims of such accidents and dependants have been the subject matter of comment by

9 Law Commission of India, 'Claims for compensation under Chapter 8 of the Motor Vehicles Act, 1939'(85th Report, 1980)

10 Law Commission of India, 'Section 103A, Motor Vehicles Act, 1939: effect of Transfer of a Motor Vehicle on Insurance' (106th Report, November, 1984)

11 Law Commission of India, Access of Exclusive Forum for Victims of Motor Accidents under the Motor Vehicles Act, 1939 (119th Report, February, 1987)

12 Law Commission of India, Removing Certain Deficiencies in the Motor Vehicles Act, 1988(149th Report, 1994)

> the Supreme Court in a number of cases. During recent years, the number of road accidents in the country have increased more alarmingly. Almost every day one finds in the newspapers, sad tales of road accidents. …. There is therefore an urgent need for streamlining the mechanism through which the victims or their legal representatives are compensated for their loss in such accidents so that they may be able to receive expeditiously an appropriate amount as compensation for the damages sustained by them. It is felt all round that victims of motor accidents and their legal representatives, where the accident is fatal, besides having grievously suffered as a result of the unfortunate event, are subjected to the agonies and uncertainties of a legal battle for a number of years for receiving the damages due to them through the process of Court. Of late, Lok Adalats have been settling the cases of such nature but it has been found that the victims or their legal representatives are compelled to be satisfied with a paltry sum out of the damages claimed by them. Such persons have no other option but to settle the dispute because they do not know for how many more years they will have to litigate for receiving the damages. In the backdrop of these and other related matters, the law commission has suo moto taken up the exercise of finding a solution to some of the problems relating to the Motor Vehicle Act and giving their appropriate recommendations thereon."

**15.** The *MV Act, 1988* is fundamentally a social welfare legislation[13] enacted with the objective of providing a mechanism for victims and their families to seek compensation for loss or injury resulting from road accidents. Additionally, its provisions regarding licensing and penalties for traffic violations serve the broader purpose of promoting road safety. Being a welfare legislation, it must be interpreted in a manner so as not to deprive the claimants of the benefit of the legislation. Any interpretation of its provisions must reflect the *dual* purpose, of not only as a mechanism for ensuring timely compensation and relief for victims of road accidents but also in promoting overall road safety.

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13 Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan, AIR 1987 SC 1184; Sohan Lal Passi v. Sesh Reddy, AIR 1996 SC 2627

**16.** The issue in this reference is whether an individual holding an LMV license can legally drive a transport vehicle if it falls within the stipulated weight limit of 7,500 kgs. The genesis of the issue stems from disputes regarding the payment of claims by insurance companies for accidents involving 'transport vehicles' operated by individuals holding licenses to drive 'light motor vehicles'. The question before this Court is not one of statutory interpretation but also involves concerns of road safety and public welfare. In interpreting any statute, it is always prudent to keep an eye on the object and purpose of the statute, as well as the underlying reason and the spirit behind it. However, we are conscious of not overstepping into the policy domain which is essentially the prerogative of the legislature. The legislature is uniquely positioned to examine the broader social, economic and safety considerations that underlie transportation policy and any changes to the law must be rooted in comprehensive public discourse and analysis. Having noted the broader objective of the MV Act, let us now discuss the statutory scheme.

**(II)** *Brief Overview of the MV Act and MV Rules*

**17.** It is a fundamental principle of statutory interpretation that 'construction is to be made of all the parts together and not of one part only by itself'.[14] When attempting to discern the meaning of a certain provision in a statute, it is essential to consider that provision within the broader context of the entire legislative framework. The context encompasses several other critical dimensions. First, it involves reading the statute as a whole. Second, it is also crucial to take into account any previous statutes that are in *pari materia*. Third, a comprehensive understanding of the general scope and purpose of the statute is essential. Finally, a critical aspect of interpreting any statutory provision also involves identifying the mischief that the legislation intended to address.[15] Therefore, a nuanced and thorough interpretation would lend clarity and consistency in the application of legal principles.

**18.** In this regard, Justice GP Singh in his seminal treatise on Interpretation of Statutes[16] had this to say:

14 Subba Rao J in Gurmej Singh S v. Sardar Pratap Singh Kairon, AIR 1960 SC 122

15 R S Raghunath v. State of Karnataka, AIR 1992 SC 81; Union of India v. Elphinstone Spg. and Wvg. Co. Ltd. (2001) 4 SCC 139; Powdrill v. Watson (1995) 2 AC 394

16 Justice G.P. Singh: *Principles of Statutory Interpretation* (LexisNexis, 2016)

> "It is a rule now firmly established- that the intention of the Legislature must be found by reading the statute as a whole. The rule is referred to as an "elementary rule" by Viscount Simonds; a "compelling rule" by Lord Somervell of Harrow; . and a "settled rule" by BK Mukherjee. "I agree", said Lord Halsbury, "that you must look at the whole instrument inasmuch as there may be inaccuracy and inconsistency; you must, if you can, ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it"."

**19.** Let us now start by noting and understanding the statutory framework of the *MV Act* and the MV Rules. A snapshot of all the chapters of *MV Act* is listed below:

Chapter I-**Definitions**

Chapter II-**Licensing of drivers of motor vehicles**

Chapter III-Licensing of Conductors of Stage Carriages.

Chapter IV-**Registration of motor vehicles**.

Chapter V-**Control of Transport Vehicles**

Chapter VI-Special provisions relating to State Transport Undertakings

Chapter VII-Construction, Equipment and Maintenance of motor vehicles.

Chapter VIII**-Control of Traffic**

Chapter IX-Motor Vehicles temporarily leaving or visiting India

Chapter XI- **Insurance of Motor Vehicles against third party risks**

Chapter XII-Claims Tribunals

Chapter XIII-**Offences, Penalties and Procedure**

Chapter XIV-Miscellaneous

**20.** The MV Rules contain the following chapters:

Chapter I-Preliminary

**Chapter II-Licensing of Drivers of Motor Vehicles**

Chapter III-Registration of Motor Vehicles

**Chapter IV-Control of Transport Vehicles**

Chapter V-Construction, Equipment and Maintenance of Motor Vehicles

**Chapter VI-Control of Traffic**

Chapter VII-Insurance of Motor Vehicles Against Third Party Risks

Chapter VIII-Offences, Penalties and Procedure

Chapter IX-Examination of Good Samaritan and Enquiry

**21.** This court, to effectively address the issue, is primarily concerned with Chapter II of the *MV Act* and the *MV Rules* which relates to licensing of drivers of motor vehicles. The Forms concerning driving license appended to the MV Rules, may also bear a reference. Chapter II of the MV Act contains the provisions dealing with the necessity for a driving license, age limit, responsibility of owners of motor vehicles, restrictions on the holding of driving licenses and the restrictions on the grant of learner's licenses for certain vehicles. Section 8 and Section 9 contain provisions concerning the application for grant of a learner's license and driving license respectively. Section 10 which is important for our purpose deals with 'forms and contents of licenses to drive'. Chapter II also contains provisions for additions to the driving license, the licensing and regulation of schools or establishments for imparting instruction in driving of motor vehicles, the validity period of license, renewal, and revocation. Additionally, it also contains provisions concerning orders refusing or revoking driving licenses, driving licenses to drive motor vehicles belonging to Central Government, power of licensing authority to disqualify from holding a driving license or revoke such license, the power of Court to disqualify, suspend driving license in certain cases, the effect of the disqualification order, endorsement, and the maintenance of National and State Registers of Driving licenses. Finally, it also contains provisions relating to the power of Central and State Government to make Rules.

**22.** The *MV Rules* contain the procedure concerning driving licenses in Chapter II. It covers, inter alia, general provisions, evidence as to the correctness of address and age, medical certificate, educational qualifications, preliminary test, application for a driving license, driving test, form of driving license, renewal, driving schools and establishments, duration of license, duplicate license as well as the training syllabus.

**23.** The MV Act and MV Rules work in tandem, like two wheels in the same axle, to form a comprehensive legal framework governing

motor vehicles in India. While the Act provides the backbone, the Rules provide specific provisions for implementation.

***(III)*** *Construing Section 2(21), Section 3 and Section 10*

**24.** To understand the divergent interpretations on the core issue of whether a holder of a LMV license can operate a 'transport vehicle' weighing less than 7,500 kgs, it will be necessary to first consider the relevant definition(s) contained in Section 2 of the *MV Act.* The definitions deserving scrutiny are noted below for ready reference. The definition of Section 2 interestingly begins with the clarificatory preface, 'unless the context otherwise requires':

2(10) "**driving licence**" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description."

2(15) "**gross vehicle weight**" means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle;"

2(16) "**heavy goods vehicle**" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms;"

2(17) "**heavy passenger motor vehicle**" means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which; or a motor-car the unladen weight of which, exceeds 12,000 kilograms;"

2(21) "**light motor vehicle"** means a transport vehicle or omnibus the gross vehicle weight of either of which or a motorcar or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms;"

2(22) "**maxicab"** means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward;

2(23) "**medium goods vehicle**" means any goods carriage other than a light motor vehicle or a heavy goods vehicle;"

2(24) "**medium passenger motor vehicle**" means any public service vehicle or private service vehicle, or educational institution bus other than a motor-cycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle;"

2(25) **"motorcab"** means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward.

2(26) **"motor-car"** means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor-cycle or invalid carriage.

2(27) **"motor cycle**" means a two-wheeled motor vehicle, inclusive of any detachable side-car having an extra wheel, attached to the motor vehicle.

2(28) "**motor vehicle"** or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding1 [twenty-five cubic centimetres];

2(29) "**omnibus"** means any motor vehicle constructed or adapted to carry more than six persons excluding the driver."

2(44) "**tractor"** means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller;"

**2(48)** "**unladen weight**" means the weight of a vehicle or trailer including all equipments ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body;"

**25.** The term 'Transport Vehicle' is defined in Section 2(47) of the *MV Act* and each of the terms contained in the definition is separately defined in Sections 2(35),2(14), 2(11), 2(33) of the *MV Act:*

2(47) "**transport vehicle"** means a **public service vehicle**, a **goods carriage**, an **educational institution bus** or a **private service vehicle;"**

[emphasis supplied]

2(35) "**public service vehicle**" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxi-cab, a motor-cab, contract carriage, and stage carriage;"

2(14) "**goods carriage**" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;"

2(11) "**educational institution bus**" means an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities;"

2(33) **"private service vehicle"** means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes

**26.** Rule 2 of the MV Rules provides certain additional definitions. For instance, Rule 2(c) defines an 'agricultural tractor' as under:

> "agricultural tractor" means any mechanically propelled 4-wheel vehicle designed to work with suitable implements for various field operations and/or trailers to transport agricultural materials. *Agricultural tractor is a non-transport vehicle'*
>
> [emphasis supplied]

**27.** Significantly, a non-transport vehicle is defined in Rule 2(h):

> ""non-transport vehicle" means a motor vehicle which is not a transport vehicle"

**28.** The definition of 'e-cart',[17] 'e-rickshaw',[18] 'Battery operated vehicle',[19] 'road ambulance',[20] 'school bus',[21] 'special purpose vehicle',[22] 'motor caravan',[23] 'puller tractor'[24] and different categories of vehicles such as 'Category L'[25] and 'Category M'[26] are also provided in the MV Rules.

**29.** The above definition(s) in the MV Act and MV Rules would indicate that they focus on various aspects including reference by (i) *weight* such as light motor vehicle and heavy goods vehicle; (ii) the *intended use* such as educational institution bus, public service or private service and also (iii) the vehicle *types* such as omnibuses and motor cars. Therefore, the scheme of the Act is not exactly either user-based or weight-based but is a combination of both. It also takes into account the evolving transportation sector which is reflected in the introduction of new categories of vehicles through various amendments such as adapted vehicles, e-carts, and e-rickshaws. Notably, the Supreme Court has also recognized[27] that hybrid rickshaws, commonly referred to as 'jugaad' in India, fall under the definition of Motor Vehicle u/s 2(28) of the MV Act.

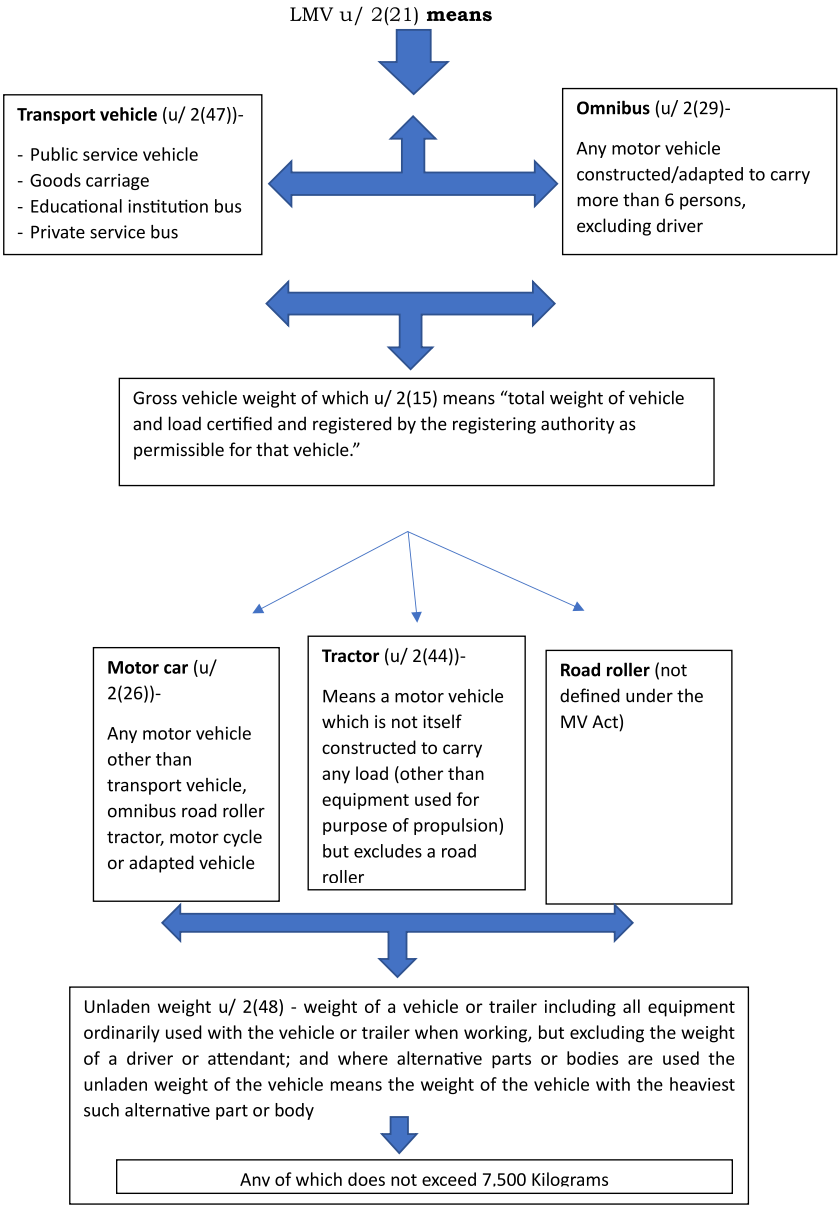
**30.** For our discussion, much turns on the definition of LMV contained in Section 2(21) of the MV Act:

