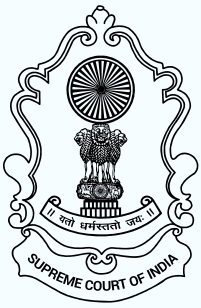

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Level 9 Biz Pvt. Ltd.
v.
Himachal Pradesh Housing and Urban Development Authority & Another

(Civil Appeal No. 4626 of 2024)

02 April 2024

[Bela M. Trivedi* and Pankaj Mithal, JJ.]

Issue for Consideration

Matter pertains to the correctness of the order passed by the High Court disposing the writ petition by accepting the statements of the respondent no. 1-tenderee and respondent no. 2-successful bidder, permitting the respondent no.1 to withdraw the cancellation of initial tendering process order and permitting the respondent no. 2 to execute the project on the same terms and conditions as in the initial tender, though the said tender was already withdrawn by the respondent no.1 in view of the report of the independent Committee confirming gross irregularities and illegalities committed by the officers of the respondent no.1.

Headnotes

Tender – Notice inviting tender – Issuance of letter of intent in favour of the successful bidder by the tenderee – Challenge to, by the unsuccessful bidder – Cancellation of initial tender process by the tenderee and withdrawal of the letter of intent issued in favour of the successful bidder on account of pending litigations in the High Court – Thereafter, issuance of fresh NIT by tenderee – Challenge to – High Court disposed of the writ petition by merely accepting the statement of the tenderee that it had no objection to go ahead with the initial tendering process and the statement of the initial successful bidder that it was ready to execute the project on the same terms and conditions as initially agreed, though the said tender was already withdrawn by the tenderee in view of the irregularities and illegalities committed by it, as recorded by an independent committee appointed by the High Court in earlier writ petitions – Correctness:

* Author

Held: No right whatsoever created in favour of the respondent no. 2-successful bidder, and the respondent no. 1 HIMUDA-tenderee cancelled the tender and issued fresh NIT, as such the respondent no. 1 could not have agreed to allow the respondent no. 2, who was found to be not technically qualified, to go ahead with the execution of the project in question and that too without giving the other two parties any opportunity to negotiate – Respondent no. 1 in collusion with the respondent no. 2, took the High Court for a ride and misused the process of law for covering up the irregularities and illegalities committed in the tender process by the officers of the respondent no. 1 – High Court also could not notice the ill-intention of the respondent nos. 1 and 2 and disposed of the petition, permitting them to go ahead with the original tender – Thus, the impugned order having been passed without proper application of mind and without assigning any cogent reason for brushing aside the findings recorded by the Independent Committee and the observations made by the Single Bench, is quashed and set aside – Also, the respondent no.1, though 'State' within the meaning of Art. 12, acted malafide and in collusion with the respondent no.2, and took the High Court for a ride, heavy cost of Rs. 5,00,000/- imposed on the respondent no. 1 – Constitution of India – Art. 12. [Paras 11-14]

Tender – Notice inviting tender – Letter of Intent – Nature of:

Held: Letter of Intent is merely an expression of intention to enter into a contract – It does not create any right in favour of the party to whom it is issued – There is no binding legal relationship between the party issuing the LOI and the party to whom such LOI is issued – Detailed agreement/contract is required to be drawn up between the parties after the LOI is received by the other party. [Para10]

List of Acts

Constitution of India.

List of Keywords

Cancellation of initial tendering process; Tender; Irregularities and illegalities; Notice inviting tender; Letter of intent; Burden on the public exchequer; Misuse process of law; Cost; Fresh tender process; Agreement/contract.

Level 9 Biz Pvt. Ltd. v. Himachal Pradesh Housing and Urban Development Authority & Another

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4626 of 2024

From the Judgment and Order dated 18.10.2022 of the High Court of Himachal Pradesh at Shimla in CWP No. 1481 of 2021

Appearances for Parties

P.S. Patwalia, Sr. Adv., Ritesh Khatri, Ms. Deveshi Chand, Advs. for the Appellant.

Anoop G. Chaudhari, Navin Pahwa, Sr. Advs., Shankar Divate, J. P. Mishra, D. K. Thakur, Rajeev Kumar Gupta, Tavleen Singh, Joginder Mann, Ms. Vallabhi Shukla, Divyansh Thakur, Bimlesh Kumar Singh, Kanwal Chaudhary, Neeraj Agarwal, Santosh Kumar Yadav, Ms. Niharika, Nishant Anand, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Bela M. Trivedi, J.

1. Leave granted.

2. The Appellant – Level 9 BIZ Pvt. Ltd., who was not a party to the proceedings, being Civil Writ Petition No. 1481 of 2021, filed by the Respondent No.2 – M/s. Vasu Constructions in the High Court of Himachal Pradesh at Shimla, has challenged the impugned order dated 18.10.2022 passed by the High Court in the said proceedings. The High Court passed the impugned order disposing of the said CWP by merely accepting the statement made on behalf of the Respondent No.1 – Himachal Pradesh Housing and Urban Development Authority (HIMUDA) that it wanted to withdraw the cancellation of initial tendering process order dated 05.02.2021, and the statement made on behalf of the Respondent No. 2 that it was ready to execute the project on the same terms and conditions and the rates as per the initial tender dated 15.11.2018, though the said tender was already withdrawn by the Respondent no. 1 HIMUDA in view of the irregularities and illegalities committed by it, as recorded by an independent committee appointed by the High Court in earlier writ petitions filed by the present appellant and one Dalip S. Rathore.

3. The broad facts giving rise to the present appeal may be stated as under: -

DATES	EVENTS
15/16.11.2018	Notice Inviting Tender (NIT) was issued by HIMUDA (R-1) for the construction of proposed commercial complex of Vikas Nagar, Shimla, at estimated cost of Rs.45,05,62,074/-
15.12.2018	Technical Bids were opened and on the same day Financial Bids were also opened. (Appellant & R-2 were the only found to be qualified – But the Appellant was L2)
17.12.2018	LOI was issued by the R-1 in favour of R-2.
24.12.2018	One Unsuccessful bidder Dalip S Rathore filed Writ Petition being CWP 3021 of 2018 challenging the technical specifications & ineligibility of Respondent No.2, also seeking cancellation of the Tender. The High Court issued notice.
02.01.2019	R-1 HIMUDA withdrew the LOI dated 17.12.2018 of R-2 M/S Vasu Constructions stating that the case is pending in the High Court and the work will be awarded only as per the decision of the High Court.
05.01.2019	R-1 HIMUDA constituted a committee, which reviewed the tender process and concluded that there were many lapses which warranted actions against the erring officials.
07.01.2019	Another Committee constituted by R-1 submitted a report that Shri Dalip Singh was not qualified and M/s. Vasu Constructions was qualified.
23.02.2019	Appellant – Level 9 BIZ Pvt. Ltd. filed a writ petition CWP 363 of 2019, praying for rejection of Technical Bid and Financial Bid of the R-2 M/s. Vasu Constructions

25.11.2020	High Court passed a detailed order on 25.11.2020 in CWP No. 3021/2018 and 363/2019. In Para 29 High Court observed- *"[..] this Court is prima facie of the view that some of the officers manning high positions in HIMUDA have not acted responsibly and in the interest of organization, rather have attempted, directly or indirectly, to give undue benefit to some of the contractors. Having seen the record, this Court is compelled to draw a conclusion that the officers responsible for evaluation of the tender in question, did not scrutinize the documents submitted by the tenderers along with their bids properly and, with a view to ensure ouster of some eligible contractors and awarding the same to their favourites, have made an attempt to justify their action by giving totally implausible reasoning."* In para 31, High Court observed- *"But, for the reasons, best known to the authority, it still proceeded to award the tender in favour of M/s. Vasu Construction Company."* The High Court therefore to instill confidence in the general public and to ensure transparency in the system, constituted an independent committee to enquire into the tender process in question, and directed the committee to submit its report in a sealed cover to the Court.
02.01.2021	Committee constituted by High Court filed its report.
08.01.2021	High Court disposed of both Petitions being Nos. 3021/2018 and 363/19 and directed registry to initiate separate proceedings against erring officials, observing as under: -

14. Since the committee, after having perused the records, has arrived at a definite conclusion that on account of shortcomings/irregularities, tender in question requires to be cancelled, nothing much is left for this court to adjudicate in these matters. Leaving everything aside, learned counsel for the petitioners in both the petitions, being satisfied with the findings of enquiry committee as well as suggestions made therein, are not willing to prosecute the cases further and have prayed to dispose of the same as having been rendered infructuous.

15. In view of aforesaid, both the petitions are disposed of as infructuous alongwith all pending applications. Interim directions, if any, stand vacated. However, liberty is reserved to the parties to file fresh petition(s), if any, if they still remain aggrieved.

16. However, this court, having taken note of the fact that the enquiry committee despite having found officers lacking in discharge of their duties, has failed to fix responsibility and recommend action, criminal or departmental, deems it necessary to direct the Registry of this Court to register separate proceedings, enabling this Court to pass appropriate orders so as to ensure strict compliance of recommendations given in the report of enquiry committee and pass appropriate orders with regard to initiation of criminal/ departmental proceedings against the erring officials.

	Registry is directed to register separate proceedings and list the same on 17.3.2021. The order dated 25.9.2020, this judgment and the enquiry report submitted by the committee constituted by this Court, shall form part of the fresh proceedings.
05.02.2021	Respondent No.1 cancelled the Tender in view of the Order dated 08.01.2021 passed by the High Court.
03.03.2021	Respondent No.2 filed a new Writ Petition against Respondent No.1, i.e., CWP 1481 of 2021 challenging order dated 05.02.2021. Respondent no. 2 also filed separate two LPAs being LPA No. 6/2021 and 12/2021 against the common order dated 08.01.2021 passed in CWP No. 3021/2018 and CWP No. 363/2019 by the Single Bench.
17.11.2021	R-1 HIMUDA issued fresh NIT for the same work.
01.12.2021	The Division Bench of High Court passed an interim order in LPA No. 6/2021, 12/2021 and CWP No. 1481/2021 staying the NIT dated 17.11.2021 till further orders.
18.10.2022	The Division Bench disposed of the Writ Petition No. 1481/2021 upon statement of the Executive Engineer of Respondent No.1 observing as under: 7. Learned counsel for the respondent on instructions of Mr. Rajesh Thakur, Executive Engineer, HIMUDA, Division, Shimla-9, has submitted that the competent authority wants to withdraw the cancellation of initial tendering process order dated 5th February, 2021, bearing No. 5806-11, as the public is deprived from the facilities, which would have been available to them after completion of the project. The project cost is going to be enhanced due to delay in execution of the project, which will cause additional burden

	on the public exchequer. The various Government departments/PSUs are facing acute shortage of office accommodation, therefore, in larger public interest, the authority has no objection to go ahead with initial tendering process, in case the petitioner is ready to execute the work at the same rate and terms and conditions as were agreed at the time of finalization of the initial NIT dated 15.11.2018 (Annexure P-2). The time period for execution of work will start from date of fresh award letter which will be issued in favour of the petitioner within 15 days. 8.Learned Senior counsel for the petitioner, on instructions from the petitioner, has submitted that offer made by the respondent is acceptable to the petitioner and petitioner is ready to execute the project on the same terms and conditions and rates as per initial tender dated 15.11.2018 (Annexure P-2).
Nov. 2022	Contract Agreement was signed between Respondent 1 & 2. Work started.
12.12.2022	The Appellant filed the SLP challenging the impugned order dated 18.10.2022 and the Court while issuing notice, granted stay of operation of the impugned order dated 18.10.2022.

4. The question that has been posed before us in the instant appeal is, whether the High Court could have disposed of the CWP filed by the respondent no. 2 by simply accepting the statements made on behalf of the learned advocates for the respondent no. 1 and respondent no. 2, virtually permitting the respondent no.1 HIMUDA to withdraw the cancellation of initial tendering process order dated 05.02.2021 and permitting the respondent no. 2 M/s Vasu Constructions to execute the project on the same terms and conditions and at the rates as per the initial tender dated 15.11.2018, though the said tender was already withdrawn by the Respondent No.1 HIMUDA in view of the report made by the independent Committee constituted by the High Court confirming gross irregularities and illegalities committed by the officers of

HIMUDA and in view of the order dated 08.01.2021 passed by the Single Bench?

5. As could be seen from the chronology of events, the appellant and the respondent No. 2 were declared qualified in the Technical Bids opened on 15.12.2018 and on the same day, the financial bid of the said two parties were also opened. The respondent no.2 being L-1, the Letter of Intent dated 17.12.2018 was issued by the Respondent No.1 in favour of the respondent no.2. Subsequently, an unsuccessful bidder M/s Dalip Singh Rathore filed a writ petition being No. 3021/2018 in the High Court, alleging irregularities and illegalities in the tender process and challenging the eligibility of the respondent no. 2, also seeking cancellation of the Tender. The appellant also filed CWP No. 363/2019 praying for the rejection of the Technical and Financial Bids of the respondent no.2. The respondent no.1 HIMUDA in the meantime appointed a committee on 01.01.2019 to review the tender process. The respondent no.1 also vide the letter dated 02.01.2019 withdrew the Letter of Intent issued in favour of the respondent no.2. Subsequently, the High Court also appointed an Independent Committee to look into the alleged illegalities and irregularities vide the order dated 25.11.2020, in order to instill confidence in the general public and to ensure transparency in the system.

6. As transpiring from the order dated 08.01.2021, the said Independent Committee submitted the report, arriving at a definite conclusion that the officers responsible for evaluation of the tender had not acted responsibly and fairly, as a consequence of which both M/s Vasu Constructions Company (respondent no.2 herein) and M/s Level 9 Biz Pvt. Ltd. (the appellant herein) were wrongly declared eligible in the Technical Bid. The Committee had concluded that since both the bidders were not technically qualified as per the terms and conditions of the NIT, the tender needed to be cancelled. The recommendations made by the said Committee, except the recommendation for deletion of condition with regard to NPA, were stated to have been accepted by the Enquiry Committee of the respondent no. 1 HIMUDA. The High Court recorded the statements of the concerned counsels for the parties and disposed of the petitions being CWP Nos. 3021/2018 and 363/2019 vide Order dated 08.01.2021 observing that the petitions had been rendered infructuous, however reserved a liberty for the parties to file fresh petition(s), if any, if they still remained aggrieved.

7. Subsequently, the respondent no.1 HIMUDA cancelled the tender on 05.02.2021 in view of the said order dated 08.01.2021 passed by the High Court. The said action of the respondent no.1 came to be challenged by the Respondent No.2 M/s Vasu Constructions by filing a petition being CWP No. 1481/2021. The respondent no. 2 also filed two LPAs being 6/2021 and 12/2021 being aggrieved by the common Order dated 08.01.2021 passed by the Single Bench. The Division Bench of the High Court disposed of the CWP No. 1481/2021 vide the impugned order dated 18.10.2022 accepting the statements made by the learned counsels for the respondent nos. 1 and 2 as stated hereinabove.

8. We are at loss to understand as to how the said petition filed by the respondent no.2 could have been disposed of by the Division Bench by merely recording and accepting the statements of the learned counsels for the respondent nos. 1 and 2, when the tender in respect of NIT dated 15.11.2018 was cancelled by the respondent no.1 HIMUDA on account of the gross irregularities and illegalities in the tender process found by the Independent Committee constituted by the High Court and on account of the order passed by the High Court on 08.01.2021? We are also at loss to understand as to how the Executive Engineer of HIMUDA, could have made the statements before the Division Bench that the competent authority of the respondent no.1 wanted to withdraw the cancellation of the initial tendering process order dated 05.02.2021 and that the respondent no. 1 had no objection to go ahead with the initial tendering process, in case the respondent no.2 was ready to execute the work on the same terms and conditions as were agreed at the time of finalization of NIT dated 15.11.2018, when the respondent no. 1 itself had decided to cancel and in fact cancelled the initial tendering process vide its order dated 05.02.2021 accepting the findings of the committee constituted by the High Court to the effect that there were irregularities and illegalities committed by the officers of the HIMUDA in processing the tender and that the respondent no. 2 was not technically qualified?

9. When the common order dated 08.01.2021 was passed in the Writ Petition No. 3021 of 2018 filed by the petitioner Dalip Singh and Writ Petition No.363 of 2019 filed by the present appellant, recording the said findings of the committee appointed by it, pursuant to which order, the respondent no.1 had cancelled the tender on 05.02.2021,

and had issued a fresh NIT on 17.11.2021, it was incumbent on the part of the respondent no. 2 to implead the said two petitioners as the party respondents in the new petition filed by it i.e. 1481/2021, and it was also incumbent on the part of the High Court to give opportunity of hearing to the said petitioners before passing the impugned order disposing of the said petition merely recording the statements of the learned counsels for the respondent nos. 1 and 2, and permitting the respondent nos. 1 and 2 to go ahead with execution of the work as per the initial tender which was already cancelled by the respondent no.1.

10. Though it is true that initially an LOI was issued by the respondent no. 1 in favour of the respondent no. 2 on 17.12.2018, but the same was withdrawn by the respondent no. 1 as per the letter dated 02.01.2019 on account of pending litigations in the High Court. In any case, it hardly needs to be reiterated that the Letter of Intent is merely an expression of intention to enter into a contract. It does not create any right in favour of the party to whom it is issued. There is no binding legal relationship between the party issuing the LOI and the party to whom such LOI is issued. A detailed agreement/ contract is required to be drawn up between the parties after the LOI is received by the other party more particularly in case of contract of such a mega scale.

11. Since, there was no right whatsoever created in favour of the respondent no. 2, and since the respondent no. 1 HIMUDA had already accepted the recommendations of the Committee appointed by the High Court and the order dated 08.01.2021 passed by the High Court, and had cancelled the tender and issued fresh NIT on 17.11.2021, the respondent no. 1 could not have agreed to allow the respondent no. 2, who was found to be not technically qualified, to go ahead with the execution of the project in question and that too without giving the other two parties any opportunity to negotiate. If the respondent no. 1 was so keen to provide the facilities to the public without causing any additional burden on the public exchequer, all the three parties who had participated in the original tender should have been given the opportunity to negotiate with it.

12. Having regard to the entire chain of events, and the conduct of the respondent nos. 1 and 2, we have no hesitation in holding that the respondent no. 1 in collusion with the respondent no. 2, had

taken the High Court for a ride and misused the process of law for covering up the irregularities and illegalities committed in the tender process by the officers of the respondent no. 1, and for anyhow awarding the contract to the respondent no. 2 under the guise of the court's order. It is a matter of surprise for us that the High Court also could not notice the ill-intention of the respondent nos. 1 and 2 and disposed of the petition, permitting them to go ahead with the original tender, ignoring the reports of the independent committee and the observations made by the Single Bench in the Order dated 08.01.2021 with regard to the irregularities and illegalities committed by the officers of the respondent no. 1 HIMUDA.

13. The impugned order having been passed without proper application of mind and without assigning any cogent reason for brushing aside the findings recorded by the Independent Committee and the observations made by the Single Bench in the order dated 08.01.2021, the same deserves to be quashed and set aside. Since, we have found that the respondent no.1 HIMUDA, though 'State' within the meaning of Article 12 of the Constitution of India, had acted *malafide* and in collusion with the respondent no.2, and had taken the High Court for a ride, the present appeal deserves to be allowed with heavy cost.

14. In that view of the matter, the impugned order passed by the High Court is set aside. The appeal is allowed with cost of Rs. 5,00,000/- to be deposited by the respondent no. 1 HIMUDA with the Supreme Court Advocates-on-Record Association, within two weeks from today. However, it is clarified that the respondent no.1 shall be at liberty to initiate a fresh tender process in accordance with law and after following the due process of law.

Headnotes prepared by: Nidhi Jain

Result of the case: Appeal allowed.

[2024] 4 S.C.R. 13 : 2024 INSC 253

State of Kerala
v.
Union of India

(Original Suit No. 1 of 2024)

01 April 2024

[Surya Kant* and K.V. Viswanathan, JJ.]

Issue for Consideration

What is the true import and interpretation of the expression "if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends" contained in Article 131 of the Constitution; Does Article 293 of the Constitution vest a State with an enforceable right to raise borrowing from the Union government and/or other sources and if yes, to what extent such right can be regulated by the Union government; Can the borrowing by State-Owned Enterprises and liabilities arising out of the Public Account be included under the purview of Article 293(3); What is the scope and extent of Judicial Review exercisable by this Court with respect to a fiscal policy purportedly in conflict with the object and spirit of Article 293; Is fiscal decentralization an aspect of Indian Federalism and if yes, do the impugned actions taken by the Defendant-Union of India purportedly to maintain the fiscal health of the country violate such Principles of Federalism; Are the impugned actions violative of Article 14 of the Constitution on the ground of 'manifest arbitrariness' or on the basis of differential treatment meted out to the Plaintiff-State vis-à-vis other States; What has been the past practice regarding regulation of the Plaintiff's borrowing by the Defendant; If such practice has been restrictive of Plaintiff's borrowings, can it estop the Plaintiff from bringing the present suit; Conversely, if such practice has not been restrictive, can it serve as the basis for the Plaintiff's legitimate expectations against the Defendant; Are the restrictions imposed by the impugned actions in conflict with the role assigned to the Reserve Bank of India as the public debt manager of the Plaintiff; Is it mandatory to have prior consultation with States for giving effect to the recommendations of Finance Commission.

Headnotes

Constitution of India – Article 293 – Borrowing by States – Union of India *inter alia* imposed Net Borrowing Ceiling on the

* Author

State of Kerala, to restrict its maximum possible borrowing – Suit filed by State of Kerala on the premise that by undertaking the impugned actions, Union of India imposed ceiling on all its borrowings, and exceeded its power u/Article 293 – It also sought interim injunction, *inter alia*, to mandate Union of India to restore the position that existed before it imposed ceiling on all its borrowings; and to enable it to borrow INR 26,226 crores on an immediate basis:

Held: Since Article 293 has so far not been the subject of any authoritative interpretation by this Court, the questions arising in the present suit squarely fall within the ambit of Article 145(3) of the Constitution – Questions referred to Constitution Bench of five judges – Matter be placed before Hon'ble the Chief Justice of India for constitution of an appropriate Bench – Further, the Plaintiff-State also sought mandatory injunction and hence, was required to meet a higher standard for the triple-test of interim relief – *Prima facie*, the argument of the Union is accepted that where there is over-utilization of the borrowing limit in the previous year, to the extent of over-borrowing, deductions are permissible in the succeeding year, even beyond the award period of the 14th Finance Commission– Plaintiff failed to establish a *prima facie* case regarding its contention on under-utilization of borrowing – The mischief that is likely to ensue in the event of granting the interim relief, will be far greater than rejecting the same – Balance of convenience clearly lies in favour of the Union of India – Plaintiff sought to equate 'financial hardship' with 'irreparable injury' – *Prima facie* 'monetary damage' is not an irreparable loss, as the Court can always balance the equities in its final outcome by ensuring that pending claims are adjusted along with resultant additional liability on the opposite party – If the State has essentially created financial hardship because of its own financial mismanagement, such hardship cannot be held to be an irreparable injury that would necessitate an interim relief against Union – Since the Plaintiff-State failed to establish the three prongs of proving *prima facie* case, balance of convenience and irreparable injury, it is not entitled to the interim injunction. [Paras 8, 10, 27, 28, 32, 33]

Injunctions – Mandatory injunctions vis-à-vis prohibitory injunctions – Triple-Test – *Prima facie* case; Balance of convenience; Irreparable injury – Standard of scrutiny in applying these parameters for 'prohibitory' and 'mandatory' injunctions:

Held: Prohibitory injunctions vary from mandatory injunctions in terms of the nature of relief sought – While the former seeks to restrain the defendant from doing something, the latter compels the defendant to take a positive step – Prohibitory injunctions are forward-looking as they seek to restrict a future course of action – Conversely, mandatory injunctions are backward-looking because they require the defendant to take an active step and undo the past action– Courts are, therefore, relatively more cautious in granting mandatory injunction as compared to prohibitory injunction and thus, require the plaintiff to establish a stronger case – In the present case, the Plaintiff sought mandatory injunction and not a prohibitory one – Instead of arguing that the Defendant-Union of India should refrain from imposing a Net Borrowing Ceiling during the next F.Y., the Plaintiff applied for a backward-looking injunction, i.e., for an injunction to undo the imposition of the Net Borrowing Ceiling that covered various liabilities and to restore the position that existed before such ceiling – Hence, was required to meet a higher standard for the triple-test of interim relief. [Paras 13-15]

Words and Phrases – "if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends" in Article 131 of the Constitution of India.

List of Acts

Constitution of India; Fiscal Responsibility and Budget Management Act, 2003; Kerala Fiscal Responsibility Act, 2003.

List of Keywords

Borrowing by States; Ceiling on borrowings; Mandatory injunctions; Prohibitory injunctions; Triple-test of interim relief; Prima facie case; Balance of convenience; Irreparable injury; Fiscal policy; Federalism; Finance Commission.

Case Arising From

ORIGINAL JURISDICTION : Original Suit No. 1 of 2024

Original Suit has been instituted under Article 131 of the Constitution of India

With

I.A. No. 6149 of 2024

Appearances for Parties

K. Gopalakrishna Kurup, A.G., Kapil Sibal, Sr. Adv., C. K. Sasi, V. Manu, Ms. Meena K Poulose, Ms. Anusha Nagarajan, Ms. Aparajita Jamwal, Ms. Manisha Singh, Rishabh Parikh, Ms. Sumedha Sarkar, Ms. Rupali Samuel, Advs. for the Plaintiff.

R Venkatramani, Attorney General for India, N Venkatraman, A.S.G., Raj Bahadur Yadav, Sonali Jain, Chitvan Singhal, Raman Yadav, Kartikay Aggarwal, Abhishek Kumar Pandey, Ms. Ameyvikrama Thanvi, Mukesh Kumar Singh, Advs. for the Defendant.

Judgment / Order of the Supreme Court

Order

Surya Kant, J.

1. State of Kerala has instituted this Original Suit under Article 131 of the Constitution of India against the Union of India, challenging, *inter alia*, the following (collectively, the "Impugned Actions"):

(a) Amendment Act No. 13 of 2018 (dated 28.03.2018):

By this Amendment Act, the Parliament has amended Section 4 of the Fiscal Responsibility and Budget Management Act, 2003, whereby the Central Government is obligated to ensure that the aggregate debt of the Central Government and the State Governments does not exceed sixty percent of the gross domestic product by the end of Financial Year (F.Y.) 2024-25;

(b) Letter No. 40(1)/PF-S/2023-24 (dated 27.03.2023):

Through this letter, the Defendant has imposed a 'Net Borrowing Ceiling' on the Plaintiff - State, to restrict the maximum possible borrowing that Plaintiff could make under law. This ceiling was quantified as three percent of the projected Gross State Domestic Product (GSDP) for the F.Y. 2023-24, which came to INR 32,442 crores. This Net Borrowing Ceiling covered all sources of borrowings, including open market borrowings, loans from Financial Institutions, and the liabilities arising out of the Public Account of the Plaintiff. Additionally, to prevent the States from by-passing the Net Borrowing Ceiling by using State-Owned Enterprises, the ceiling has also been applied to certain borrowings by such enterprises; and

(c) Letter No. 40(12)/PF-S/2023-24/OMB-52 (dated 11.08.2023):

In this letter, the Defendant has accorded its consent to the Plaintiff to raise open market borrowing of INR 1,330 crores. It has also noted that the total open market borrowing allowed to the Plaintiff for the F.Y. 2023-24 was INR 21,852 crores.

2. The instant suit has been filed on the premise that by undertaking the Impugned Actions, the Defendant - Union of India has exceeded its power under Article 293 of the Constitution of India, which provides:

> "***293. Borrowing by States.***—
>
> *(1) Subject to the provisions of this article, the executive power of a State extends to borrowing within the territory of India upon the security of the Consolidated Fund of the State within such limits, if any, as may from time to time be fixed by the Legislature of such State by law and to the giving of guarantees within such limits, if any, as may be so fixed.*
>
> *(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 292 are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.*
>
> *(3) A State may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of India or by its predecessor Government, or in respect of which a guarantee has been given by the Government of India or by its predecessor Government.*
>
> *(4) A consent under clause (3) may be granted subject to such conditions, if any, as the Government of India may think fit to impose*."

3. Besides the afore-mentioned final relief in the suit, the Plaintiff -State also seeks interim injunction, *inter alia*, to mandate Union of India: *(a)* to restore the position that existed before the Defendant imposed

ceiling on all the borrowings of the Plaintiff; and *(b)* to enable the Plaintiff to borrow INR 26,226 crores on an immediate basis.

4. We have heard Mr. Kapil Sibal, Ld. Senior Advocate, for the Plaintiff - State, and Mr. R. Venkataramani, Ld. Attorney General for India and Mr. N. Venkataraman, Ld. Additional Solicitor General of India, on behalf of the Defendant – Union of India at a considerable length, and have perused the Plaint and other documents on record on the issue of maintainability of suit as well as the interim relief sought by the Plaintiff - State.