> "light motor vehicle" **means** a **transport vehicle** or **omnibus** the **gross vehicle weight** of either of which or a **motorcar** or **tractor** or **road-roller** the **unladen weight** of any of which, does not exceed 7,500 kilograms."
>
> [emphasis supplied]

**31.** The term 'transport vehicle', 'gross vehicle weight', 'motor car', 'tractor', 'road roller', 'unladen weight' and 'gross vehicle weight' are also separately defined in the *MV Act* as noted earlier. In the

17 Rule 2(cc)
18 Rule 2(cb)
19 Rule 2(u)
20 Rule 2(zb)
21 Rule 2(zc)
22 Rule 2(zd)
23 Rule 2(za)
24 Rule 2(y)
25 Rule 2(i)
26 Rule 2(k)
27 Rajasthan SRTC v. Santosh (2013) 7 SCC 107

context, Mr. Dave, Learned Senior Counsel appearing for one of the insurance companies presented to us a visual 1 page representation of the definition of LMV which being useful, is reproduced below:



**32.** A plain reading of the definition clause of LMV as is also clear from the diagram above shows that LMV, inter-alia, 'means' a 'Transport Vehicle'. The use of the word 'means' is crucial here which suggests specifics. When the statute says that a word or a phrase shall "mean" (instead of say "include"), it is quite certainly a 'hard and fast', strict and exhaustive definition. Such a definition is an explicit statement of the full connotation of a term.[28] It is a clear signal that the legislature did not wish to maintain a distinction between the two classes of vehicles. Such an explicit and specific definition leaves no room for ambiguity.

**33.** On the importance of definition sections, G.P. Singh in Interpretation of Statutes[29] has the following to say:-

> "In spite of severe criticism as to utility of definitions section or interpretation clauses, it is common to find in a statute "Definitions" of certain words and expressions used elsewhere in the body of the statute. The object of such a definition is to avoid the necessity of frequent repetitions in describing all the subject matter to which the word or expression so defined is intended to apply. For instance, the Supreme Court held that when the word "securities" has been defined under the Securities Contracts (Regulation) Act, 1956, its meaning would not vary when the same word is used at more than one place in the same statute, **as otherwise it will defeat the very object of the definitive section."**
>
> [emphasis supplied]

**34.** As noticed earlier, Section 2 also begins with the phrase 'unless the context otherwise requires'. However, any contention based on a contrary context must avoid the risk of making the explicit definition, redundant or useless. Here we may usefully extract the following :-

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28 *Gough* v. *Gough* [(1891) 2 QB 665 : 65 LT 110] referred in P. Kasilingam v. PSG College of Technology, AIR 1995 SC 1395; See also Punjab Land Development and Reclamation Corpn Ltd. v. Presiding Officer, Labour Court (1990) 3 SCC 682

29 Justice G.P. Singh: *Principles of Statutory Interpretation* (LexisNexis,2016)

> "..However, it is incumbent on those who contend that the definition given in the interpretation clause does not apply to a particular section to show that the context in fact so requires. **An argument based on contrary context which will make the inclusive definition inapplicable to any provision in the Act cannot be accepted as it would make the definition entirely useless.** Repugnancy of a definition arises only when the definition does not agree with the subject or context; any action not in conformity with the definition will not obviously make it repugnant to subject or context of the provision containing the term defined under which such action is purported to have been taken. When the application of the definition to a term in a provision containing that term makes it unworkable and otiose, it can be said that the definition is not applicable to that provision because of contrary context."[30]
>
> [emphasis supplied]

**35.** Considering the emphatic nature of the definition given in Section 2(21) which would suggest a strict interpretation, it would be logical to conclude that a light motor vehicle would *mean* a *transport vehicle*, omnibus, road roller, tractor, or motor car, provided the weight does not exceed 7,500 kgs. The definition as understood, has an important bearing on the issuance of licenses and permits.

**36.** The term "driving license", which is relevant for the present discussion, is defined under Section 2(10) of the *MV Act* as a license authorizing a person to operate a motor vehicle of "*any specified class or description*". Let us now read Section 10(2) titled, 'form and Contents of Licenses to drive' which lists the different classes of motor vehicles. It is contained in Chapter II which deals with 'Licensing of Drivers of Motor Vehicles'. A key amendment was carried out in the Section by deleting clauses (e), (f), (g) and (h) and all these were clubbed under a single head of "transport vehicle".

30 Justice G.P. Singh, Principles of Statutory Interpretation (LexisNexis,2016)

| **MV Act (pre amendment of 14.11.1994)** | **MV Act (post amendment of 14.11.1994)** |
|---|---|
| 10. Form and contents of licences to drive.—(1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.<br>(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of **one or more of the following classes**, namely:— (a) motor cycle without gear; (b) motor cycle with gear;<br>(c) invalid carriage;<br>(d) *light motor vehicle;*<br>**(e) medium goods vehicle**<br>**(f)medium passenger vehicle;**<br>**(g)heavy goods vehicle;**<br>**(h) heavy passenger vehicle.** | 10. Form and contents of licences to drive.—(1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government. (2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of **one or more of the following classes,** namely:—<br>(a) motor cycle without gear;<br>(b) motor cycle with gear;<br>(c) invalid carriage1 ;<br>(d) *light motor vehicle;*<br>(e) **transport vehicle**;<br>**(e)** deleted<br>**(f)** deleted<br>**(g)** deleted<br>**(h)** deleted<br>(i) road-roller;<br>(j)motor vehicle of a specified description |

**37.** In the context of the deletion of the classes of 'medium goods vehicle', 'medium passenger vehicle', 'heavy goods vehicle', and 'heavy passenger vehicle' and the introduction of a separate class of 'transport vehicle' through the 1994 amendment, the counsel for the insurance companies contended that a specific mention of

'transport vehicle' after the amendment would suggest that a separate endorsement would be necessary to drive a 'transport vehicle'. It was further submitted that even before the 1994 amendment, the second part of Section 3 always provided that a separate endorsement would be necessary.

**38.** Section 3 is titled 'Necessity for driving license' and reads as under:

> "3. Necessity for driving licence.– (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; **and no person shall so drive a transport vehicle** [other than a motor cab or motor cycle hired for his own use or rented under any scheme made under sub-section (2) of section 75] **unless his driving licence specifically entitles him so to do.**
>
> (2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government."
>
> [emphasis supplied]

**39.** To deal with the above submission, let us take the hypothetical example of Sri **-** who let us say is desirous of driving an auto in the year 1990. The following option(s) of classes of vehicles would be available to Sri, as per unamended Section 10:

(a) motor cycle without gear;

(b) motor cycle with gear;

(c) invalid carriage;

(d) light motor vehicle**;**

(e) medium goods vehicle

(f) medium passenger vehicle;

(g) heavy goods vehicle;

(h) heavy passenger vehicle.

**40.** The applicant Sri would be required to fill the Form 4, prescribed under Rule 14 of MV Rules which was prevalent before 28.3.2001. The Form 4 is extracted below:-

"FORM 4

[*See* Rule 14]

Form of application for licence to drive a motor vehicle

To,

The licensing authority,

……..

[Passport size photograph]

I apply for a licence to enable me to drive vehicles of the following description—

*(a)* Motorcycle without gear

*(b)* Motorcycle with gear

*(c)* Invalid carriage

*(d)* Light motor vehicle

*(e)* Medium goods vehicle

*(f)* Medium passenger motor vehicle

*(g)* Heavy goods vehicle

*(h)* Heavy passenger motor vehicle

*(i)* Roadroller

*(j)* Motor vehicle of the following description:

***

Certificate of test of competence to drive

The applicant has passed the test prescribed under Rule 15 of the Central Motor Vehicles Rules, 1989. The test was conducted on (here enter the registration mark and description of the vehicle) …… on (date)…….

The applicant has failed in the test.

(The details of deficiency to be listed out)

Date:……

Signature of Testing Authority

…….

Full name and designation

Two specimen signatures of applicant:

Strike out whichever is inapplicable."

**41.** Form 4 above indicates that there is no mention of 'Transport Vehicle' for the purpose of obtaining a driving license. Moreover, there is no mention of a 'light goods vehicle' or a 'light passenger vehicle'. Therefore, if Sri applies for a 'Light Motor Vehicle' license, which already *means* a 'Transport Vehicle' as per the definition of LMV contained in 2(21), can it be said that Sri cannot drive a 'Transport Vehicle' because '*his driving license specifically*' does not '*entitle him so to do*' as provided in the second part of Section 3? We think not. The specific authorization should not be understood to mean that Sri holding an LMV license which covers 'Transport vehicle', would be disentitled to drive a 'Transport Vehicle'. A question would then arise about the purpose of explicitly mentioning 'Transport Vehicle' in Section 3 (and other provisions as we will discuss later)? We may notice that there is no mention of the term 'light **goods** vehicle' or a 'light **passenger** vehicle' in Section 10 or in the definition section. On the other hand, a separate mention of 'medium **goods** vehicle', 'medium **passenger** vehicle', 'heavy **goods** vehicle' and 'heavy **passenger** vehicle' as incorporated in the Section 10 would suggest that it is primarily targeted towards 'Transport Vehicles' as opposed to a 'Light Motor Vehicle', which as earlier noticed could also be a 'Non-Transport Vehicle'. The emphasis in the second part of Section 3 should therefore be understood in relation to Medium and Heavy Vehicles in the statutory scheme even prior to the 1994 amendment. The reasonable interpretation of the second part of Section 3 should therefore pertain to a driving license for those driving 'medium goods vehicle', 'medium passenger vehicle', 'heavy goods vehicle', and 'heavy passenger vehicle'. Such an interpretation and understanding would be logical because medium and heavy vehicles would require greater maneuverability and skill as compared to drivers of the LMV class. The subsequent amendment in Section 10 makes this position even clearer. The relevant portion of the Statement of Objects and Reasons of the Amendment Act 54 of 1994 may also guide us here and is reproduced below:

> "(a) The introduction of newer type of vehicles and fast increasing number of both commercial and personal vehicles in the country.
>
> (b) Providing adequate compensation to victims of road accidents without going into longdrawn procedure;

(c) Protecting consumers' interest in Transport Sector;

(d) Concern for road safe ty standards, transport of hazardous chemicals and pollution control;

(e) Delegation of greater powers to State Transport Authorities and rationalising the role of public authorities in certain matters;

(f) **The simplification of procedures** and policy liberalisation in the field of Road Transport;

(g) Enhancing penalties for traffic offenders.

The Bill inter alia provides for –

(a) modification and amplification of certain definitions of new type of vehicles ;

(b) **simplification of procedure for grant of driving licences;**

(c) putting restrictions on the alteration of vehicles;

(d) certain exemptions for vehicles running on non-polluting fuels;

(e) ceilings on individuals or company holdings removed to curb "benami" holdings;

(f) states authorised to appoint one or more State Transport Appellate Tribunals;

(g) punitive checks on the use of such components that do not conform to the prescribed standards by manufactures, and also stocking / sale by the traders;

(h) increase in the amount of compensation of the victims of hit and run cases;

(i) removal of time limit for filling of application by road accident victims for compensation;

(j) punishment in case of certain offences is made stringent;

(k) a new pre-determined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational."

[emphasis supplied]

**42.** The classes of 'medium goods vehicle', 'medium passenger vehicle', 'heavy goods vehicles', and 'heavy passenger vehicles' as earlier noted in the table, were subsumed under the class of 'Transport vehicle'. It can logically be inferred that the term 'Transport Vehicle' primarily targets vehicles exceeding 7,500 kgs, for the purpose of license regime. The intention of the legislature was to simplify the licensing framework for larger commercial vehicles and at the same time not interdict a LMV license holder to also drive a transport vehicle. The additional requirements for medium and heavy vehicles are also evident from unamended sub-section 1 of Section 7 which reads as under:

"Restrictions on the granting of learner's license for certain vehicles-

(1) No person shall be granted a learner's license-

*(a) to drive a heavy goods vehicle unless he has held a driving license for atleast 2 years to drive a light motor vehicle or for at least one year to drive a medium goods vehicle.*

*(b) to drive a medium goods vehicle or a medium passenger vehicle unless he has held a driving license for atleast one year to drive a light motor vehicle."*

[emphasis supplied]

**43.** The amended Section 7(1) however, states that:

'7. Restrictions on the granting of learner's licences for certain vehicles:-

[(1) No person shall be granted a **learner's licence** to drive a **transport vehicle** unless he has held a driving licence to drive a **light motor vehicle** for at **least one year**:]

Therefore, the classes of medium and heavy vehicles stood subsumed under 'transport vehicles'. Our view on the LMV licence holder's capability to drive a transport vehicle is also fortified by the unamended and amended Rule 10 of the MV Rules:

| **Rule 10** *(pre-amendment)* | **Rule 10** *(post-amendment)* |
|---|---|
| "10. Application for learner's licence.— | 10. Application for learner's licence.— |
| An application for the grant of a learner's licence shall be made in Form 2 and shall be accompanied by,— | An application for the grant of a learner's licence shall be made in Form 2 and shall be accompanied by,— |
| (a) save as otherwise provided in rule 6, a medical certificate in [Form 1-A]. | (a) save as otherwise provided in rule 6, a medical certificate in [Form 1-A]. |
| (b) three copies of the applicant's recent 28 [passport size photograph] | (b) three copies of the applicant's recent 28 [passport size photograph], |
| (c) appropriate fee as specified in rule 32, | (c) appropriate fee as specified in rule 32, |
| (d) in the case of an application for **medium goods vehicle, a medium passenger motor vehicle, a heavy goods vehicle or a heavy passenger vehicle,** *the driving license held by the applicant."* | (d) in the case of an application for **transport vehicle** excluding E-rickshaw or E-Cart, the driving licence held by the applicant] |
| | [(e) proof of residence |
| | (f) proof of age |

**44.** The insertion of a separate class of 'Transport Vehicle' has led to some confusion in legal interpretation. In *National Insurance Co. Ltd. v. Annappa Irappa Nesaria*[31] (for short *"Annappa Irappa Nesaria"*), the issue before this Court was whether the driver of a Matador van weighing 3,500 kgs which had a 'goods carriage' permit could drive a 'transport vehicle', if he had a LMV license. The van, which was insured by the appellant, met with an accident on 9.12.1999, causing

31 [2008] 1 SCR 1061 : (2008) 3 SCC 464

the death of respondent's wife. It was brought to the notice of the Court that the 1994 amendment to the MV Act, replaced "medium goods vehicle" and "heavy goods vehicle", with "transport vehicle." The 2-judge bench observed as under:

> "19. "Light motor vehicle" is defined in Section 2(21) and, therefore, in view of the provision, as then existed, **it included a light transport vehicle**. xx
>
> 20. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well."
>
> [emphasis supplied]

**44.1.** In the pertinent judgment, this Court held that the amendments carried out in 1994 had a prospective operation and at the time of the accident (pre-amendment), a driver holding a valid license to drive a 'Light Motor Vehicle' was also authorised to drive a 'light goods vehicle'. However, post-amendment, a separate endorsement would be necessary. Thus, the insurance company was held liable to remit the compensation since the accident occurred before the change in law.