5. In support of its prayer for the interim injunction, the Plaintiff - State has mainly urged that: *(i)* under Article 293 of the Constitution, the Union of India does not have the power to regulate all the borrowings of a State and conditions can be imposed only on the loans sought from the Central Government; *(ii)* the liabilities arising out of the Public Account and State-Owned Enterprises cannot be included in the borrowings of the Plaintiff; *(iii)* the Plaintiff – State is in dire need of INR 26,226 crores to pay dues arising out of various budgetary obligations including dearness allowance, pension scheme, subsidies, etc.; *(iv)* there has been under-utilization of permissible borrowing space from previous years, which the Plaintiff should be allowed to use now; *(v)* the over-borrowing from the years before F.Y. 2023-24 cannot be adjusted from the Net Borrowing Ceiling of this F.Y. and must instead be repaid at the date of maturity of such borrowing; and *(vi)* the debt is sustainable because it satisfies the Domar model, such that the GSDP of the Plaintiff – State is rising faster than the effective interest rate.

6. *Per contra*, the Defendant – Union of India controverted the Plaintiff's interim claim and has argued that: *(i)* since management of public finance is a national issue, the Union of India has the power to regulate all the borrowings of the Plaintiff - State to maintain the fiscal health of the country; *(ii)* the liabilities arising out of Public Account and State-Owned enterprises can be included in the borrowings of the Plaintiff since they may be used to by-pass the borrowing ceiling; *(iii)* the pending dues have arisen on account of the fiscal mismanagement by the State of Kerala and are not a consequence of regulation of borrowing by the Union of India; *(iv)* the Plaintiff's contention regarding under-utilized borrowing space from the previous years is based on erroneous facts; *(v)* the over-borrowing done in a F.Y. has to be adjusted against the borrowing amount of the next

F.Ys.; and *(vi)* the fiscal health of the country will be jeopardized if the Plaintiff – State is allowed to undertake more debt.

7. On a critical analysis of the contentions of both the sides, it seems to us that the instant suit raises more than one substantial questions regarding interpretation of the Constitution, including:

(a) What is the true import and interpretation of the following expression contained in Article 131 of the Constitution: "*if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends*"?

(b) Does Article 293 of the Constitution vest a State with an enforceable right to raise borrowing from the Union government and/or other sources? If yes, to what extent such right can be regulated by the Union government?

(c) Can the borrowing by State-Owned Enterprises and liabilities arising out of the Public Account be included under the purview of Article 293(3) of the Constitution?

(d) What is the scope and extent of Judicial Review exercisable by this Court with respect to a fiscal policy, which is purportedly in conflict with the object and spirit of Article 293 of the Constitution?

8. Since Article 293 of the Constitution has not been so far the subject to any authoritative interpretation by this Court, in our considered opinion, the aforesaid questions squarely fall within the ambit of Article 145(3) of the Constitution. We, therefore, deem it appropriate to refer these questions for pronouncement by a Bench comprising five judges.

9. In addition, and as a necessary corollary to these questions, it appears that on merits also, various questions of significant importance impacting the Federal Structure of Governance as embedded in our Constitution, like, the following, arise for consideration*:*

(a) Is fiscal decentralization an aspect of Indian Federalism? If yes, do the Impugned Actions taken by the Defendant purportedly to maintain the fiscal health of the country violate such Principles of Federalism?

(b) Are the Impugned Actions violative of Article 14 of the Constitution on the ground of 'manifest arbitrariness' or on the

basis of differential treatment meted out to the Plaintiff vis-à-vis other States?

(c) What has been the past practice regarding regulation of the Plaintiff's borrowing by the Defendant? If such practice has been restrictive of Plaintiff's borrowings, can it estop the Plaintiff from bringing the present suit? Conversely, if such practice has not been restrictive, can it serve as the basis for the Plaintiff's legitimate expectations against the Defendant - Union of India?

(d) Are the restrictions imposed by the Impugned Actions in conflict with the role assigned to the Reserve Bank of India as the public debt manager of the Plaintiff?

(e) Is it mandatory to have prior consultation with States for giving effect to the recommendations of Finance Commission?

10. The Registry is accordingly directed to place this matter before Hon'ble the Chief Justice of India for the constitution of an appropriate Bench to answer the aforementioned questions and/or such other issues as may be identified by the Five-Judge Bench.

11. We may now advert to the issue as to whether, pending the decision on the questions formulated above, the Plaintiff – State can be granted the ad-interim injunction as briefly noticed in paragraph 3 of this Order?

12. The globally acknowledged golden principles, collectively known as the Triple-Test, are followed by the Courts across the jurisdictions as the pre-requisites before a party can be mandatorily injuncted to do or to refrain from doing a particular thing. These three cardinal factors, that are deeply embedded in the Indian jurisprudence as well, are:

(a) A '*Prima facie* case', which necessitates that as per the material placed on record, the plaintiff is likely to succeed in the final determination of the case;

(b) 'Balance of convenience', such that the prejudice likely to be caused to the plaintiff due to rejection of the interim relief will be higher than the inconvenience that the defendant may face if the relief is so granted; and

(c) 'Irreparable injury', which means that if the relief is not granted, the plaintiff will face an irreversible injury that cannot be compensated in monetary terms.

13. At this juncture, it is necessary to distinguish the standard of scrutiny in applying these parameters for 'prohibitory' and 'mandatory' injunctions. Prohibitory injunctions vary from mandatory injunctions in terms of the nature of relief that is sought. While the former seeks to restrain the defendant from doing something, the latter compels the defendant to take a positive step.[1] For instance, hypothetically, in the context of a construction dispute, if a plaintiff seeks to prevent the defendant from demolishing a structure, it would be deemed a prohibitory injunction. Whereas, if a plaintiff wants to compel the defendant to demolish a structure, then this would amount to mandatory injunction.

14. In that sense, prohibitory injunctions are forward-looking, such that they seek to restrict a future course of action. Conversely, mandatory injunctions are backward-looking, because they require the defendant to take an active step and undo the past action.[2] Since mandatory injunctions require the defendant to take a positive action instead of merely being restrained from performing an act, they carry a graver risk of prejudice for the defendant if the final outcome subsequently turns out to be in its favour. For instance, in the example above, preventing the demolition of a structure for the time being cannot be perceived to be on the same pedestal as mandating the demolition of a construction. While the former may still be undone, i.e., the defendant may still be compelled to demolish the structure should the plaintiff succeeds in his final claim, undoing the latter, i.e., rebuilding the construction, would cause graver injustice. The Courts are, therefore, relatively more cautious in granting mandatory injunction as compared to prohibitory injunction and thus, require the plaintiff to establish a stronger case.[3]

15. Reverting to the facts of the case in hand, the Plaintiff – State has sought mandatory injunction and not a prohibitory one. Instead of arguing that the Defendant – Union of India should refrain from imposing a Net Borrowing Ceiling during the next F.Y., the Plaintiff has applied for a backward-looking injunction, i.e., for an injunction to undo the imposition of the Net Borrowing Ceiling that covered various liabilities and to restore the position that existed before such ceiling. Hence,

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1 *State of Haryana v. State of Punjab*, (2004) 12 SCC 673, para 37-38.

2 *Shepherd Homes Ltd. v. Sandham*, [1970] 3 WLR 348.

3 *Id*., *Dorab Cawasji Warden v. Coomi Sorab Warden*, (1990) 2 SCC 117, para 16.

the Plaintiff is required to meet a higher standard for the triple-test of interim relief as mentioned in paragraph 12 above of this order.

16. Coming to the first factor, i.e., the *prima facie* case, the Plaintiff – State has raised various substantive questions of constitutional interpretation. Generally speaking, the phrase '*prima facie* case' is not a term of art and it simply signifies that at first sight the plaintiff has a strong case. According to Webster's International Dictionary, '*prima facie* case' means a case established by '*prima facie* evidence', which in turn means the evidence that is sufficient in law to raise a presumption of fact unless rebutted.

17. The Plaintiff – State has argued that based on the States Finance Accounts audited by the Comptroller and Auditor General of India and the achievements of the fiscal deficit targets, the Plaintiff – State has under-utilized permissible borrowing space in the last three F.Ys. (2020-21, 2021-22 and 2022-23) to the extent of INR 24,434 crores. The Plaintiff – State contends that even going by the stand of the Union, the under-utilized space of the Plaintiff for the said period borrowings is INR 10,722 crores, which it should be allowed to borrow.

18. Mr. Kapil Sibal, learned Senior Counsel for the Plaintiff – State, submitted that under the recommendations of the 15th Finance Commission, the State is entitled to borrow up to the maximum permissible fiscal deficit for the year. He relied on paragraphs 12.64 and 12.65 of the Report of the 15th Finance Commission, which read as under:

> ***"12.64 If a State is not able to fully utilise its sanctioned borrowing limit, as specified above, in any particular year during the first four years of our award period (2021-22 to 2024 -25), it will have the option of availing this unutilised borrowing amount (calculated in rupees) in any of the subsequent years within our award period.***
>
> *12.65 Based on these assumptions, we have worked out the debt path for States, as presented in Table 12.4. Since all estimated revenue deficits are met by equivalent provision of revenue deficit grant, the revenue surpluses run by the States are reflected by the negative numbers on revenue deficit presented in the table. The State debt in aggregate tapers off gradually after 2022-23. This is*

similar to the pattern in the debt path of the Union shown in Table 12.2. The State-specific indicative debt paths are given in Annex 12.1.

Table 12.4: Indicative Deficit and Debt Path for State Governments

(% of GSDP)

	2020-21	***2021-22***	***2022-23***	***2023-24***	***2024-25***	***2025-26***
*Revenue deficit**	*-0.1*	*-0.5*	*-0.8*	*-1.2*	*-1.7*	*-2.5*
Fiscal deficit	*4.5*	*4.0*	*3.5*	*3.0*	*3.0*	*3.0*
Total liabilities	*33.1*	*32.6*	*33.3*	*33.1*	*32.8*	*32.5*

**negative values indicate surplus and positive values indicate deficit*

Note: While arriving at the total liabilities of States for the year 2021-22, an aggregate fiscal deficit of 3.5 per cent of GSDP is taken because some States may not avail of the full unconditional net borrowing space of 4 per cent."

19. According to the learned Senior Counsel, since the fiscal deficit for 2023-24 is 3% of GSDP, they should be allowed the full borrowing without any restrictions.

20. Mr. N. Venkataraman, learned ASG, controverted the submission of the Plaintiff – State. According to learned ASG, while the figures as projected by the State are themselves in dispute, the State is not entitled to borrow the amounts as claimed since the over-borrowing by the State of Kerala from F.Ys. 2016-17 to 2019-20 is INR 14,479 crores. According to him, if these over-borrowings are factored in the borrowing space, it will be found that the State has not under-utilized but over-utilized its borrowing capacity by INR 2,941.82 crores till F.Y. 2022-23. The learned ASG, relying on paragraph 14.64 of the Report of the 14th Finance Commission, contended that if the State is not able to fully utilize its sanctioned borrowings limit of 3% of GSDP in any particular year during the first four years of the award period (2015-16 to 2018-19), the State will have the option of availing

this un-utilized borrowing amount (calculated in Rupees) only in the following year within the award period. However, there is a difference between under-utilization of the borrowing limit and over-utilization of the borrowing limit. Learned ASG maintained that over-utilization is dealt with in Annexure 14.2 of Chapter-XIV in the Report of the 14th Finance Commission, which clearly prescribes as under:

> "***Case II. Over-utilizing the borrowing amount****:*
>
> *If a State, in a given year, borrows over and above the sanctioned borrowing limit by x amount, then in the succeeding year, the same x amount of the previous year will be deducted from the States borrowing limit of that year*."

21. According to learned ASG, the Plaintiff – State is wrong in contending that such deduction in the succeeding year can only be made within the award period of the 14th Finance Commission. He explained that over-borrowings of the previous year were adjusted for the F.Ys. 2021-22, 2022-23 and 2023-24 (as on date) to the tune of INR 9,197.15 crores, INR 13,067.78 crores and INR 4,354.72 crores respectively. According to learned ASG, the State was fully conscious of the correct position in law and had rightly acquiesced in the adjustments of the over-borrowings. Having acquiesced, it does not lie in the mouth of the Plaintiff – State to contend that once the period for the 15th Finance Commission has set in from F.Ys. 2021-22 to 2025-26, the over-borrowings of the previous years have absolutely no relevance. Learned ASG vehemently argued that the Plaintiff is wrong in contending that a reading of the report of the 14th and 15th Finance Commission indicates that for both under-utilization and over-utilization, all adjustments have to be made within the period covered by the Report of the Commission.

22. *Prima facie*, we are inclined to accept the argument of the Union that where there is over-utilization of the borrowing limit in the previous year, to the extent of over-borrowing, deductions are permissible in the succeeding year, even beyond the award period of the 14th Finance Commission. This is, however, a matter which will have to be finally decided in the suit.

23. At this stage, based on the contentions of the Plaintiff – State with which we are not *prima facie* convinced, permitting any borrowing—

whether INR 24,434 crores as claimed in the written note or INR 10,722 crores as alternatively claimed—would not be tenable.

24. In fact, it has been admitted by the Plaintiff – State that there has been over-borrowing/over-utilization of the borrowing limit between the F.Ys. 2017-18 and 2019-20. It is not denied that if, as contended by the Union, such over-borrowings are adjustable in the succeeding years, then the State has already exhausted its borrowing limits for the F.Y. 2023-24.

25. We find, *prima facie*, that there is a difference in the mechanism which operates when there is under-utilization of borrowing and when there is over-utilization of borrowing. The Plaintiff – State has not been able to demonstrate at this stage that even after adjusting the over-borrowings of the previous year, there is fiscal space to borrow.

26. Our attention has also been invited to the Kerala Fiscal Responsibility Act, 2003. The Act is enacted to provide for the responsibility of the government to ensure prudence in fiscal management and fiscal stability by progressive elimination of revenue deficit and sustainable debt management consistent with fiscal stability, greater transparency in fiscal operations of the government and conduct of fiscal policy in a medium term fiscal framework and for matters connected there with and incidental thereto. The Preamble of the Act also states that it was felt expedient to provide for the responsibility of the government to ensure prudence in fiscal management and fiscal stability by progressive elimination of revenue deficit and sustainable debt management consistent with fiscal stability.

27. In view of above, we find *prima facie* merit in the submission of the Union of India that after inclusion of off budget borrowing for F.Y. 2022-23 and adjustments for over-borrowing of past years, the State has no unutilized fiscal space and that the State has over-utilized its fiscal space. Hence, we are unable to accept the argument of the Plaintiff at the interim stage that there is fiscal space of unutilized borrowing of either INR 10,722 crores as was orally prayed during the hearing or INR 24,434 Crores which was the borrowing claimed in the negotiations with the Union.

28. Therefore, the Plaintiff – State has failed to establish a *prima facie* case regarding its contention on under-utilization of borrowing. Further, with respect to its other contentions, while the Plaintiff

has sought to construe Article 293 restrictively to limit the Central government's power only to the loans granted by it, the Defendant has contended that if Article 293 is read in such a manner, it would render this provision redundant as the Central Government has an inherent power as a lender to impose conditions on such loans even in the absence of any express constitutional provision. Similarly, the Defendant has contested the Plaintiff's narrow reading of the term 'borrowing' and has argued that off-budget borrowings could also be included in the same if they are used to by-pass the conditions imposed under Article 293 of the Constitution.

29. Since this Article has not been the subject of an authoritative pronouncement of this Court so far, we cannot readily accept the Plaintiff's contention over the Defendant's interpretation by taking it on face value. In this regard, we have referred the matter to a larger bench of five judges, as mentioned in paragraph 10 of this order.

30. Hence, on consideration of the limited material available on record so far, the Plaintiff – State has not established a *prima facie* case to the extent required in the instant suit.

31. With respect to the second prong for claiming the interim relief, the Plaintiff – State has argued that if the interim injunction is not granted, it is likely to face extreme financial hardship on account of its pending dues. As against this, the Defendant – Union of India has highlighted the grave consequences regarding the fiscal health of the country if the Plaintiff is allowed the interim relief. The Union of India has argued that additional borrowing by the State will have spill-over effects and may raise the prices of borrowing in the market, possibly crowding out the borrowing by private investors. This may then have an adverse impact on the production of goods and services in the market, possibly affecting the economic well-being of every citizen. Since the Central government borrows money from outside the country and lends money to the State governments, borrowings of the States are intricately linked to the creditworthiness of the country in the international market. Hence, the Union of India argued that in case such borrowings by State Governments are not regulated, it may negatively impact the macro-economic growth and stability of the entire nation.

32. On a comparative evaluation of the submissions, it seems to us that the mischief that is likely to ensue in the event of granting the interim

relief, will be far greater than rejecting the same. If we grant the interim injunction and the suit is eventually dismissed, turning back the adverse effects on the entire nation at such a large scale would be nearly impossible. *Au contraire*, if the interim relief is declined at this stage and the Plaintiff - State succeeds subsequently in the final outcome of the suit, it can still pay the pending dues, may be with some added burden, which can be suitably passed on the judgment - debtor. The balance of convenience, thus, clearly lies in favour of the Defendant – Union of India.

33. Finally, as regards to the third pre-condition, we find that the Plaintiff – State has sought to equate 'financial hardship' with 'irreparable injury'. It appears *prima facie* that 'monetary damage' is not an irreparable loss, as the Court can always balance the equities in its final outcome by ensuring that pending claims are adjusted along with resultant additional liability on the opposite party.

34. We may hasten to remind ourselves at this stage that according to the Defendant-Union of India, the Plaintiff – State is apparently a highly debt stressed State that has mismanaged its finances. This statement, however, is strongly refuted by the State. According to the Union, the Plaintiff has the highest ratio of Pension to Total Revenue Expenditure among all States and requires urgent measures to reduce its expenditure. Instead of doing so, the Plaintiff is borrowing more funds to meet its day-to-day expenses such as salaries and pensions. Accordingly, the Defendant has contended that the financial hardship is not attributable to the regulation of Plaintiff's borrowing and is actually a consequence of its own actions. Furthermore, the Defendant maintains that restriction on the borrowing is a step towards the betterment of fiscal health of the State because if such borrowings are not restricted, the Plaintiff's position will become more precarious, leading to a vicious cycle of deteriorating financial health and increased borrowing to repair the same.

35. If the State has essentially created financial hardship because of its own financial mismanagement, such hardship cannot be held to be an irreparable injury that would necessitate an interim relief against Union. There is an arguable point that if we were to issue interim mandatory injunction in such like cases, it might set a bad precedent in law that would enable the States to flout fiscal policies and still successfully claim additional borrowings.

36. In any case, we cannot be oblivious of the fact that in light of the Plaintiff's contention regarding pending financial dues, the Defendant has already made an offer to allow additional borrowing. In a meeting dated 15.02.2024, the Defendant first offered consent for INR 13,608 crores, out of which INR 11,731 crore was subject to the pre-requisite of withdrawal of the suit, a condition that we disapproved of. Subsequently, in a meeting dated 08.03.2024, the Union offered a consent for INR 5,000 crores. Further, vide circulars dated 08.03.2024 and 19.03.2024, the Union has accorded consent for INR 8,742 crores and INR 4,866 crores respectively, which comes to a sum total of INR 13,608 crores. Even if we assume that the financial hardship of the Plaintiff is partly a result of the Defendant's Regulations, during the course of hearing this interim application, the concern has been assuaged by the Defendant – Union of India to some extent so as to bail out the Plaintiff – State from the current crisis. The Plaintiff thus has secured substantial relief during the pendency of this interim application.

37. To sum up, we are of the view that since the Plaintiff – State has failed to establish the three prongs of proving *prima facie* case, balance of convenience and irreparable injury, State of Kerala is not entitled to the interim injunction, as prayed for.

38. In light of the above observations, I.A. No. 6149 of 2024 is disposed off.

39. It is clarified that the observations made hereinabove are for the limited purpose of deciding the prayer for ad-interim injunction and shall have no bearing on the final outcome of the Original Suit.

40. The main case be placed before Hon'ble the Chief Justice of India for constitution of an appropriate Bench.

Headnotes prepared by: Divya Pandey *Result of the case:*
Matter referred to Larger Bench.

[2024] 4 S.C.R. 29 : 2024 INSC 260

Prem Raj
v.
Poonamma Menon & Anr.

(Criminal Appeal No. 1858 of 2024)

02 April 2024

[Sanjay Karol* and Aravind Kumar, JJ.]

Issue for Consideration

Whether, a criminal proceeding can be initiated and the accused therein held guilty with natural consequences thereof to follow, in connection with a transaction, in respect of which a decree by a competent Court of civil jurisdiction, already stands passed.

Headnotes

Negotiable Instruments Act, 1881 – s.138 – Appellant borrowed Rs.2,00,000/- from the complainant – On receipt of demand, appellant issued a cheque for the said amount – It was dishonoured due to insufficient funds and 'payments stopped by drawer' – The complainant issued a notice of demand – No action on the part of the appellant was taken – Pursuant thereto, a criminal proceeding was initiated against appellant – Equally, though, the appellant had filed a civil suit with prayers to declare the said cheque as a security; direction for return of cheque and prohibitory injunction restraining any steps to encash the said cheque – The suit was decreed in favour of appellant – However, the Court seized of the s.138 N.I. Act complaint, convicted the appellant herein to undergo simple imprisonment for one year as well as pay compensation of Rs.2 lakhs in default whereof, he was to undergo further simple imprisonment for six months – First Appellate upheld the conviction – The High Court, in revision, observed no perversity in the concurrent findings of the Trial Court and First Appellate Court – Propriety:

Held: The position as per K.G. Premshanker vs. Inspector of Police & Anr is that sentence and damages would be excluded from the conflict of decisions in civil and criminal jurisdictions of the Courts – Therefore, in the present case, considering that the Court in criminal jurisdiction has imposed both sentence and damages, the ratio of the above-referred decision dictates

* Author

that the Court in criminal jurisdiction would be bound by the civil Court having declared the cheque, the subject matter of dispute, to be only for the purposes of security – In that view of the matter, the criminal proceedings resulting from the cheque being returned unrealised due to the closure of the account would be unsustainable in law and, therefore, are to be quashed and set aside. [Paras 11 and 12]

Case Law Cited

Iqbal Singh Marwah v. Meenakshi Marwah [2005] 2 SCR 708 **: (2005) 4 SCC 370 – followed.**

K.G. Premshanker v. Inspector of Police & Anr. [2002] Supp. 2 SCR 350 **: (2002) 8 SCC 87 – relied on.**

Karam Chand Ganga Prasad & Anr. v. Union of India & Ors. **(1970) 3 SCC 694;** *M.S. Sheriff v. State of Madras* [1954] 1 SCR 1144 **: AIR 1954 SC 397;** *Vishnu Dutt Sharma v. Daya Sapra (Smt.)* [2009] 7 SCR 977 **: (2009) 13 SCC 729;** *Satish Chander Ahuja v. Sneha Ahuja* [2020] 12 SCR 189 **: (2021) 1 SCC 414 – referred to.**

List of Acts

Negotiable Instruments Act, 1881.

List of Keywords

Dishonour of cheque; Criminal Proceedings; Civil suit; Conflict of decisions in civil and criminal jurisdictions.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1858 of 2024

From the Judgment and Order dated 23.01.2018 of the High Court of Kerala at Ernakulam in CRLRP No. 1111 of 2011

Appearances for Parties

K. Parameshwar, Ms. Arti Gupta, Ms. Kanti, Chinmay Kalgaonkar, Ms. Raji Gururaj, Advs. for the Appellant.

Pranjal Kishore, Atul Shankar Vinod, Dilip Pillai, Ajay Jain, Ms. Madiya Mushtaq Nadroo, M. P. Vinod, Alim Anvar, Nishe Rajen Shonker, Mrs. Anu K Joy, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol, J.

Leave granted.

2. Appellant herein challenges judgment and order dated 23rd January, 2018 passed in Crl.R.P. No.1111 of 2011[1], whereby the High Court of Kerala allowed, only in part, his Revision Petition against the judgment and order of the learned Additional Sessions Judge, Thrissur,[2] dated 11th January, 2011, in Criminal Appeal No.673 of 2007, which, in turn, upheld his conviction, as handed down by the learned Judicial First Class Magistrate[3] vide order dated 14th August, 2007 in CC No.51 of 2003, under Section 138 of the Negotiable Instruments Act, 1881.[4]

3. The sole issue that we are required to consider is, whether, a criminal proceeding can be initiated and the accused therein held guilty with natural consequences thereof to follow, in connection with a transaction, in respect of which a decree by a competent Court of civil jurisdiction, already stands passed.

4. The facts necessary to put into perspective the issue in the present appeal are:-

   4.1 The Appellant borrowed Rs.2,00,000/- from the Complainant, K.P.B Menon "Sreyes," with the promise that he would repay it on demand.

   4.2 On receipt of such demand, he issued a cheque dated 30th June, 2002 for the said amount from the South Indian Bank, encashment thereof was to be through Canara Bank, Irinjalakuda Branch, to which the cheque was sent through the post with a covering letter dated 24th September, 2002.

   4.3 It was dishonoured due to insufficient funds and 'payments stopped by drawer'. The Complainant came to know of such dishonour and issued a notice of demand dated 22nd December,

1 'Impugned Judgment'

2 'Lower Appellate Court'

3 'Trial Court'

4 'N.I. Act'

2002. Accounting for no action on the part of the appellant, the complaint, the subject matter of the instant proceedings, came to be filed.

5. Equally, though, the appellant (accused) had filed Original Suit No.1338 of 2002. The five parties impleaded as defendants were, ***(i)*** K.P. Bhaskara Menon; ***(ii)*** K.P. Vipinendra Kumar[5]; ***(iii)*** Praveen Menon; ***(iv)*** The Manager South Indian Bank Limited Kathikudam, Via Koratty, Trichur; and ***(v)*** N.T. Raghunandanan. The prayers made therein were to, (a) declare cheque No.386543 of the South Indian Bank Limited, Kathikudam, as a security cheque; (b) issue mandatory injunction directing the 1st defendant to return the said cheque; and (c) issue a permanent prohibitory injunction restraining defendants 1 to 4 named hereinabove from taking any steps to encash the said cheque.

5.1 The Additional District Munsif, Irinjalakuda, decreed the Suit on 11th April, 2003 in favour of the plaintiff (accused). The Suit in respect of defendant No.4, namely the Manager, South Indian Bank, was dismissed and the Suit was wholly decreed against the remaining defendants.

5.2 Defendant No.1 filed an appeal before the Additional Subordinate Judge, Irinjalakuda in C.M.A.No.6/2006. In its judgment dated 30th January, 2007, the Court observed that "*The lower court correctly analysed the facts and arrived at the right conclusion. I find no reason to interfere the order of the lower court. Hence I dismissed this appeal.*"

6. Therefore, it appears from the record that the very same cheque was in issue before the Civil Court and also the Court seized of the Section 138 N.I. Act complaint.

The conclusions drawn by the Courts below, subject matter of the instant *lis*, are as under:

6.1 The Trial Court convicted the appellant herein to undergo simple imprisonment for one year as well as pay compensation of Rs.2 lakhs in default whereof, he was to undergo further simple imprisonment for six months. The determination of the issues, i.e., whether the decree passed by the Munsif Court would be

5 2nd defendant

binding on it, is of note. It was observed that a Court exercising jurisdiction on the criminal side is not subordinate to the Civil Court. Further, it was held "That order was an ex-parte order as far as criminal complaint is concerned the order of injunction issued cannot be granted and the hands of the criminal court cannot be fettered by the civil court".

6.2 The First Appellate Court framed primarily one point for consideration – whether the cheque was issued against a legally enforceable debt, thereby attracting the offence under Section 138 of the N.I. Act. This point was held against the appellant and therefore, the conviction handed down by the Court below, accordingly confirmed.

7. The High Court, in revision, observed that no perversity could be indicated in the concurrent findings of the Trial Court and First Appellate Court. The same was dismissed.

8. We find the manner in which this matter has travelled up to this Court to be quite concerning. We fail to understand as to how a civil as well as criminal course could be adopted by the parties involved, in respect of the very same issue and transaction, in these peculiar facts and circumstances.

9. In advancing his submissions, Mr. K. Parameshwar, learned counsel appearing for the appellant, placed reliance on certain authorities of this Court. In ***M/s. Karam Chand Ganga Prasad & Anr.*** *vs.* ***Union of India & Ors.***[6]**,** this Court observed that:

> ".....It is a well-established principle of law that the decisions of the civil courts are binding on the criminal courts. The converse is not true."

In ***K.G. Premshanker vs. Inspector of Police & Anr***[7]***.,*** a Bench of three learned Judges observed that, following the ***M.S. Sheriff vs. State of Madras***[8]**,** no straight-jacket formula could be laid down and conflicting decisions of civil and criminal Courts would not be a relevant consideration except for the limited purpose of sentence or damages.

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6 (1970) 3 SCC 694

7 [2002] Supp. 2 SCR 350 : (2002) 8 SCC 87

8 [1954] 1 SCR 1144 : AIR 1954 SC 397

10. We notice that this Court in ***Vishnu Dutt Sharma vs. Daya Sapra (Smt.)***[9], had observed as under:

> "26. It is, however, significant to notice a decision of this Court in *Karam Chand Ganga Prasad* v. *Union of India (1970) 3 SCC 694,* wherein it was categorically held that the decisions of the civil court will be binding on the criminal courts but the converse is not true, was overruled therein…"

This Court in ***Satish Chander Ahuja vs. Sneha Ahuja***[10] considered a numerous precedents, including ***Premshanker*** (supra) and ***Vishnu Dutt Sharma*** (supra), to opine that there is no embargo for a civil court to consider the evidence led in the criminal proceedings.