**44.2.** The above interpretation on prospective application in the context of the 1994 amendment, however does not seem to be correct since the mention of the term 'Transport Vehicle', does not exclude transport vehicles that are already classified as 'LMV', under Section 10. If this interpretation were accepted, it would imply that medium or heavy vehicles would no longer require 'specific' endorsements, as those classes were removed by the amendment. This would lead to impractical outcomes.

**44.3.** The contention that since Light Motor Vehicles and Transport Vehicles are mentioned separately, those Transport Vehicles which (weighing less than 7,500 kg) fall within the class of LMV would require the driver to have a separate driving license or

an endorsement does not appeal well to our understanding. This would be contrary to the legislative intent. The classes mentioned therein do not appear like watertight compartments and some degree of overlap is discernible. An LMV license which typically covers two-wheelers may also be used for commercial activities like small-scale deliveries and the driver may not be required to obtain a separate endorsement for the 'Transport Vehicle' class. It is difficult to accept the argument that a driving license issued for a particular class is limited and the intention of the legislature was to exclude the Transport Vehicles falling within the LMV class. According to our understanding, the correct way to view the legal implication would be that 'transport vehicles' mentioned in Section 10 would cover only those vehicles whose gross vehicle weight is above 7,500 kgs. Such an interpretation aligns with the broader purpose of the amendments and ensures that the licensing regime remains efficient and practical for vehicle owners and drivers. We therefore partially overrule the decision in *Annappa Irappa Nesaria (supra)* for the view taken w.r.t the post-1994 amendment position.

**45.** Significantly, Section 10(2) states that a driving license 'shall also be expressed as entitling the holder to drive a motor vehicle of *one or more* of the following classes'. Therefore, the driver of a 'Light Motor Vehicle' is not per se disentitled to acquire a license for a 'Transport Vehicle' class, for driving vehicles above the weight of 7,500 kgs or those classes which do not fall in the definition of Light Motor Vehicle under Section 2(21). As rightly noted in *Mukund Dewangan (supra)*, Section 10 has to be read with Section 2(21) which defines a Light Motor Vehicle.

***III.*** *Whether the interpretation in Mukund Devangan(2017) would render most provisions of the MV Act and MV Rules otiose?*

**46.** For the Insurance Companies, it was argued with much emphasis that sole reliance on Section 2(21) r/w Section 10 as held in *Mukund Dewangan (2017)* would render otiose, many provisions of the *MV Act* and this can have far-reaching implications. To appreciate this contention, a careful examination of the identified provisions is necessary. Is it correct to say that in order to drive a transport

vehicle, an LMV license holder will require by law, an additional endorsement because the scheme of the Act provides a clear distinction between 'Light Motor Vehicle' and 'Transport Vehicle'? The following table marking the distinction was placed before the Court for consideration:

| **Sr. No.** | **Differentiating Factor** | **Provision Under M.V. Act / Rules** | **Light Motor Vehicle License** | **Transport Vehicle License** |
|---|---|---|---|---|
| **Age / Time Requirement** | | | | |
| *(i)* | *Age limit For Driving* | *Sec. 4* | *18 years and above* ***[S.4(1)]*** | *20 years and above* ***[S.4(2)]*** |
| *(ii)* | *Restriction on grant of Learner's License* | *Sec. 7(1)* | *No minimum requirement to obtain License for Light Motor Vehicle.* | *Must hold a Driving License for a Light Motor Vehicle for at least 1 year, to obtain Learner's License for Transport Vehicle.* ***[S. 7(1)]*** |
| *(iii)* | *Training Period for Obtaining License* | *Rule 31* | *Not less than 21 days* ***[Rule 31(2)]*** ***(+)*** *Actual Hours of Driving shall not be less than 10 hours.* ***[Rule 31(4)]*** | *Not less than 30 days* ***[Rule 31(3)]*** ***(+)*** *Actual Hours of Driving shall not be less than 15 hours.* ***[Rule 31(4)]*** |
| **Medical Certificates** | | | | |
| *(iv)* | *Requirement of Medical for Certificate Learner's License* | *Sec. 8(3)* | *No requirement of Medical Certificate* | *Application for Grant of Learner's License must be accompanied by a Medical Certificate* ***[S.8(3)]*** |
| *(v.)* | *Requirement Of Medical Certificate For Renewal Of Licenses* | *Sec. 15* | *No requirement of Medical Certificate prior to attaining the age of 40 years.* ***[Second Proviso to S.15(1)]*** | *Application Shall be accompanied by a Medical Certificate* ***[Second Proviso to S.15(1)]*** |

| | | | | |
|---|---|---|---|---|
| *(vi)* | *Self-Declaration Of Fitness Or Medical Certificate For License* | *Rule 5* | *Requirement of Self Declaration as to Physical Fitness.* ***[Rule 5(1)]*** | *Requirement Of Medical Certificate by a Registered Medical Practitioner.* ***[Rule 5(1)]*** |
| **Driving Certificates** | | | | |
| *(vii)* | *Requirement Of Obtaining Driving Certificate from a Driving School for Obtaining Driving License* | *Sec. 9(4)* | *No requirement of obtaining Driving Certificate from a Driving School.* | *Application for grant of License Must be accompanied by a Driving Certificate Issued By a School or Establishment referred to in S.12 of M.V. Act.* ***[S.9(4)]*** |
| *(viii)* | *Addition to Driving License to be supported by Driving Certificate* | *Rule 17(1)(b)* | *No such requirement* | *Application for Addition of Transport Vehicle shall be accompanied by a Driving Certificate in Form 5 of the Rules.* ***[Rule 17(1)(b)]*** |
| **Separate Vehicle / Separate License** | | | | |
| *(ix)* | *Necessity for Permits* | *Sec. 66* | *No requirement of a Permit.* | *Permit from the Regional, or State Transport Authority is required to use a vehicle as Transport Vehicle.* |
| *(x)* | *Necessity for Driving License* | *Sec. 3* | *Effective License holder may drive.* | *Driving License must specifically entitle the Driver to drive the Transport Vehicle.* |
| *(xi)* | *Separate Class of Vehicles* | *Sec.10(2)* | ***Section 10(2)(d)*** *– Light Motor Vehicle.* | ***Section 10(2)(e)*** *– Transport Vehicle.* |

| | | | | |
|---|---|---|---|---|
| **Validity of Driving License** | | | | |
| *(xii)* | *Validity of Driving License.* | *Sec. 14* | *Valid for – **[S.14(2)(b)]***<br><br>*(i) Who has not attained 30 years of age on the date of issue / renewal – Valid till such person attains 40 years of age;*<br>*(ii) Who has attained 30 years, but not attained 50 yrs. of age – Valid for 10 years;*<br>*(iii) Who has attained 50 years, but not attained 55 yrs. of age – Valid till such person attains 60 years of age;*<br>*(iv)Who has attained 55 years – Valid for 5 years.* | *Valid for 5 years*<br>***[S.14(2)(a)]*** |
| ***Other Differentiating Factors*** | | | | |
| *(xiii)* | *Requirement of Uniform and Badges* | *Sec. 28* | *No such requirement* | *State Govt. may make Rules prescribing Badges and Uniform to be worn by Drivers of Transport Vehicles. **[S.28(2)(d)]*** |
| *(xiv)* | *Duties, Functions and Conduct* | *Sec. 28* | *No such requirement* | *State Govt. may make Rules prescribing Duties and Conduct of such persons to whom license is issued to drive Transport Vehicles. **[S.28(2)(h)]*** |
| *(xv)* | *Syllabus for obtaining License* | *Rule 31* | *Syllabus Part A, B, C, F, G and K **[Rule 31(2)]*** | *Syllabus Part E, F, G, H, I, J and K **[Rule 31(3)]*** |

**47.** Analysis of the above provisions is now apposite. Chapter II addresses 'Licensing of Drivers of Motor Vehicles'. We have already noticed Section 3 earlier that covers the 'Necessity for Driving License' and specifically mentions 'Transport Vehicle'. Section 4, in sequence, is titled 'Age limit in connection with driving of motor vehicles'. Section 18 referred to in Section 4(2) concerns '*Driving Licenses to drive motor vehicles, belonging to the Central Government*'. Section 4(2) in its current form reads as under:

> "(1) No person under the age of eighteen years shall drive a motor vehicle in any public place:
>
> Provided that [a motor cycle with engine capacity not exceeding 50cc] may be driven in a public place by a person after attaining the age of sixteen years.
>
> (2) Subject to the provisions of section 18, no person under the age of twenty years shall drive a **transport vehicle** in any public place.
>
> (3) No learners licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section."
>
> [emphasis supplied]

**48.** Section 5 deals with the 'Responsibility of owners of motor vehicles for contravention of Section 3 and 4' and declares that:

> "No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle."

**49.** At this stage, we must also note the penal provisions i.e. Section 180 and Section 181 of Chapter XIII which deals with 'Offences, Penalties and Procedure':

> "180. *Allowing unauthorised persons to drive vehicles.*— Whenever, being the owner or person in charge of a motor vehicle, causes, or permits, any other person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both."

> "181. *Driving vehicles in contravention of section 3 or section 4.*—Whoever, drives a motor vehicle in contravention of section 3 or section 4 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

**50.** Section 6 deals with *'Restrictions on the holding of driving licenses'* and imposes, *inter alia,* general restrictions to prevent individuals from allowing others to use their driving license. Section 7(1) is important and provides that a Learner's license for a **transport vehicle** can only be issued to a person who has held a driving license for a Light Motor Vehicle for atleast one year. The amended section reads as under:

> "7. Restrictions on the granting of learner's licences for certain vehicles.—
>
> [(1) No person shall be granted a **learner's licence** to drive a **transport vehicle** unless he has held a driving licence to drive a **light motor vehicle** for at **least one year**:]
>
> [Provided that nothing contained in this sub-section shall apply to an e-cart or e-rickshaw.]
>
> (2) No person under the age of eighteen years shall be granted a learner's licence to drive a motor cycle without gear except with the consent in writing of the person having the care of the person desiring the learner's licence."
>
> [emphasis supplied]

**51.** Section 8 deals with the 'Grant of Learner's license'. The requirement of medical certificate is contained in Section 8(3), Section 15 and Rule 5 of the MV Rules. Sub-section (3) of Section 8 as amended mandates that an application for a Learner's License for a *Transport Vehicle* must be accompanied by a Medical Certificate by a registered medical practitioner. However, the unamended Section 8 did not mention 'Transport Vehicle':

> "—8(1) Any person who is not disqualified under section 4 for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a driving licence may, subject to the provisions of section 7, apply to the licensing authority having jurisdiction in the area—

(i) in which he ordinarily resides or carries on business, or (ii) in which the school or establishment referred to in section 12 from where he intends to receive instruction in driving a motor vehicle is situate, for the issue to him of a learner's licence.

(2) Every application under sub-section (1) shall be in such form and shall be accompanied by such documents and with such fee as may be prescribed by the Central Government. **(3)** Every application under sub-section (1) shall be accompanied by a medical certificate in such form as may be prescribed by the Central Government and signed by such registered medical practitioner, as the State Government or any person authorised in this behalf by the State Government may, by notification in the Official Gazette, appoint for this purpose:

XX]"

**52.** The amended 8(3) reads as under:

**(3)** Every application **[to drive a transport vehicle made]** under sub-section (1) shall be accompanied by a medical certificate in such form as may be prescribed by the Central Government and signed by such registered medical practitioner, as the State Government or any person authorised in this behalf by the State Government may, by notification in the Official Gazette, appoint for this purpose:"

[emphasis supplied]

**53.** Rule 5(1) of the amended MV Rules titled 'Medical Certificate' reiterates such a requirement. While for other vehicles, there is a requirement of a self-declaration of fitness, a Medical certificate by a registered Medical practitioner is necessary for driving a 'Transport Vehicle'. The *unamended Rule 5* which does not mention 'Transport Vehicle' reads as under:

"5. "Medical Certificate- Every application for the issue of a learner's licence or a driving licence or for making addition of another class or description of motor vehicle to a driving licence or for renewal of learner license or a driving license,

> shall be accompanied by a medical certificate in Form 1 issued by a registered medical practitioner referred to in sub-section (3) of section 8""

**54.** The *amended Rule 5* is also extracted below:

> "5. Medical Certificate- Every application for the issue of a learner's licence or a driving licence or for making addition of another class or description of a motor vehicle to a driving licence or for renewal of a driving licence to drive a vehicle other than a **transport vehicle** shall be accompanied by a self-declaration as to the physical fitness as in Form 1 and every such application for a licence to drive a **transport vehicle** shall be accompanied by a medical certificate in Form 1-A issued by a registered medical practitioner referred to in sub-section (3) of section 8"
>
> [emphasis supplied]

**55.** Section 15 titled 'Renewal of driving licenses', outlines the requirements for renewal within the time period provided therein. The second proviso to Section 15(1), mandates the requirement of a medical certificate for 'Transport Vehicle' and for those who are above the age of 40 years. The second proviso therein reads as under:

> "Provided further that where the application is for the renewal of a licence to drive a **transport vehicle** or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8, and the provisions of sub-section (4) of section 8 shall, so far as may be, apply in relation to every such case as they apply in relation to a learner's licence."
>
> [emphasis supplied]

**56.** Section 9 titled 'Grant of driving license' provides a comprehensive procedure for granting driving licenses. Section 9(1) addresses the jurisdiction involved in the licensing process. Under Section 9(2), anyone not disqualified from holding or obtaining a driving license may apply, using a form prescribed by the Central Government.

The applicant must also pass a test as specified in Section 9(3). Additionally, for those seeking a **Transport Vehicle** license, Section 9(4) mandates a minimum educational qualification set by the Central Government. Section 9(5) pertains to the requirement for re-taking the test after 7 days. Meanwhile, 9(6) states that the test of competence to drive must be carried out in a vehicle of the *type* to which the application refers. Section 9(7) deals with disqualification and Section 9(8) provides, inter alia, that the licensing authority may refuse to issue a licence to a habitual criminal or a habitual drunkard or who is habitually addicted to any narcotic drug or psychotropic substance or whose license had been revoked earlier. Section 9(4) which is relevant for our purpose is extracted below:

> "(4) Where the application is for a licence to drive a **transport vehicle**, no such authorisation shall be granted to any applicant unless he possesses such minimum educational qualification as may be prescribed by the Central Government and a driving certificate issued by a school or establishment referred to in section 12."
>
> [emphasis supplied]

**57.** Rule 17(1)(b) of the *MV Rules* stipulates that any application for adding a class of "Transport Vehicle" to a Driving License must be accompanied by a Driving Certificate:

> **"17. Addition to driving licence.—(1)** An application for the addition of another class or description of motor vehicle to the driving licence shall be made in [Form 2] to the licensing authority and shall be accompanied by— (a) an effective learner's licence and driving licence held by the applicant;
>
> (b) the driving certificate in Form 5, in the case of an application for addition of a **transport vehicle**, excluding E-rickshaw or E-cart."
>
> [emphasis supplied]

**58.** Section 14 of the Motor Vehicles Act outlines the validity period of driving licenses, distinguishing between those for 'transport vehicles' and 'transport vehicles carrying goods,' while also considering the age of the license holder. According to the amended section, individuals

under 30 years of age will have their license valid until they reach 40 years, while those aged 30 to 49 will enjoy a 10-year validity period. For individuals aged 50 to 54, the license remains valid until they turn 60, and for those aged 55 and older, the validity is set at 5 years. This framework reflects the understanding that driving capabilities and experience may vary with age. The relevant part of Section 14 is extracted below:

> "14. Currency of licences to drive motor vehicles.—
>
> (1) A learner's licence issued under this Act shall, subject to the other provisions of this Act, be effective for a period of six months from the date of issue of the licence.
>
> (2) A driving licence issued or renewed under this Act shall,— (a) in the case of a licence to drive a **transport vehicle**, be effective for a period of **three years**: 1 *** 2 [Provided that in the case of licence to drive a **transport vehicle carrying goods of dangerous or hazardous nature** be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and;]
>
> xxxxxxxxxxxxxxxxxxxxxx"
>
> [emphasis supplied]

**59.** Rule 10 is titled 'Application for Learner's license'. The unamended Rule 10 stated as under:

> "10. Application for learner's licence.—
>
> An application for the grant of a learner's licence shall be made in Form 2 and shall be accompanied by,—
>
> (a) save as otherwise provided in rule 6, a medical certificate in [Form 1-A].
>
> (b) three copies of the applicant's recent 28 [passport size photograph],
>
> (c) appropriate fee as specified in rule 32,
>
> [(d) in the case of an application for **medium goods vehicle, a medium passenger motor vehicle, a heavy**

**goods vehicle or a heavy passenger vehicle,** *the driving license held by the applicant."*

[emphasis supplied]

**60.** The amended Rule 10 replaces these highlighted terms with the single term 'Transport Vehicle':

10. Application for learner's licence.—

An application for the grant of a learner's licence shall be made in Form 2 and shall be accompanied by,—

(a) save as otherwise provided in rule 6, a medical certificate in [Form 1-A].

(b) three copies of the applicant's recent 28 [passport size photograph],

(c) appropriate fee as specified in rule 32,

[(d) **in the case of an application for transport vehicle** excluding E-rickshaw or E-Cart, the driving licence held by the applicant]

[(e) proof of residence

(f) proof of age"

[emphasis supplied]

**61.** Section 27 concerns the power of Central Government to make Rules. Section 28 which deals with the power of the State Government to make rules provides specifically w.r.t. transport vehicles in sub-section 2(d) and 2(h) the following :-

"(d) the badges and uniform to be worn by drivers of **transport vehicles** and the fees to be paid in respect of badges"

(h) the duties, functions and conduct of such persons to whom licences to drive **transport vehicles** are issued

[emphasis supplied]

**62.** Rule 31(2) and (3) which deal with the syllabus provides as under:

31. Syllabus for imparting instructions, in driving of motor vehicles.—

> (1) The syllabus for imparting instructions in driving of motor vehicles of the schools or establishments shall be as follows (see tables below):
>
> [(2) The lessons for training drivers of **non-transport vehicles** shall cover Parts A, B, C, F, G and K of the syllabus referred to in sub-rule (1) and the training period shall not be less than twenty-one days: Provided that in case of motorcycles, it shall be sufficient compliance of the provisions, if portion of Part C of syllabus as applicable to such vehicles are covered.
>
> (3) The lessons for training drivers of **transport vehicles** shall cover Parts E, F, G, H, I, J and K of the syllabus referred to in sub-rule (1) and the training period shall not be less than thirty days"
>
> [emphasis supplied]

**63.** Chapter V of the MV Act specifically deals with 'Control of Transport Vehicles'. Section 66 deals with 'Necessity for Permits' and prohibits an owner of a motor vehicle to use or to permit the use of the motor vehicle as a *transport vehicle* in any public place save in accordance with the conditions of permit, granted by an appropriate authority:

> "66. Necessity for permits.—(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a **transport vehicle** in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:…"
>
> [emphasis supplied]

**64.** The necessity for a permit and the need for driving license are two different requirements and the distinctions thereof must be borne in mind.

**65.** The aforenoted provisions are pressed into service to contend that the legislature has placed LMVs and Transport Vehicles under separate classes. For each class of vehicle, varying degrees of scrutiny are

provided and the argument on behalf of Insurance Companies is that the holder of a LMV license is disentitled to drive a Transport Vehicle and a separate endorsement would be necessary for driving a vehicle of the other class.

**66.** Reading the various provisions as noticed above appears to pull the reader into two distinct spheres and this might make the legal implications unworkable. The principle of harmonious constructions of statutes should guide us to unravel this vexed question.

*(a) Harmonious Construction*

**67.** In *Sultana Begum v. Prem Chand Jain*,[32] this Court examined the relevant precedents of this Court and articulated the following principles on harmonious construction of statutes:

> "a. It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them;
>
> b. The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them;
>
> c. When there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of harmonious construction;
>
> d. *The courts have also to keep in mind that an interpretation which reduces one of the provisions to a "dead letter" or "useless lumber" is not harmonious construction;* and
>
> e. *To harmonize is not to destroy any statutory provision or to render it otiose."*
>
> [emphasis supplied]

32 [1996] Supp. 9 SCR 707 : (1997) 1 SCC 373

**68.** Keeping the above principles in mind, let us proceed further. The relevant provisions of the *MV Act* and the *MV Rules* would show that the term 'Transport Vehicle' is frequently referenced in various Sections and Rules. Most of these provisions were not noticed in *Mukund Dewangan (2017)*. It is true that the legislature has imposed additional requirements for 'Transport Vehicles'. But should it be enough to say that a 'Light Motor Vehicle' license holder is legally incapable of driving a transport vehicle although its gross vehicle weight is below 7500 kg, as is suggested by the counsel for the insurance companies? In our view, such a manner of interpretation would render superfluous and otiose the precise and compact definition of LMV given in Section 2(21) which so significantly uses the expression 'means'. When questions on the relevance of Section 2(21) was raised, the following points were made:-

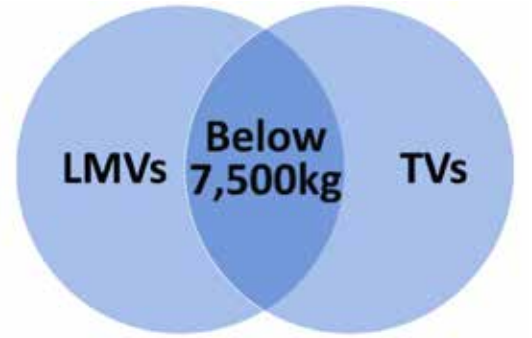
**(a)** Section 2(21) which includes Transport Vehicles is for a different regime, set under Section 113 which places limitation both on weight and usage of the vehicle. Section 115 empowers the authority to restrict the driving of any vehicle of a specified class or description. These sections are contained in Chapter VII which is titled 'Control of Traffic' and pertain to 'limits of weight and limitations on use' and 'power to restrict the use of vehicles'. Vehicles of specific weight may be prohibited from certain roads or areas making weight a relevant factor. Under the said definition of LMV, 'weight' has been kept as a factor for demarcation between 'LMV' and 'Transport' vehicles primarily for the purposes of determining the 'road tax'.

**(b)** Section 41(4) outlines the necessity of specifying the exact type of vehicle—including its design, construction, and intended use—during the registration process. It was contended that this is where weight becomes a critical factor.

**(c)** Weight is considered in Section 44(ae) of the *Income Tax Act 1961,* which concerns incomes derived from transport vehicles.

**69.** The above submissions which mention the weight of the vehicle are in different context and can't be used to render section 2(21) i.e. the definition, a dead letter. If the definition clause was worded differently, one might possibly argue that a distinction could be made between Transport Vehicles and LMVs. But the use of the word

'means', points towards the categorical intent of the legislature. When a Court is faced with two interpretations, one of which would have the effect of rendering a provision a 'dead letter', the interpretation that allows for such violence to the key words in the statute must be avoided. An attempt at harmonization would therefore be in order. Let us analyse the issue further by considering the following overlapping diagram:




**70.** The above illustration indicates that all Transport Vehicles are not Light Motor Vehicles but some may fall within the *class* of LMVs which is represented by the overlapping section. The inference therefore is that if the transport vehicle falls under the definition of Light Motor Vehicle in Section 2(21), the additional requirements as outlined in the provisions noticed above, need not be satisfied by a person holding a driving licence for a 'Light Motor Vehicle' *class*. Consequently, a separate endorsement of a Transport Vehicle is not necessary as the LMV license would suffice for vehicles below 7500 kg weight. Such an interpretation would harmonize the statutory provisions by requiring the additional factors only for those Transport vehicles whose gross weight exceeds 7500 kg.

**71.** It was additionally argued that the principle of *generalia specialibus non derogant* would apply in this case. Section 2(21) is a general provision defining a Light Motor Vehicle which includes a 'Transport Vehicle,' whereas Section 3 is a specific provision that prohibits driving a 'transport vehicle' without a separate license endorsement. According to Mr. Jayant Bhushan, Section 3 should take precedence, requiring a separate endorsement under the 'Transport Vehicle' class.

**72.** To address the argument, let us consider the following passage by Lord Herschell LC *in Institute of Patent Agents & Ors. v. Joseph Lockwood*[33] :

> "Well, there is a conflict sometimes between two sections to be found in the same Act. You have to try and reconcile them as best you may. If you cannot, you have to determine which is the leading provision and which the subordinate provision, and which must give way to the other."

**73.** The important thing to note is that one provision must give way to the other *only when* reconciliation is not possible. However, when it is possible to harmonize the two, the Court need not determine which is the leading provision. As regards the argument of rendering second part of Section 3(1) otiose, let us again notice Section 3:

> "3. *Necessity for driving licence*.—(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; *and no person* ***shall so drive a transport vehicle*** *(other than a motor cab or motorcycle hired for his own use or rented under any scheme made under sub-section (2) of Section 75)* ***unless his driving licence specifically entitles him so to do****."*
>
> [emphasis supplied]

**74.** Section 3 refers to 'Transport Vehicles', like many other provisions in the *MV Act* and the *MV Rules*. Section 3 cannot however be construed as a special provision that would override the strict and emphatic definition of LMV, given in Section 2(21) and the separate class of 'Light Motor Vehicle' provided in Section 10. Section 2(21) uses the term 'means' as earlier emphasized and there is an affirmation of certainty in the wordings of the definition and it is to be recognized *sensu stricto* in a technical sense and must not be understood loosely. To say that Section 3 would disentitle the LMV license holders to drive transport vehicles of the permissible weight category, would be incompatible and would render the strict definition clause, sterile and a 'dead letter'. A harmonious construction of

33 1894 A.C. 347 at 360

both sections can however reach us to a conclusion that for LMV licence holders, a separate endorsement under 'Transport Vehicle' class would be unnecessary for driving LMV class of vehicles. In our interpretation and understanding, it would be logical to hold that the additional licensing requirements will have no application for the LMV class of vehicles but will be needed only for such 'Transport Vehicles', which by virtue of their gross weight fall in the Medium and Heavy category. Such a construction would also fulfill the legislative purpose which is to ensure road safety by requiring only those individuals who intend to operate medium and heavy vehicles, to satisfy the additional licensing criteria. In our view, the age restrictions outlined in Section 4, the requirement of a medical certificate, and the criteria under Section 7 should reasonably apply only for the medium and heavy transport vehicles whose gross weight will be above 7500 Kg. Such an interpretation would fulfill the objective of the MV Act to provide compensation to victims of road accidents while maintaining a commensurate licensing regime for drivers.

**75.** At this stage, it needs to be borne in mind that the genesis of the present reference arises from compensation claims. A reference to the judgment in *National Insurance Co. Ltd. v. Swaran Singh*[34] may therefore be apposite. A 3-judge bench of this Court noted that the liability of the insurance company in relation to the owner depends on several factors. The issue of lack of valid driving license was discussed as under**:**

> "7. If a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. As for example, when a person is granted a licence for driving a light motor vehicle, he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately.
>
> 89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle

34 [2004] 1 SCR 180 : (2004) 3 SCC 297

which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (*a*) motorcycle without gear, (*b*) motorcycle with gear, (*c*) invalid carriage, (*d*) light motor vehicle, (*e*) transport vehicle, (*f*) road roller, and (*g*) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle", "motor-cab", "motorcycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer" and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for "motorcycle without gear", [*sic* may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxi-cab", "motor-cab" or "omnibus" for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, **the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.**

90. We have construed and determined the scope of sub-clause (*ii*) of sub-section (2) of Section 149 of the Act.

> **Minor breaches of licence conditions, such as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles**. Such minor and inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties."
>
> [emphasis supplied]

**76.** The upshot of the above is that compensation must not be denied for minor technical breaches of the licensing conditions. It was submitted before this Court that the decision in *Mukund Dewangan (2017)* is *per incuriam* for not considering Para 89 of the judgment. It is true that the Court pertinently notes therein that *"Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxi-cab", "motor-cab" or "omnibus" for which he has no licence."* However, such an observation cannot be considered a conclusive determination by the Court to hold that a separate license for each of these vehicles would be necessary. Therefore, we are disinclined to accept such an argument.