The issue has been laid to rest by a Constitution Bench of this Court in ***Iqbal Singh Marwah vs. Meenakshi Marwah***[11] :

> **"32.** Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence, while in a criminal case, the entire burden lies on the prosecution, and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of the old Code, the following observations made by a Constitution Bench in *M.S. Sheriff* v. *State of Madras* [1954 SCR 1144 : AIR 1954 SC 397: 1954 Cri LJ 1019] give a complete answer to the problem posed: (AIR p. 399, paras 15-16)

9 [2009] 7 SCR 977 : (2009) 13 SCC 729

10 [2020] 12 SCR 189 : (2021) 1 SCC 414

11 [2005] 2 SCR 708 : (2005) 4 SCC 370

> "*15*. As between the civil and the criminal proceedings, we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard-and-fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.
>
> *16*. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.
>
> This, however, is not a hard-and-fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under Section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished."
>
> (Emphasis Supplied)

11. The position as per ***Premshanker*** (supra) is that sentence and damages would be excluded from the conflict of decisions in civil and criminal jurisdictions of the Courts. Therefore, in the present case, considering that the Court in criminal jurisdiction has imposed

both sentence and damages, the ratio of the above-referred decision dictates that the Court in criminal jurisdiction would be bound by the civil Court having declared the cheque, the subject matter of dispute, to be only for the purposes of security.

12. In that view of the matter, the criminal proceedings resulting from the cheque being returned unrealised due to the closure of the account would be unsustainable in law and, therefore, are to be quashed and set aside. Resultantly, the damages as imposed by the Courts below must be returned to the appellant herein forthwith.

13. The appeal is allowed in the aforesaid terms. Hence, the judgment and order passed by Additional Sessions Judge, Thrissur, in Criminal Appeal 673 of 2007, which upheld the conviction, as handed down by the learned Judicial First Class Magistrate in CC No. 51 of 2003, which came to affirmed by the High Court of Kerela in Crl.R.P.No.1111 of 2011 is quashed and set aside. Pending application(s), if any, shall stand disposed of.

Headnotes prepared by: Ankit Gyan

Result of the case:
Appeal allowed.

[2024] 4 S.C.R. 37 : 2024 INSC 259

Purni Devi & Anr.
v.
Babu Ram & Anr.

(Civil Appeal No. 4633 of 2024)

02 April 2024

[Sanjay Karol* and Aravind Kumar, JJ.]

Issue for Consideration

A suit was decreed in favour of plaintiff. Application for execution was filed before the Tehsildar (settlement), Hiranagar on 18.12.2000. The application was rejected on 29.01.2005. The Tehsildar observed that plaintiff had not applied before the Court with appropriate jurisdiction. Whether the period (18.12.2000 to 29.01.2005) diligently pursuing execution petition before the Tehsildar, would be excluded for the purposes of computing the period of limitation or not.

Headnotes

Limitation Act, 1963 – s. 14 – J&K Limitation Act – Art.182 – The High Court dismissed the execution application preferred by the plaintiff being barred by limitation – Sustainability:

Held: In the present case, it is not in dispute that:- (i) Both the proceedings are civil in nature and have been prosecuted by the Plaintiff or the predecessor in interest; (ii) The failure of the execution proceedings was due to a defect of jurisdiction; (iii) Both the proceedings pertain to execution of the decree dated 10.12.1986, which attains finality on 09.11.2000; (iv) Both the proceedings are in a court – No substantial averment has come on record to substantiate the claim that the predecessor in interest of the Plaintiff approached the Tehsildar with any *mala fide* intention, in the absence of good faith or with the knowledge that it was not the Court having competent jurisdiction to execute the decree – On a perusal of the record, it is apparent that the Plaintiff has pursued the matter *bonafidely* and diligently and in good faith before what it believed to be the appropriate forum and, therefore, such time period is bound to be excluded when computing limitation before the Court having competent jurisdiction – All conditions stipulated for invocation of s.14 of the Limitation Act are fulfilled – Therefore, the period from 18.12.2000, when

* Author

the execution application was filed to 29.01.2005, when the prior proceeding was dismissed, has to be excluded while computing period of limitation – The impugned order of the High Court dated 09.04.2018 and Munsiff Court, Hiranagar dated 28.11.2007 (dismissing application of plaintiff as being barred by limitation) are set aside – The execution application of the Plaintiff is restored to the file of the Munsiff Court, Hiranagar for fresh consideration. [Paras 32, 37, 38, 39, 40]

Case Law Cited

Consolidated Engg. Enterprises v. Principle Secy, Irrigation Department [2008] 5 SCR 1108 **: (2008) 7 SCC 169;** *M.P. Steel Corporation v. CCE* [2015] 7 SCR 291 **: (2015) 7 SCC 58 – relied on.**

Prem Lata Agarwal v. Lakshman Prasad Gupta and others [1971] 1 SCR 364 **: (1970) 3 SCC 440;** *Sesh Nath Singh v. Baidyabati Sheoraphuli Coop. Bank Ltd.* [2021] 3 SCR 806 **: (2021) 7 SCC 313;** *Laxmi Srinivasa R and P Boiled Rice Mill v. State of Andhra Pradesh and Anr.* **2022 SCC Online SC 1790 – referred to.**

J&K Bank Limited etc. v. Amar Poultry Farm **AIR 2007 J&K 56 – referred to.**

List of Acts

Limitation Act, 1963; J&K Limitation Act; Code of Civil Procedure, 1908.

List of Keywords

Application for execution; Appropriate jurisdiction; Limitation; Computing the period of limitation; Pursued the matter bonafidely and diligently; Exclusion of time of proceeding bona fide in court without jurisdiction.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4633 of 2024

From the Judgment and Order dated 09.04.2018 of the High Court of Jammu & Kashmir and Ladakh at Jammu in CREV No. 33 of 2008

Appearances for Parties

Nitin Sangra, Riju Ghosh, Mrs. Pragya Baghel, Advs. for the Appellants.

Sunil Fernandes, Sr. Adv., Ms. Nupur Kumar, Ms. Diksha Dadu, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol, J.

Leave Granted.

2. The present appeal arises from the final judgment and order in Civil Revision No.33/2008 dated 09.04.2018 of the High Court of Jammu and Kashmir at Jammu, whereby the judgment and order of Munsiff, Hiranagar, in File No. 70/Execution dated 28.11.2007 came to be affirmed, wherein the execution application preferred by the Plaintiff herein was dismissed, being barred by limitation.

Factual History

3. The genesis of the case at hand dates back to 01.06.1984, wherein the predecessors in interest of the Appellant (*hereinafter "Plaintiff"*) filed a suit for possession against the Respondents (*hereinafter "Defendants"*) herein. On 10.12.1986, this suit was decreed by learned Munsiff, First Class Hiranagar, in favour of the Plaintiff, and the Defendants were directed to deliver vacant and peaceful possession of the property to the Plaintiff. This decree was challenged by the Respondents before the learned District Judge, Kathua, in First Appeal, which came to be dismissed on 09.02.1990. Thereafter, the Respondents preferred a Second Appeal before the High Court of Jammu and Kashmir which came to be dismissed *vide* Order dated 09.11.2000. No further appeal was preferred. Therefore, the decree of the learned Munsiff Court attained finality on 09.11.2000.

4. The present *lis* arises from the application for execution filed by the predecessor in interest of the Plaintiff, before the learned Tehsildar (Settlement), Hiranagar on 18.12.2000. This application came to be rejected on 29.01.2005, whereby the learned Tehsildar observed that the Plaintiff had not applied before the Court with appropriate jurisdiction.

5. The Plaintiff thereafter, on 03.10.2005 preferred a fresh application for execution before the Court of Munsiff, Hiranagar. This application resulted in the order dated 28.11.2007, whereby, the learned Munsiff Court dismissed the application as being barred by limitation, which has come to be confirmed vide the impugned order.

Reasoning of the Courts below

Munsiff Court, Order dated 28.11.2007

6. The question framed for determination was whether the execution petition was filed within time and whether the period of limitation for filing the execution petition is 3 years or 12 years.

7. The Court after a careful perusal of Article 182 of the J&K Limitation Act (*which provides for 3 years*) and Section 48 of the Civil Procedure Code (*which provides for 12 years, hereinafter "CPC"*), observed that, Article 182 deals with period of Limitation for filing an execution application for the first-time seeking enforcement of a decree. Meanwhile, Section 48 of the CPC deals with subsequent applications and fixes an outer limit when execution remains unsatisfied.

8. The application was held to be required to be filed within 3 years, as required by Article 182 of the J&K Limitation Act, which would run from when the second appeal came to be dismissed. Accordingly, the Munsiff Court, Hiranagar, held the application to be time-barred and therefore, dismissed.

9. There was no argument or discussion about the exclusion of time period under Section 14 of the Limitation Act at this stage.

10. The Plaintiff preferred Civil Revision No.33/2008 against the aforesaid order which came to be dismissed vide the Impugned Order, dated 09.04.2018.

Impugned Order

11. The Impugned Order also framed the question as to whether for execution of a decree, the application has to be filed within 12 years as prescribed by Section 48 of the CPC or within 3 years as prescribed by Article 182 of J&K Limitation Act.

12. Reliance was placed on a judgment rendered by the High Court in ***J&K Bank Limited etc.*** v. ***Amar Poultry Farm***[1] wherein it was observed that limitation for the first execution application shall be governed by Article 182 of the J&K Limitation Act. Further reliance was placed on the judgment of this Court in ***Prem Lata Agarwal v. Lakshman Prasad Gupta and others***[2] (2-Judge Bench) wherein Section 48 of the CPC came to be considered. This Court observed that Section 48 provides for a maximum time limit provided for execution, but it does not prescribe the period within which each application for execution was to be made.

13. The argument of the Plaintiff that time spent in pursuing the proceedings before the Tehsildar is required to be excluded, has been recorded and rejected by the High Court.

14. It was finally held *vide* the Impugned Order that the dismissal of the execution petition is well reasoned and, therefore, cannot be interfered with. However, while disposing off the revision, the Court observed that the State Code of Civil Procedure is required to be brought to 12 years.

Submissions on behalf of the Appellant/Plaintiff

15. Learned counsel for the Plaintiff has submitted that the reasoning of the learned High Court that the Plaintiff had chosen a wrong forum and is not entitled to exclusion of time runs, contrary to the law laid down by this Court that the provisions of Section 14 of the Limitation Act, 1963 are meant for grant of relief, where a person has committed some mistake and such provisions should be applied in a broad manner. Furthermore, the provision of Section 14 of the Limitation Act is *para materia* to the provisions of Section 14 of the Limitation Act, as applicable to the then State of Jammu and Kashmir.

16. The Plaintiff has sought to place reliance on the judgment of this Court in ***Consolidated Engg. Enterprises v. Principle Secy, Irrigation Department***[3] (3-Judge Bench) and ***M.P. Steel Corporation v. CCE***[4]

1 AIR 2007 J&K 56

2 [1971] 1 SCR 364 : (1970) 3 SCC 440

3 [2008] 5 SCR 1108 : (2008) 7 SCC 169

4 [2015] 7 SCR 291 : (2015) 7 SCC 58

(2-Judge Bench) wherein it was expounded that the provisions of Section14 of the Limitation Act are to advance the cause of justice and must be interpreted to do so rather than abort proceedings.

17. It has been further submitted that in light of the facts of the present case, the Plaintiff is entitled to exclusion of time consumed in pursuing their remedy before the learned Tehsildar, in view of Section 14(2) of the Limitation Act. The filing of the application by the predecessor of the Plaintiff before the Tehsildar for implementation of the judgment and decree dated 09.10.1986 was under a genuine *bona fide* belief and in good faith that the Tehsildar possess the jurisdiction to execute decrees passed by a Civil Court.

18. In lieu of this conspectus, it has been submitted that previous recourse to a mistaken remedy or selection of a wrong forum by the Plaintiff cannot be said to be bereft of *bona fides*, due diligence or lacking in good faith.

19. Further, it is not disputed that in view of Section 105 and 112 of the Land Revenue Act, the Court of learned Tehsildar, Settlement, has all the trappings of a Court and thus would fall within the scope and ambit of the expression "*Court*" for the purpose of Section14 of the Limitation Act.

20. Lastly, in view of the facts submitted above, it would be a travesty of justice, if, on mere technicalities, the Plaintiff is deprived from reaping the fruits of the decree.

Submissions on behalf of the Respondent

21. Learned counsel for the Respondents has vehemently opposed the stand taken by the Plaintiff. It has been submitted that the Plaintiff is taking this plea for the first time before this Court and did not raise the plea of Section 14 of the Limitation Act before the Courts below.

22. It was a deliberate act of wilful disobedience at the Plaintiff's end and the plea of Section 14 of the Limitation Act ought to have been raised at the very first instance.

23. It is further submitted that the Plaintiff herein has not approached the Court with clean hands. They have concealed the fact that they did not enter appearance in the Second Appeal and thereafter, had filed an application for setting aside the ex-parte order, which was allowed, and only thereafter, the second appeal was dismissed vide

the impugned order. This Court in ***M.P. Steel*** (Supra) has reiterated that '*due diligence*' and '*good faith*' means that the party who invokes Section 14 is not guilty of negligence, lapse or inaction.

Issue before this Court

24. In view of the submissions raised, the issue which arises for consideration of this Court is as to whether the period (18.12.2000 to 29.01.2005) diligently pursuing execution petition before the Tehsildar, would be excluded for the purposes of computing the period of limitation or not.

Analysis & Consideration

25. The relevant portion of Section 14 of the Limitation Act is extracted as under, for ready reference:

> "Section 14. Exclusion of time of proceeding bona fide in court without jurisdiction. …
>
> …
>
> **(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.**"
>
> ….

26. The Plaintiffs have submitted that the provision of Section14 of the Limitation Act, finds place in the Limitation Act applicable to the then State of J&K, which has not been contested by the Respondents.

27. On a perusal of Section 14(2) of the Limitation Act, which is also applicable to the State of Jammu and Kashmir, it is evident that it carves out an exception excluding the period of limitation when the proceedings are being pursued with due diligence and good faith in a Court "*which from defect of jurisdiction or other cause of a like nature, is unable to entertain it*".

28. The first objection raised by Defendants is that the plea of exclusion of limitation has not been raised before the Courts below and cannot be raised at the first instance before this Court.

29. We do not find merit in this submission, the learned High Court in paragraph 9 has categorically recorded the submission of the Plaintiff pertaining to the exclusion of time spent in pursuing the proceedings before the learned Tehsildar. Therefore, it cannot be said that the plea of *exclusion* has been raised for the first time, before this Court.

30. The principles pertaining to applicability of Section 14, were extensively discussed and summarised by this Court in ***Consolidated Engg. Enterprises*** (Supra), wherein while holding the exclusion of time period under Section 14 of the Limitation Act to a petition under Section 34 of the Arbitration Act it was observed:-

> "**21**. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:
>
> (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
>
> (2) The prior proceeding had been prosecuted with due diligence and in good faith;
>
> (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
>
> (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue; and
>
> (5) Both the proceedings are in a court."

31. This Court in ***Consolidated Engg. Enterprises*** (Supra) further expounded that the provisions of this Section, must be interpreted and applied in a manner that furthers the cause of justice, rather than aborts the proceedings at hand and the time taken diligently pursuing a remedy, in a wrong Court, should be excluded.

32. In the present case, it is not in dispute that:-

(i) Both the proceedings are civil in nature and have been prosecuted by the Plaintiff or the predecessor in interest.

(ii) The failure of the execution proceedings was due to a defect of jurisdiction.

(iii) Both the proceedings pertain to execution of the decree dated 10.12.1986, which attains finality on 09.11.2000.

(iv) Both the proceedings are in a *court*.

33. The only objection pointed out by the Respondent to the ingredients for invocation of Section 14, is that the Plaintiff have not approached this Court with clean hands and did not approach the Court of the Tehsildar *diligently* and in *good faith*.

34. The judgment of this Court in ***M.P. Steel*** (Supra) discussed the phrases, "*due diligence*" and "*in good faith*" for the purposes of invocation of Section 14 of the Limitation Act. While considering the application of Section 14 to the Customs Act, it was observed:

> "**10.** We might also point out that Conditions 1 to 4 mentioned in the Consolidated Engg. case [(2008) 7 SCC 169] have, in fact, been met by the Plaintiff. It is clear that both the prior and subsequent proceedings are civil proceedings prosecuted by the same party. The prior proceeding had been prosecuted with due diligence and in good faith, as has been explained in Consolidated Engg. [(2008) 7 SCC 169] itself. **These phrases only mean that the party who invokes Section 14 should not be guilty of negligence, lapse or inaction. Further, there should be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party.**
>
> xxx xxx xxx
>
> **49.** ……. **the expression "the time during which the plaintiff has been prosecuting with due diligence another civil proceeding" needs to be construed in a manner which advances the object sought to be achieved, thereby advancing the cause of justice."**
>
> **(emphasis supplied)**

35. The judgments in ***Consolidated Engg. Enterprises*** (Supra) and ***M.P. Steel*** (Supra) have been followed consistently by this Court. For instance in ***Sesh Nath Singh v. Baidyabati Sheoraphuli Coop.***

Bank Ltd.[5] (2-Judge Bench), while holding Section 14 to be applicable to applications under Section 7 of the Insolvency and Bankruptcy Code, 2016 and the SARFAESI Act, it was observed:-

> "**75.** Section 14 of the Limitation Act is to be read as a whole. A conjoint and careful reading of sub-sections (1), (2) and (3) of Section 14 makes it clear that an applicant who has prosecuted another civil proceeding with due diligence, before a forum which is unable to entertain the same on account of defect of jurisdiction or any other cause of like nature, is entitled to exclusion of the time during which the applicant had been prosecuting such proceeding, in computing the period of limitation. The substantive provisions of sub-sections (1), (2) and (3) of Section 14 do not say that Section 14 can only be invoked on termination of the earlier proceedings, prosecuted in good faith."

36. More recently, in ***Laxmi Srinivasa R and P Boiled Rice Mill*** v. ***State of Andhra Pradesh and Anr.***[6] (2-Judge Bench), this Court followed the dictum in ***Consolidated Engg. Enterprises*** (Supra) and ***M.P. Steel*** ***(Supra)*** to exclude the time period undertaken by the Plaintiff therein in pursuing remedy under Writ Jurisdiction, in the absence of challenge to the bona fides of the Plaintiff, in view of Section 14.

37. No substantial averment has come on record to substantiate the claim that the predecessor in interest of the Plaintiff approached the Tehsildar with any *mala fide* intention, in the absence of good faith or with the knowledge that it was not the Court having competent jurisdiction to execute the decree. The object to advance the cause of justice, as well must be kept in mind.

38. We do not find the reasoning given by the learned High Court in paragraph 9 while rejecting the plea for exclusion of time to be sustainable. On a perusal of the record, it is apparent that the Plaintiff has pursued the matter *bonafidely* and *diligently* and *in good faith* before what it believed to be the appropriate forum and, therefore, such time period is bound to be excluded when computing limitation before

5 [2021] 3 SCR 806 : (2021) 7 SCC 313

6 2022 SCC Online SC 1790

the Court having competent jurisdiction. All conditions stipulated for invocation of Section 14 of the Limitation Act are fulfilled.

39. Therefore, in view of the above discussion the period from 18.12.2000, when the execution application was filed to 29.01.2005, when the prior proceeding was dismissed, has to be excluded while computing period of limitation, which results in the execution application filed by the Plaintiff, being within the limitation period prescribed under Article 182 of the Limitation Act as well, which is 3 years.

40. Consequently, the appeal is allowed. The impugned order of the High Court dated 09.04.2018 and Munsiff Court, Hiranagar dated 28.11.2007 are set aside. The execution application of the Plaintiff is restored to the file of the Munsiff Court, Hiranagar for fresh consideration, in consonance with the view on limitation which has been decided above.

41. Pending applications, if any, are disposed of. No order as to costs.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeal allowed.

[2024] 4 S.C.R. 48 : 2024 INSC 258

Ballu @ Balram @ Balmukund and Another
v.
The State of Madhya Pradesh

(Criminal Appeal No. 1167 of 2018)

02 April 2024

[B.R. Gavai* and Sandeep Mehta, JJ.]

Issue for Consideration

High Court whether justified in reversing the acquittal of the appellant Nos.1 and 2 and convicting them u/ss.302 and 201/34 and ss.302/34 and 201, Penal Code, 1860 respectively and sentencing accordingly; whether the prosecution proved its case beyond reasonable doubt and whether the appellants were guilty of committing the crime.

Headnotes

Appeal against acquittal – Interference – When not sustainable:

Held: Prosecution case rests on circumstantial evidence – Trial Judge gave sound and cogent reasons for discarding the testimony of the IO and the other witnesses and by elaborately discussing the evidence found that the appellants were not guilty – Findings of the trial Judge were based on correct appreciation of the material placed on record – This elaborate exercise of the trial Judge was washed away by the Division Bench of the High Court in a totally cursory manner – Though the High Court referred to the law laid down by this Court with regard to the scope of interference in an appeal against acquittal, it totally misapplied the same and a very well-reasoned judgment based upon the correct appreciation of evidence by the trial Court was reversed only on the basis of conjectures and surmises – High Court could have interfered in the criminal appeal only if it came to the conclusion that the findings of the trial Judge were either perverse or impossible – No perversity or impossibility could be found in the approach adopted by the trial Judge – Furthermore, in any case, even if two views were possible and the trial Judge found the other view to be more probable, an interference would not have been warranted by the High Court, unless the view taken by the trial Judge was a perverse or impossible view – Prosecution failed to prove any

* Author

of the incriminating circumstances beyond reasonable doubt and in no case, the chain of circumstances, which was so interlinked to each other that led to no other conclusion, than the guilt of the accused persons – Judgment passed by the High Court being unsustainable is quashed and set aside – Appellants acquitted. [Paras 6, 12-14, 16, 19-23]

Evidence – Circumstantial evidence – Law as regards conviction on the basis of circumstantial evidence – Discussed.

Case Law Cited

Sharad Birdhichand Sarda v. State of Maharashtra [1985] 1 SCR 88 **: (1984) 4 SCC 116 – relied on.**

Sadhu Saran Singh v. State of U.P. [2016] 1 SCR 913 **: (2016) 4 SCC 397;** *Harljan Bhala Teja v. State of Gujarat* [2016] 2 SCR 203 **: (2016) 12 SCC 665 – referred to.**

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973; Evidence Act, 1872.

List of Keywords

Appeal against acquittal; Circumstantial evidence; Chain of circumstances not interlinked; Case not proved beyond reasonable doubt; Conjectures and surmises; Findings perverse or impossible; Two possible views; Perverse or impossible view.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1167 of 2018

From the Judgment and Order dated 06.04.2018 of the High Court of Madhya Pradesh at Jabalpur in Cr. A. No.261 of 1995

Appearances for Parties

Varun Thakur, Ramkaran, Ms. Shraddha Saran, Brajesh Pandey, Varinder Kumar Sharma, Advs. for the Appellants.

Pashupathi Nath Razdan, Vikas Bansal, Mirza Kayesh Begg, Ms. Maitreyee Jagat Joshi, Astik Gupta, Ms. Akanksha Tomar, Argha Roy, Ms. Ojaswini Gupta, Ms. Ruby, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

B.R. Gavai, J.

1. The present appeal challenges the judgment dated 6th April 2018 passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 261 of 1995, thereby allowing the appeal of the respondent-State which was filed challenging the judgment dated 26th March 1994 passed in S.T. No. 160 of 1992, vide which the learned 2nd Class Sessions Judge, Damoh (hereinafter referred to as 'the learned trial Judge') had acquitted the appellants of the charges under Sections 302, 201 and 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'). The High Court, reversing the judgment of the learned trial Judge, had convicted the appellant No. 1 (Ballu Chaurasiya @ Balram @ Balmukund) under Sections 302 and 201/34 of IPC and appellant No. 2 (Halki Bahu @ Jamna Bai @ Jamuna Bai) under Sections 302/34 and 201 of IPC and awarded rigorous imprisonment for life under Sections 302 and 302/34 with fine of Rs. 1000/-, in default of payment of fine to further undergo rigorous imprisonment for three months. Insofar as Sections 201 and 201/34 of IPC are concerned, the High Court further awarded sentence of rigorous imprisonment for seven years with a fine of Rs. 3000/-, in default of payment of fine to further undergo rigorous imprisonment for 5 months.

2. The prosecution story in brief is as under:

2.1 The deceased-Mahesh Sahu was in a love relation with Anita, who is the daughter of respondent No.2-Jamna Bai (appellant No.2 herein) and sister of Ballu @ Balram @ Balmukund (appellant No.1 herein). Anita and deceased Mahesh Sahu resided at Agra for about eight months and then returned to Damoh. Thereafter, the marriage of Anita was solemnized with another person. Even then, they were in contact with each other. Due to this enmity, on 7th June, 1992 at about 11:00 P.M., the appellants caused death of the deceased in furtherance of their common intention. The prosecution relies on the evidence of Govind (PW-7), who saw that appellant No. 1 was dragging a dead body from his house. He had also seen his mother, appellant No. 2, who was washing the blood stains at the door of their house.

2.2 After Beni Prasad @ Beri Prasad (PW-1) and Sumitra Bai (PW-6), who are the father and mother of the deceased, came to know about the incident, they came to the spot of the incident. On the basis of the oral report of PW-1, an FIR (Exh. P-1) came to be registered at Police Station, Damoh.

2.3 Upon completion of the investigation, the chargesheet came to be filed in the Court of Judicial Magistrate First Class. Since the case was exclusively triable by the learned trial Judge, it was committed to the learned trial Judge.

2.4 At the conclusion of the trial, the learned trial Judge has acquitted the accused persons since the prosecution has failed to prove the case beyond reasonable doubt. The respondent-State preferred an appeal before the High Court.

2.5 The High Court, by the impugned judgment, reversed the finding of the learned trial Judge, as aforesaid.

2.6 Being aggrieved thereby, the present appeal.

3. We have heard Mr. Varun Thakur, learned counsel appearing on behalf of the appellants and Shri Pashupathi Nath Razdan, learned counsel for the respondent-State.

4. Mr. Varun Thakur, learned counsel, submits that the High Court has grossly erred in reversing the well-reasoned judgment of acquittal. He submits that the learned trial Judge by giving elaborate reasonings, found that the prosecution has failed to prove the case beyond reasonable doubt. He submits that the High Court in a cursory manner interfered with the said finding. He submits that the present case is a case of circumstantial evidence and unless the prosecution is able to prove the chain of circumstances beyond reasonable doubt it is not permissible to interfere with the findings of the trial Judge and to record the finding of conviction. He further submits that, in an appeal arising from acquittal, the scope is limited. Unless the finding is shown to be perverse or impossible, it will not be permissible for the Appellate Court to interfere with the same.

5. Shri Pashupathi Nath Razdan, learned counsel for the respondent-State, on the contrary, submits that the learned trial Judge has totally misread the evidence. He submits that the evidence of Beni

Prasad (PW-1) and Sumitra Bai (PW-6), coupled with the medical evidence, would show that the prosecution has proved the case beyond reasonable doubt.

6. Undoubtedly, the prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalized in the judgment of this Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra***[1]**,** wherein this Court held thus:

> "**152.** Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. State of Madhya Pradesh* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh* [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and *Ramgopal v. State of Maharashtra* [(1972) 4 SCC 625 : AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in *Hanumant case* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :
>
> > "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a

1 [1985] 1 SCR 88 : (1984) 4 SCC 116 : 1984 INSC 121

> conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

> "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."
>
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
>
> (3) the circumstances should be of a conclusive nature and tendency,
>
> (4) they should exclude every possible hypothesis except the one to be proved, and
>
> (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence

> of the accused and must show that in all human probability the act must have been done by the accused.
>
> **154.** These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

7. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused 'must be' and not merely 'may be' proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities the act must have been done by the accused.

8. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

9. Apart from that, it is to be noted that the present case is a case of reversal of acquittal. The law with regard to interference by the Appellate Court is very well crystallized. Unless the finding of acquittal is found to be perverse or impossible, interference with the same would not be warranted. Though, there are a catena of judgments on the issue, we will only refer to two judgments which the High Court itself has reproduced in the impugned judgment, which are as reproduced below:

> "13. In case of ***Sadhu Saran Singh vs. State of U.P.*** (2016) 4 SCC 397, the Supreme Court has held that:-

> "In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate Court would interfere with the order of acquittal only when there is perversity of fact and !aw. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. Appellate Court, while enunciating the principles with regard to the scope of powers of the appellate Court in an appeal against acquittal, has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded."

14. Similar, In case of ***Harljan Bhala Teja vs. State of Gujarat*** **(2016) 12 SCC 665,** the Supreme Court has held that:-

> "No doubt, where, on appreciation of evidence on record, two views are possible, and the trial court has taken a view of acquittal, the appellate court should not interfere with the same. However, this does not mean that in all the cases where the trial court has recorded acquittal, the same should not be interfered with, even if the view is perverse. Where the view taken by the trial court is against the weight of evidence on record, or perverse, it is always open far the appellate court to express the right conclusion after re-appreciating the evidence If the charge is proved beyond reasonable doubt on record, and convict the accused."

10. In view of the above settled principles of law, we will have to examine the present case.

11. It is not in dispute that the death of the deceased is a homicidal death and as such, it will not be necessary to refer to the medical evidence. The only question that remains is as to whether the prosecution has proved its case beyond reasonable doubt and as to whether the appellants are guilty of committing the crime.

12. Learned trial Judge, by elaborately discussing the evidence, had found that the appellants were not guilty. We crystallize the findings of the learned trial Judge, as under:

12.1 Beni Prasad (PW-1), who is the father of the deceased, had deposed that when he went to call his son Mahesh Sahu for dinner then Mahesh Sahu was standing at the Chowk with Pappu Tamrakar and two boys. Mahesh Sahu told him that he would come later, then Beni Prasad (PW-1) went to his house and fell asleep and later at night around 11:45 P.M., one boy came to him and told him that Ballu Chaurasiya (appellant No. 1), Santosh Chaurasiya and other persons were beating Mahesh Sahu. On hearing this, he ran towards the house of Ballu Chaurasiya wearing *chaddhi* and *baniyan*. He saw that Ballu Charuasiya, Santosh Chaurasiya and his two brothers were dragging Mahesh Sahu in dead condition and put his body 10 feet away from their house. After that the accused Ballu Chaurasiya went inside his house. Beni Prasad (PW-1) went near the place where Mahesh Sahu's body was lying and he found him to be dead. At that point of time, Sumitra Bai (PW-6), the mother of the deceased also came there and she saw that Jamuna Bai (appellant No. 2), who is the mother of the accused Ballu Chaurasiya, was cleaning the blood on the door.

12.2 Beni Prasad deposed that in the last month of the year 1991 (December 1991) his son Mahesh Sahu went to Bhopal for an interview and there was no news about him for about eight months. Thereafter, a letter came to him from his son in the fourth month of the year 1992 (April 1992) informing him that he was working at Agra and that he had married a girl named Anita, who is the sister of the accused/appellant No. 1 Ballu Chaurasiya. Thereafter, the deceased Mahesh Sahu and Anita returned to Damoh (in the fourth month of the year 1992 i.e., April 1992), and Anita started living in her house and thereafter Anita was married to another person in Ujjain by her brother

Ballu Chaurasiya (appellant No. 1). Thereafter, Anita left for her in-laws house and thereafter correspondence of letters started between Mahesh Sahu and Anita. He stated that this correspondence of letters was not liked by Ballu Chaurasiya (appellant No. 1) and he started to give death threats to Mahesh Sahu.

12.3 The learned trial Judge found that the statement given by Beni Prasad (PW-1), before the trial Judge was totally contrary to his statement recorded under Section 161 of the Code of Criminal Procedure, 1973 (Exh. D/1). It was found that Beni Prasad (PW-1) had totally improved his story in his deposition before the Court. Learned trial Judge also found the behaviour of Beni Prasad (PW-1) to be abnormal. In his cross-examination, Beni Prasad (PW-1) admitted that when he saw four persons dragging the dead body, he said nothing because he was alone. However, he admitted that the dead body of Mahesh Sahu was lying in a dense basti and people have houses around the said place and there was also a dispensary of the (Nagar Palika) Municipality situated at Gauri Shankar Temple, about 9 feet away from his house. Learned trial Judge also found that within the same dispensary itself, the Police Chowki was situated, manned by hawaldar and constables. The learned trial Judge found that the conduct of the Beni Prasad (PW-1) in not informing about the dead body of the deceased being dragged away to anyone and particularly at the Police Chowki which was hardly any distance from the place of occurrence to be absolutely unnatural. The learned trial judge found that when a panchnama of the dead body (Exh. P-2) was being conducted, he did not give the name of the killers. The explanation given by Beni Prasad (PW-1) was that the police did not ask him. The learned trial Judge also found that Beni Prasad (PW-1) admitted in his evidence that at the time of panchnama of dead body (Exh. P-2), there was a crowd of around 150 people.

12.4 Ms. Sumitra Bai (PW-6), mother of the deceased, also stated about the relationship between the deceased Mahesh Sahu and Anita. She stated that the accused/appellant No. 1 Ballu Chaurasiya was threatening the deceased Mahesh Sahu on a day prior to the date of the incident. She also informed about

one boy coming at about 11:45 P.M./12 A.M. and informing her that a fight was going on between Mahesh Sahu and Ballu Chaurasiya. When she went to the house of the accused, she saw accused Ballu Chaurasiya, his elder brother, his *manjhla* brother and accused Jamuna Bai dragging her son and leaving her son in front of bade father's house. Learned trial Judge found that the evidence of this witness was also totally improvised. Learned trial Judge also found that there was extreme exaggeration in the depositions given by this witness in the Court as compared to the statements under Section 161 Cr.P.C. (Exh. D-2). The learned trial Judge, as a result, disbelieved the evidence of these two witnesses, i.e., the father and mother of the deceased.

12.5 Learned trial Judge also found that the prosecution had relied on the evidence of Raju (PW-4), Dharmendra Singh (PW-5) and Govind (PW-7) to establish the circumstances regarding the accused being last seen with the deceased Mahesh Sahu. Further all these three witnesses had turned hostile and not supported the prosecution case.

12.6 Learned trial Judge also discarded the circumstances relied on by the prosecution regarding cutting the nails of both the hands of the accused Ballu Chaurasiya and the said nails containing the blood of the deceased Mahesh Sahu. Learned trial Judge also found that the nails were cut after a period of six days from the date of the incident. The prosecution has also relied on the circumstances of recovery of the blood stained clothes and the knife. Learned trial Judge found that the said circumstances were also of no assistance in the case of the prosecution, inasmuch as there were no evidence to show that the blood found on these articles was a human blood.

12.7 Insofar as the circumstances with regard to the mother of the appellant No. 1, Jamuna Bai (appellant No. 2), are concerned, the learned trial Judge found that the independent witnesses had turned hostile, and the only evidence in that regard was that of S.K. Banerjee @ S.K. Banerji @ Sukant Banerjee/ Investigating Officer (PW-15).

12.8 Learned trial Judge found that Rajesh Kumar (PW-14), who was a panch witness, in his evidence, had stated that the

deceased was his cousin brother and he has signed the documents on the directions of the S.K. Banerjee/Investigating Officer (PW-15). As such, the learned trial Judge found that the circumstances with regard to the memorandum under Section 27 of the Evidence Act, 1872 and subsequent recovery was also not proved beyond reasonable doubt. Learned trial Judge further found that though from the panchnama, it was shown that the blood was found at various places, he had not made any attempt to seize the samples nor had he provided an explanation as to why he had not seized the samples of the said blood.

12.9 Learned trial Judge found that the knife was seized on a memorandum of the accused (Exh. P-14) on 14th June 1992 from an open place in the same room as mentioned in panchnama (Exh. P-11). Learned trial Judge also found that if immediately on the next day of incident, the Investigating Officer had visited and searched the room but he did not see the knife, then the subsequent recovery of knife from the very same room appears to be planted.

12.10 Learned trial Judge also found that though the incident was of 7th June 1992 at around 12:00 A.M. and it had been reported to the Investigating Officer at 12:40 A.M., the arrest of the accused persons had been made only on 15th June 1992, which creates a doubt on the prosecution version. This is more so when the distance between the place of occurrence and the police station is hardly 1 to 1 ½ kms.

13. The above points, that we have culled out from the judgment of the learned trial Judge, make it clear that the learned trial Judge has done a very elaborate exercise of discussing the evidence in great detail. We therefore would not like to burden our judgment with more details. The aforesaid points are more than sufficient to come to a conclusion that the prosecution has failed to prove any of the incriminating circumstances beyond reasonable doubt and in no case, the chain of circumstances, which was so interlinked to each other that leads to no other conclusion, than the guilt of the accused persons. We have no hesitation to hold that the findings of the learned trial Judge are based on correct appreciation of the material placed on record.

14. This elaborate exercise of the learned trial Judge, has been washed away by the learned Division Bench of the High Court in a totally cursory manner. Insofar as the testimony of Beni Prasad (PW-1) and Sumitra Bai (PW-6) is concerned, the Division Bench of the High Court observed thus:

> "**8.**.....After considering the entire testimony of Beni Prasad (PW-1) and Sumitra Bai (PW-6) we come to the conclusion that there are improvements and exaggerations in their court statement. But on this ground their whole testimony cannot be brushed out as the principle *"Falsus in uno, Falsus in Omnibus"* is not applicable in criminal trial. Sometimes, the witnesses are in fear that if their testimony cannot be relied upon by the Court, the main culprit may be acquitted. Therefore, naturally they improve their statement to some extent."

15. The testimony of S.K. Banerjee/Investigating Officer (PW-15), which has been disbelieved by the learned trial Judge, giving sound reasons, has been believed by the learned Division Bench of the High Court, by placing it in paragraph 12 as under:

> "**12.** We do not find any reason to disbelieve the testimony of Investigation Officer who impartially performed his duty with sincerity. He had no enmity with the respondents or relationship with the deceased. Therefore, we are inclined to rely upon his testimony. It cannot be brushed aside simply on the basis of conjectures and surmises in favour of the respondents."

16. We find that the learned trial Judge had given sound and cogent reasons for discarding the testimony of the IO and the other witnesses. We are of the view that the High Court has totally erred in observing that the trial Judge had brushed aside the evidence of the IO simply on the basis of conjectures and surmises. Rather, it is the judgment of the High Court which is based on conjectures and surmises.

17. After reproducing the aforementioned two judgments of this Court, discussing the settled law on the scope of an appeal against acquittal, the Division Bench of the High Court observed thus:

> "**15.** As discussed above, we find that there is sufficient ground to reverse the impugned the judgment. Dr.

> J.P.Parsai (PW-8) examined respondent No. 1 Ballu. He found some injuries on the body of respondent no. 1 which also indicate that before the death, the deceased struggled to save himself from the respondents. Dr. J.P.Parsai took sample of nails of both the hands of the deceased and sent them for FSL examination."

18. After discussing this, the High Court noted that the articles which were seized by S.K. Banerjee/Investigating Officer (PW-15) contained blood stains as per the FSL report. The High Court observed that the accused failed to offer any explanation with regard to the presence of blood on these articles. The High Court observed thus:

> "**18**...Respondent No. 1 did not offer any explanation with regard to presence of blood on these articles. This is a strong link along with the blood marks of dragging found from the house of the respondent to the spot where the body of the deceased was lying. This establishes that the respondents committed murder of the deceased Mahesh because he had love relation with Anita. After his death, six love letters of Anita were found in the pocket of the deceased which indicates that Anita also wanted to reside with the deceased against the will and consent of her family members."

19. At the cost of repetition, we are compelled to say that the findings of the High Court are totally based on conjectures and surmises. Though the High Court has referred to the law laid down by this Court with regard to the scope of interference in an appeal against acquittal, the High Court has totally misapplied the same and a very well-reasoned judgment based upon the correct appreciation of evidence by the trial Court has been reversed by the High Court, only on the basis of conjectures and surmises.

20. The High Court could have interfered in the criminal appeal only if it came to the conclusion that the findings of the trial Judge were either perverse or impossible. As already discussed hereinbefore, no perversity or impossibility could be found in the approach adopted by the learned trial Judge.

21. In any case, even if two views are possible and the trial Judge found the other view to be more probable, an interference would not have

been warranted by the High Court, unless the view taken by the learned trial Judge was a perverse or impossible view.

22. In that view of the matter, we find that the judgment passed by the High Court is totally unsustainable in law.

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

(i) The appeal is allowed;

(ii) The impugned judgment dated 6th April 2018 passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 261 of 1995 is quashed and set aside; and

(iii) The accused persons (appellants herein) are acquitted of all the charges they were charged with. The appellants are already on bail. Hence, their bail bonds shall stand discharged.

24. Pending application(s), if any, shall stand disposed of.

Headnotes prepared by: Divya Pandey

Result of the case:
Appeal allowed.

[2024] 4 S.C.R. 63 : 2024 INSC 264

The General Manager, M/S Barsua Iron Ore Mines
v.
The Vice President United Mines Mazdoor Union and Ors.

(Civil Appeal No. 4686 of 2024)

02 April 2024

[Hima Kohli and Ahsanuddin Amanullah,* JJ.]

Issue for Consideration

Respondent initially declared his date of birth as 27.12.1948. Later, in descriptive roll, he changed his initially recorded date of birth i.e. 27.12.1948 to 12.03.1955. Based on his declaration at the time of initial employment the Competent Authority of the appellant determined the date of birth of the respondent no.3 as 27.12.1948. The respondent no.3 superannuated from service based on his initially recorded date of birth [27.12.1948]. Whether the respondent no.3 is held to have been rightly retired in terms of his date of birth as 27.12.1948.

Headnotes

Service Law – Superannuation – Discrepancy in date of birth – The CGIT passed its Award and held that the appellant's determination of the respondent no.3's date of birth based on the initial Descriptive Roll (27.12.1948) was unjustified and thus, awarded him 50% back wages from his retirement in 2008 until his supposed date of superannuation in 2015, based on the date of birth disclosed in the STC i.e., 12.03.1955 – Propriety:

Held: The disclosure of the originally-given date of birth (27.12.1948) by the respondent no.3 was a well-thought out plan hatched by him, at the relevant time – His conduct cannot be simply brushed aside on a plea that there was an error on the part of the appellant in recording his date of birth – Examined thus, the following is evincible: (a) the Competent Authority noticed discrepancy in the date of birth in the records of the appellant and, upon due scrutiny, opined that the declaration of date of birth made by the respondent no.3 at the first point of time, i.e., 27.12.1948, should be taken as his date of birth, as till 1998 no documentary proof was given, and; (b) the respondent no.3 would not have

* Author

been able to legally come into employment on 27.12.1972, had he disclosed his date of birth as 12.03.1955 – No fault can be found with the appellant on this score – It is a just and reasonable conclusion by the appellant's Competent Authority – The principles of estoppel would come into play in the present case – The respondent no.3, having stated on 27.12.1972, that his date of birth was 27.12.1948, cannot be permitted to raise the claim of his date of birth being 12.03.1955, that too on 14.08.1982, i.e., almost after a decade (counting from 27.12.1972 to 14.08.1982) – Even the STC was submitted after the appellant requested the respondent no.3 for documentary proof on 24.11.1998 – The respondent no.3 is held to have been rightly retired in terms of his date of birth reckoned as 27.12.1948 – The further direction to award 50% back wages to the respondent no.3 from the date he was retired till the (notional) superannuation on 31.03.2015, also stands set aside. [Paras 17 and 19]

Case Law Cited

Bharat Coking Coal Ltd. v. Shib Kumar Dushad [2000] Suppl. 4 SCR 336 **: (2000) 8 SCC 696;** *Union of India v C Rama Swamy* [1997] 3 SCR 760 **: (1997) 4 SCC 647 – relied on.**

Karnataka Rural Infrastructure Development Limited v. T P Nataraja [2021] 7 SCR 634 **: (2021) 12 SCC 27;** *Home Department v. R Kirubakaran* [1993] Suppl. 2 SCR 376 **: (1994) Supp (1) SCC 155;** *State of Madhya Pradesh v. Premlal Shrivas* [2011] 11 SCR 444 **: (2011) 9 SCC 664;** *Life Insurance Corporation of India v. R Basavaraju* **(2016) 15 SCC 781;** *Bharat Coking Coal Limited v. Shyam Kishore Singh* **(2020) 3 SCC 411 – referred to.**

List of Keywords

Service Law; Superannuation; Date of birth; Discrepancy in the date of birth; Principle of estoppel; Back wages.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4686 of 2024

From the Judgment and Order dated 04.02.2021 of the High Court of Orissa at Cuttack in WP(C) No. 9424 of 2019

**The General Manager, M/S Barsua Iron Ore Mines v.
The Vice President United Mines Mazdoor Union and Ors.**

Appearances for Parties

Ranjit Kumar, Sr. Adv., Sunil Kumar Jain, Ms. Rashika Swarup, Advs. for the Appellant.

Ms. Deepanwita Priyanka, Satyalipsu Ray, Ritesh Patil, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Ahsanuddin Amanullah, J.

1. Heard Mr. Ranjit Kumar, learned senior counsel for the appellant and Ms. Deepanwita Priyanka, learned counsel for the respondent no.3.

2. Leave granted.

3. The present appeal arises out of the final judgment dated 04.02.2021 (hereinafter referred to as the "impugned judgment"), passed by a Division Bench of the High Court of Orissa at Cuttack (hereinafter referred to as the "High Court") in Writ Petition (Civil) No.9424 of 2019, whereby the petition filed by the appellant was dismissed and the Award dated 24.01.2018 passed by the Central Government Industrial Tribunal-*cum*-Labour Court, Bhubaneswar (hereinafter referred to as the "CGIT") in ID Case No.33 of 2003, was upheld.

BRIEF FACTS:

4. The respondent no.3 was employed as a Piece Rated Mazdoor at Barsua Iron Ore Mines under Rourkela Steel Plant, a unit of Hindustan Steel Limited (hereinafter referred to as "HSL"), which later merged into Steel Authority of India Limited (hereinafter referred to as "SAIL"). The respondent no.3 was offered employment on a casual basis *vide* letter dated 14.04.1972 as a Piece Rated Mazdoor. On 27.12.1972, he submitted the prescribed form of descriptive roll declaring his age as 24 years but did not provide a specific date or any documentary proof of date of birth. Based on his oral declaration, his date of birth was recorded as 27.12.1948 and this date was accepted and signed on by the respondent no.3 leading to his employment. *Vide* Offer of Appointment dated 22.06.1981, the respondent no.3, initially employed as a casual labourer, was regularized under the appellant and worked as a Piece Rated Mazdoor in mining operations for SAIL following the merger of HSL into SAIL.

5. It appears that on 14.08.1982, the respondent no.3 submitted the prescribed form of Descriptive Roll, wherein he changed his initially recorded date of birth i.e. 27.12.1948 to 12.03.1955, again without providing any documentary proof. *Vide* Office Order dated 20.12.1982, such date of birth, as disclosed by the respondent no.3, was entered in the records of the appellant who effected the change without any scrutiny.

6. On 24.11.1998, the respondent no.3 was requested to submit documentary proof in support of his date of birth, in response to which he submitted a School Transfer Certificate (hereinafter referred to as the "STC") dated 12.01.1972, which made him 17 years and 1 month old at the time when he was offered employment on casual basis on 14.04.1972.

7. On 29.11.2001, based on his declaration at the time of initial employment the Competent Authority of the appellant determined the date of birth of the respondent no.3 as 27.12.1948, which made him come within the statutory employment age limit and above the minimum age i.e., 18 years, required for such employment.

8. On 09.10.2003, a dispute regarding the respondent no.3's date of birth was referred by the "*appropriate Government*"[1] to the CGIT for adjudication.

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1 Section 2(a) of the Industrial Disputes Act, 1947 reads as below:

'(a) "appropriate Government" means,—

(i) in relation to any Industrial Disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an Industrial Dispute concerning a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956, or the Employees' State Insurance Corporation established under Section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under Section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under Section 5-A and Section 5-B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956) or the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under Section 3, or a Board of Management established for two or more contiguous States under Section 16 of the Food Corporations Act, 1964 (37 of 1964), or the Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited, or the Banking

9. In the meanwhile, on 31.12.2008, the respondent no.3 superannuated from service, having attained the age of 60 years, based on his initially recorded date of birth [27.12.1948].

10. On 24.01.2018, the CGIT passed its Award and held that the appellant's determination of the respondent no.3's date of birth based on the initial Descriptive Roll was unjustified and thus, awarded him 50% back wages from his retirement in 2008 until his supposed date of superannuation in 2015, based on the date of birth disclosed in the STC i.e., 12.03.1955. The appellant filed a Writ Petition before the High Court of Orissa at Cuttack on 19.05.2019 challenging the Award passed by the CGIT on 24.01.2018. The order of the High Court dismissing the same on 04.02.2021, is impugned in the present appeal.

SUBMISSIONS BY THE APPELLANT:

11. Learned Senior counsel for the appellant submitted that the conduct of the respondent no.3 clearly dis-entitled him to any relief as he could not have been allowed to resile from his initially declared date of birth, that too after 9 years of his initial declaration, on 27.12.1972. It was submitted that the said declaration by the respondent no.3 himself on 27.12.1972, cannot be said to be an inadvertent error or omission for the reason that had the so-called correct date of birth, according to the respondent no.3, i.e., 12.03.1955 been declared, then at the relevant point of time, he would have been only 17 years and 1 month old and could not have been given the employment he had sought, since the minimum age required was 18 years. Thus, it was submitted that it was clear that he had tried to take employment relying on his date of birth as 27.12.1948,

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Service Commission established, under Section 3 of the Banking Service Commission Act, 1975, or an air transport service, or a banking or an insurance company, a mine, an oilfield, a Cantonment Board, or a major port, any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and

(ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government:

Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment.'

from which he cannot be allowed to backtrack. It was canvassed that the same would amount to taking double advantage; one at the initial stage on the basis of the date of birth as 27.12.1948 and later in service on a different date of birth i.e., 12.03.1955. It was contended that the CGIT reaching the conclusion, that the management could not have determined the date of birth of the respondent no.3 based on the initial Descriptive Roll being unjustified, was totally without any basis and arbitrary and thus, awarding him 50% back wages, is totally misplaced and needs interference by this Court. It was urged that the High Court also failed to take notice of basic factual aspects and more importantly, the conduct of the respondent no.3 and the time-gap of 9 years after which he suddenly woke up and made a representation for change of his date of birth.

SUBMISSIONS OF RESPONDENT NO.3:

12. Per contra, learned counsel for the respondent no.3 submitted that at the time of filling up the Descriptive Roll, the same was based on an oral declaration and apparently the authority, which was noting down the date of birth, had committed an error.

13. It was further submitted that the STC dated 12.01.1972 clearly indicates that his date of birth was 12.03.1955, which required corrections in the records of the appellant and thus the CGIT and the High Court have not committed any error warranting interference by this Court.

14. It was submitted that the respondent no.3 was unaware of the date of birth being recorded as 27.12.1948 and only when he came to know of the same, he had taken steps and the CGIT rightly granted relief to him.

15. Learned counsel submitted that the respondent no.3 cannot be made to suffer for the fault of the appellant itself and more so when later, in its own records it had correctly recorded his date of birth as 12.03.1955, in the year 1982.

ANALYSIS, CONCLUSION AND REASONING:

16. Having considered the matter in its entirety and the submissions made, this Court is of the opinion that the Award of the CGIT as well as the impugned judgment rendered by the High Court cannot be

sustained. It is not in dispute that while submitting the Descriptive Roll, the respondent no.3 had himself declared his age as 24 years without any documentary proof and since the date of submission of such Descriptive Roll was 27.12.1972, his date of birth was recorded by the appellant as 27.12.1948. This position continued for almost a decade viz. till 1982, when the respondent no.3 submitted a declaration, on the merger of HSL with SAIL, wherein his date of birth was disclosed as 12.03.1955, though even at such time, again, no documentary proof was furnished by him. The respondent no.3 submitted the so-called proof, which was the STC dated 12.01.1972, only after the issuance of letter dated 24.11.1998, whereby he was required to submit documentary proof of his date of birth. Pausing here, the Court would note that by reckoning his date of birth as 12.03.1955, the respondent no.3 would be much below the age of 18 years at the time of initial employment, which was the minimum requirement in law. Thus, it is clear that had the respondent no.3 declared his so-called correct date of birth, obviously he would not have been given the employment.

17. From this point of view, it is clear that the disclosure of the originally-given date of birth by the respondent no.3 was a well-thought out plan hatched by him, at the relevant time. His conduct cannot be simply brushed aside on a plea that there was an error on the part of the appellant in recording his date of birth. Another doubt cast on the conduct of the respondent no.3 is him not acting on time, which raises a question about the bonafides of his claim of having been born on 12.03.1955. In fact, even after giving a declaration on 14.08.1982, on the merger of HSL with SAIL, the copy of the STC was never provided to the appellant, which was done only in response to the letter dated 24.11.1998, requiring him to submit documentary proof of his date of birth. Examined thus, the following is evincible: (a) the Competent Authority noticed discrepancy in the date of birth in the records of the appellant and, upon due scrutiny, opined that the declaration of date of birth made by the respondent no.3 at the first point of time, i.e., 27.12.1948, should be taken as his date of birth, as till 1998 no documentary proof was given, and; (b) the respondent no.3 would not have been able to legally come into employment on 27.12.1972, had he disclosed his date of birth as 12.03.1955. No fault can be found with the appellant on this score. It is a just and reasonable conclusion by the appellant's Competent

Authority. Moreover, reckoning his date of birth as 27.12.1948, the respondent no.3 has been permitted to work for 36 years, which by itself is a sufficient period of employment. Hence, on this count too, we are unable to show any indulgence to the respondent no.3.

18. Undoubtedly, a decision on the issue of date of birth is as important for the employer as it is for the employee. Reference in this regard can be made to ***Bharat Coking Coal Ltd. v Shib Kumar Dushad*, *(2000) 8 SCC 696. As expressed in Union of India v C Rama Swamy*, *(1997) 4 SCC 647***, "… the court also ought not to grant any relief even if it is shown that the date of birth, as originally recorded, was incorrect because the candidate concerned had represented a different date of birth to be taken into consideration obviously with a view that that would be to his advantage. …".

19. Moreover, the principles of estoppel would come into play in the present case. The respondent no.3, having stated on 27.12.1972, that his date of birth was 27.12.1948, cannot be permitted to raise the claim of his date of birth being 12.03.1955, that too on 14.08.1982, i.e., almost after a decade (counting from 27.12.1972 to 14.08.1982). Even the STC was submitted after the appellant requested the respondent no.3 for documentary proof on 24.11.1998.

20. Although, we have examined the matter from the lens of fraud as well, in view of our discussions hereinabove, the said aspect does not merit deeper probe. We leave it at that. For the present, it would suffice to refer to a pronouncement of recent vintage by this Court in ***Karnataka Rural Infrastructure Development Limited v T P Nataraja*, (2021) 12 SCC 27,** where earlier precedents in ***Home Department v R Kirubakaran*, 1994 Supp (1) SCC 155; *State of Madhya Pradesh v Premlal Shrivas*, (2011) 9 SCC 664; *Life Insurance Corporation of India v R Basavaraju,* (2016) 15 SCC 781** and ***Bharat Coking Coal Limited v Shyam Kishore Singh,* (2020) 3 SCC 411** were considered. Although this Court in ***T P Nataraja*** *(supra)* was looking at the facts therein, in the context of the Karnataka State Servants (Determination of Age) Act, 1974, the principle of law laid down would equally apply insofar as change of date of birth in service records is concerned, with which we concur:

> **"11.** Considering the aforesaid decisions of this Court the law on change of date of birth can be summarised as under:

(i) application for change of date of birth can only be as per the relevant provisions/regulations applicable;

(ii) even if there is cogent evidence, the same cannot be claimed as a matter of right;

(iii) application can be rejected on the ground of delay and laches also more particularly when it is made at the fag-end of service and/or when the employee is about to retire on attaining the age of superannuation."

21. In view of the aforesaid, this Court finds that the much-delayed disclosure of the date of birth as 12.03.1955 by the respondent no.3, coupled with his initial declaration and the admitted position that based on such initial declaration, he had received employment, as otherwise based on 12.03.1955, he could not have been legally appointed due to being under-age, there is no manner of doubt that the respondent no.3, irrespective of his real date of birth, for the purpose of employment under the appellant, cannot be allowed the purported rectification/correction of date of birth to 12.03.1955. He would have to, necessarily, be content with his service and benefits accounted taking his date of birth as 27.12.1948.

22. For reasons aforesaid, the appeal stands allowed. The Award of the CGIT dated 24.01.2018 and the impugned judgment stand set aside. The respondent no.3 is held to have been rightly retired in terms of his date of birth reckoned as 27.12.1948. Needless to state that the further direction to award 50% back wages to the respondent no.3 from the date he was retired till the (notional) superannuation on 31.03.2015, also stands set aside.

23. There shall be no order as to costs. Pending applications [IA Nos.51644/2021 and 54844/2021] are closed upon ceasing to subsist for consideration. The amount deposited by the appellant with the interest accrued thereon be released by the Registry in its favour.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeal allowed.

[2024] 4 S.C.R. 72 : 2024 INSC 274

Deep Mukerjee
v.
Sreyashi Banerjee

(Civil Appeal No(s). 4722-4723 of 2024)

05 April 2024

[Vikram Nath and Prashant Kumar Mishra,* JJ.]

Issue for Consideration

Matter pertains to subjecting the husband to undergo potentiality test.

Headnotes

Matrimonial laws – Matrimonial disputes – Medical tests – Potentiality test for husband – Divorce petition by the wife on the ground that the marriage between the parties was not consummated because of the husband's impotency – Application by husband for subjecting the husband to undergo potentiality test and referring the wife for fertility test and psychological/mental health test for both the parties – Allowed by the trial court, however set aside by the High Court – Correctness:

Held: When the husband is willing to undergo potentiality test, the High Court should have upheld the order of the trial court to that extent – Order passed by the trial court directing the husband to take the medical test to determine his potentiality upheld – Impugned order passed by the High Court modified to that extent – Hindu Marriage Act, 1955 – Evidence Act, 1872. [Para 9]

Case Law Cited

Sharda v. Dharmpal [2003] 3 SCR 106 **: (2003) 4 SCC 493 – referred to.**

List of Acts

Hindu Marriage Act, 1955; Evidence Act, 1872; Code of Civil Procedure, 1908.

List of Keywords

Divorce petition; Non-consummation of marriage; Impotency; Medical tests; Potential test; Fertility test; Psychological/mental health test.