***b)*** *Interpretation must not result in impractical outcomes*

**77.** It is well-settled that a statute should be interpreted in a manner that avoids leading to unworkable or impractical outcomes.[35] If a statutory interpretation results in confusion, impracticability or creates burden that the legislature could not have intended, such an interpretation should be avoided. Mr. Jayant Bhushan, Learned Senior Counsel, placed reliance on Section 9(6) of MV Act and Rule 15(2) of MV Rules to argue that if one wants an endorsement of a 'transport vehicle' class, the person has to be *tested* on a 'transport vehicle' and not a 'Maruti-800 car'. Let us test this argument by again taking the hypothetical example of Sri who holds an LMV license and is desirous of operating an auto for commercial purposes and as such applies separately for a license of a 'Transport Vehicle' class.

35 Madan and Co. v. Wazir Jaivir Chand (1989) 1 SCC 264

Crucially, Section 9 dealing with 'Grant of driving license' provides in sub-section (6) as under:

> "(6) The test of competence to drive shall be carried out in a vehicle of the **type** to which the application refers:"

**78.** Sub-section (2) of Rule 15 of MV Rules titled 'Driving Test' read thus:

> "(2) The test of competence to drive referred to in sub-section (3) of section 9 shall be conducted by the licensing authority or such other person as may be authorised in this behalf by the State Government in a vehicle of the **type** to which the application relates."

**79.** The type of the vehicle referred above, under the 'Transport Vehicle' class could therefore either be a three-wheeler weighing less than 7,500 kgs or a heavy passenger vehicle of more than 12,000 kgs, if the class for which Sri applied is broadly taken as a 'transport Vehicle', with no distinction between heavy, medium or light category. Then our hypothetical driver Sri, although will be tested to drive an 'auto', could end up driving a heavy passenger vehicle using the 'Transport Vehicle' license. Such a conclusion on valid authority would be incompatible in the context.

**80.** Let us also look at the syllabus that would be prescribed for Sri for his application to drive a 'Transport Vehicle'. As noted earlier, for 'Transport Vehicles', the syllabus as per Rule 31 is contained in Part E, F, G, H, I, J and K:

Part A: Driving Theory-I

Part B: Traffic Education-I

Part C: Light Vehicles Driving Practice

Part D: Vehicle Mechanism and Repairs

**Part E:** *Medium and Heavy Vehicle Driving*: Driving Theory-II

Part F: Traffic Education—II

Part G. Public Relations For Drivers

**Part H.** *Heavy Vehicle Driving Practice*

Part I. Fire Hazards

Part J. Vehicle Maintenance

Part K. First Aid

the syllabus is contained in Part E, F, G, H, I, J and K:

**81.** Our hypothetical Sri, who wants to drive an auto would then be imparted training for the syllabus outlined in Parts E, F, G, H, I, J & K. These parts primarily pertain to 'Medium and Heavy Vehicle Driving'. The extensive syllabus covers topics such as fire hazards, heavy vehicle maintenance, cross-country practice and hill driving but those would hardly be germane for Sri who is desirous of driving only an auto rickshaw falling within the Light Motor Vehicle class. The legislature in its wisdom had stipulated such a wide-ranging syllabus to augment the safety measures as considered apposite for operating medium and heavy motor vehicles. To apply this extensive level of learning for the auto driver Sri, would defy logic although auto is a 'transport vehicle' but of a light weight class. To avoid such an illogical outcome, the argument of Mr. Bhushan has to be rejected. It would therefore be appropriate to interpret the provision to declare that the additional requirements outlined in the *MV Act* for 'Transport Vehicle', would not cover the LMV class but would be applicable only for the heavy and medium class vehicles. Such an interpretation would align with our harmonious interpretation, as explained earlier. If the alternate interpretation as suggested by the counsel for the insurance companies is accepted, it would mean that Sri's driving skills may be tested on an autorickshaw but he would also be legally entitled to drive a heavy multi axle truck because of the broad class of 'Transport Vehicle'. Such an absurd result should not be permitted.

**82.** The requirement of uniforms and badges for 'transport vehicle' and the duties and conduct of such persons under Section 28(2)(d) and 28(2)(h) are not directly related to the licensing regime. Similarly misplaced here is the reliance on necessity for Permit under Section 66 as also Rule 62 dealing with the 'Certificate of Fitness' of the vehicle. Rule 62 is extracted:-

> "62. Validity of certificate of fitness.—(1) A certificate of fitness in respect of a **transport vehicle** granted under section 56 shall be in Form 38 and such certificate

when granted or renewed shall be valid for the period as indicated below:—

| | |
|---|---|
| (a) new transport vehicle | Two years |
| (b) renewal of certificate of fitness in respect of vehicles mentioned in {a) above | One year |
| [(ba) renewal of certificate of fitness in respect of E-rickshaw and E-cart | Three years |
| renewal of certificate of fitness in respect of vehicles covered under rule 82 of these rules | One year |
| d) fresh registration of important vehicles | same period as in the case of vehicles manufactured in India having regard to the date of manufacture: |

[emphasis supplied]

**83.** The apprehension about a person with a license of a light motor vehicle class being able to drive an e-rickshaw, e-cart, a vehicle carrying hazardous goods or even a road roller is also misplaced. This is for the reason that legislature has carved out exceptions for these special kinds of vehicles in the *MV Act* and the *MV Rule*s which is discernible from the following:.

(i) Section 28 deals with the power of State Government to make Rules. Clause (h) provides for "the exemption of drivers of **road rollers** from all or any of the provisions of this Chapter or of the rules made thereunder"

(ii) An exception is carved out in Section 7, 9 and 27 of *MV Act* for e-cart or e-rickshaw. For instance, the proviso to Section 7 states that "Provided that nothing contained in this section shall apply to an **e-cart or e-rickshaw**".

(iii) Similarly, Rule 8A provides for minimum training for driving E-rickshaw or E-cart. Rule 9 provides for educational qualifications for drivers of goods carriage carrying dangerous or hazardous goods.

Therefore, the present interpretation will not have any impact for such vehicles.

**84.** It was also argued that the form of the driving license provides for the validity period for 'Transport' and 'Non Transport Vehicle'. On this contention, we can benefit by the following words of Justice O. Chinnappa Reddy in *Life Insurance Corporation v. Escorts*,[36] where for a similar insistence on form, the Judge opined as under:-

> "Surely, the Form cannot control the Act, the Rules or the directions. As one learned Judge of the Madras High Court was fond of saying it is the dog that wags the tail and not the tail that wags the dog. We may add what this Court had occasion to say in Vasudev Ramchandra Shelat v. Pranlal Jayanand Thakar [(1975) 1 S.C.R. 534 : AIR 1974 SC 1728 : 1974 (2) SCC 323 : 1975 (45) Com. Cas. 43.] :
>
> "The subservience of substance of a transaction to some rigidly prescribed form required to be meticulously observed, sevours of archaic and outmoded jurisprudence."

**85.** A harmonious interpretation of various sections would lead us to conclude that a person holding a LMV license is equally competent to drive a Transport Vehicle, provided of course the vehicle's gross weight does not exceed 7,500 kgs. The reference to 'transport vehicle' in Section 3(1) and other sections of the Act and Rules should therefore be understood as applying to only those vehicles which fall beyond the scope of the *sensu stricto* definition, under Section 2(21). This interpretation would ensure that no provision or word is rendered otiose and the licensing regime remains coherent with the legislative intent. Such an interpretation would also avoid illogical outcomes as discussed above.

***V.*** *Discussion on the 8 Conflicting decisions*

**86.** The legal landscape surrounding the issue of whether a driver holding a license for a 'Light motor vehicle' can operate a 'Transport Vehicle' without obtaining a specific endorsement has been marked by a myriad of conflicting judgments. The genesis of the present reference stems from eight conflicting decisions which were thereafter

36 [1985] Supp. 3 SCR 909 : (1986) 2 SCC 264

referred to a 3-judge bench in *Mukund Dewangan (2017)*. On the issue of Transport Vehicles of the LMV class being driven by a driver with a LMV License, in the event of an accident involving an insured vehicle, some opinions have held the insurance company liable to pay compensation while few others have noted that the driver did not have a valid license for a 'transport vehicle' although he was possessing a LMV license. On a few occasions, this Court had exercised its power under Article 142 to grant compensation despite noting that the driver did not possess a valid 'transport vehicle' license. Before proceeding any further, a short discussion of these decisions in chronological order would be appropriate for aiding clarity to the discussion.

**87.** The earliest decision on the issue was in 1999, in *Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd.*[37] *(for short "Ashok Gangadhar Maratha").* The definition of LMV at that time stipulated a weight limit of 6000 kgs. The facts in that case was that the appellant who was the holder of a LMV license, owned a Swaraj Mazda truck weighing 5,920 kgs, which got damaged in an accident on 26.11.1991. When the insurer refuted the claim, questioning the validity of the LMV driving license, the appellant filed a complaint before the Consumer Forum. The case traveled to the Supreme Court where a two-judge bench of this Court pertinently observed that a holder of a LMV license can drive a 'transport vehicle', without a specific endorsement and accordingly, compensation was granted to the claimants. The Supreme Court, *inter alia,* gave an important interpretation to Section 2(21) of the *MV Act* as well as Rule 2(e) of the *MV Rules* which defines a "non-transport vehicle". In Para 10, the Court pertinently observed as under:

> **"10.** The definition of "light motor vehicle" as given in clause (21) of Section 2 of the Act can apply only to a "light goods vehicle" or a "light transport vehicle". A "light motor vehicle" otherwise has to be covered by the definition of "motor vehicle" or "vehicle" as given in clause (28) of Section 2 of the Act. A light motor vehicle cannot always mean a light goods carriage. Light motor vehicle can be a non-transport vehicle as well."

37 [1999] Supp. 2 SCR 202 : (1999) 6 SCC 620

**88.** The Court supplemented its reasoning in Para 11 as under:

> **"11.** To reiterate, since a vehicle cannot be used as a transport vehicle on a public road unless there is a permit issued by the Regional Transport Authority for that purpose and since in the instant case there is neither a pleading to that effect by any party nor is there any permit on record, the vehicle in question would remain a light motor vehicle. The respondent also does not say that any permit was granted to the appellant for plying the vehicle as a transport vehicle under Section 66 of the Act. Moreover, on the date of the accident, the vehicle was not carrying any goods and though it could be said to have been designed to be used as a transport vehicle or a goods carrier, it cannot be so held on account of the statutory prohibition contained in Section 66 of the Act."

**89.** The Court additionally noted that if one accepts the contention of the insurer, "there can never be any light motor vehicle and there can never be any driving licence for driving a light motor vehicle. We cannot put such a construction on clause (21) of Section 2 of the Act so as to exclude a light motor vehicle from the Act altogether."

**89.1.** Looking at the scheme of the *MV Act*, the above conclusion was the correct one declaring that an LMV would include a 'light good vehicle' or a 'light transport vehicle'. While the Court supplemented its reasoning by stating that a vehicle cannot be used as a transport vehicle on a public road unless there is a permit, we must understand that a 'license' is different from a 'permit'. The observations of the Court on the legal issue of a driving license, aligns with our own interpretation.

**90.** In *Nagashetty v. United India Insurance Co*,[38] the vehicle involved was a tractor with a trailer attached, filled with stones. The case revolved around an accident that occurred on 4.12.1995, when a tractor driven by the driver lost control and hit two pedestrians, resulting in the death of one person. The LRs of the deceased filed a compensation claim before the Motor Accident Claims Tribunal (MACT), which ruled in their favor and awarded compensation of ₹2,07,000 making the Insurance company liable for the insured

38 [2001] Supp. 1 SCR 656 : (2001) 8 SCC 56

tractor. The Insurance Company appealed before the High Court, contending that the driver only had a licence to operate a tractor and not a 'goods vehicle', as a trailer filled with stones was attached to the tractor, classifying it as a 'transport vehicle'. Deciding in favour of the Insurance Company, the High Court held that the licence was invalid for driving a 'transport vehicle', and therefore, the Insurance Company was not liable to pay the compensation to the claimants.

**90.1.** Setting aside the decision of the High Court, the Supreme Court held that a person having a valid driving license to drive a particular category of vehicle, does not become unauthorised to drive that category of vehicle, merely because a trailer is attached to it. Interpreting the terms of the Insurance Policy, it was held that if the submission of the Insurance Co. is accepted, then every time, an owner of a private car, who has a license to drive an LMV, attaches a roof carrier to his car, and carries goods thereon, the LMV would become a Transport Vehicle, and the owner would then be deemed to have no valid license, to drive that vehicle.

**90.2.** It was rightly held in the above decision and as noted in *Mukund Dewangan (2017)*, that a vehicle cannot be readily classified as a 'transport vehicle' requiring a separate endorsement in the driving license. Although the Court supported its reasoning by referencing the insurance policy terms, the legal position remains that the term 'transport vehicle' overlaps with other vehicle classes.

**91.** Before this Court, reliance was placed on the judgment in *New India Assurance Company v. Prabhu Lal*[39] *(for short "Prabhu Lal")*. The decision would now require our careful consideration. In this case, the accident which occurred on 17.4.1998 involved a Roadways bus (weighing 4,100 kgs) which was being driven by one M. This was however disputed by the insurance company who claimed that the vehicle was driven by the complainant's own brother, who held a 'Light Motor Vehicle' license but not a 'transport vehicle' license. The District Forum held that a "goods carrier" weighing 4,100 kgs defined under Section 2(14) of the MV Act was driven by an individual with a LMV license and hence this was a Transport Vehicle under

39 [2007] 12 SCR 724 : (2008) 1 SCC 696

Section 2(47) of the MV Act for which, a separate endorsement was necessary. The State Commission however held that the principle laid down in the 1999 decision in *Ashok Gangadhar (supra)* would apply and since the gross weight of the vehicle was only 6,800 kgs, it did not exceed the permissible limits for LMV category vehicles. Accordingly, the Insurance company was held liable. The National Commission upheld the said decision of the State Commission, favouring the claimants.