* Author

Deep Mukerjee v. Sreyashi Banerjee

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.4722-4723 of 2024

From the Judgment and Order dated 28.11.2023 of the High Court of Judicature at Madras in CRPPD No. 2844 and 2848 of 2023

Appearances for Parties

B Ragunath, Mrs. N C Kavitha, Vijay Kumar, Advs. for the Appellant.

K. S. Mahadevan, Ms. Swati Bansal, Rangarajan .R, Aravind Gopinathan, Rajesh Kumar, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Prashant Kumar Mishra, J.

Leave granted.

2. Challenge in these appeals is to the common order dated 28.11.2023 passed by the High Court in Civil Revision Petition Nos. 2844 and 2848 of 2023 allowing the revisions while setting aside the order dated 27.06.2023 passed by the Trial Court in I.A. Nos. 8 & 9 of 2023 preferred by the appellant/husband in O.P. No. 2866 of 2021.

3. The parties were married on 23.07.2013 at Chennai and thereafter they agreed to move to the United Kingdom where they stayed together happily for a period of 7½ years. After they returned, they stayed together in a residential property belonging to the respondent/wife's father. However, upon disputes being cropped, they have separated in April, 2021 and since then, it is alleged by the appellant/husband that the respondent/wife neither joined his company nor responded to any communication and/or messages of the appellant/husband.

4. The appellant/husband preferred application under Section 9 of the Hindu Marriage Act, 1955[1] before the Additional Principal Family Court at Chennai, seeking restitution of conjugal rights being OP No. 2441 of 2021 whereas the respondent/wife subsequently preferred

1 'Act,1955'

OP No. 2866 of 2021 for grant of decree of divorce under Section 13(1) (ia) of the Act, 1955 on the ground that the marriage between the parties has not consummated because of the appellant/husband's impotency.

5. In the above factual background, the appellant/husband moved I.A. Nos. 8 & 9 of 2023 under Section 45 of the Indian Evidence Act read with Section 151 of the Code of Civil Procedure, 1908[2] for subjecting the appellant/husband to undergo potentiality test and at the same time referring the respondent/wife for fertility test and psychological/mental health test for both the parties. Vide order dated 27.06.2023, the Trial Court allowed the above interim applications on the condition that a competent medical board shall be constituted by the Dean, Rajiv Gandhi Government General Hospital, Chennai to conduct the subject tests for both the parties as prayed for in the interim applications and the report of the medical board be sent to the Court through the advocate Commissioner in a sealed cover. Both the parties were directed not to reveal the result of the tests to any third party and maintain complete secrecy.

6. The Trial Court's order dated 27.06.2023 was challenged by the respondent/wife before the High Court by way of two separate revisions which have been allowed by the High Court under the impugned order.

7. In the course of arguments in this Court, learned counsel for the appellant/husband submitted that when the appellant/husband is willing to undergo potentiality test, there is no reason why the High Court should set aside the entire order. The learned counsel for the appellant would refer to the decision of this Court in the case of ***"Sharda vs. Dharmpal"*** (2003) 4 SCC 493. Per contra, the learned counsel for the respondent/wife would submit that when the respondent/wife is not willing to undergo any test be it fertility test or mental health check-up, she cannot be compelled to undergo such tests.

8. While allowing the revision petitions preferred by the respondent/wife the High Court has not assigned any cogent reason as to why the appellant/husband cannot be sent for potentiality test. Instead of

2 'CPC'

dwelling on the contentions of the parties qua the merits of the interim applications decided by the Trial Court, the High Court focused on the conduct of the parties which was not at all germane for deciding the issue as to the validity of the order passed by the Trial court.

9. Considering the fact situation of the present case, we are satisfied that when the appellant/husband is willing to undergo potentiality test, the High Court should have upheld the order of the Trial Court to that extent. Accordingly, we allow the present appeals in part maintaining the order passed by the Trial Court dated 27.06.2023 insofar as it directs the appellant/husband to take the medical test to determine his potentiality. Let the test be conducted in the manner indicated by the Trial Court within a period of four weeks from today and the report be submitted within two weeks thereafter. Impugned order passed by the High Court stands modified to the above extent only.

Headnotes prepared by: Nidhi Jain

Result of the case:
Appeals partly allowed.

[2024] 4 S.C.R. 76 : 2024 INSC 262

Union of India & Anr.
v.
Jahangir Byramji Jeejeebhoy (D) Through His LR

(Civil Appeal No. 4672 of 2024)

03 April 2024

[Aniruddha Bose and J.B. Pardiwala,* JJ.]

Issue for Consideration

Whether the High Court committed any error in passing the impugned order by which it declined to condone the delay of 12 years and 158 days in filing the restoration application by appellants-Union of India for restoration of the Writ Petition.

Headnotes

Delay – Non-condonation of – Length of the delay, relevant – Decree for possession of the suit premises was passed in favour of respondent in 1987 – Appeal thereagainst filed by appellants-Union of India, dismissed in 1992 – Said order of the appellate court was challenged by the appellants by filing Writ Petition in 1993 which was dismissed for non-prosecution in 2006 – Respondent filed Execution Petition in 2013 – Later, appellants filed application seeking restoration of the Writ Petition filed in 1993 and for condonation of delay of 12 years and 158 days in preferring such restoration application – Impugned order passed by High Court declining to condone the said delay – Correctness:

Held: Length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not – Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for long, delay cannot be presumed to be non-deliberate and thus, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations – Further, while considering the plea for condonation of delay, the court must not start with the merits of the main matter – Court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation – It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits

* Author

of the matter for the purpose of condoning the delay – Question of limitation is not merely a technical consideration – Rules of limitation are based on the principles of sound public policy and principles of equity – It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years – In the present case, litigation between the parties started sometime in 1981 – Almost 43 years have elapsed however, till date the respondent has not been able to reap the fruits of his decree – Appellants failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case – No error committed by High Court in passing the impugned order. [Paras 26, 27, 25, 34]

Case Law Cited

Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation [2010] 2 SCR 1172 **: (2010) 5 SCC 459;** *Postmaster General and others v. Living Media India Limited* [2012] 1 SCR 1045 **: (2012) 3 SCC 563;** *Lanka Venkateswarlu (D) by LRs v. State of Andhra Pradesh & others* [2011] 3 SCR 217 **: (2011) 4 SCC 363;** *Pundlik Jalam Patil (D) by LRs. v. Executive Engineer, Jalgaon Medium Project & others* [2008] 15 SCR 135 **: (2008) 17 SCC 448;** *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Others* [2013] 9 SCR 782 **: (2013) 12 SCC 649 – relied on.**

List of Keywords

Limitation; Gross delay; Delay condonation; Sufficient cause; Length of the delay; Principles of equity.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.4672 of 2024

From the Judgment and Order dated 09.07.2019 of the High Court of Judicature at Bombay in CA No. 1494 of 2019

Appearances for Parties

R.Venkataramani, AG, Vikramjit Banerjee, ASG, Col. R. Balasubramanian, Sr. Adv., Chinmayee Chandra, Chitvan Singhal,

Abhishek Kumar Pandey, Arvind Kumar Sharma, Advs. for the Appellants.

Sudhanshu Chaudhari, Sr. Adv., Ms. Supreeta Sharanagouda, Sharanagouda Patil, Mahesh P Shindhe, Ms. Rucha A Pande, Veeraragavan M, C Sawant, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

J.B. Pardiwala, J.

Leave granted.

2. This appeal arises from an order passed by a learned single Judge of the High Court of Judicature at Bombay dated 09.07.2019 in Civil Application No. 1494 of 2019 filed in Writ Petition No. 2307 of 1993 by which the High Court declined to condone the delay of 12 years and 158 days in filing the application for restoration of the Writ Petition No. 2307 of 1993 referred to above which came to be dismissed for non-prosecution vide order dated 10.10.2006.

3. The facts giving rise to this appeal may be summarized as under.

4. The suit property bearing S. No. 402, Bungalow No. 15A, situated at Staveley Road, Pune Cantonment, Pune–1 was leased by the respondent in favour of the appellants on 09.03.1951.

5. As the appellants committed breach of the terms of the lease deed, the respondent herein instituted civil suit bearing No. 2599 of 1981 before the Court of the 4th Additional Small Causes Judge, Pune for the recovery of the possession of the suit property & arrears towards the rent.

6. On 02.05.1987, the suit came to be allowed and the final decree came to be passed in the following terms:

"ORDER

1) The plaintiffs are entitled to possession of the suit premises.

2) The defendant shall deliver vacant and peaceful possession of the suit premises to the plaintiffs or before 30.6.1987.

3) The defendants do pay by way of damages and mesne profits and notice charges Rs. 17,383/- to the plaintiffs.

4) The defendant shall also pay future mesne profits at the rate of Rs. 316/- per month from the date of filing of the suit till recovery of possession of the suit premises under order 20 rule 12(1) of CPC.

5) The defendant shall pay costs of this suit to the plaintiffs and shall bear their own."

7. The appellants herein challenged the judgment and decree referred to above by preferring Civil Appeal bearing No. 850 of 1987 in the Court of the District Judge, Pune. The appeal filed by the appellants herein came to be dismissed vide the judgment and order dated 29.08.1992 passed by the 8th Additional District Judge, Pune.

8. The judgment and order passed by the first appellate court dismissing the appeal referred to above came to be challenged by the appellants herein by filing the Petition No. 2307 of 1993 before the High Court of Bombay invoking its supervisory jurisdiction under Article 227 of the Constitution of India.

9. On 10.10.2006, the Petition No. 2307 of 1993 referred to above came to be dismissed for non-prosecution. The order reads thus:

"Coram : D.G. Deshpande – J.) on 10.10.06

AND UPON hearing Shri. D.S. Mhaispurkar for Respondent Nos. 1A to 1C and 2 this Court has passed the following order:-

"None for the Petitioners. Mr. D.S. Mhaispurkar for the Respondents 1A to C and 2.

Petition is dismissed. Rule discharged. Interim order is vacated.

IT IS ACCORDINGLY ordered that this writ petition is disposed of as per the accompanying court's order. The directions given in the court's order hereinabove shall be carried out and complied with scrupulously.

It is accordingly ordered that this order be punctually observed and carried into execution by concerned."

10. On 26.11.2013 the respondent herein filed Execution Petition bearing No. 16 of 2014. The appellants herein were served with the notice in the execution proceedings on 18.03.2016 by the Executing Court.

11. On 20.08.2018, the appellants herein filed an application seeking to set aside the order passed by the Executing Court. On 30.10.2018 the Executing Court set aside the said order referred to above.

12. On 12.04.2019, the appellants herein filed Civil Application No. 1294 of 2019 seeking restoration of the Petition No. 2307 of 1993 referred to above and for condonation of delay of 12 years and 158 days in preferring such restoration application.

13. On 09.07.2019, a learned single Judge of the High Court vide the impugned order declined to condone the delay of 12 years and 158 days in filing the restoration application.

14. In view of the aforesaid, the appellants are here before this Court with the present appeal.

Submissions on behalf of the appellants

15. Mr. R. Venkataramani, the learned Attorney General for India appearing for the appellants vehemently submitted that he has a very good case on merits and considering the merits alone, the delay of 12 years and 158 days deserves to be condoned. The learned Attorney General laid much emphasis on the fact that the suit property is situated within the Pune cantonment which is under the ownership of the Union of India and the same was held by the respondent herein on old grant lease and in such circumstances, according to the learned Attorney General, the respondent in his capacity as a private party should not be permitted to deprive the Government of its land after having admitted that the super structure alone belongs to him and that the land belongs to the Government.

16. On the aspect of delay of 12 years and 158 days in filing the restoration application before the High Court, the learned Attorney General has no explanation worth to offer.

Submissions on behalf of the respondent

17. Mr. Sudhanshu Chaudhari, the learned senior counsel appearing for the respondent, on the other hand, vehemently opposed the present appeal and submitted that no error not to speak of any error of law

could be said to have been committed by the High Court in passing the impugned order.

18. He submitted that no sufficient case worth the name has been assigned by the appellants for the purpose of getting such a long and inordinate delay of more than 12 years condoned for filing the restoration application.

19. In such circumstances referred to above, the learned counsel prayed that there being no merit worth the name in the present appeal, the same may be dismissed.

Analysis

20. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned order?

21. When this matter was heard for the first time by this Bench, we brought to the notice of the learned Attorney General something very relevant as observed by the High Court in para 18 of its impugned order. Para 18 of the impugned order reads thus:

> *"18. During the course of hearing, I suggested Mr. Singh that in case the defendants are ready and willing to handover possession of the suit property to the respondents, the Court will consider restoring the Petition to its original position. The respondents in turn will give undertaking to the effect that in case the defendants succeed in the Petition, before approaching the Apex Court, they will handover possession of the suit property to the defendants. Upon taking instructions, Mr. Singh submitted that defendants are not ready and willing to handover possession of the suit property. In view of the aforesaid discussion, no case is made out for condoning the delay."*

22. Thus, it appears that the High Court made a reasonable suggestion to the appellants that if the possession of the suit property is handed over to the respondent, then probably the Court may consider restoring the Petition No. 2307 of 1993 which came to be dismissed for default on 10.10.2006. The High Court noted as above that the learned counsel appearing for the appellants declined to hand over the possession of the suit property to the respondent herein. We

reiterated the very same suggestion before the learned Attorney General that if the appellants are ready and willing to hand over the suit property to the respondent, then, despite there being a long and inordinate delay, we may consider condoning the same and remanding the matter back to the High Court so that the High Court may be in a position to hear the matter on its own merits. However, the learned Attorney General, after taking instructions from his clients, regretted his inability to persuade the appellants to hand over the possession of the suit property to the respondent.

23. In such circumstances referred to above, we were left with no other option but to call upon the learned Attorney General to make submissions as to why we should look into only the merits of the matter and condone the delay of 12 years and 158 days.

24. In the aforesaid circumstances, we made it very clear that we are not going to look into the merits of the matter as long as we are not convinced that sufficient cause has been made out for condonation of such a long and inordinate delay.

25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned. This litigation between the parties started sometime in 1981. We are in 2024. Almost 43 years have elapsed. However, till date the respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the respondent to undergo the rigmarole of the legal proceedings.

26. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the

substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the *bona fides* of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

27. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the 'Sword of Damocles' hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants.

28. At this stage, we would like to quote few observations made by the High Court in its impugned order pointing towards lack of *bona fides* on the part of the appellants. The observations are as under:-

> *"9. A perusal of paragraph 4 extracted hereinabove shows that on oath, solemn statement is made that notice of Darkhast No.16 of 2014 for execution of the decree issued by the executing Court was received by the Department on 25.02.2019. As against this, in paragraph 3 of the additional affidavit dated 04.07.2019 made by Rajendra Rajaram Pawar, it is stated that the averments made in paragraph 4 as regards service of Darkhast on 25.02.2019 is factually incorrect. Notice of Darkhast No. 16 of 2014 was received by the defendants on 18.03.2016. The error in the application is out of inadvertence for which he tendered unconditional apology. It is further stated that inadvertent mistake on facts as to knowledge of execution proceedings was purely because of oversight in the light of possibilities of issuance of possession warrant by the executing court and requirement of expeditious urgency of moving before this Court to save the proceeding in litigation since 1981 which otherwise would have got frustrated. He stated that the same is nothing beyond human error.*
>
> *x x x x*

12. The assertions made in paragraph 4 are bereft of any particulars and are totally vague. In fact the solemn statement made in paragraph 4 that notice of Darkhast for execution of the decree issued by the executing Court was received by the Department on 25.02.2019, to put it mildly, is incorrect statement. In view of paragraph 3 of the additional affidavit dated 04.07.2019 made by Rajendra Rajaram Pawar, it is evident that notice of Darkhast was received by the defendants on 18.03.2016. It is material to note that no particulars are given as to when the Department sought legal opinion. There is also no explanation as to why Department did not instruct lawyer in the High Court to apply for restoration of the Petition and why the Department defended execution proceedings. It is worthwhile to note that execution proceedings were filed by the respondents only because Writ Petition was dismissed. If the Writ Petition was restored, automatically the execution proceedings would have been stayed by the executing Court. Instead of adopting appropriate proceedings, the defendants unnecessarily went on defending the execution proceedings. In paragraph 4(b) though it is stated that Department was regularly following up with its panel lawyer till 2003, this statement is also not substantiated by producing any document. Even if I accept that the Department was regularly following up with its panel lawyer till 2003, there is no explanation worth the name as to why the Department did not follow up the matter between 2003 and 2006 when the Petition was dismissed in default. That apart, equally, there is no explanation as to why no follow up action was taken by the officers between 2006 and 2016 when Department acquired knowledge about dismissal of Writ Petition on 18.03.2016.

13. It is no doubt true that while considering the application for condonation of delay, the expression 'sufficient cause' has to be liberally construed. It, however, does not mean that without making any sufficient cause, the Court will condone the delay regardless of the length of the delay. In the present case, the delay is of 12 years and 158 days.

A perusal of the application as also the additional affidavit hardly indicates any sufficient cause for condoning the unpardonable delay of 12 years and 158 days."

29. In ***Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation***, (2010) 5 SCC 459, this Court rejected the application for condonation of delay of 4 years in filing an application to set aside an *exparte* decree on the ground that the explanation offered for condonation of delay is found to be not satisfied.

30. In ***Postmaster General and others v. Living Media India Limited***, (2012) 3 SCC 563, this Court, while dismissing the application for condonation of delay of 427 days in filing the Special Leave Petition, held that condonation of delay is not an exception and it should not be used as an anticipated benefit for the government departments. In that case, this Court held that unless the Department has reasonable and acceptable reason for the delay and there was *bona fide* effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process cannot be accepted. In Para Nos. 25, 26, 27, 28, and 29 respectively, this Court dealt with the scope of 'sufficient cause' and held as follows:

"25. We have already extracted the reasons as mentioned in the "better affidavit" sworn by Mr. Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in Office of the Chief Postmaster v. Living Media India Ltd. [(2009) 8 AD 201 (Del)] as 11-9-2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 8-1-2010 and the same was received by the Department on the very same day. There is no explanation for not applying for the certified copy of the impugned judgment on 11-9-2009 or at least within a reasonable time. The fact remains that the certified copy was applied for only on 8-1-2010 i.e. after a period of nearly four months.

26. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person-in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

31. In the case of ***Lanka Venkateswarlu (D) by LRs v. State of Andhra Pradesh & others***, (2011) 4 SCC 363, this Court made the following observations:

"20. In N. Balakrishnan, [(1998) 7 SCC 123] this Court again reiterated the principle that: (SCC p. 127, para 11)

> *"11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that [the] parties do not resort to dilatory tactics, but seek their remedy promptly."*

21 to 27.....

28. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" cannot be employed to jettison the substantial law of limitation. Especially, in cases where the court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms.

29. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers."

32. In the case of ***Pundlik Jalam Patil (D) by LRs. v. Executive Engineer, Jalgaon Medium Project & others***, (2008) 17 SCC 448, this Court held as follows:

"19. In Ajit Singh Thakur Singh v. State of Gujarat [(1981) 1 SCC 495 : 1981 SCC (Cri) 184] this Court observed: (SCC p. 497, para 6)

> *"6. … it is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute sufficient cause."*
>
> *(emphasis supplied)*

This judgment squarely applies to the facts in hand.

x x x x

21. Shri Mohta, learned Senior Counsel relying on the decision of this Court in N. Balakrishnan v. M. Krishnamurthy [(1998) 7 SCC 123] submitted that length of delay is no matter and acceptability of explanation is the only criterion. It was submitted that if the explanation offered does not smack of mala fides or it is not put

forth as a part of dilatory tactics, the court must show utmost consideration to the suitor. The very said decision upon which reliance has been placed holds that the law of limitation fixes a lifespan for every legal remedy for the redress of the legal injury suffered. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. The decision does not lay down that a lethargic litigant can leisurely choose his own time in preferring appeal or application as the case may be. On the other hand, in the said judgment it is said that court should not forget the opposite party altogether. It was observed: (SCC p. 128, para 11)

> *"11. … It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."*

22. In Ramlal v. Rewa Coalfields Ltd. [AIR 1962 SC 361] this Court held that: (AIR pp. 363-65)

> *"In construing Section 5 of the Limitation Act, it is relevant to bear in mind two important considerations. The first consideration is that the expiration of period of limitation prescribed for making an appeal gives rise to right in favour of the decree-holder to treat the decree as binding between the parties and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause of excusing delay is shown discretion is given to the court to condone the delay and admit the appeal. It is further necessary to*

emphasise that even if the sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage the diligence of the party or its bona fides may fall for consideration."

(emphasis supplied)

23. On the facts and in the circumstances, we are of the opinion that the respondent beneficiary was not diligent in availing the remedy of appeal. The averments made in the application seeking condonation of delay in filing appeals do not show any acceptable cause much less sufficient cause to exercise courts' discretion in its favour."

33. In the case of ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Others***, (2013) 12 SCC 649, this Court made the following observations:

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective

reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."

34. In view of the aforesaid, we have reached to the conclusion that the High Court committed no error much less any error of law in passing the impugned order. Even otherwise, the High Court was exercising its supervisory jurisdiction under Article 227 of the Constitution of India.

35. In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. The appellants have failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.

36. For all the foregoing reasons, this appeal fails and is hereby dismissed. There shall be no order as to costs.

37. Pending application, if any, shall also stand disposed of accordingly.

Headnotes prepared by: Divya Pandey

Result of the case:
Appeal dismissed.

[2024] 4 S.C.R. 94 : 2024 INSC 271

Chandan
v.
The State (Delhi Admn.)

(Criminal Appeal No.788 of 2012)

05 April 2024

[Sudhanshu Dhulia* and Prasanna B. Varale, JJ.]

Issue for Consideration

Matter pertains to effect of lack or absence of motive, when there is testimony of a reliable eye-witness.

Headnotes

Penal Code, 1860 – s. 302 – Murder – Prosecution case that accused stabbed the victim multiple times with the knife he was carrying, resulting in the death of the victim – Victim's sister-in-law witnessed the incident from a short distance – Conviction and sentence u/s. 302 by the courts below – Interference with:

Held: Not called for – Blood of the deceased clearly matched with the blood found on the knife recovered from the accused, together with the ocular evidence of a reliable eye-witness of the incident – Murder, the arrest of the accused and the recovery of the knife from him happened in quick succession, with a very little time gap – Entire evidence put together by the prosecution establishes the guilt of the accused beyond a reasonable doubt – Submission that the prosecution not been able to establish any motive on the accused for committing this dastardly act is true, but since in the instant case there is nothing to discredit the eye-witness, the motive itself is of little relevance – Lack or absence of motive is inconsequential when direct evidence establishes the crime. [Paras 4-6]

Case Law Cited

Shivaji Genu Mohite v. State of Maharashtra **AIR (1973) SC 55;** *Bikau Pandey v. State of Bihar* [2003] Supp. 6 SCR 201 **: (2003) 12 SCC 616;** *Rajagopal v. Muthupandi* [2017] 2 SCR 84 **: (2017) 11 SCC 120;** *Yogesh Singh v. Mahabeer Singh* [2016] 7 SCR 713 **: (2017) 11 SCC 195 – referred to.**

* Author

List of Acts

Penal Code, 1860.

List of Keywords

Lack of or absence of motive; Testimony of a reliable eye-witness; Murder; Ocular evidence; Recovery of knife.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.788 of 2012

From the Judgment and Order dated 02.07.2010 of the High Court of Delhi at New Delhi in CRLA No. 130 of 1997

Appearances for Parties

Ms. Richa Kapoor, Deepak Singh, Advs. for the Appellant.

Mrs. Aishwariya Bhati, A.S.G., Mukesh Kumar Maroria, Mrs. Shivika Mehra, Mrs. Rajeshwari Shankar, Alankar Gupta, Akshaja Singh, Advs. for the Respondent

Judgment / Order of the Supreme Court

Judgment

Sudhanshu Dhulia, J.

1. The appellant before this Court was convicted under Section 302 of IPC. The conviction and sentence have been upheld by the High Court in appeal. As per the prosecution it is a case of a daylight murder with a reliable eye-witness.

2. Brief facts of the case are that on 28.05.1993 at about 8:15 pm while PW-2, who was sister-in-law of the deceased was returning from Ram Bazar, the deceased and the accused were walking a few steps ahead of her. After a few minutes she saw the two, i.e. the deceased Rakesh and Chandan, grappling with each other and then she saw the accused stabbing the deceased multiple times with the knife he was carrying. The deceased fell on the ground and the accused/appellant fled away. The deceased, Rakesh, was first taken to the adjacent clinic which was a private clinic of Dr. Kalra in the vicinity, where they were advised to take him to Hindu Rao hospital which was the nearest hospital where an emergency treatment could

be given to the deceased. By the time the deceased reached the hospital he was declared dead. Post-mortem was conducted on the deceased the next day i.e. on 29.05.1993, and the following ante-mortem injuries were detected:

> *"1. An incised stab wound 22 cm x 2 cm x? places vertically on the left claricular area. (cellar bone region).*
>
> *2. An incised wound 2 cm x 1 cm x? vertically present just below an moidal to the left nipple.*
>
> *3. An incised wound 3 cm. x 1.5 cm x? transversally places on the middle on left arm over anterolateral surface. The medial end was actually cut.*
>
> *4. An incised wound 1.5 cm. x. 0.8 cm. x? transversally placed on the back of let arm upper part. The posterior end of the injury was actually cut.*
>
> *Injury No. 3 and 4 were found to be communicating with each other.*
>
> *5. An incised wound 2.5 cm x 1.5 x? vertically placed on the left lateral chest wall on the seventhribs, lower and was acute.*
>
> *6. An incised wound 20. cm. x · 1.5 cm. x? sprindle shape on the top of let shoulder*
>
> *7. An incised wound 2 cm. x 0.5 cm. x muscle deep on the left scapular area.*
>
> *8. An incised wound 2 cm. x 1 cm. x? placed vertically on the left renal angle."*

It was further observed:

> *"Injury no. 1 on the chest was only muscle deep. So was injury No. 2 Injury No. 5 had entered left chest cavity through 7th intercostals space and was directed upwards and medially where it involved pericardium and tip of the left ventricle of the hear…*
>
> *Injury no. 5 was sufficient the ordinarly course of nature to cause death. Death was due to shock and haemorrhage consequent to injuries…*

In my opinion, injuries found on the body of deceased Rakesh were possible with this weapon. I had also made sketch of the said weapon along with P.M. report which is Ex.PW9/A which is signed me and is correct.

The weapon knife Ex.PI is taken out. The weapon Ex. PI shown to me in the court is the name with was produced before me police in sealed parcel at the time P.M. and the injury could be caused with Ex.PI."

An FIR was registered on the date of incident itself i.e., 28.05.1993, at Police Station, Kashmere Gate, Delhi on the statement of PW-2, the complainant, where she narrated the incident as already stated above. The police after investigation filed the chargesheet against the sole accused, Chandan, under Section 302 IPC. After committal of the case to the Sessions, 18 witnesses were examined by the prosecution. The star witness of the prosecution was PW-2, who was the eye-witness. She was put to a lengthy cross-examination by the defence but nothing has come out which may discredit this witness. This witness in her testimony narrates the entire sequence of events as to how the accused stabbed the deceased to death and how she watched from a short distance the act being committed before her, and how all this happened in quick time.

3. The accused, it must be stated here, was caught the same day in the vicinity itself along with the knife, which was the weapon, used in the commission of the crime. The forensic report and other evidences show that this was the knife which was recovered from the possession of the sole accused and was used in the commission of the crime. The blood of the deceased was found to be matching with the blood found on the knife, which was recovered from the accused/appellant. Brahm Pal Singh (PW-12) Head Constable is a witness to this recovery. He states that upon receiving information of stabbing, he along with constable Mahabir found the accused at Hamilton Road. They saw the accused coming out from the side of 'ganda Nala', carrying a blood stained knife and wearing a blood stained shirt. The accused was then apprehended by constable Brahm Pal and the knife and shirt were accordingly recovered.

4. There were certain doubts raised on the manner of recovery of the knife from the accused, but nothing moves on this aspect alone, more particularly, in view of the fact that the blood of the deceased clearly

matches with the blood which was found on the knife, together with the ocular evidence in the form of an eyewitness (PW-2), who is a reliable eye-witness of the incident. We can also not lose sight of the fact that the murder, the arrest of the accused and the recovery of the knife from him happened in quick succession, with a very little time gap. The entire evidence put together by the prosecution does establish the guilt of the accused beyond a reasonable doubt. Both the Trial Court as well as the Appellate Court have rightly held that the prosecution has proved their case as such.

5. The argument of the defence that the prosecution has not been able to establish any motive on the accused for committing this dastardly act is in fact true, but since this is a case of eye-witness where there is nothing to discredit the eye-witness, the motive itself is of little relevance. It would be necessary to mention some of the leading cases on this aspect which are as under:

In ***Shivaji Genu Mohite*** *v.* ***State of Maharashtra*****, AIR 1973 SC 55**, it was held that it is a well-settled principle in criminal jurisprudence that when ocular testimony inspires the confidence of the court, the prosecution is not required to establish motive. Mere absence of motive would not impinge on the testimony of a reliable eye-witness. Motive is an important factor for consideration in a case of circumstantial evidence. But when there is direct eye witness, motive is not significant. This is what was held:

> *"In case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eye-witness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eye-witnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eye-witness is rendered untrustworthy"*

The principle that the lack or absence of motive is inconsequential when direct evidence establishes the crime has been reiterated by

this Court in ***Bikau Pandey v. State of Bihar*****, (2003) 12 SCC 616**; ***Rajagopal v. Muthupandi***, **(2017) 11 SCC 120**; ***Yogesh Singh v. Mahabeer Singh***, **(2017) 11 SCC 195**.