**91.1.** Reversing the concurrent decisions of the State and National Commissions, the Supreme Court however restored the decision of the District Forum which held that at the time of the accident, complainant's brother was driving the insured vehicle. On the validity of the LMV driving license holder driving the bus weighing 4100 kg, this Court held that a separate endorsement was necessary to drive the Transport Vehicle. It was observed as under:

> "**33.** In our considered view, the State Commission was wrong in reversing the finding recorded by the District Forum. So far as *Ashok Gangadhar* [(1999) 6 SCC 620 : 1999 SCC (Cri) 1170] is concerned, we will deal with the said decision little later but from the documentary evidence on record and particularly, from the permit issued by the Transport Authority, it is amply clear that the vehicle was a "goods carrier" [Section 2(14)]. If it is so, obviously, it was a "transport vehicle" falling under Clause (47) of Section 2 of the Act. The District Forum was, therefore, right in considering the question of liability of the Insurance Company on the basis that Tata 709 which met with an accident was "transport vehicle".

**91.2.** The Court in Para 40 and Para 41 also distinguished the 1999 judgement in *Ashok Gangadhar Maratha (supra)* with the following discussion:

> "40**.** It is no doubt true that in *Ashok Gangadhar* [(1999) 6 SCC 620 : 1999 SCC (Cri) 1170] in spite of the fact that the driver was holding valid driving licence to ply light motor vehicle (LMV), this Court upheld the claim and ordered the Insurance Company

to pay compensation. But, in our considered opinion, the learned counsel for the Insurance Company is right in submitting that it was because of the fact that there was neither pleading nor proof as regards the permit issued by the Transport Authority. In absence of pleading and proof, this Court held that, it could not be said that the driver had no valid licence to ply the vehicle which met with an accident and he could not be deprived of the compensation. This is clear if one reads para 11 of the judgment, which reads thus: (SCC p. 626)

> "*11*. To reiterate, *since a vehicle cannot be used as a transport vehicle on a public road unless there is a permit issued by the Regional Transport Authority for that purpose and since in the instant case there is neither a pleading to that effect by any party nor is there any permit on record, the vehicle in question would remain a light motor vehicle*. The respondent also does not say that any permit was granted to the appellant for plying the vehicle as a transport vehicle under Section 66 of the Act. Moreover, on the date of the accident, the vehicle was not carrying any goods and though it could be said to have been designed to be used as a transport vehicle or a goods carrier, it cannot be so held on account of the statutory prohibition contained in Section 66 of the Act."

41. In our judgment, *Ashok Gangadhar* [(1999) 6 SCC 620 : 1999 SCC (Cri) 1170] did not lay down that the driver holding licence to drive a light motor vehicle need not have an endorsement to drive transport vehicle and yet he can drive such vehicle. It was on the peculiar facts of the case, as the Insurance Company neither pleaded nor proved that the vehicle was transport vehicle by placing on record the permit issued by the Transport Authority that the Insurance Company was held liable."

**91.3.** In *Prabhu Lal* (supra), this Court correctly noted that the vehicle was a 'goods carrier' under Section 2(14) and fell within the definition of 'transport vehicle'. But then it strikingly overlooked that a 'transport vehicle' below 7500 kg unladen weight, would also be covered within the definition of LMV, under Section 2(21). This vital aspect was not discussed and the definition of Section 2(21) was also not adverted to in the judgment. The relevant portion of *Ashok Gangadhar Maratha (supra*) where it was held that the definition of 'light motor vehicle' can apply to 'light goods vehicle' as well as a 'light transport vehicle', was also overlooked. Instead the Court distinguished the judgment in *Ashok Gangadhar Maratha (supra)* on the basis of evidence and pleadings in that case. We have already noted earlier that the reasoning in *Ashok Gangadhar Maratha (supra)* w.r.t evidence and pleadings was only an additional observation. We must not confuse 'permit' with a 'driving license' to drive a 'Transport Vehicle'. The Supreme Court in *Prabhu Lal (supra)* should have followed the decision in *Ashok Gangadhar Maratha (supra)* which clearly stated the legal position that a 'light motor vehicle' would include a 'light goods vehicle'.

**92.** The issue in *Annappa Irappa Nesaria (supra)*, as we have already discussed in Part III of the judgment, was whether a driver of a Matador van weighing 3,500 kgs, with a "goods carriage" permit, could drive a "transport vehicle" with just a LMV license. The van met with an accident before the 1994 amendments to the MV Act, when there was no separate class for "transport vehicle." The Court ruled that since the accident occurred before the amendment, the driver's LMV license was valid for the transport vehicle, and the insurance company was liable to pay compensation. However, the Court held that post-amendment, a separate endorsement for driving transport vehicles is required. We are disinclined to accept such a view as we have already discussed in our judgment earlier that both before and after the 1994 amendment, the enhanced requirements for 'Transport Vehicles' applied primarily for medium and heavy vehicles, particularly following the 1994 amendment. We have also discussed the unworkability of the broad class of 'Transport Vehicles' and the inconsistency this creates with the other provisions of the MV Act and MV Rules, if such an interpretation is adopted.

**93.** In *New India Assurance Co. Ltd. v. Roshanben Rahemansha Fakir*[40] (for short "*Roshanben Rahemansha Fakir*), the case involved an autorickshaw, classified as a three-wheeled transport vehicle, used for goods delivery. In this case, insurance company resisted the accident claim and argued that the driver did not have a valid driving licence for a 'transport vehicle'. The Supreme Court however reversed the decision of the Gujarat High Court and the MACT and noted that under *Section 14(2)(a)* of the *MV Act*, the renewal period for Transport Vehicle licences is three years, compared to twenty years for other vehicle categories. Based on this reasoning, the Court held that the driver was not authorised to drive the autorickshaw as he lacked the appropriate endorsement on his LMV License.

**93.1.** The above faulty conclusion was reached primarily because the Court failed to take into account Section 2(21), which defines a Light Motor Vehicle (LMV). Since an autorickshaw falls within the weight limit of an LMV, the driver's LMV licence should have been deemed sufficient. The presumption on account of the validity of license for 20 years could be relevant only for such vehicles which are covered within Medium or Heavy categories.

**94.** *In Oriental Insurance Co. Ltd. v. Angad Kol*[41] *(for short "Angad Kol"),* the legal heirs of the deceased victim filed claim before the MACT, alleging that the deceased was fatally injured by a mini door auto (a goods carriage vehicle) on 31.10.2004 while she was standing at a location known as 'Hardi Turning'. The Insurance Company resisted the claim by contending that the driver did not possess a valid and effective licence to operate the vehicle. The Tribunal allowed the claim and directed the payment of Rs. 1,83,000/- holding that the driver's Light Motor Vehicle (LMV) licence was sufficient. This view was upheld by the High Court.

**94.1.** Setting aside the above decisions favouring the claim, a two-judge bench of this Court held that the holder of a LMV license must also obtain a separate endorsement for a transport vehicle. It noted that the definition of LMV under Section 2(21) of MV Act would bring within its umbrage a Transport Vehicle but a distinction exists between the two as per Section 3 which

40 [2008] 8 SCR 328 : (2008) 8 SCC 253

41 [2009] 2 SCR 695 : (2009) 11 SCC 356

deals with the necessity of a driving license. It was thus noted in Para 15 and 16 of the judgment:

> "15. Section 9 provides for "grant of driving licence". Section 10 prescribes the form and contents of licences to drive which is to the following effect:
>
> > "10. *Form and contents of licences to drive.*— (1) Every learner's licence and driving licence, except a driving licence issued under Section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.
> >
> > (2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:
> >
> > (*a*)-(*c*)***
> >
> > (*d*) light motor vehicle;
> >
> > (*e*) transport vehicle; [ Substituted for clauses (*e*) to (*h*) by Act 54 of 1994, Section 8 (w.e.f. 14-11-1994).]
> >
> > (*i*) road roller;
> >
> > (*j*) motor vehicle of a specified description."
>
> *The distinction between a "light motor vehicle" and a "transport vehicle" is, therefore, evident. A transport vehicle may be a light motor vehicle but for the purpose of driving the same, a distinct licence is required to be obtained.*
>
> 16. The distinction between a "transport vehicle" and a "passenger vehicle" can also be noticed from Section 14 of the Act. Sub-section (2) of Section 14 provides for duration of a period of three years in case of an effective licence to drive a "transport vehicle" whereas in case of any other licence, it may remain effective for a period of 20 years."
>
> [emphasis supplied]

**94.2.** Relying on the judgment in *Prabhu Lal (supra)* which distinguished *Ashok Gangadhar Maratha (supra)*, the Court in *Angad Kol* held that a driver of the mini goods carriage auto holding a LMV license, need not have a license for a Transport Vehicle. The Court also referred to *Annappa Irappa Nesaria* (supra) to note that the amendment (applicable prospectively) specifically introduced the term 'Transport Vehicle' in Section 10. Following this amendment, a specific endorsement for driving a Transport Vehicle would be necessary. It was also noted that since the license was granted for 20 years, a presumption arose that it was for a vehicle other than a transport vehicle. It was ultimately held that the driver did not have a valid driving license, for driving a 'goods vehicle' and breach of conditions of the insurance policy was found apparent on the face of record. However, exercising its power under Article 142, this Court directed the Insurance Company to deposit the compensation amount before the Tribunal with liberty to the claimants to withdraw the same providing the right of recovery to the Insurance Company to recover the deposited sum from the owner and the driver of the vehicle.

**94.3.** Before this Court, the Counsel for the Insurance Companies placed reliance on the above decision in *Angad Kol (supra)* to argue that there is a clear distinction between 'transport vehicle' and 'light motor vehicle'. Let us examine if such argument deserves our endorsement.

**94.4.** The decision in *Angad Kol (supra)* was rendered when *Prabhu Lal (supra)* and *Annapa Irappa Nesaria (supra)* held the field. However, as we have noticed earlier, *Prabhu Lal (supra)* conspicuously failed to notice the definition of LMV in Section 2(21) even though it considered the definition of Transport Vehicle. It also wrongly distinguished *Ashok Gangadhar Maratha (supra)*, where the legal position was clearly stated as under:

> "10. The definition of "light motor vehicle" as given in clause (21) of Section 2 of the Act can apply only to a "light goods vehicle" or a "light transport vehicle". A "light motor vehicle" otherwise has to be covered by the definition of "motor vehicle" or "vehicle" as

given in clause (28) of Section 2 of the Act. A light motor vehicle cannot always mean a light goods carriage. Light motor vehicle can be a non-transport vehicle as well."

**94.5.** The Court in *Angad Kol (supra)* overlooked the crucial legal analysis in Para 9 and 10 and instead distinguished *Ashok Gangadhar Maratha (supra)* by relying on Para 11 where the Court only provided additional reasoning on the requirement of a 'permit'. A 'driving license' is different from a 'permit'. The conflation of the two terms led to the confusion. While a driving license relates to a driver's qualification, a 'permit' relates to the vehicle's operational classification.

**94.6.** The Court in *Angad Kol (supra)* also relied on *Annapa Irappa Nesaria (supra)*, which held that the introduction of Transport Vehicles post-amendment would imply that a specific endorsement would be needed for Transport Vehicles. At the cost of repetition, even otherwise, a comprehensive reading of the MV Act and Rules shows that the specific mention of the term Transport Vehicle in different places of the Act and Rules for the purpose of driving license would reasonably be applicable only for those Transport Vehicles, that fall above the weight limit prescribed in Section 2(21) for LMVs.

**95.** In *S. Iyyapan v. United India Insurance Co. Ltd.*,[42] the 2-judge bench relied on inter alia, *Ashok Gangadhar Maratha (supra)* and *Annappa Irappa Nesaria (supra).* The case stemmed from an accident involving a Mahindra Maxi Cab (a light motor vehicle) that led to the death of one person. The deceased's wife filed a claim before the Motor Accidents Claims Tribunal. The Tribunal awarded Rs. 2,42,000/- in compensation and held that a person holding a LMV License was entitled to drive a Mahindra Maxi Cab. The High Court, however reversed this decision noting that the vehicle was used as a taxi and hence it was a commercial vehicle. It held that a separate license is necessary for driving a commercial vehicle. The Supreme court however restored the decision of MACT stating that the driver with a LMV license was legally competent to drive the Max Cab, used as a taxi. The Court additionally considered Sections 146, 147, and 149 of

42 [2013] 7 SCR 45 : (2013) 7 SCC 62

the MV Act and noted that under certain circumstances, insurers could limit their liability, but they were still bound to pay compensation to third parties. The right of third parties to compensation was protected by law, and the insurer could later recover the amount from the insured if any policy violation occurred. The Supreme Court categorically held that since the driver had a valid LMV licence, and the Mahindra Maxi Cab was classified as an LMV, the insurance company was liable to pay the compensation. The following was the relevant discussion for what appears to be the correct conclusion in *S Iyyappan (supra)*:-

> "18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment [ Civil Misc. Appeal No. 1016 of 2002, order dated 31-10-2008 (Mad)] is, therefore, liable to be set aside."

**96.** Similarly, in *Kulwant Singh v. Oriental Insurance Co. Ltd*,[43] the question for consideration was whether the Insurance Company had recovery rights for breach of conditions of insurance policy when the driver possesses a valid driving licence for driving light vehicle but fails to obtain endorsement for driving goods vehicle? In that case, the L/Rs of the deceased had filed a claim before the MACT following a road accident death on 8.10.2005. The deceased was driving a tempo which was hit by a Tata-407 Tempo. The tribunal held that the claimants were entitled to compensation. The High Court, however, held that there was a breach of policy conditions and the insurance company was entitled to recover the compensation amount from the owner of the vehicle.

**96.1.** The 2-judge bench of the Supreme Court opined that the issue stands covered by the judgment in *S. Iyyapan (supra).* It therefore held that the insurance company could not

43 (2015) 2 SCC 186

avoid liability merely because, the driver did not have an endorsement to drive a commercial vehicle.

**96.2.** In view of the reasons assigned by us and as rightly noted in *Mukund Dewangan (2017)*, the decisions in *S. Iyyapan* (*supra*) and *Kulwant Singh (supra)* were decided correctly. However, as regards the reliance on *Annappa Irappa Nesaria (supra)*, post-amendment in Section 10 also, the law continues to be the same for vehicles falling within the LMV category.

**96.3.** Therefore, the judgments where the Court has held that a separate endorsement for a 'transport vehicle' may not be necessary i.e. in *Ashok Gangadhar Maratha (supra)*, *Nagashetty (supra)*, *S. Iyyapan (supra)* and *Kulwant Singh (supra)* are found to align with our reasoning and interpretation and they are therefore upheld. In consequence, the three judgments which concluded otherwise i.e. *Prabhu Lal (supra)*, *Roshanben Rahemansha Fakir (supra)* and *Angad Kol (supra)* are overruled based on the reasoning provided by us in this judgment. The decision in *Annappa Irappa Nesaria (supra)* is partially overruled to the extent that the position even post-amendment would remain the same.

**VI.** Is *Mukund Dewangan (2017)* *per incuriam*?

**97.** Shifting gears, we may recall that the decision in *Mukund Dewangan (2017)* was doubted for not noticing certain provisions of the *MV Act* and *MV Rules*. These include, inter alia, Section 4(1), 7, 14, the second proviso to Section 15 and Section 180 and 181 of the MV Act. It was therefore argued before this Court that the said decision is per incuriam. To begin with, it is useful to refer to some decisions that have expounded on the principle of per incuriam.

**98.** The term *per incuriam* is a Latin term which means 'by inadvertence' or 'lack of care'. English Courts have developed this principle in relaxation of the rule of stare decisis. In *Halsbury's Laws of England,*[44] the concept of *per incuriam* was explained as under:

44 Halsbury's Laws of England (4th Edn.) Vol. 26: *Judgment and Orders*: *Judicial Decisions as Authorities* (pp. 297-98, para 578)

> "A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow;[45] or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force.[46] A decision should not be treated as given per incuriam, however, simply because of a deficiency of parties,[47] or because the court had not the benefit of the best argument,[48] and, as a general rule, the only cases in which decisions should be held to be given per incuriam are those given in **ignorance of some inconsistent statute or binding authority**.[49] Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of Lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake."
>
> [emphasis supplied]

**99.** Lord Evershed in *Morelle Ld. V. Wakeling*[50] (for short "Morelle") explained the concept as under:

> "As a general rule the only cases in which decisions should be held to have been given per incuriam are those of decisions given in ignorance or forgetfulness of some **inconsistent statutory provision** or of some authority binding on the court concerned; so that in such cases some part of the decision or some step in the reasoning on which it is based is found, on that account, to be demonstrably wrong"
>
> [emphasis supplied]

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45 *Young* v. *Bristol Aeroplane Co. Ltd.*, 1944 KB 718 at 729 : (1944) 2 All ER 293 at 300

46 *Lancaster Motor Co. (London) Ltd.* v. *Bremith Ltd.* (1941) 1 KB 675 : (1941) 2 All ER

47 Morelle Ltd. v. Wakeling (1955) 2 QB 379 : (1955) 1 All ER 708 (CA)

48 Bryers v. Canadian Pacific Steamships Ltd. (1957) 1 QB 134 : (1956) 3 All ER 560 (CA) Per Singleton, L.J., affirmed in Canadian Pacific Steamships Ltd. v. Bryers1958 AC 485 : (1957) 3 All ER 572.]

49 A. and J. Mucklow Ltd. v. IRC, 1954 Ch 615 : (1954) 2 All ER 508 (CA), Morelle Ltd. v. Wakeling (1955) 2 QB 379 : (1955) 1 All ER 708 (CA), see also Bonsor v. Musicians' Union, 1954 Ch 479 : (1954) 1 All ER 822 (CA)

50 Morelle LD v. Wakeling (1955) 2 QB 379 (Court of Appeal).

**100.** A few months after the decision in *Morelle (supra)*, the Constitution Bench of this Court in *Bengal Immunity Co. Ltd.* v. *State of Bihar*[51] adopted the *per incuriam* principle. It held that while Article 141 states that the Supreme Court's decisions are "binding on all courts within the territory of India," this does not extend to binding the Supreme Court itself, which remains free to reconsider its judgments in appropriate cases.

**101.** In *Mamleshwar Prasad* v. *Kanhaiya Lal*,[52] reflecting on the principle of *per incuriam*, this Court speaking through Krishna Iyer J. held thus:

> "*7*. Certainty of the law, consistency of rulings and comity of courts — all flowering from the same principle — converge to the conclusion that a decision once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. **It should be a glaring case, an obtrusive omission**. No such situation presents itself here and we do not embark on the principle of judgment per incuriam."
>
> [emphasis supplied]

**102.** In *A.R. Antulay* v. *R.S. Nayak*,[53] the Constitution Bench of this Court made the following observations:

> "*42*. It appears that when this Court gave the aforesaid directions on 16-2-1984, for the disposal of the case against the appellant by the High Court, the directions were given oblivious of the relevant provisions or law and the decision in *Anwar Ali Sarkar case* [*State of W.B.* v. *Anwar Ali Sarkar* (1952) 1 SCC 1 : AIR 1952 SC 75 : 1952 Cri LJ 510] . See *Halsbury's Laws of England*, 4th Edn., Vol. 26, p. 297, para 578 and p. 300, the relevant Notes 8, 11 and 15; *Dias on Jurisprudence*, 5th Edn., pp.

51 AIR 1955 SC 661

52 [1975] 3 SCR 834 : (1975) 2 SCC 232

53 [1988] Supp. 1 SCR 1 : (1988) 2 SCC 602

> 128 and 130; *Young* v. *Bristol Aeroplane Co. Ltd.* [*Young* v. *Bristol Aeroplane Co. Ltd.*, 1944 KB 718 (CA)] Also see the observations of Lord Goddard in *Moore* v. *Hewitt* [*Moore* v. *Hewitt*, 1947 KB 831] and *Nicholas* v. *Penny* [*Nicholas* v. *Penny* (1950) 2 KB 466] .
>
> *"Per incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong. See Morelle Ltd.* v. *Wakeling* [*Morelle Ltd.* v. *Wakeling* (1955) 2 QB 379 : (1955) 2 WLR 672 (CA)] . *Also see State of Orissa* v. *Titaghur Paper Mills Co. Ltd.* [*State of Orissa* v. *Titaghur Paper Mills Co. Ltd.*, 1985 Supp SCC 280 : 1985 SCC (Tax) 538] We are of the opinion that in view of the clear provisions of Section 7(2) of the Criminal Law Amendment Act, 1952 and Articles 14 and 21 of the Constitution, these directions were legally wrong."

**103.** In *MCD v. Gurnam Kaur*,[54] A 3-Judge bench of this Court held that:

> **"**11. ... A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute."

**104.** In *Punjab Land Development & Reclamation Corpn. Ltd. v. Labour Court*,[55] a five-judge bench of this Court said the following in the context of the principle of *per incuriam* for ignoring statutory provisions :-

> "*43*. As regards the judgments of the Supreme Court allegedly rendered in ignorance of a relevant constitutional provision or other statutory provisions on the subjects covered by them, it is true that the Supreme Court may not be said to "declare the law" on those subjects if the relevant provisions were not really present to its mind. But in this case Sections 25-G and 25-H were not directly

54 [1988] Supp. 2 SCR 929 : (1989) 1 SCC 101

55 [1990] 3 SCR 111 : (1990) 3 SCC 682

attracted and even if they could be said to have been attracted in laying down the major premise, they were to be interpreted consistently with the subject or context. *The problem of judgment per incuriam when actually arises, should present no difficulty as this Court can lay down the law afresh, if two or more of its earlier judgments cannot stand together*."

[emphasis supplied]

**105.** In *N.Bhargavan Pillai v. State of Kerala*,[56] a two-judge bench speaking through Arijit Pasayat J. noted that a judgment cannot be treated as a binding precedent, if it fails to notice a specific statutory bar:

> "14. Coming to the plea relating to benefits under the Probation Act, it is to be noted that Section 18 of the said Act clearly rules out application of the Probation Act to a case covered under Section 5(2) of the Act. Therefore, there is no substance in the accused-appellant's plea relating to grant of benefit under the Probation Act. The decision in Bore Gowda case [(2000) 10 SCC 260 : 2000 SCC (Cri) 1244] does not even indicate that Section 18 of the Probation Act was taken note of. In view of the specific statutory bar the view, if any, expressed without analysing the statutory provision cannot in our view be treated as a binding precedent and at the most is to be considered as having been rendered per incuriam. Looked at from any angle, the appeal is sans merit and deserves dismissal which we direct."

**106.** In *State of M.P. v. Narmada Bachao Andolan*,[57] this Court reiterated**:**

> "67. Thus, "per incuriam" are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the W.P.(C)Nos.7785, 7851, court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the

56 [2004] Suppl. 1 SCR 444 : (2004) 13 SCC 217

57 [2011] 11 SCR 678 : (2011) 7 SCC 639

> reasoning on which it is based, is found, on that account to be demonstrably wrong."

**107.** Subsequently, in *Fuerst Day Lawson Ltd.* v. *Jindal Exports Ltd.*[58] this Court observed:

> "A prior decision of the Supreme Court on identical facts and law binds the Court on the same points of law in a later case. In exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority **running counter to the reasoning and result reached,** the principle of per incuriam may apply. **Unless it is a glaring case of obtrusive omission,** it is not desirable to depend on the principle of judgment 'per incuriam'. It has to be shown that some part of the decision was based on a reasoning which was demonstrably wrong, for applying the principle of per incuriam."
>
> [emphasis supplied]

**108.** In *State of Bihar* v. *Kalika Kuer*,[59] the legal dilemma was noted as under:

> "*10*. … Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits."

**109.** In *Sundeep Kumar Bafna* v. *State of Maharashtra*,[60] the Court expanded the definition of per incuriam in the Indian context and noted that:

> "A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a Co-equal or Larger Bench; or if the decision of a High Court is not in consonance with the

58 [2001] 3 SCR 479 : (2001) 6 SCC 356

59 (2003) 5 SCC 448

60 [2014] 4 SCR 486 : (2014) 16 SCC 623

views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta."

**110.** In a recent decision in *Shah Faesal v. Union of India*,[61] a five judge bench of this Court reiterated that the principle of *per incuriam* only applies on the ratio of the case.

**111.** After having examined the above decisions, when dealing with the ignorance of a statutory provision, we may bear in mind the following principles. These may not however be exhaustive:

(i) A decision is *per incuriam* only when the overlooked statutory provision or legal precedent is central to the legal issue in question and might have led to a different outcome if those overlooked provisions were considered. It must be an inconsistent provision and a glaring case of obtrusive omission.

(ii) The doctrine of *per incuriam* applies strictly to the *ratio decidendi* and does not apply to *obiter dicta.*

(iii) If a court doubts the correctness of a precedent, the appropriate step is to either follow the decision or refer it to a larger Bench for reconsideration.

(iv) It has to be shown that some part of the decision was based on a reasoning which was demonstrably wrong, for applying the principle of *per incuriam*. In exceptional instances, where by obvious inadvertence or oversight, a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, the principle of per incuriam may apply.

**112.** Applying the above principles to the case at hand, let us now apply our mind to the reference made in the context of the decision in *Mukund Dewangan (2017)*. The following questions were referred:

"1. What is the meaning to be given to the definition of "light motor vehicle" as defined in Section 2(21) of the MV Act? Whether transport vehicles are excluded from it?

61 [2020] 3 SCR 1115 : (2020) 4 SCC 1

2. Whether "transport vehicle" and "omnibus" the "gross vehicle weight" of either of which does not exceed 7500 kg would be a "light motor vehicle" and also motor car or tractor or a roadroller, "unladen weight" of which does not exceed 7500 kg and holder of a licence to drive the class of "light motor vehicle" as provided in Section 10(2)(*d*) would be competent to drive a transport vehicle or omnibus, the "gross vehicle weight" of which does not exceed 7500 kg or a motor car or tractor or roadroller, the "unladen weight" of which does not exceed 7500 kg?

3. What is the effect of the amendment made by virtue of Act 54 of 1994 w.e.f. 14-11-1994 while substituting clauses (*e*) to (*h*) of Section 10(2) which contained "medium goods vehicle", "medium passenger motor vehicle", "heavy goods vehicle" and "heavy passenger motor vehicle" by "transport vehicle"? Whether insertion of expression "transport vehicle" under Section 10(2)(*e*) is related to said substituted classes only or it also excluded transport vehicle of light motor vehicle class from the purview of Sections 10(2)(*d*) and 2(41) of the Act?

4. What is the effect of amendment of Form 4 as to the operation of the provisions contained in Section 10 as amended in the year 1994 and whether the procedure to obtain the driving licence for transport vehicle of the class of "light motor vehicle" has been changed?"

**113.** The judgment in *Mukund Dewangan (2017)*, shows that the *3* Judge Bench considered Section 2(21), 2(47) read with Section 10 of MV Act. The Court also examined the legislative intent behind the 1994 amendment to Section 10, noting that while the amendment introduced the term "transport vehicle" under Section 10(2)(e), it did not amend the definition of LMVs under Section 2(21). It was further observed that the newly inserted provision of Section 10(2)(e) would only subsume those classes of vehicles that were contained in Sections 10(2)(e) to 10(2)(h) of the un-amended Act i.e. medium goods vehicle, medium passenger vehicle, heavy goods vehicle and

heavy passenger vehicle, and which now stand deleted by virtue of the amendment of 1994. Since no amendment was carried out in Section 10(2)(d) of the Act which contains the class for 'Light Motor Vehicles', the scope of Section 10(2)(d) would remain intact as is contained in Section 2(21) of the Act, which is to say that LMV would include 'Transport Vehicles' in cases where the gross weight of such vehicle is less than 7500 Kgs. It further noted that the syllabus does not provide separate training for transport vehicles but includes them under the relevant vehicle class based on the vehicle's weight. It considered Rule 75 which deals with 'State Register of motor vehicles' as provided in Form 41. Form 41 categorizes vehicles on the basis of, *inter alia*, gross vehicle weight, unladen weight etc. Likewise, the Court observed that Section 41, pertaining to registration, mandates the inclusion of relevant information as specified in Form 20, which outlines details such as the class of vehicle, gross vehicle weight, and unladen weight, among other factors.

**114.** The court analysed those key provisions of the Act and Rules and reached a conclusion which is aligned with the discussion and opinion in this judgment. It rightly concluded as under:

> "(i) 'Light motor vehicle' as defined in section 2(21) of the Act would include a transport vehicle as per the weight prescribed in section 2(21) read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.
>
> (ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor

vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and "heavy passenger motor vehicle" in section 10(2)(h) with expression 'transport vehicle' as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.