6. In view of above, we see no reason to interfere with the orders of the Trial Court and that of the High Court, accordingly the appeal is dismissed. Interim order dated 09.05.2012 granting bail to the appellant stands vacated. Appellant, who is presently on bail, is directed to surrender before the Trial Court within a period of four weeks from today. A copy of this judgment shall be sent to the Trial Court to ensure that the appellant undergoes the remaining part of his sentence.

Headnotes prepared by: Nidhi Jain

Result of the case: Appeal dismissed.

[2024] 4 S.C.R. 100 : 2024 INSC 265

M/S Bharti Airtel Limited
v.
A.S. Raghavendra

(Civil Appeal No.5187 of 2023)

02 April 2024

[Hima Kohli and Ahsanuddin Amanullah,* JJ.]

Issue for Consideration

Whether the respondent would or would not come within the definitional stipulation of a "workman" as laid out under Section 2(s), Industrial Disputes Act, 1947.

Headnotes

Industrial Disputes Act, 1947 – s.2(s) – "workman" – When not – Respondent appointed in the appellant-Company as Regional Business Head (South) in the grade of Senior Manager (B2)-Sales performed managerial and supervisory work, if a "workman":

Held: No – Respondent himself described his position as a Member of the senior management cadre, in-charge of supervising the Account Managers in the four Southern States – He performed a supervisory role over the managers and was the Assessing Manager of his team, which consisted of Managers in the B-1 & B-2 Levels – Respondent had perks such as Special Allowance, Car Hiring Charges, Petrol and Maintenance, Driver's Salary etc. – Labour Court vide a detailed order and discussion held the respondent not to be covered under "workman" as per s.2(s) – However, the Single Judge did not appreciate the discussion by the Labour Court and the available evidence in their true perspective, relying mainly upon the judgment in Ved Prakash Gupta v. Delton Cable India (P.) Ltd. [1984] 3 SCR 169 – Absence of power to appoint, dismiss or conduct disciplinary enquiries against other employees was not the only reason for the Court to conclude in Ved Prakash Gupta that the appellant therein was a "workman" – Mere absence of power to appoint, dismiss or hold disciplinary inquiries against other employees, would not and could not be the sole criterion to determine such an issue – Nature of duties performed by the respondent do not place him under the cover of s.2(s) – Impugned judgment passed by Division Bench of the High Court as well

* Author

as the judgment of the Single Judge holding respondent to be a "workman", set aside – Judgment of the Labour Court holding that respondent was performing the role of a Manager and thus was not a "workman" within the meaning of s.2(s), restored – Respondent not a "workman" and thus, reference to the Labour Court under the ID Act against the appellant would not be maintainable. [Paras 5, 21, 22-25 and 29]

Constitution of India – Articles 226, 227 – Re-appraisal of facts – Respondent working as Regional Business Head (South)- Government Enterprise Services in the grade of Senior Manager (B2)-Sales resigned from the appellant-Company however, later filed petition before the Deputy Labour Commissioner alleging that his resignation was forceful – Dispute referred to the Labour Court by appropriate Government – Labour Court rejected the reference holding that respondent was performing the role of a Manager and thus was not a "workman" within the meaning of s.2(s), ID Act – Writ Petition filed by respondent challenging the said award – Award set aside by Single Judge – Appellant filed appeal, dismissed by Division Bench – Appellant contended that the approach of the Single Judge of re-appreciating the entire evidence and coming to a fresh conclusion was not proper while exercising jurisdiction u/Articles 226 and 227:

Held: As regards the power of the High Court to re-appraise the facts, it cannot be said that the same is completely impermissible u/Articles 226 and 227 – However, there must be a level of infirmity greater than ordinary in a Tribunal's order, which is facing judicial scrutiny before the High Court, to justify interference – Such a situation did not prevail in the present facts. [Para 26]

Case Law Cited

Devinder Singh v. Municipal Council, Sanaur [2011] 4 SCR 867 **: (2011) 6 SCC 584;** *Suo-Motu Contempt Petition (Civil) No.3 of 2021* **(2022) SCC OnLine SC 858;** *Shankarbhai Nathalal Prajapati v. Maize Products* **(2002) SCC OnLine Guj 143;** *Suzuki Parasrampuria Suitings Private Limited v. Official Liquidator of Mahendra Petrochemicals Limited (in Liquidation)* [2018] 12 SCR 906 **: (2018) 10 SCC 707;** *Muthu Karuppan, Commissioner of Police, Chennai v. Parithi Ilamvazhuthi* [2011] 5 SCR 329 **: (2011) 5 SCC 496;**

K D Sharma v. Steel Authority of India Limited [2008] 10 SCR 454 **: (2008) 12 SCC 481;** *Tularam Manikrao Hadge v. Sudarshan Paper Converting Works, Nagpur* **2020 SCC OnLine Bom 965;** *Bombay Mothers and Children's Society v. General Labour Union (Red Flag)* **1991 SCC OnLine Bom 88;** *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED.)* [2013] 9 SCR 1 **: (2013) 10 SCC 324;** *Ishwarlal Mali Rathod v Gopal* **(2021) SCC OnLine SC 921;** *Anvar P V v. P K Basheer* [2014] 11 SCR 399 **: (2014) 10 SCC 473;** *Sri Shivadarshan Balse v. The State of Karnataka, rep. by its Secretary, Revenue Department* **(2017) SCC OnLine Kar 2317;** *Atlas Cycle (Haryana) Limited v. Kitab Singh* [2013] 1 SCR 611 **: (2013) 12 SCC 573;** *National Kamgar Union v. Kran Rader Private Limited* [2018] 1 SCR 74 **: (2018) 1 SCC 784;** *Ananda Bazar Patrika (P) Ltd. v. The Workmen* **(1970) 3 SCC 248;** *Arkal Govind Raj Rao v. Ciba Geigy of India Ltd. Bombay* [1985] Suppl. 1 SCR 282 **: (1985) 3 SCC 371 – held inapplicable.**

Ved Prakash Gupta v. Delton Cable India (P.) Ltd. **(1984) 2 SCC 569 :** [1984] 3 SCR 169**;** *Indian Overseas Bank v. IOB Staff Canteen Workers Union* [2000] 2 SCR 1212 **: (2000) 4 SCC 245;** *Anoop Sharma v. Public Health Division, Haryana* **(2010) 5 SCC 497;** *Pepsico India Holding (P) Ltd. v. Krishna Kant Pandey* [2015] 1 SCR 288 **: (2015) 4 SCC 270;** *Heavy Engineering Corporation v. Presiding Officer, Labour Court* [1996] Suppl. 8 SCR 92 **: (1996) 11 SCC 236;** *Muir Mills Unit of NTC Ltd. v. Swayam Prakash Srivastava* [2006] Suppl. 9 SCR 1028 **: (2007) 1 SCC 491;** *C Gupta v. Glaxo Smithkline Ltd.* [2007] 7 SCR 800 **: (2007) 7 SCC 171;** *E.S.I. Corporation's Medical Officers' Association v. ESI Corporation* [2013] 12 SCR 907 **: (2014) 16 SCC 182;** *Sonepat Cooperative Sugar Mills v. Ajit Singh* [2005] 2 SCR 105 **: (2005) 3 SCC 232;** *H R Adyanthaya v. Sandoz (India) Ltd.* **[1994] 3 SCALE 816 : (1994) 5 SCC 737;** *Management of M/s May and Baker (India) Ltd. v. Workmen* **AIR (1967) SC 678;** *Chauharya Tripathi v. Life Insurance Corporation of India* [2015] 4 SCR 186 **: (2015) 7 SCC 263;** *S K Maini v. M/s Carona Sahu Company Limited* [1994] 2 SCR 333 **: (1994) 3 SCC 510 – referred to.**

List of Acts

Industrial Disputes Act, 1947; Constitution of India.

List of Keywords

Workman; Reference to Labour Court; Managerial and supervisory work; Supervisory role; Managerial capacity; Nature of duties; Re-appraisal of facts.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5187 of 2023

From the Judgment and Order dated 31.03.2022 of the High Court of Karnataka at Bengaluru in WA No. 4067 of 2019

Appearances for Parties

C U Singh, Sr. Adv., Vatsalya Vigya, Advs. for the Appellant.

Respondent-in-person.

Judgment / Order of the Supreme Court

Judgment

Ahsanuddin Amanullah, J.

1. Heard learned counsel for the appellant and the respondent-in-person.

2. The present appeal arises out of the final judgment and order dated 31.03.2022 (hereinafter referred to as the "impugned judgment"), passed by a learned Division Bench of the High Court of Karnataka at Bengaluru (hereinafter referred to as the "High Court") in Writ Appeal No.4067 of 2019 (L-TER) arising from Writ Petition No.13842 of 2018 (L-TER) by which the High Court dismissed the appeal filed by the appellant (hereinafter also referred to as the "Company"), which was occasioned on account of the learned Single Judge partly allowing the respondent's writ petition.

THE FACTUAL COMPASS:

3. The respondent, upon being interviewed by the appellant's concerned officials was appointed as the Regional Business Head (South) – Government Enterprise Services on 22.06.2009, in the grade of Senior Manager (B2)-Sales. The same carried an annual benefits package of Rs.22,00,000/- (Rupees Twenty-Two lakhs) with fixed pay

of Rs.13,20,000/- (Rupees Thirteen Lakhs Twenty Thousand) and variable pay under the Sales Incentive Plan (hereinafter referred to as "SIP") of Rs.8,80,000/- (Rupees Eight Lakhs and Eighty Thousand). The respondent worked as Team Leader and Regional Business Head (South) - Government Enterprise Services, heading a team comprising four Account Managers (Sales), one each for the States of Karnataka, Tamil Nadu, Andhra Pradesh and Kerala, respectively. The said Managers were working under the supervision and control of the respondent and were in the B1 and B2 salary levels. On 24.03.2011, the respondent made an initial resignation request on the internal system, which was accepted by the appellant on 09.05.2011. In terms thereof, the respondent was paid Rs.5,92,538/- (Rupees Five Lakhs Ninety-Two Thousand Five Hundred and Thirty-Eight) by the appellant in full and final settlement of all his claims.

4. After about 19 months, the respondent filed a petition before the Deputy Labour Commissioner, Region-2, Bengaluru, alleging his resignation to be a forceful resignation, which resulted in initiation of conciliation proceedings but ended in failure. However, on 27.06.2013, brushing aside the appellant's objections that the Industrial Disputes Act, 1947 (hereinafter referred to as the "ID Act") was not applicable in the case of the respondent as he performed managerial and supervisory work at an annual package totalling Rs.22,00,000/- (Rupees Twenty-Two Lakhs) and thus, was not a "workman", within the meaning of Section 2(s)[1], ID Act, the "*appropriate Government*"[2]

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1 Extracted hereinafter.

2 *'(a) "appropriate Government" means,—*

(i) in relation to any Industrial Disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an Industrial Dispute concerning a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956], or the Employees' State Insurance Corporation established under Section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under Section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under Section 5-A and Section 5-B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956) or the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under Section 3 of

[herein, the Government of Karnataka] referred the dispute to the Labour Court under Section 10(1)(c)[3], ID Act on 27.06.2013. Pleadings were completed and witnesses were examined by both sides.

5. On 05.09.2017, the Labour Court made its Award recording findings of fact and held that the respondent had failed to plead or prove that he was a "*workman*" and that on an assessment of the evidence on record, he was performing the role of a Manager and thus was not a "*workman*" within the meaning of Section 2(s), ID Act, and accordingly rejected the reference. Aggrieved, the respondent filed Writ Petition No.13842 of 2018 (L-TER) before the High Court challenging the Labour Court's Award and the learned Single Judge by judgment and order dated 29.11.2019, partly allowed the writ petition, relying upon the judgment of this Court in ***Ved Prakash Gupta v Delton Cable India (P.) Ltd.*****, (1984) 2 SCC 569**. The learned Single Judge held that since there was an absence of power in the respondent, whilst

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the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under Section 3, or a Board of Management established for two or more contiguous States under Section 16 of the Food Corporations Act, 1964 (37 of 1964), or the Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited, or the Banking Service Commission established, under Section 3 of the Banking Service Commission Act, 1975, or an air transport service, or a banking or an insurance company, a mine, an oilfield, a Cantonment Board, or a major port, any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and

(ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government:

Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment.'

3 *'10. Reference of disputes to Boards, Courts or Tribunals.—(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,—*

(a) xxx; or

(b) xxx; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) xxx:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c) :'

in service of the appellant, to appoint, dismiss or hold disciplinary enquiries against other employees, the same indicated that the respondent did not belong to the managerial category and held him to be a "*workman*". The learned Single Judge, thus, set aside the award and remanded the matter to the Labour Court for adjudication on merits within 3 months therefrom. Aggrieved by the learned Single Judge's judgment, the appellant filed Writ Appeal No.4067 of 2019 (L-TER) before the learned Division Bench, which was dismissed *vide* the impugned judgment.

SUBMISSIONS BY THE APPELLANT:

6. Mr C U Singh, learned senior counsel for the appellant submitted that the Labour Court's order covered in detail all the factual and legal aspects based on the evidence produced before it by both sides and needed no interference. It was urged that the learned Single Judge as also the learned Division Bench of the High Court erroneously interfered in the matter. It was submitted that the respondent was a Regional Business Head, whose nature of duties clearly established that he was a senior manager in the managerial cadre, earning an annual package of Rs.22,00,000/- (Rupees Twenty-Two Lakhs) and thus, was not covered by the definition of "*workman*" as per Section 2(s), ID Act. He contended that even the approach adopted by the learned Single Judge of re-appreciating the entire evidence and coming to a fresh conclusion was not proper while exercising jurisdiction under Articles 226 and 227 of the Constitution of India, 1950 (hereinafter referred to as the "Constitution") as it was not a Court of first instance.

7. Mr Singh submitted that even without examining the Award and findings of the Labour Court, the learned Single Judge concluded that the same were perverse. It was advanced that the learned Division Bench, on the assumption that the learned Single Judge had examined the materials on record, concurred with the judgment of the learned Single Judge, ignoring the admitted fact that the respondent had worked in progressively more senior managerial positions before joining the appellant as Senior Manager (Sales) in Band-2 which was equivalent to Deputy General Manager as also that his previous employment was as Regional Manager (South) in Kodak India Private Limited and he had joined the appellant as Head of Sales Operations for four Southern States (Karnataka, Tamil

Nadu, Andhra Pradesh and Kerala) and was also the Team Leader of a managerial team which comprised an Account Manager (Sales) each for the four States. It was canvassed that the respondent was also writing the half-yearly and annual performance assessments and appraisals of the Account Managers referred *supra* as also liaising, negotiating and representing the appellant/Company with senior government officials of the Indian Administrative Service and the General Managers of various Public Sector Undertakings.

8. Further, learned Senior Advocate submitted that the burden of proving that the respondent was a "*workman*" under the ID Act, was not discharged and he had neither pleaded nor proved the nature of duties and functions performed by him. It was his stand that once the respondent tendered his resignation on 24.03.2011, which was accepted and he was relieved from service on 09.05.2011, pursuant whereto he accepted the full and final settlement on 23.06.2011 along with receipt of SIP on 26.08.2011, he had clearly accepted what had transpired. It was advanced that, therefore, after a period of over 1½ years raising an industrial dispute before the Deputy Labour Commissioner and Conciliation Officer, Bengaluru, on the ground that his resignation was obtained under coercion and duress, was not tenable and was rightly rejected by the Labour Court. It was submitted that ironically the documents relied upon by the respondent himself clearly demonstrated that he was a member of the senior management cadre, being in-charge of and supervising the Accounts Managers in the four Southern States as noted hereinbefore, which, by no stretch of imagination can lead to the conclusion that he was a "*workman*". Learned Senior counsel submitted that in the written statement filed by the Company in reply to the Statement of Claim of the respondent, it was specifically pleaded that the respondent was not a "*workman*" and the nature of his duties were described in detail. However, the learned Single Judge grossly erred and misread the documentary and oral evidence while reaching the incorrect conclusion that the respondent was a "*workman*" within the meaning of Section 2(s), ID Act.

9. On the legal aspect, it was contended that the High Court had exceeded its jurisdiction in such matters, as the law was that a writ of *certiorari* under Article 226 of the Constitution can be issued only to correct errors of jurisdiction where a Court or Tribunal acts with material irregularity or in violation of natural justice but not for the

purpose of re-appreciation of evidence or acting as a Court of appeal. For such proposition, reliance was placed on the judgment in ***Syed Yakub v K S Radha Krishnan*, AIR 1964 SC 477**, the relevant being Paragraph 7[4]***.*** Similarly, it was contended that in matters pertaining to industrial law, it has been held that unless the High Court first concludes that the Award or Order of a Labour Court or Industrial Tribunal is based on no evidence or is perverse, the High Court cannot proceed to reappreciate the evidence under Articles 226 or 227 of the Constitution. In this regard, following judgments were relied on - ***Indian Overseas Bank v IOB Staff Canteen Workers Union*, (2000) 4 SCC 245**; ***Anoop Sharma v Public Health Division, Haryana*, (2010) 5 SCC 497**, relevant being Paragraphs 12-14[5], and;

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4 '***7.*** *The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque [(1955) 1 SCR 1104] Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam [(1958) SCR 1240] and Kaushalya Devi v. Bachittar Singh [AIR 1960 SC 1168].*'

5 '***12.*** *A reading of the impugned order shows that the Division Bench of the High Court set aside the award of the Labour Court without even adverting to the fact that challenge to similar award passed in the cases of other employees was negatived by the High Court and this Court. We have no doubt that if the Division Bench had taken the trouble of ascertaining the status of the disputes raised by other employees, then it would have discovered that the award of reinstatement of similarly situated employees has been upheld by the High Court and this Court and in that event, it may not have passed the impugned order. That apart, we find that even though the Division Bench did not come to the conclusion that the finding recorded by the Labour Court on the issue of non-compliance with Section 25-F of the Act is vitiated by an error of law apparent on the face of the record, it allowed the writ petition by assuming that the appellant's initial engagement/employment was not legal and the respondent had complied with the conditions of a valid retrenchment.*

13. *In our view, the approach adopted by the Division Bench is contrary to the judicially recognised limitations of the High Court's power to issue writ of certiorari under Article 226 of the Constitution—Syed*

***Pepsico India Holding (P) Ltd. v Krishna Kant Pandey*, (2015) 4 SCC 270**.

10. Further, it was submitted that unless a person proves that he is employed to perform any manual, unskilled, skilled, technical, operational, clerical, or supervisory work, such person does not fall within the definition of "*workman*" under Section 2(s), ID Act and that it has been held that a teacher, an advertising manager, a chemist employed in a sugar mill, gate sergeant in a tannery, and a welfare officer in an educational institution are not "*workman*", and that a legal assistant, whose job is not stereotyped and involves creativity can never be a "*workman*". It was submitted that the High Court has, thus, clearly fallen in error in not appreciating the ratios of judgments of this Court in ***Heavy Engineering Corporation v Presiding Officer, Labour Court*, (1996) 11 SCC 236**; ***Muir Mills***

Yakoobv. K.S. Radhakrishnan [AIR 1964 SC 477 : (1964) 5 SCR 64] , Municipal Board, Saharanpur v. Imperial Tobacco of India Ltd. [(1999) 1 SCC 566] , Lakshmi Precision Screws Ltd. v. Ram Bahagat [(2002) 6 SCC 552 : 2002 SCC (L&S) 926] , Mohd. Shahnawaz Akhtar v. ADJ, Varanasi [(2010) 5 SCC 510 : JT (2002) 8 SC 69] , Mukand Ltd. v. Staff and Officers' Assn. [(2004) 10 SCC 460 : 2004 SCC (L&S) 798] , Dharamraj v. Chhitan [(2006) 12 SCC 349 : (2006) 11 Scale 292] and CIT v. Saurashtra Kutch Stock Exchange Ltd. [(2008) 14 SCC 171 : (2008) 12 Scale 582]

***14.** In Syed Yakoob v. K.S. Radhakrishnan [AIR 1964 SC 477: (1964) 5 SCR 64] the Constitution Bench of this Court considered the scope of the High Court's jurisdiction to issue a writ of certiorari in cases involving challenge to the orders passed by the authorities entrusted with quasi-judicial functions under the Motor Vehicles Act, 1939. Speaking for the majority of the Constitution Bench, Gajendragadkar, J. observed as under: (AIR pp. 479-80, para 7)*

> *"7. … A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised."*

Unit of NTC Ltd. v Swayam Prakash Srivastava*, (2007) 1 SCC 491**; ***C Gupta v Glaxo Smithkline Ltd.*, (2007) 7 SCC 171**; ***E.S.I. Corporation's Medical Officers' Association v ESI Corporation*, (2014) 16 SCC 182**; ***Sonepat Cooperative Sugar Mills v Ajit Singh*, (2005) 3 SCC 232**; ***H R Adyanthaya v Sandoz (India) Ltd.*, (1994) 5 SCC 737**; ***Management of M/s May and Baker (India) Ltd. v Workmen*, AIR 1967 SC 678**, and; ***Pepsico India Holding (*supra*).

11. Even with regard to ***Chauharya Tripathi v Life Insurance Corporation of India*, (2015) 7 SCC 263**, the relevant being Paragraphs 9-16[6],

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6 '**9.** We have quoted in extenso as the Constitution Bench has declared the pronouncement in S.K. Verma case [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] as per incuriam.

10. *At this juncture, it is condign to note the position in Mukesh K. Tripathi [(2004) 8 SCC 387 : 2004 SCC (L&S) 1128] which has been rendered by the three-Judge Bench that has been placed reliance upon by the High Court while deciding the writ petition. In Mukesh K. Tripathi case [(2004) 8 SCC 387 : 2004 SCC (L&S) 1128] , the question arose whether the appellant, who was appointed as Apprentice Development Officer, could be treated as a workman. While dealing with the said question, the three-Judge Bench referred to earlier decisions and the Constitution Bench decision in H.R. Adyanthaya [(1994) 5 SCC 737 : 1994 SCC (L&S) 1283] and opined that : (Mukesh K. Tripathi case [(2004) 8 SCC 387 : 2004 SCC (L&S) 1128] , SCC p. 396, paras 21-23)*

> *"21. Once the ratio of May and Baker [AIR 1967 SC 678] and other decisions following the same had been reiterated despite observations made to the effect that S.K. Verma [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] and other decisions following the same were rendered on the facts of that case, we are of the opinion that this Court had approved the reasonings of May and Baker [AIR 1967 SC 678] and subsequent decisions in preference to S.K. Verma [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] .*
>
> *22. The Constitution Bench further took notice of the subsequent amendment in the definition of 'workman' and held that even the legislature impliedly did not accept the said interpretation of this Court in S.K. Verma [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] and other decisions. 23. It may be true, as has been submitted by Ms Jaising, that S.K. Verma [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] has not been expressly overruled in H.R. Adyanthaya [(1994) 5 SCC 737 : 1994 SCC (L&S) 1283] but once the said decision has been held to have been rendered perincuriam it cannot be said to have laid down a good law. This Court is bound by the decision of the Constitution Bench."*

We respectfully agree with the aforesaid exposition of law. There can be no cavil over the proposition that once a judgment has been declared per incuriam, it does not have the precedential value. After so stating, the three-Judge Bench did not accept the stand of the appellant therein that he was a workman and accordingly declined to interfere.

11. *As has been stated earlier, the decision that was pressed into service in the application filed for review is the judgment in R. Suresh [(2008) 11 SCC 319 : (2008) 2 SCC (L&S) 1083] . In the said case, the question that was posed in the beginning of the judgment reads thus : (SCC p. 321, para 2)*

> *"2. Whether jurisdiction of the Industrial Courts is ousted in regard to an order of dismissal passed by Life Insurance Corporation of India, a corporation constituted and incorporated under the Life Insurance Corporation Act, 1956, is the question involved in this appeal which arises out of a judgment and order dated 3-2-2006 [LIC v. Industrial Tribunal, Writ Appeal No. 3360 of 2001, decided on 3-2-2006 (Ker)] passed by a Division Bench of the Kerala High Court at Ernakulam."*

12. *The facts of R. Suresh case [(2008) 11 SCC 319 : (2008) 2 SCC (L&S) 1083] that were the subject-matter of the lis in the said case were that the respondent was appointed as a Development Officer of LIC and a departmental proceeding was initiated against him and eventually he was found guilty in respect of certain charges and was dismissed from service by the disciplinary authority. As an industrial dispute was raised by him, the appropriate Government referred the dispute for adjudication by the Industrial Tribunal. The Tribunal passed an award on 6-2-1993 and reduced the punishment imposed*

the appellant contends the said decision squarely covers the case, but has not been accepted by the learned Single Judge.

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by the employer. The said order was assailed before the High Court in the writ petition. Before the High Court, the decision in M. Venugopal v. LIC [(1994) 2 SCC 323 : 1994 SCC (L&S) 664 : (1994) 27 ATC 84] was cited. The High Court opined that the said decision was not applicable and placed reliance on the authority in S.K. Verma [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] . Thereafter, the Court referred to the jurisdiction of the Industrial Tribunal in interfering with the quantum of punishment and after referring to various provisions of the Life Insurance Corporation Act, 1956, opined that it is "State" and on that basis ruled thus : (R. Suresh case [(2008) 11 SCC 319 : (2008) 2 SCC (L&S) 1083] , SCC p. 328, paras 35-36)

> *"35. The jurisdiction of the Industrial Court being wide and it having been conferred with the power to interfere with the quantum of punishment, it could go into the nature of charges, so as to arrive at a conclusion as to whether the respondent had misused his position or his acts are in breach of trust conferred upon him by his employer.*
>
> *36. It may be true that quantum of loss may not be of much relevance as has been held in Suresh Pathrella v. Oriental Bank of Commerce [(2006) 10 SCC 572 : (2007) 1 SCC (Cri) 612 : (2007) 1 SCC (L&S) 224] , but there again a question arose as to whether he was in the position of trust or not."*

13. *At this juncture, we are obliged to state that the two-Judge Bench in R. Suresh case [(2008) 11 SCC 319 : (2008) 2 SCC (L&S) 1083] referred to the decision in S.K. Verma [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] and also stated that they were not unmindful of the principle stated in Mukesh K. Tripathi [(2004) 8 SCC 387 : 2004 SCC (L&S) 1128] . Dealing with the decision in Mukesh K. Tripathi [(2004) 8 SCC 387 : 2004 SCC (L&S) 1128] , the Court said that there the question was whether the Apprentice Development Officer would be a "workman" within the meaning of the provisions of Section 2(s) of the Act and observed that it was not dealing with the case that pertains to an apprentice.*

14. *Mr Singh, the learned Senior Counsel appearing for the appellant built the plinth of his argument on the basis of the aforesaid authority with the hope that an enormous structure would come into existence but as we find on a studied and anxious reading of the judgment, we notice that there is no reference to the Constitution Bench decision in H.R. Adyanthaya [(1994) 5 SCC 737 : 1994 SCC (L&S) 1283] and the two-Judge Bench, though has referred to S.K. Verma [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] and Mukesh K. Tripathi [(2004) 8 SCC 387 : 2004 SCC (L&S) 1128] but has not taken note of what the three-Judge Bench has said in Mukesh K. Tripathi [(2004) 8 SCC 387 : 2004 SCC (L&S) 1128] with regard to the precedent and how S.K. Verma case [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] is no more a binding precedent.*

15. *In our considered opinion, the decision in R. Suresh [(2008) 11 SCC 319 : (2008) 2 SCC (L&S) 1083] cannot be regarded as the precedent for the proposition that a Development Officer in LIC is a "workman". In fact, the judgment does not say so but Mr Vasdev, the learned Senior Counsel would submit that inferring such a ratio, cases are being decided by the High Courts and other authorities. Though such an apprehension should not be there, yet to clarify the position, we may quote a few lines from Ambica Quarry Works v. State of Gujarat [(1987) 1 SCC 213 : AIR 1987 SC 1073] : (SCC p. 221, para 18)*

> *"18. … It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. (See Lord Halsbury in Quinn v. Leathem [1901 AC 495 : (1900-03) All ER Rep 1 (HL)] .)"*

In view of the aforesaid, any kind of interference is not permissible but, a pregnant one, it has dealt with the cases of Development Officers of LIC.

16. *As we find, the said judgment R. Suresh [(2008) 11 SCC 319 : (2008) 2 SCC (L&S) 1083] has been rendered in ignorance of the ratio laid down by the Constitution Bench in H.R. Adyanthaya [(1994) 5 SCC 737 : 1994 SCC (L&S) 1283] and also the principle stated by the three-Judge Bench in Mukesh K. Tripathi [(2004) 8 SCC 387 : 2004 SCC (L&S) 1128] that the decision in S.K. Verma [(1983) 4 SCC 214 : 1983 SCC (L&S) 510] is not a precedent, and hence, we are compelled to hold that the pronouncement in R. Suresh [(2008) 11 SCC 319 : (2008) 2 SCC (L&S) 1083] is per incuriam. We say so on the basis of the decisions rendered in A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602 : 1988 SCC (Cri) 372] , Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court [(1990) 3 SCC 682 : 1991 SCC (L&S) 71] , State of U.P. v. Synthetics and Chemicals Ltd. [(1991) 4 SCC 139] and Siddharam Satlingappa Mhetre v. State of Maharashtra [(2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] .'*

12. Learned counsel summed up his arguments by pointing out that the Labour Court had rightly noticed Clause 5.5 of the respondent's Appointment Letter which starts with "*being a managerial cadre employee you will be……*", which should leave no manner of doubt that the respondent cannot come within the definition under Section 2(s), ID Act and his post/position was a pure managerial position.

13. Learned counsel submitted that the learned Single Judge has erroneously relied on ***Ved Prakash Gupta*** (*supra*) to hold that since there was an absence of power to appoint, dismiss or hold disciplinary enquiry against other employees, the same indicated that the respondent did not belong to the managerial capacity as the observation therein was not a water-proof compartment to hold that the respondent was a "*workman*". Mr Singh urged that the impugned judgment deserved to be set aside.

SUBMISSIONS BY THE RESPONDENT-IN-PERSON

14. The respondent, who appeared in person, vehemently opposed the instant appeal. He submitted that the arguments advanced on behalf of the appellant are without any basis. He submitted that before the learned Single Judge and the learned Division Bench of the High Court, he had succeeded in establishing that he was a "*workman*" based on the nature of duties performed by him. Further, he contended that the Labour Court had ignored the fact that there was enough oral and documentary evidence showing the nature of duties performed by him, which was ignored in a hyper-technical manner on the ground that specific pleading that he was a "*workman*" was missing in his Statement of Claim. It was his stand that only because of his designation and salary, it was held that he was not a "*workman*" which was an incorrect approach by the Labour Court. He submitted that the proceedings before the Labour Court do not require strict compliance of Rules of Evidence, Code of Civil Procedure, 1908 and Code of Criminal Procedure, 1973. He canvassed that basically it is the rules of natural justice which have to prevail. It was further argued that in the Statement of Claim, the expression "*workman*" was not expressly used as he had engaged the services of an advocate to draft such claim and was also because of inadvertence and sheer oversight. The respondent urged that the same cannot be held to be against him as he has mentioned in sufficient detail, the duties performed by him and nature thereof, which are neither managerial

nor supervisory but, as per him, purely clerical. He reiterated that the appellant had obtained his resignation under coercion, and he was removed from his services wrongfully/unlawfully and virtually at gunpoint. He submitted that the resignation was not out of his free will as he had pleaded for alternative job/employment with the appellant and had stated the reason for resignation.

15. It was submitted that the appellant is a telecommunications enterprise and offers telecom-related products and services to individuals and entities as also to Government Departments and participates in government tenders. The respondent stated that the appellant has a separate division called "Government Vertical Division/Department" which has to liaison with Government Departments by collecting information and passing it on to the superior officers/management in the Company. The Respondent states that he was working in such vertical division and thus his duties were clerical in nature.

16. Continuing, the respondent stated that he had no decision-making knowledge, and/or qualification, and/or powers and nobody reported to him. The stand taken was that to facilitate its employees for having ease of access to Government Departments, the appellant like many other private organisations, tactfully gave fanciful and impressive designations like "*Regional Business Head*", "*Team Leader*", etc. without any real power or authority. It was submitted that subsequently, the appellant did not issue any further Memo or Letter designating him as "*Regional Business Head*" or "*Team Leader*". He reiterated that he was not writing any appraisals of any employee and was also not an "*Assessing Manager*". The respondent also tried to indicate discrepancies in the stand of the appellant before different fora.

17. The respondent, in support of his contentions above, has placed reliance upon the following pronouncements:

Devinder Singh v Municipal Counicl, Sanaur*, (2011) 6 SCC 584**; **Suo-Motu Contempt Petition (Civil) No.3 of 2021 [2022 SCC OnLine SC 858]**; ***Shankarbhai Nathalal Prajapati v Maize Products*, 2002 SCC OnLine Guj 143**; ***Suzuki Parasrampuria Suitings Private Limited v Official Liquidator of Mahendra Petrochemicals Limited (in Liquidation)*, (2018) 10 SCC 707**; ***Muthu Karuppan, Commissioner of Police, Chennai v Parithi Ilamvazhuthi*, (2011) 5 SCC 496**; ***K D Sharma v Steel Authority of India Limited*, (2008) 12 SCC 481**; ***Tularam Manikrao Hadge v

Sudarshan Paper Converting Works, Nagpur*, 2020 SCC OnLine Bom 965**; ***Bombay Mothers and Children's Society v General Labour Union (Red Flag)*, 1991 SCC OnLine Bom 88; Deepali Gundu Surwase v Kranti Junior Adhyapak Mahavidyalaya (D.ED.)*, (2013) 10 SCC 324**; ***Ishwarlal Mali Rathod v Gopal*, 2021 SCC OnLine SC 921**; ***Anvar P V v P K Basheer*, (2014) 10 SCC 473; *Sri Shivadarshan Balse v The State of Karnataka, rep. by its Secretary, Revenue Department*, 2017 SCC OnLine Kar 2317**; ***Atlas Cycle (Haryana) Limited v Kitab Singh*, (2013) 12 SCC 573**; ***National Kamgar Union v Kran Rader Private Limited*, (2018) 1 SCC 784**; ***Ananda Bazar Patrika (P) Ltd. v The Workmen*, (1970) 3 SCC 248**; *Ved Prakash Gupta* (*supra*), and; ***Arkal Govind Raj Rao v Ciba Geigy of India Ltd. Bombay*, (1985) 3 SCC 371.**

ANALYSIS, REASONING AND CONCLUSION:

18. Having carefully considered the facts and circumstances and submissions of the parties, the Court finds that the Impugned Judgment as also the judgment passed by the learned Single Judge cannot be sustained. The moot issue is whether the respondent would or would not come within the definitional stipulation of a "*workman*" as laid out under Section 2(s), ID Act. The same reads as under:

> "*2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—*
>
> *(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
>
> *(ii) who is employed in the police service or as an officer or other employee of a prison; or*
>
> *(iii) who is employed mainly in a managerial or administrative capacity; or*

> *(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.*"

19. The story begins with induction of the respondent into the appellant-Company on 22.06.2009. Perusal of the Appointment Letter of even date, which has also been taken note of by the Labour Court, reveals at the very beginning that the respondent's appointment was as "Senior Manager(B2) - Sales" in the Company.

20. Clause 5.5 of the Appointment Letter provides as under:

> "*Being a managerial cadre employee you will be responsible for the overall smooth and effective functioning of the department/ establishment/ office/ staff/ employees under you charge and will be directly responsible for the successful and timely completion of any job / work assigned to you or any person working under your control and supervision and/ or within the department/ establishment/ office of which you are for the tire being holding the charge You would adhere to the norms of office discipline. You would also be responsible to ensure proper and effective adherence to the norms of office discipline including working hours, systems and procedures by the staff/ employees working under your supervision and/or In the department/ office/ establishment under your charge*." [sic]

21. Coupled with the above, Annexure 'A' to the Appointment Letter discloses that the respondent had perks such as Special Allowance, Car Hiring Charges, Petrol and Maintenance, Driver's Salary, Professional Body Membership(s) and Credit Card Reimbursement *etcetera*.

22. The fixed pay of the respondent was Rs.13,20,000/- (Rupees Thirteen Lakhs and Twenty Thousand), whereas the SIP was Rs.8,80,000/- (Rupees Eight Lakhs and Eighty Thousand), with the total coming to Rs. 22,00,000/- (Rupees Twenty-Two Lakhs) per annum. In the orders of the Labour Court, the learned Single Judge and the learned Division Bench as also the material placed before us in the present proceedings, it is clear that even prior to joining the appellant-Company, the respondent, had worked in a managerial capacity

in another organisation[7]. The respondent himself described his position as a Member of the senior management cadre, in-charge of supervising the Account Managers in the four Southern States. Even the application made by the respondent seeking employment in the appellant-Company shows that it was for the position of "*Head Sales Operations*". Further, in the said application, relating to professional experience, he disclosed that he was Regional Manager South – Graphic Communication Group in Kodak India Private Limited from June, 2007 till the date of making the application; in Xerox India as "*Corporate Account Relationship Manager*"(2005-2007), "*Manager Graphic Arts*" (2002-2005) and "*Account Manager – Government*" (2000-2002); in Food World Supermarkets Limited as "*Assistant Manager-Operations*" (April, 2000-October, 2000) and in STM & Sterling Resort (I) Limited as "*Assistant Manager Sales*" (July, 1992–March, 2000).

23. The records also show that the respondent, in fact, performed a supervisory role over the managers and was the Assessing Manager of his team, which consisted of Managers in the B-1 & B-2 Levels. Moreover, after adducing the evidence led by both sides, the Labour Court *vide* a detailed order and discussion, has held the respondent not to be covered under "*workman*" as per Section 2(s), ID Act. The learned Single Judge has not appreciated the discussion by the Labour Court and the available evidence in their true perspective, relying mainly upon the judgment in ***Ved Prakash Gupta*** (*supra*). In Paragraph 12 of ***Ved Prakash Gupta*** (*supra*), it was held "…*It must also be remembered that the evidence of both WW1 and MW1 shows that the appellant could never appoint or dismiss any workman or order any enquiry against any workman. In these circumstances we hold that the substantial duty of the appellant was only that of a Security Inspector at the gate of the factory premises and that it was neither managerial nor supervisory in nature in the sense in which those terms are understood in industrial law. In the light of the evidence and the legal position referred to above we are of the opinion that the finding of the Labour Court that the appellant is not a workman within the meaning of Section 2(s) of the Act is perverse and could not be supported.*"

7 Kodak India Private Limited.

24. A bare perusal of the above makes it crystal clear that absence of power to appoint, dismiss or conduct disciplinary enquiries against other employees was not the only reason for the Court to conclude in ***Ved Prakash Gupta*** (*supra*) that the appellant therein was a "*workman*". At this juncture, we may note that although ***Ved Prakash Gupta*** (*supra*) was decided by a 3-Judge Bench, in a later judgment by a 2-Judge Bench of this Court in ***S K Maini v M/s Carona Sahu Company Limited*****, (1994) 3 SCC 510**, it was held that "*…It should be borne in mind that an employee discharging managerial duties and functions may not, as a matter of course, be invested with the power of appointment and discharge of other employees. It is not unlikely that in a big set-up such power is not invested to a local manager but such power is given to some superior officers also in the management cadre at divisional or regional level. …*" The judgment in ***S K Maini*** (*supra*) is innocent of ***Ved Prakash Gupta*** (*supra*), but we do not find any inconsistency in the statement of law laid down in ***S K Maini*** (*supra*), given our reading of ***Ved Prakash Gupta*** (*supra*) as enunciated hereinabove.

25. That being said, in our considered view, mere absence of power to appoint, dismiss or hold disciplinary inquiries against other employees, would not and could not be the sole criterion to determine such an issue. Holding otherwise would lead to incongruous consequences, as the same would, illustratively, mean that, employees in high-ranking positions but without powers to appoint, dismiss or hold disciplinary enquiry would be included under the umbrella of "*workman*" under Section 2(s), ID Act. We cannot be oblivious of the impact of our decisions. In this context, reference to the decision in ***Shivashakti Sugars Limited v Shree Renuka Sugar Limited*****, (2017) 7 SCC 729** is apposite:

> "*43. It has been recognised for quite some time now that law is an interdisciplinary subject where interface between law and other sciences (social sciences as well as natural/ physical sciences) come into play and the impact of other disciplines on Law is to be necessarily kept in mind while taking a decision (of course, within the parameters of legal provisions). Interface between Law and Economics is much more relevant in today's time when the country has ushered into the era of economic liberalisation, which is also termed as "globalisation" of economy. India is on*

the road of economic growth. It has been a developing economy for number of decades and all efforts are made, at all levels, to ensure that it becomes a fully developed economy. Various measures are taken in this behalf by the policy-makers. The judicial wing, while undertaking the task of performing its judicial function, is also required to perform its role in this direction. It calls for an economic analysis of law approach, most commonly referred to as "Law and Economics". In fact, in certain branches of Law there is a direct impact of Economics and economic considerations play predominant role, which are even recognised as legal principles. Monopoly laws (popularly known as "Antitrust Laws" in USA) have been transformed by Economics. The issues arising in competition laws (which has replaced monopoly laws) are decided primarily on economic analysis of various provisions of the Competition Commission Act. Similar approach is to be necessarily adopted while interpreting bankruptcy laws or even matters relating to corporate finance, etc. The impress of Economics is strong while examining various facets of the issues arising under the aforesaid laws. In fact, economic evidence plays a big role even while deciding environmental issues. There is a growing role of Economics in contract, labour, tax, corporate and other laws. Courts are increasingly receptive to economic arguments while deciding these issues. In such an environment it becomes the bounden duty of the Court to have the economic analysis and economic impact of its decisions.

44. We may hasten to add that it is by no means suggested that while taking into account these considerations, specific provisions of law are to be ignored. First duty of the Court is to decide the case by applying the statutory provisions. However, on the application of law and while interpreting a particular provision, economic impact/effect of a decision, wherever warranted, has to be kept in mind. Likewise, in a situation where two views are possible or wherever there is a discretion given to the Court by law, the Court needs to lean in favour of a particular view which subserves the economic interest of the nation. Conversely, the Court

> *needs to avoid that particular outcome which has a potential to create an adverse effect on employment, growth of infrastructure or economy or the revenue of the State. It is in this context that economic analysis of the impact of the decision becomes imperative.*"
>
> (emphasis supplied)

26. As regards the power of the High Court to re-appraise the facts, it cannot be said that the same is completely impermissible under Articles 226 and 227 of the Constitution. However, there must be a level of infirmity greater than ordinary in a Tribunal's order, which is facing judicial scrutiny before the High Court, to justify interference. We do not think such a situation prevailed in the present facts. Further, the ratio of the judgments relied upon by the respondent in support of his contentions, would not apply in the facts at hand.

27. Though much emphasis was laid by the respondent on his claim that his resignation was forced, this Court is not persuaded to accept such a contention, basically on the ground that the language employed by the respondent in his resignation letter is to the effect that he was submitting his resignation, which may be approved, keeping the interest of his family and career and also that with utmost feeling of humiliation and insult he was submitting such resignation. It further indicates that over the six months preceding his resignation, he felt that he had been subjected to unfair rating, which indicates his disillusionment and dissatisfaction, while working for the Company. Pausing here, the Court would indicate that a person, in the employment of any company, cannot dictate terms of his employment to his employer. He has channels of venting her/his grievances but ultimately, it is the view of the competent authority within the organisation that will prevail with regard to his appraisal/ rating. In his resignation letter dated 24.03.2011, the respondent has further stated that because of being subjected to unfair rating without any feedback or review, he faced personal and professional insult, harassment and was left with no option but to submit his resignation, which was not out of his free will. Again, the Court would indicate that the phraseology, "not of his free will" would not mean that it was forced upon him by the Company. Rather, what can be gathered from the materials on record and the orders of the fora below, is that the resignation was more out of a sense of being unfairly rated by the appellant. From the material available, it also transpires that

the respondent had made a complaint to the Ombudsman pertaining to his unfair rating. Needless to point out, it would be far-fetched for the Court to assume that the entire organisation i.e., the Company would be against one individual (the respondent) and that a person of such high calibre and quality, who could deliver so much to the Company, would be forced to put in his papers.

28. The respondent asserts that he was one of the best performers and an asset to the Company. Such being the situation, it is hard to fathom why all his superiors would have turned against him. On the record, there is no direct allegation of any bias against or victimisation of the respondent as he himself has stated as also written to various persons venting his grievances. Only because things did not turn out the way the respondent wanted them to, or for that his grievances were not adequately or appropriately addressed, cannot lead to the presumption that the resignation was forced upon him by the Company. One way to label the respondent's resignation as "forced" would be to attribute the compulsion to the respondent, rather than factors relating to the Company and/or its management. In other words, it can be termed a result of feeling suffocated due to lack of proper appreciation and not being given his rightful due that led to the chain of events *supra*, rather than by way of any arbitrariness or high-handedness on the part of the appellant. Bearing due regard to the nature of duties performed by the respondent, we are satisfied that the same do not entail him being placed under the cover of Section 2(s), ID Act.

29. For reasons aforesaid, this appeal succeeds and is, accordingly, allowed. The impugned judgment as well as the judgment rendered by the learned Single Judge are set aside. The judgment of the Labour Court is revived and restored. *Ex consequenti*, it is held and declared that the respondent is not a "*workman*" and thus, reference to the Labour Court under the ID Act against the appellant would not be maintainable. We commend the respondent for his spirited resistance to the appeal.

30. Parties to bear their own costs.

Headnotes prepared by: Divya Pandey

Result of the case: Appeal allowed.

[2024] 4 S.C.R. 121 : 2024 INSC 266

Navneet Kaur Harbhajansing Kundles @ Navneet Kaur Ravi Rana
v.
State of Maharashtra and Others

(Civil Appeal No(s). 2741-2743 of 2024)

04 April 2024

[J.K. Maheshwari* and Sanjay Karol, JJ.]

Issue for Consideration

The question that arises for consideration is that how far the High Court was justified in completely overturning the findings of Scrutiny Committee (validating the caste certificate of the appellant), in exercise of jurisdiction u/Art. 226 of the Constitution of India by reappraisal of the entire evidence on record.

Headnotes

Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 – ss. 6, 7, 9 – Maharashtra Scheduled Castes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 – rr. 13, 14, 17 – Various complaints were submitted against appellant before the Scrutiny Committee seeking cancellation of the caste validity certificate issued in her favour by Deputy Collector – The High Court quashed and set-aside the order passed by Scrutiny Committee primarily on the ground that the same was obtained fraudulently and cancelled the caste certificate issued in favour of appellant – Propriety:

Held: A combined reading of the Sections of 2000 Act and Rules of 2012 Rules, makes it clear that the power to deal with verification has been specifically vested with Scrutiny Committee and it falls within the exclusive domain of it in view of Rule 13(b) of 2012 Rules – In the instant case, the Scrutiny Committee accepted the caste claim of appellant vide order 03.11.2017 predominantly on the basis of two documents, i.e., (i) bona-fide

* Author

certificate dated 11.02.2014 issued by Khalsa College of Arts, Science and Commerce in the name of Appellant's grandfather mentioning his caste as 'Sikh Chamar'; and (ii) the Indenture of Tenancy of 1932 which corroborated the Appellant's claim of her forefathers having migrated to Maharashtra from Punjab back in 1932 itself along with proof of residence – The adjudication on the basis of the documents falls solely within the domain of Scrutiny Committee based on the inputs received from the Vigilance Cell – The Scrutiny Committee is an expert forum armed with fact finding authority – The Scrutiny Committee duly considered the documents placed before it and after due application of mind on being satisfied, accorded reasons for accepting/validating the caste claim of the appellant herein while accepting/rejecting other certain documents – The Scrutiny Committee heard all the parties in detail complying with the principles of natural justice – Hence, the order of Scrutiny Committee did not merit any interference by the High Court in a 'writ of certiorari' u/Art. 226 of Constitution of India. [Paras 12, 13, 22, 23]

Constitution of India – Art. 226 – Writ of certiorari – Settled principles of law:

Held: The writ of certiorari being a writ of high prerogative, should not be invoked on mere asking – The purpose of a writ of certiorari for a superior Court is not to review or reweigh the evidence to adjudicate unless warranted – The jurisdiction is supervisory and the Court exercising it, ought to refrain to act as an appellate court unless the facts so warrant – It also ought not re-appreciate the evidence and substitute its own conclusion interfering with a finding unless perverse – The High Court in a writ for certiorari should not interfere when such challenge is on the ground of insufficiency or adequacy of material to sustain the impugned finding – Assessment of adequacy or sufficiency of evidence in the case at hand, fell within the exclusive jurisdiction of the Scrutiny Committee and re-agitation of challenge on such grounds ought not have been entertained by High Court in a routine manner. [Para 17]

Case Law Cited

Kumari Madhuri Patil and Another v. Additional Commissioner, Tribal Development and Others **[1994] Suppl. 3 SCR 50 : (1994) 6 SCC 241;** *Indian Overseas Bank v. I.O.B. Staff Canteen Workers Union*

and Another [2000] 2 SCR 1212 **: (2000) 4 SCC 245 – relied on.**

Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam and Others [1958] 1 SCR 1240 **: AIR (1958) SC 398;** *Rajendra Diwan v. Pradeep Kumar Ranibala* [2019] 17 SCR 1089 **: (2019) 20 SCC 143;** *Mah. Adiwasi Thakur Jamat Swarakshan Samiti v. State of Maharashtra and Others* [2023] 3 SCR 1100 **: (2023) SCC OnLine SC 326;** *Anand v. Committee for Scrutiny and Verification of Tribal Claims* [2011] 15 SCR 386 **: (2012) 1 SCC 113;** *Priya Pramod Gajbe v. State of Maharashtra and Others* [2023] 9 SCR 1261 **: 2023 SCC OnLine SC 909;** *Marri Chandra Sekhar Rao v. Seth G.S. Medical College* [1990] 2 SCR 843 **: (1990) 2 SCC 130;** *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another v. Union of India and Another* [1994] Suppl. 1 SCR 714 **: (1994) 5 SCC 244;** *State of Maharashtra v. Milind and Others,* [2000] Suppl. 5 SCR 65 **: (2001) 1 SCC 4;** *Dayaram v. Sudhir Batham and Others* [2011] 15 SCR 1092 **: (2012) 1 SCC 333;** *Central Council for Research in Ayurvedic Sciences and Another v. Bikartan Das and Others* [2023] 11 SCR 731 **: 2023 SCC OnLine 996;** *Syed Yakoob v. K.S. Radhakrishnan* [1964] 5 SCR 64 **: AIR 1964 SC 477 – referred to.**

List of Acts

Constitution of India; Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000; Maharashtra Scheduled Castes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012; Scheduled Castes Order, 1950.

List of Keywords

Caste validity certificate; Exclusive domain of Scrutiny Committee; Fact finding authority; Principles of Natural Justice; Supervisory jurisdiction; Ground of insufficiency or adequacy of material.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.2741-2743 of 2024

From the Judgment and Order dated 08.06.2021 of the High Court of Judicature at Bombay in WP No. 3370 of 2018, 2675 of 2019 and WPL No. 9426 of 2020

Appearances for Parties

Dhruv Mehta, Sr. Adv., Mahesh Agarwal, Rishi Agrawala, Anshuman Srivastava, Ankur Saigal, Ms. Kajal Dalal, Ms. Kamakshi Sehgal, Rajesh Kumar, E. C. Agrawala, Advs. for the Appellant.

Shadan Farasat, Sachin Bharat Thorat, Ashok Janrao, Ms. Aparajita Jamwal, Harshit Anand, Aman Naqvi, Ms. Hrishika Jain, Ms. Natasha Maheshwari, Ms. Mreganka Kukreja, Abhishek Babbar, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Aditya Krishna, Ms. Preet S. Phanse, Adarsh Dubey, Sudhanshu S. Choudhari, Praveen Arya, Nachiketa Vajpayee, Ms. Divyangna Malik for M/s. Lawfic, Ravindra Keshavrao Adsure, Sagar N. Pahune Patil, Yash Prashant Sonavane, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

J.K. Maheshwari J.

1. The present appeals arise out of impugned common judgment and final order dated 08.06.2021 passed by Division Bench of High Court of Judicature at Bombay in three Writ Petitions. Out of the said three petitions, Writ Petition No. 3370 of 2018 and Writ Petition No. 2675 of 2019 were preferred by Anandra Vithoba Adsul and Raju Shamrao Mankar (Respondents herein), inter-alia seeking identical reliefs, i.e., issuance of writ of certiorari for quashing and setting aside order dated 03.11.2017 passed by District Caste Scrutiny Committee, Mumbai Suburban (hereinafter referred to as **'Scrutiny Committee'**) which validated the caste claim of Appellant herein as **'Mochi – Scheduled Caste'** in Maharashtra. Conversely, Writ Petition (Lodging) No. 9426 of 2020 was filed by Appellant herein seeking writ of certiorari and setting aside the findings of Scrutiny Committee, particularly in para 4 of order dated 03.11.2017 to the extent of 'non-consideration' of oldest

documents submitted by her, which as contended by her sustained and established her caste claim. The Division Bench vide common impugned judgment allowed the petitions of Anandra Vithoba Adsul and Raju Shamrao Mankar and dismissed the petition preferred by Appellant. The High Court quashed and set-aside the order dated 03.11.2017 passed by Scrutiny Committee primarily on the ground that the same was obtained fraudulently and cancelled the caste certificate issued in favour of Appellant. The Division Bench further imposed a cost of Rs. 2,00,000/- on the Appellant and directed to surrender her caste certificate. Hence, the present appeals.

FACTS IN BRIEF

2. The entire controversy revolves around the validation of caste claim in favour of Appellant, on the anvil of which, the Appellant contested the 2019 Parliamentary election from Amravati constituency in Maharashtra as an independent candidate on a seat reserved for Scheduled Caste and emerged as winning candidate while defeating the other contesting candidates including Anandra Vithoba Adsul (Respondent herein). Aggrieved, Appellant's candidature on the reserved seat was assailed by other contesting candidates primarily on the ground that she obtained the 'Mochi-Scheduled Caste' certificate from the authorities concerned by submitting forged and fabricated documents. The genesis of the dispute is traceable from year 2013, when various complaints were submitted against Appellant before the Scrutiny Committee seeking cancellation of the caste validity certificate issued in her favour by Deputy Collector vide order dated 30.08.2013. From 2013 to 2017, the proceedings continued and eventually, when the matter was seized before High Court in Civil Writ Petition No. 325 of 2014 preferred by one Raju Mankar, the High Court vide order dated 28.06.2017 set-aside the caste validity certificate issued in favour of Appellant and remanded the matter with directions to the Scrutiny Committee to give opportunity of hearing to all the parties and take decision in accordance with law.

3. In furtherance of remand by High Court vide order dated 28.06.2017, the matter was taken up by Scrutiny Committee, and the parties duly contested their case. After hearing the parties at length and having considered all the documents placed on record, the Scrutiny Committee accepted the caste claim of Appellant vide order 03.11.2017 predominantly on the basis of two documents, i.e., (i)

bona-fide certificate dated 11.02.2014 issued by Khalsa College of Arts, Science and Commerce in the name of Appellant's grandfather mentioning his caste as 'Sikh-Chamar'; and (ii) the Indenture of Tenancy of 1932 which corroborated the Appellant's claim of her forefathers having migrated to Maharashtra from Punjab back in 1932 itself along with proof of residence. Aggrieved from above, the parties filed respective Writ Petitions and hence, the instant appeals.

ARGUMENTS ADVANCED BY APPELLANT

4. Learned Senior Counsel Mr. Dhruv Mehta at the outset contended that High Court erred in upsetting the detailed findings of Scrutiny Committee in exercise of jurisdiction under Article 226 of Constitution of India. High Court by invoking its jurisdiction to issue a writ of certiorari ought not to have interfered in the matter since the Committee arrived at such conclusion after having conducted extensive fact-finding exercise. He further submitted that the scope of exercise of jurisdiction in such cases is limited to examination of orders passed by the Courts/Forums below to see if such orders have been passed without jurisdiction, or in excess of the jurisdiction or due to failure of exercise of jurisdiction. Undisputedly, Scrutiny Committee in the instant case, being a quasi-judicial authority exercised its jurisdiction under *'Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000', (hereinafter referred to as* ***'2000 Act'****)* and adjudicated the claim. The fact-finding exercise and assessment of documents fell within the exclusive domain of the Scrutiny Committee and High Court in supervisory jurisdiction dealt with the petitions akin a statutory appeal. The roving inquiry conducted by High Court was uncalled for, particularly when in the instant case there is no allegation to the effect that Scrutiny Committee lacked jurisdiction. The procedure as prescribed was duly followed by the Scrutiny Committee and after due application of mind, the claim of Appellant was validated. *[See* ***'Nagendra Nath Bora Vs. The Commissioner of Hills Division and Appeals, Assam and Others., AIR 1958 SC 398' –*** *Para 30 to 39 and 41;* ***'Rajendra Diwan Vs. Pradeep Kumar Ranibala, (2019) 20 SCC 143' –*** *Para 85 to 87;* ***'Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another, 2000 (4) SCC 245' –*** *Para 17;* ***Mah. Adiwasi Thakur Jamat Swarakshan***

***Samiti Vs. State of Maharashtra and Others*, *2023 SCC OnLine SC 326* –** *Para 28]*

5. So far as question of inadmissibility of documents submitted by Appellant before Scrutiny Committee is concerned, it was argued by the learned Senior Counsel that those documents carried a statutory presumption under Indian Evidence Act as they were related to forefathers of Appellant and belonged from pre-independence era. Unless any adverse findings were returned on those documents by Vigilance Cell, the Scrutiny Committee erred in not considering them and holding them as inadmissible. *[See '**Anand Vs. Committee for Scrutiny and Verification of Tribal Claims*, *(2012) 1 SCC 113' –** Para 22; '**Priya Pramod Gajbe Vs. State of Maharashtra and Others*, *2023 SCC OnLine SC 909' –** Para 8 to 12]*

ARGUMENTS ADVANCED BY RESPONDENTS

6. The learned Senior Counsel Mr. Kapil Sibal mainly contested the case on the scope of interference with the Scheduled Castes Order, 1950 (hereinafter referred to as **'Presidential Order'**) issued by President under Article 341 of Constitution of India and argued that it is constitutionally impossible to grant the caste certificate in favour of Appellant. He submitted that in absence of specific caste ('Ravidasia Mochi' or 'Sikh Chamar') being originally mentioned in the said Presidential Order for Maharashtra State, no caste certificate could have been conferred at the first instance in favour of Appellant. He further submitted that the issue of interfering with the Presidential Order is no more res-integra and has been long back well settled by catena of judgments passed by this Court including Constitution Bench judgments *[See '**Marri Chandra Sekhar Rao Vs. Seth G.S. Medical College*, *(1990) 2 SCC 130*'; '**Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India and Another*, *(1994) 5 SCC 244*'; '**State of Maharashtra Vs. Milind and Others*, *(2001) 1 SCC 4*']*, wherein it has been categorically held that the Presidential Order is to be read as it is and no further interpretation is permissible by any authority to such order. The terminology used in the Presidential Order is to be read verbatim and if a caste is mentioned in the original Order, then only benefit of caste certificate can be issued in favour of an applicant belonging from one State and migrated to another. No kind of 'prefix' or 'suffix' can be taken

into consideration to expand the ambit of Presidential Order by any authority, and it is only the Parliament which is competent by law to include or exclude a caste/tribe from the list of notified Scheduled Castes and Scheduled Tribes. He further drew our attention to the extracts of Presidential Order and submitted that neither 'Ravidasia Mochi' nor 'Sikh Chamar' is mentioned or recognized therein. In such case, if a caste has not been particularly mentioned or notified for a State, then the benefit of recognition to an applicant belonging to a caste notified for that particular State cannot be granted. What cannot be done directly, cannot be done indirectly. Lastly, learned Senior Counsel concluded his arguments on the note that, once such is the situation where the Presidential Order itself is a self-speaking document, nothing survives in the case for adjudication and no interference of this Court is called for.