(iv) The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect."

**115.** It is true that *Mukund Dewangan (2017)* did not analyse the provisions that distinguish transport and non-transport vehicles, as noted in the reference orders. The statutory scheme of MV is more nuanced than the simple weight-based distinction made in the said judgment. Moreover, the Court failed to notice Section 31(2) and 31(3) which specify 'Transport' and 'Non-Transport' vehicles. However, the judgment gave due consideration to the important statutory provisions. We have carefully looked at the relevant and the wide ranging provisions in our analysis in this decision. A harmonious interpretation, as we have explained earlier, would lead us to the same conclusion but fortified with some additional reasoning based on the consideration of all the relevant provisions. The overlooked

provisions would not, in our considered opinion, alter the eventual pronouncement. Importantly, we do not notice any glaring error or omission that would alter the outcome of the case. Therefore, the ratio in *Mukund Dewangan (2017)* should not be disturbed by applying the principles of *per incuriam.*

**F.** IMPACT ON ROAD SAFETY

**116.** The counsel for the insurance Companies raised concerns regarding road safety, arguing that if the present law in *Mukund Dewangan (2017)* is not interfered with, unfit drivers will start plying Transport Vehicles putting at risk the lives of thousands of people. One of the supporting Intervenors placed reliance on Para 57 of the decision of this Court in *Savelife Foundation v. Union of India*[62] where this Court while exercising its public interest litigation jurisdiction under Article 32 of the Constitution of India held that the Right to life under Article 21 also includes the right to safety of persons travelling on the road. Per contra, in the intervention application filed on behalf of auto drivers, it was argued that the members of the Applicant Intervenor have been permitted to operate taxis and motorcabs while holding an LMV licence for the past almost 6 years. Reconsideration of the same is not merely an issue of insurance coverage, rather it directly pertains to the livelihood of those operating transport vehicles of the LMV class, thereby giving rise to a fair consideration of their rights under Article 19(1)(g). It was submitted that if this Court upsets *Mukund Dewangan (2017)*, which it should not, a transition period of 12-24 months be provided.

**117.** The above submissions will now require our consideration. It is true that in its PIL jurisdiction, this Court has passed orders in a myriad of cases including elevating the right of road safety to a fundamental right. It has also taken over policy areas[63] by appointing Commissioners to gather facts or to take expert advice in the form of reports. However, this Court should be conscious that this is neither a Public Interest Litigation jurisdiction nor is the Court testing the constitutional validity of any of the provisions. Moreover, no empirical

62 (2016) 7 SCC 194

63 See Ashok H Desai and S Muralidhar, 'Public Interest Litigation: Potential and Problems' in B.N Kirpal and others (eds), *Supreme but not Infallible – Essays in Honour of the Supreme Court of India* (Oxford University Press 2000)

data has been produced before us to show that road accidents in India have increased as a direct result of drivers with LMV license, plying a transport vehicle of LMV class of vehicles whose gross weight is within 7500 Kg. Road safety is indeed an important objective of the *MV Act* but our reasoning must not be founded on unverified assumptions without any empirical data. The dangers of reasoning without empirical data[64] and beyond the statutory scheme of the Act must be avoided. While we are mindful of issues of road safety, the task of crafting policy lies within the domain of the legislature. As a constitutional court, it is not our role to dictate policy decisions or rewrite laws. We must be mindful of the institutional limitation to address such concerns.

**118.** The complexities surrounding the question of whether the Court should examine not only the existing laws and definitions, but also the broader underlying issues of policy have been vividly captured in the following words from Salmond on Jurisprudence[65]:

> "Rules, which are originally designed to fit social needs, develop into concepts, which then proceed to take on a life of their own to the detriment of legal development. The resulting "jurisprudence of concepts" produces a slot-machine approach to law whereby new points posing questions of social policy are decided, not by reference to the underlying social situation, but by reference to the meaning and definition of the legal concepts involved. This formalistic a priori approach confines the law in a strait-jacket instead of permitting it to expand to meet the new needs and requirements of changing society. ……In such cases Courts should examine not only the existing laws and legal concepts, but also the broader underlying issues of policy. In fact presently, judges are seen to be paying increasing attention to the possible effects of their decision one way or the other…… Such an approach is to be welcomed, but it also warrants two comments. *First, judicial inquiry into the general effects of a proposed decision tends itself to be of a fairly speculative nature.*

64 Anuj Bhuwania, 'Courting the People— Public Interest Litigation in Post-Emergency India' (Cambridge University Press 2017).

65 P.J. Fitzgerald(Ed), 'Salmond on Jurisprudence' (12th edn, Sweet and Maxwell 1966)

> *Secondly, Too much regard for policy and too little for legal consistency may result in a confusing and illogical complex of contrary decisions; and while it is true that 'the life of the law has not been logic, it has been experience' and that we should not wish it otherwise, nevertheless we should remember that 'no system of law can be workable if it has not got logic at the root of it"*
>
> [emphasis supplied]

**119.** What follows from the above is that wherever possible, the Court must attempt to be consistent in its approach. The principle of *stare decisis*, which mandates that courts adhere to established precedents, plays a crucial role in maintaining legal stability and predictability. The finding in *Mukund Dewangan (2017)* need not be disturbed owing to speculative concerns of road safety that intersect with broader policy issues.

**120.** We may recall that during the course of the present proceeding, the Central Government was arrayed and the learned Attorney General was requested to obtain instructions on whether the legislative wing would wish to examine and undertake an appropriate amendment on the legal question of whether a person holding a driving license for a light motor vehicle is entitled to legally drive a 'transport vehicle' of a specified weight. An order to this effect was passed in light of the possible social impact of the reference, particularly on road safety and the livelihood issue. Pursuant to this, the learned Attorney General submitted a note, *inter alia*, suggesting multiple amendments including a further classification of LMVs into LMV Class 1 and LMV Class 2, each with different weight thresholds.

**121.** Had the Parliament acted sooner to amend the *MV Act* and clearly differentiated between classes, categories and types, much of the uncertainty surrounding driving licenses could have been addressed, reducing the need for frequent litigation and an unclear legal terrain. The confusion and inconsistency in judicial decisions continued to persist for 25 years starting from the 1999 decision in *Ashok Gangadhar Maratha (supra).*

**122.** Road safety is a serious public health issue globally. It is crucial to mention that in India, over 1.7 lakh persons[66] were killed in road

66 Dipak K Dash, Accidents killed 474 on daily average in 2023 (October 20, 2024) <https://timesofindia.indiatimes.com/india/accidents-killed-474-daily-on-average-in-2023/articleshow/114384171.cms>

accidents in 2023. The causes of such accidents are diverse, and assumptions that they stem from drivers operating light transport vehicles with an LMV license are unsubstantiated. Factors[67] contributing to road accidents include careless driving, speeding, poor road design, and failure to adhere to traffic laws. Other significant contributors are mobile phone usage, fatigue, and non-compliance with seat belt or helmet regulations.

**123.** Driving a motor vehicle is a complex task requiring both practical skills and theoretical knowledge. Safe driving involves not only technical vehicle control[68] but also proficiency in various road conditions, including managing speed,[69] turns, and spatial awareness relative to other vehicles. Additionally, handling road gradients demands skill, particularly with brakes[70] and maneuvering. Effective driving requires awareness of road signs, adherence to traffic rules,[71] and a focus on the road free from distractions. The core skills expected of all drivers apply universally, regardless of whether the vehicle falls into transport or non-transport categories.

**124.** At this juncture, it is also essential to note the scheme[72] devised in accordance with Section 75 of *MV Act* whereby the pre-requisites in the form of 'General Conditions' to be maintained by the 'holder of license' ensure safety and compliance. Certain guidelines[73] have also been enacted in so far as aggregators are concerned whereby chapters outlining 'Conditions for grant of licence for Aggregator', 'Compliance with regard to Drivers', 'Compliance with regard to Vehicles' as also 'Compliances to ensure safety' further address the speculative concerns raised on behalf of the counsel for insurance companies.

**G.** CONCLUSION

**125.** The licensing regime under the *MV Act* and the *MV Rules*, when read as a whole, does not provide for a separate endorsement for

67 WHO(2023) Global Status Report on Road Safety India 2023 Country profile https://www.who.int/publications/m/item/road-safety-ind-2023-country-profile

68 See MV Rules, Rule 31, Part D Vehicle Mechanism and Repairs

69 See MV Act, Section 112 Limits of Speed

70 See MV rules, Rule 31, Part A-Driving Theory-I,

71 See MV Rules, Rule 31, Part B-Traffic Education-I and Part F-Traffic Education-II

72 Rent a Cab Scheme, 1989; Vide S.O. 437 (E), dated 12th June, 1989, published in the Gazette of India, Extra. Pt. II, Sec. 3(ii), dated 12th June, 1989

73 Motor Vehicle Aggregator Guidelines, 2020

operating a 'Transport Vehicle', if a driver already holds a LMV license. We must however clarify that the exceptions carved out by the legislature for special vehicles like e-carts and e-rickshaws,[74] or vehicles carrying hazardous goods,[75] will remain unaffected by the decision of this Court.

**126.** As discussed earlier in this judgment, the definition of LMV under Section 2(21) of the *MV Act* explicitly provides what a 'Transport Vehicle' 'means'. This Court must ensure that neither provision i.e. the definition under Section 2(21) or the second part of Section 3(1) which concerns the necessity for a driving license for a 'Transport Vehicle' is reduced to a dead letter of law. Therefore, the emphasis on 'Transport Vehicle' in the licensing scheme has to be understood only in the context of the 'medium' and 'heavy' vehicles. This harmonious reading also aligns with the objective of the 1994 amendment in Section 10(2) to simplify the licensing procedure.[76]

**127.** The above interpretation also does not defeat the broader twin objectives of the *MV Act* i.e. road safety and ensuring timely compensation and relief for victims of road accidents. The aspect of road safety is earlier discussed at length. An authoritative pronouncement by this Court would prevent insurance companies from taking a technical plea to defeat a legitimate claim for compensation involving an insured vehicle weighing below 7,500 kgs driven by a person holding a driving license of a 'Light Motor Vehicle' class.

**128.** In an era where autonomous or driver-less vehicles are no longer tales of science fiction and app-based passenger platforms are a modern reality, the licensing regime cannot remain static. The amendments that have been carried out by the Indian legislature may not have dealt with all possible concerns. As we were informed by the Learned Attorney General that a legislative exercise is underway, we hope that a comprehensive amendment to address the statutory lacunae will be made with necessary corrective measures.

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74 See Rule 8A of MV Rules,'Minimum training required for driving E-rickshaw or E-cart'

75 See Rule 9 of MV Rules, 'Educational Qualification for drivers of goods carriages carrying dangerous or hazardous goods'

76 The classes medium goods vehicle[(10(2)(e)], medium passenger vehicle[10(2)(f)], heavy goods vehicle[10(2)(g)] and heavy passenger vehicle [10(2)(h)] were deleted and a new class 'Transport Vehicle' was introduced in Section 10(2)(e).

**129.** Just to flag one concern, the legislature through the 1994 amendment in Section 10(2)(e) in order to introduce 'transport vehicle' as a separate class could not have intended to merge light motor vehicle (which continued as a distinct class) along with medium, and heavy vehicles into a single class. Else, it would give rise to a situation in which Sri (our hypothetical character), wanting to participate in the *cycling* sport, is put through the rigorous training relevant only for a multisport like *Triathlon,* which requires a much higher degree of endurance and athleticism. The effort therefore should be to ensure that the statute remains practical and workable.

**130.** Now harking back to the primary issue and noticing that the core driving skills (as enunciated in the earlier paragraphs), expected to be mastered by all drivers are universal – regardless of whether the vehicle falls into "Transport" or "Non-Transport" category, it is the considered opinion of this Court that if the gross vehicle weight is within 7,500 kg - the quintessential common man's driver Sri, with LMV license, can also drive a "Transport Vehicle". We are able to reach such a conclusion as none of the parties in this case has produced any empirical data to demonstrate that the LMV driving licence holder, driving a 'Transport Vehicle', is a significant cause for road accidents in India. The additional eligibility criteria as specified in *MV Act* and *MV Rules* as discussed in this judgment will apply only to such vehicle ('medium goods vehicle', 'medium passenger vehicle', 'heavy goods vehicle' and 'heavy passenger vehicle'), whose gross weight exceeds 7,500 Kg. Our present interpretation on how the licensing regime is to operate for drivers under the statutory scheme is unlikely to compromise the road safety concerns. This will also effectively address the livelihood issues for drivers operating Transport Vehicles (who clock maximum hours behind the wheels), in legally operating "Transport vehicles" (below 7,500 Kg), with their LMV driving license. Perforce Sri must drive responsibly and should have no occasion to be called either a maniac or an idiot (as mentioned in the first paragraph), while he is behind the wheels. Such harmonious interpretation will substantially address the vexed question of law before this Court.

**131.** Our conclusions following the above discussion are as under:-

(I) A driver holding a license for Light Motor Vehicle (LMV) *class*, under Section 10(2)(d) for vehicles with a gross vehicle weight

under 7,500 kg, is permitted to operate a 'Transport Vehicle' without needing additional authorization under Section 10(2)(e) of the *MV Act* specifically for the 'Transport Vehicle' *class*. For licensing purposes, LMVs and Transport Vehicles are not entirely separate classes. An overlap exists between the two. The special eligibility requirements will however continue to apply for, *inter alia*, e-carts, e-rickshaws, and vehicles carrying hazardous goods.

(II) The second part of Section 3(1), which emphasizes the necessity of a specific requirement to drive a 'Transport Vehicle,' does not supersede the definition of LMV provided in Section 2(21) of the *MV Act.*

(III) The additional eligibility criteria specified in the *MV Act* and *MV Rules* generally for driving 'transport vehicles' would apply only to those intending to operate vehicles with gross vehicle weight exceeding 7,500 kg i.e. 'medium goods vehicle', 'medium passenger vehicle', 'heavy goods vehicle' and 'heavy passenger vehicle'.

(IV) The decision in *Mukund Dewangan (2017)* is upheld but for reasons as explained by us in this judgment. In the absence of any obtrusive omission, the decision is not *per incuriam*, even if certain provisions of the *MV Act* and *MV Rules* were not considered in the said judgment.

**132.** The reference is answered in the above terms. The Registry is directed to list the matters before the appropriate Bench after obtaining directions from Hon'ble the Chief Justice of India.

*Result of the case:* Reference answered.

†*Headnotes prepared by:* Divya Pandey