7. The assisting learned counsel Mr. Shadan Farasat mainly contended on the entirety of the facts and argued in support of the observations made by High Court by demonstrating as to how the Appellant obtained the caste claim certificate by submitting multiple forged and fabricated documents. He submitted that a fraud has been played by the Appellant on the authorities to get her caste certificate by using 'trial and error' method by creating multiple forged documents and submitting them to sustain her claim, specifically when her initial documents in support of 'Mochi' caste were found to be forged and fabricated. He further urged that, even for the sake of argument if it is assumed that the documents are genuine in nature, then also the Appellant cannot be granted the caste certificate for the reason that the documents on the basis of which the Appellant sought benefit of caste certificate are self-contradictory in nature. He drew the attention of this Court to the first claim submitted by the Appellant where she claimed herself belonging to 'Ravidasia Mochi' from Punjab State. Although the said documents were not admitted by the Scrutiny Committee, however, the documents showing the Appellant to be 'Sikh Chamar' were admitted and intriguingly, she was granted a 'Mochi' caste certificate which had cascading effect of tinkering with the Presidential Order as neither 'Sikh Chamar' nor 'Ravidasia Mochi' is recognized as Scheduled Caste for Maharashtra State therein. Hence, such an exercise carried out by Scrutiny Committee by considering the Appellant's case as 'Sikh-Chamar' or 'Ravidasia Mochi' even on the surface of it as true for validating her caste

claim, was impermissible in law since neither 'Sikh-Chamar' nor 'Ravidasia Mochi' are present in the original Presidential Order of 1950 for Maharashtra State.

8. To substantiate the above argument, he further placed reliance primarily on the three documents submitted by Appellant before the Scrutiny Committee, i.e., (i) her father's school leaving certificate; (ii) her father's caste certificate; and (iii) her self-school leaving certificate. It is submitted that all the above three documents were interpolated, forged and fabricated to procure the caste validity certificate. So far as first document, i.e., Appellant's father school leaving certificate is concerned, the Vigilance Cell submitted its report that on inspection it was found that the concerned school never issued the said certificate. Secondly, the Appellant's father caste certificate itself stood cancelled and confiscated by the Scrutiny Committee vide order dated 03.11.2017. Though on the very same date, the Scrutiny Committee validated the caste claim in favour of Appellant and rejected the benefit of same caste to her father. Thirdly, the last document, i.e., Appellant's self-school leaving certificate issued by Kartikeya High School and Junior College, New Hall Road, Kurla West, Mumbai, mentioning 'Mochi' under the religion column in favour of Appellant, it is submitted that the said change was done on 23.08.2013 under the political influence on letter sent by Appellant's husband who is a sitting Member of Legislative Assembly from Badnera constituency in Amravati district.

ANALYSIS

9. Before adverting to the merits of the case, it is relevant to highlight that the issue of procurement of caste certificate through fraudulent means has been a longtime menace. In absence of any mechanism prescribing the procedure, the discretionary powers vested with authorities concerned have been subject matter of multiple layers of litigation before Courts throughout India. Eventually, the issue concerning the procedure to be followed for adjudication of caste claims was considered in detail by Constitution Bench of this Court in ***'Kumari Madhuri Patil and Another Vs. Additional Commissioner, Tribal Development and Others, (1994) 6 SCC 241'***, wherein this Court expressed grave concerns about the deprivation of benefits to genuine candidates, especially when caste certificate has been obtained fraudulently on the basis of forged documents and social status. This Court laid emphasis on the need of the hour to streamline

the procedure for issuance of caste certificates, their scrutiny and validation thereafter. Resultantly, this Court exercising the powers under Article 142 of Constitution of India, laid down exhaustive procedural guidelines in para 13 which is reproduced below as thus –

> ***13.*** *……..It is, therefore, necessary that the certificates issued are scrutinized at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:*
>
> 1. *The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.*
> 2. *The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.*
> 3. *Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.*
> 4. *All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer high-er in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal*

communities, parts of or groups of tribes or tribal communities.

5. *Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.*

6. *The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for*

an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/ parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-à-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. *In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.*

8. *Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.*

9. *The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.*

10. *In case of any delay in finalizing the proceedings, and in the meanwhile the last date for admission into an*

educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. *The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.*

12. *No suit or other proceedings before any other authority should lie.*

13. *The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.*

14. *In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/ the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.*

15. *As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the*

appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post.

In furtherance of the said guidelines, streamlined procedure was formulated and State Acts were enacted to deal with caste claim cases.

10. As the present case arises from Maharashtra, it is necessary to deal with the respective State Act, i.e., the 2000 Act enacted with effect from 18.10.2001 containing elaborative procedure and mechanism for regulation and verification of caste claims. Since the moot point in this case is arising from the verification and issuance of caste validity certificate in favour of Appellant, it becomes imperative to look into the relevant provisions of the Act, in particular Section 6, Section 7 and Section 9, which are reproduced below for ready reference –

Section 6 – Verification of Caste Certificate by Scrutiny Committee.

(1) The Government shall constitute by notification in the Official Gazette, one or more Scrutiny Committee(s) for verification of Caste Certificates issued by the Competent Authorities under sub-section (1) of section 4 specifying in the said notification the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees.

(2) After obtaining the Caste Certificate from the Competent Authority, any person desirous of availing of the benefits or concessions provided to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category for the purposes mentioned in section 3 may make an application, well in time, in such form and in such manner as may be prescribed, to the concerned Scrutiny Committee for the verification of such Caste Certificate and issue of a validity certificate.

(3) The appointing authority of the Central or State Government, local authority, public sector undertakings, educational institutions, Co-operative Societies or any other Government aided institutions shall, make an application in such form and in such manner as may be prescribed by the Scrutiny Committees for the verification of the Caste Certificate and issue of a validity certificate, in case a person selected for an appointment with the Government, local authority, public sector undertakings, educational institutions, Co-operative societies or any other Government aided institutions who has not obtain such certificate.

(4) The Scrutiny Committee shall follow such procedure for verification of the Caste Certificate and adhere to the time limit for verification and grant of validity certificate, as prescribed.

Section 7 – Confiscation and Cancellation of false Certificate.

(1) Where, before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category has obtained a false Caste Certificate to the effect that either himself or his children belong to such Castes, Tribes or Classes, the Scrutiny Committee may, suo motu, or otherwise call for the record and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudulently, it shall, by an order cancel and confiscate the certificate by following such procedure as prescribed, after giving the person concerned an opportunity of being heard, and communicate the same to the concerned person and the concerned authority, if any.

(2) The order passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or court except the High Court under Article 226 of the Constitution of India.

Section 9 – Civil Court powers to Competent Authority, Appellate Authority and Scrutiny Committee.

(1) The Competent Authority, the Appellate Authority and the Scrutiny Committee shall, while holding an enquiry under this Act, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 and in particular in respect of the following matters, namely :—

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

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any Court or office; and

(e) issuing Commissions for the examination of witnesses or documents.

A bare perusal of the aforesaid provisions reveals that power to verify the correctness/validation of the caste certificate issued by Competent Authority under Section 4 is vested with Scrutiny Committee constituted under Section 6. Section 7 further empowers the Scrutiny Committee with *suo motu* powers or otherwise to call for record and enquire into correctness of a caste certificate if it is of the opinion that such certificate was obtained fraudulently and also vests the Committee with the power to cancel and confiscate the certificate in question in accordance with law. Such order of Scrutiny Committee as per sub clause (2) is said to be final and protected from any challenge before any authority except High Court under Article 226 of Constitution of India. Furthermore, Section 9 confers all powers on the Scrutiny Committee as exercised by Civil Court while trying a suit as per Civil Procedure Code, 1908.

11. In furtherance of the aforesaid 2000 Act, the State of Maharashtra further brought in force the *'Maharashtra Scheduled Castes, De-*

*notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012' (hereinafter referred to as **'2012 Rules'**)*, stipulating detailed provisions regarding procedure for constitution of Scrutiny Committee as well as the procedure to be followed by it while dealing with the claims seeking validation of caste certificate issued by Competent Authority. For the purpose of case at hand, Rule 13, Rule 14 and Rule 17 are relevant and thus are reproduced below for ready reference –

> ***Rule 13 – Report of Vigilance Cell and Issues to be dealt with.***
>
> *(1) Vigilance Cell Officer(s) shall submit report upon investigating into the Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category claim, referred to it, –*
>
> *(a) by visiting permanent place of residence and conducting domestic inquiry; or*
>
> *(b) by recording statements of respected and responsible persons from concerned area, including representatives of Local Self Government, Police Patil, etc.; or*
>
> *(c) by collecting information, as part of recording statement, as regards to name, age, educational qualification, occupation, existing place of residence and information regarding properties (existing and disposed) of family members of applicant or claimant; or*
>
> *(d) by collecting information including the sociological, anthropological and ethnological (anthropological moorings and ethnological kinship), genetical traits of the Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other*

Backward Classes or Special Backward Category, if any; or

(e) by personally visiting Office of the Competent Authority or revenue or school or other concerned offices.

(2) Notwithstanding anything contained in any provision of these rules, –

(a) the Vigilance Cell shall not record concluding remark or opinion, since vigilance inquiry is meant for internal assistance to the Scrutiny Committee and adjudication of Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category status is exclusive domain of the Scrutiny Committee;

(b) finding recorded and opinion expressed, if any, by the Vigilance Officer shall not be binding on Scrutiny Committee nor could be used as evidence, in support of Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category claim.

Rule 14 – Verification of Caste Certificate.

Any person desirous of availing of the benefits and concessions provided to the Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Categories for any of the purposes as mentioned in Section 3 of the Act shall, invariably submit an application in FORM–16 with an affidavit in FORM–3 and FORM–17 for students; FORM–18 with an affidavit in FORM–3 and FORM–19 for employees or service purpose; FORM–20 with an affidavit in FORM–3 and FORM–21 for election

purpose; or FORM–22 with an affidavit in FORM–3 and FORM–23 for other purpose, as per his requirement, to the concerned Scrutiny Committee for verification of his caste claim and issue of Caste Validity Certificate, well in time :

Provided that, the Caste Certificate issued to migrant from other State and Caste or Community Certificates issued by Authorities of the States other than the State of Maharashtra, shall not be verified by such Caste Scrutiny Committee.

Rule 17 – Procedure of Scrutiny Committee.

(1) On receipt of application, the Scrutiny Committee shall ensure that the application and the information supplied therewith is complete in all respects and to carry out scrutiny of the application.

(2) Notwithstanding anything contained in these rules, the claimant or applicant or complainant shall be personally responsible for removal of objections raised by Scrutiny Committee, if any, within two weeks or within such extended period, which shall not be more than six weeks, failing which the claim or application or complaint shall be disposed of, by appreciating available records and such decision may be communicated to the applicant by the Scrutiny Committee.

(3) The incomplete application may be rejected by recording reasons.

(4) Notwithstanding anything contained in these rules, it will be the sole responsibility of the claimant or applicant to attend the dates of hearing, either personally or through duly authorized representative.

(5) The roznama of the Scrutiny committee shall be self-evident as to what transpired on a particular day and it shall be signed by all the members of the Scrutiny Committee.

(6) If the Scrutiny Committee, upon appreciating the statement of applicant or claimant submitted in the

form of Affidavit filed in consonance with Order 18 Rule 4 of the Code of Civil Procedure, 1908, as well as other evidence and documents furnished along with any application or proposal is satisfied, about the genuineness of Scheduled Caste or Scheduled Caste converts to Buddhism or De-notified Tribes (Vimukta Jatis) or Nomadic Tribes or Other Backward Classes or Special Backward Category claim the scrutiny committee shall forthwith issue Validity Certificate in FORM-20 without enquiry by vigilance cell.

(7) If the Scrutiny Committee, upon appreciating the statement of applicant or claimant submitted in the form of Affidavit filed in consonance with Order 18 Rule 4 of the Code of Civil Procedure, 1908, as well as other evidence and documents furnished along with any application or proposal, is of the opinion that the documents do not satisfy or conclusively prove the Scheduled Caste or Scheduled Caste converts to Buddhism or De-notified Tribes (Vimukta Jatis) or Nomadic Tribes or Other Backward Classes or Special Backward Category claim, the Scrutiny Committee by mentioning the same in the roznama, shall refer such case to the Vigilance Cell for carrying out suitable inquiry, as is deemed fit, by the Scrutiny Committee:

Provided that, findings recorded by the Vigilance Cell shall not be binding on the Scrutiny Committee, as the vigilance inquiry is meant for internal assistance to the Scrutiny Committee. The Scrutiny Committee shall record its reasons for discarding the report of Vigilance Cell.

(8) The Vigilance Cell shall complete the inquiry within six weeks, thereby making suitable inquiry, on all the issues or as specifically directed by the Scrutiny Committee.

(9) Vigilance Inquiry shall be made for respective territorial area of jurisdiction of concerned Scrutiny Committee.

(10) In case of those cases which are referred to Vigilance Cell, upon considering the report submitted by Vigilance Cell, if the Scrutiny Committee is satisfied about the genuineness of Scheduled Caste or Scheduled Caste converts to Buddhism or De-notified Tribes (Vimukta Jatis) or Nomadic Tribes or Other Backward Classes or Special Backward Category claim of claimant or applicant, it shall be lawful to decide the matter finally by its written decision, and forward the copy of decision and Validity Certificate in FORM–24, to the concerned parties or authority, by preserving its scanned copy (in electronic form).

(11) (i) In case of those cases which are refereed to Vigilance Cell, upon considering the report of Vigilance Cell, if the Scrutiny Committee is not satisfied about the claim of the applicant, it shall call upon the applicant to prove his Caste claim, by discharging his burden, as contemplated under Section 8 of the Act, by issuing a notice in FORM–25 coupled with copy of report of Vigilance Inquiry;

(ii) After issuance of notice, if applicant requests, by way of written application, for copies of vigilance inquiry report or any other document or prays for adjournment, reasonable time for final hearing or for submitting written submission, it may be granted;

(iii) After affording an opportunity of hearing, Scrutiny Committee shall, –

(a) being satisfied regarding the genuineness of the Caste claim, decide the matter finally, upon appreciation of evidence, by its reasoned decision, i.e., decision of committee and issue Certificate of Validity, in FORM–24; and forward the same to concerned authorities within thirty days, by preserving its scanned copy (in electronic form);

(b) being not satisfied about the genuineness of the claim and veracity of the Caste

Certificate, it shall pass its decision, thereby cancelling and confiscating the original Caste Certificate and invalidating the Caste or Tribe claim of the applicant or claimant;

(c) upon invalidation of Caste or Tribe claim, the Caste Certificate under inquiry shall be stamped as "cancelled and confiscated", and forward the same along with copy of decision, to the Competent Authority and concerned parties, by preserving its scanned copy (in electronic form);

(d) after conclusion of the hearing of the case, the work of writing of the decision shall be assigned to one of its members by the Scrutiny Committee;

(e) in case of difference of opinion amongst the members of Committee, on the main order of majority, the dissenting member shall write his separate order;

(f) The name of member of Committee to whom work of writing final order was assigned, shall be mentioned in the roznama. Moreover, front page of final order shall disclose the date of the order.

(12) Notwithstanding anything contained in these rules, it is incumbent on the applicant to disclose all the true and correct information, including disclosure of adverse entries or material, failing which, it shall be lawful for the Scrutiny Committee to draw adverse inference.

(13) If the Scrutiny Committee finds and concludes that the report of Vigilance Cell is false or unrealistic, it shall record the reason in decision and direct appropriate action as contemplated under Section 14, read with Section 11 and 12 of the Act and also recommend Departmental inquiry against such Vigilance Officer:

Provided that, an opportunity of being heard be granted to the concerned Vigilance Cell officer prior to any direction for appropriate action. This hearing shall be independent to adjudication of Caste or Tribe claim.

12. A combined reading of the Sections of 2000 Act and Rules of 2012 Rules, makes it clear that a detailed procedure has been prescribed for the Scrutiny Committee to deal with the claim of an applicant seeking validation of caste certificate issued by the Competent Authority. The power to deal with such verification has been specifically vested with Scrutiny Committee and it falls within the exclusive domain of it in view of Rule 13(b) of 2012 Rules. For the purposes of verification, the Scrutiny Committee has all the powers of Civil Court while trying a civil suit and it can further take internal assistance of Vigilance Cell for verification in those cases as and when needed by the Committee. It is pertinent here to note that, as per Rule13(2)(b), the findings recorded, and opinion expressed by the Vigilance Cell shall not be binding on Scrutiny Committee and nor could be used in evidence for the purpose of claim. Further, Rule 17(6) provides that if the Scrutiny Committee upon appreciation of statement of applicant in prescribed format as well as other evidence and documents furnished along with it, is satisfied about the genuineness of same, then it shall forthwith issue the validity certificate in FORM–20 without enquiry by Vigilance Cell. In other words, the said Rule provides for subjective satisfaction of the Scrutiny Committee when a claim is made and does not mandate verification in each case by the Vigilance Cell. At this juncture, Section 7(2) of the 2000 Act also assumes significance. It fortifies the exclusive domain of Scrutiny Committee and deals with the finality of the orders passed by Scrutiny Committee under the 2000 Act stating that the orders passed by Scrutiny Committee shall be final and it shall not be open to challenge before any authority or Court except High Court under Article 226 of Constitution of India. The said language used in sub clause (2) clearly reflects the intention of legislature to ensure minimal interference with the orders of Scrutiny Committee.

13. Now reverting to the facts of the instant case, the Scrutiny Committee admitted the claim of Appellant vide order dated 03.11.2017 based on its subjective satisfaction regarding two documents namely, (i) bona-fide certificate issued by Khalsa College of Arts, Science and

Commerce in favour of Appellant's grandfather mentioning his caste as 'Sikh-Chamar'; and (ii) the Indenture of Tenancy of year 1932 in favour of great grandfather of Appellant as his residence proof, proving his migration from Punjab to Maharashtra prior to issuance of Presidential Order in 1950. The Scrutiny Committee also extensively referred to pedigree table of Appellant tracing the genealogy of caste of Appellant's forefathers as 'Mochi'. The said fact was also affirmed by Vigilance squad which made a personal site visit in Punjab and confirmed the truthfulness/genuineness of the contents of the pedigree documents from the locals as well as authorities concerned. Although the said documents were not admitted by the Scrutiny Committee for them not being in 'complete form', however, notably these documents were neither objected nor debated by the complainant. Be that as it may, once the Scrutiny Committee after hearing the contesting parties and evaluating the documents on record reached on conclusion based on its satisfaction and application of mind, the question that arises for consideration of this Court in the particular facts of this case is that how far the High Court was justified in completely overturning the findings of Scrutiny Committee in exercise of jurisdiction under Article 226 of the Constitution of India by re-appraisal of the entire evidence on record?

14. The entire sum and substance of the Respondents' arguments before this Court and High Court is that the Appellant has forged and fabricated the documents to obtain her caste validity certificate. In our view, it is a disputed question of facts and can only be sustained by leading evidence. Admittedly in the present case, on remand by High Court, the parties appeared before the Scrutiny Committee, filed objections and led evidence. They were heard and after due consideration of all the material brought on record, the Scrutiny Committee, delineated the objections and passed the detailed order validating the caste certificate of the Appellant primarily on the anvil of report submitted by Vigilance Cell and report of home enquiry and also held that other documents produced by the contesting parties are inadmissible. So far as question of admissibility of bona-fide certificate dated 11.02.2014 issued in favour of Appellant's grandfather is concerned, the Scrutiny Committee recorded its satisfaction and formed opinion that the said certificate is a competent evidence and held it as admissible after verification of the students' original register which recorded the date of admission of Appellant's grandfather as

16.11.1946. The complainants have not raised any oral or written objection regarding this document before the Scrutiny Committee. The primary grievance of the complainants before the Scrutiny Committee was that they were not allowed to cross-examine the Vice-Principal of the said college who came to present the original record. However, the present case herein is not that the said grievance was not considered by the Committee or that it had a biased or favourable approach towards the applicant. A perusal of the order passed by Scrutiny Committee reveals that the request of complainants for cross-examination of Vice-Principal was not accepted for the reason that the said person came as a presenter of the original student register on behalf of Principal of the college, and being representative, he does not automatically become witness of the applicant.

15. Now, when the Scrutiny Committee which is principally tasked with the fact-finding exercise for validation of caste claim, had applied its mind and reached a conclusion, then in such a situation, whether a roving enquiry by High Court was required? It is well settled that High Courts as well as Supreme Court should refrain themselves from deeper probe into factual issues like an appellate body unless the inferences made by the concerned authority suffers from perversity on the face of it or are impermissible in the eyes of law. In the instant case, the order passed by Scrutiny Committee reflects due appreciation of evidence and application of mind and in absence of any allegation of bias/malice or lack of jurisdiction, disturbing the findings of Scrutiny Committee cannot be sustained.

16. In view of the above discussion, if we take a look at the findings of the High Court in said perspective and deal with each findings individually, it would rather burden the judgment unnecessarily and therefore, we deem it appropriate to confine our analysis only to those findings by which the High Court has upset the reasonings adopted by Scrutiny Committee to admit those two documents, i.e., the bona-fide certificate of Appellant's grandfather and indenture of tenancy of year 1932 to allow the claim of Appellant. With respect to bona-fide certificate, the High Court opined that the Scrutiny Committee did not deal with the observations made by Vigilance Cell that the original student register was not produced by the Vice-Principal for inspection and that the handwriting and ink of the last two entries made in the said register did not match. The High Court itself perused the coloured photocopy of the last page of the register

and affirmed the difference in handwriting and the ink by appreciating the said evidence. On the other hand, insofar as the indenture of tenancy of year 1932 is concerned, the High Court in contradiction with the Scrutiny Committee was of the view that the alleged rent agreement was relied upon by Appellant much later in time, coupled with the fact that it did not make any sense for a landlord and tenant in a private rent agreement to mention the caste of tenant. The High Court further observed that to substantiate the rent agreement, the Scrutiny Committee heavily relied upon the affidavit of one Smt. Radha Adukiya, i.e., the granddaughter of the erstwhile landlord who rented the property in favour of Appellant's grandfather. In the said affidavit, Smt. Akudia deposed that her grandfather rented the property in favour of Appellant's grandfather and further identified his signatures too. Smt. Akudiya at the time of deposition herself was about 82 years of age and she recognized the signatures of her grandfather on an agreement allegedly executed 55 years back. In view of the same, the High Court was of the opinion that Scrutiny Committee failed in not carrying out an enquiry in finding out the authenticity of the said rent agreement. With these primary findings, the High Court quashed and set-aside the order of Scrutiny Committee.

17. Having perused the order passed by the Scrutiny Committee and findings recorded by it to reach its subjective satisfaction with respect to claim of Appellant, at this juncture, if we look at the whole exercise carried out by High Court from the perspective of settled principles of law for invocation of jurisdiction under Article 226 of Constitution of India, particularly in relation of writ of certiorari, it leaves us with no scope of doubt that the High Court has clearly overstepped by re-appreciating the evidence in absence of any allegation of mala-fide or perversity. As fairly settled by this Court in catena of judgments, the writ of certiorari being a writ of high prerogative, should not be invoked on mere asking. The purpose of a writ of certiorari for a superior Court is not to review or reweigh the evidence to adjudicate unless warranted. The jurisdiction is supervisory and the Court exercising it, ought to refrain to act as an appellate court unless the facts so warrant. It also ought not re-appreciate the evidence and substitute its own conclusion interfering with a finding unless perverse. The High Court in a writ for certiorari should not interfere when such challenge is on the ground of insufficiency or adequacy of material to sustain the impugned finding. Assessment of adequacy or

sufficiency of evidence in the case at hand, fell within the exclusive jurisdiction of the Scrutiny Committee and re-agitation of challenge on such grounds ought not have been entertained by High Court in a routine manner.

18. As per the ratio of larger Bench judgment of this Court in ***'Dayaram Vs. Sudhir Batham and Others.', (2012) 1 SCC 333'***, it reveals that the Court while answering the question as to whether the Civil Courts' jurisdiction was rightly barred by judgment in ***Kumari Madhuri Patil*** *(supra)*, observed that a Scrutiny Committee is not an adjudicating authority like a Court or Tribunal, rather it is an administrative body which verifies the fact, investigates into a specific caste claim and ascertains whether the caste claim is correct or not. It was further observed that permitting civil suits to challenge such proceedings with the provisions of appeal and further appeals would defeat the purpose of the scheme. However, such decisions were rightly made available to challenge in proceedings under Article 226 of the Constitution of India 'which may be within the parameters for invoking the writ jurisdiction by High Court' in the judgment of ***Kumari Madhuri Patil*** *(supra)*. Though at the same time, the said observation does not explicitly give a wide power in a writ of certiorari which is not within the purview of issuance of such writ merely because of decision of Scrutiny Committee is under challenge.

19. In sum and substance, the writ of certiorari is expended as a remedy and is intended to cure jurisdictional error, if any, committed by the Courts/forums below. It should not be used by superior Court to substitute its own views by getting into fact-finding exercise unless warranted. *[See* ***Central Council for Research in Ayurvedic Sciences and Another Vs. Bikartan Das and Others, 2023 SCC OnLine 996 –*** *Para 51 and 52;* ***Syed Yakoob Vs. K.S. Radhakrishnan, AIR 1964 SC 477 –*** *Para 7].* At this juncture, it would also be profitable to refer relevant extract from judgment delivered by this Court in ***'Indian Overseas Bank'*** *(supra),* wherein para 17, it was observed as thus –

> *"17. ……..The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible*

> *in the opinion of the writ Court to warrant those findings at any rate, as long as they are based upon such materials which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly undertaken……"*

Such being the situation, in the instant case, the High Court went into a probe regarding credibility of the opinion of the Scrutiny Committee because the writ Court felt the need to substitute it's own views. In case if the findings of the Scrutiny Committee are based on the materials specified under Rule 16 followed by its subjective satisfaction, then exercise of jurisdiction under writ of certiorari to quash the order of validation of caste claim by Scrutiny Committee is unwarranted and uncalled for.

20. In a recent reference in ***'Mah. Adiwasi Thakur Jamat Swarakshan Samiti'*** *(supra),* while answering the question as to *'whether paramount importance should be given to the affinity test while adjudicating upon a caste claim on the basis of a caste certificate issued by a Competent Authority, or in other words, whether the affinity test is a litmus test for deciding a caste claim'*, this Court observed that if the Scrutiny Committee is satisfied with the documents, it need not mechanically forward the same to the Vigilance Cell for verification in a routine manner. Even as per Rule 17(7) of the 2012 Rules, the Scrutiny Committee is not required to send every document to Vigilance Cell. It is only when the Scrutiny Committee after holding an enquiry is not satisfied with the material produced by the applicant, it may refer to Vigilance Cell. Therefore, in our considered view, the observations made by the High Court in the case at hand regarding not sending the documents to Vigilance Cell is not justified.

21. Lastly, the documents which are furnished by an applicant before the Scrutiny Committee are a reference point for the Scrutiny Committee to verify the caste claim of an Applicant. In such a case, where the Applicant is tracing the caste genealogy based on documents from pre-independence era, the task of Scrutiny Committee is to validate or reject a claim of validity certificate based on assessment of documents that are filed by the Applicant. More so, the Scrutiny Committee under Rule 4(3) of the 2012 Rules can even allow caste claim without any supporting documents. Hence, as already discussed above, such adjudication is kept within the exclusive domain of Scrutiny Committee under Rule 13(2)(a) of 2012 Rules.

22. In view of the aforesaid discussion, we are of the considered opinion that High Court inadvertently undertook an erroneous exercise of appreciating evidence in exercise of its jurisdiction under Article 226 of Constitution of India and swayed itself into a roving inquiry which was not expected as per settled legal position. At the cost of repetition, we again observe that under Rule 13(2)(a) of 2012 Rules, the adjudication on the basis of the documents falls solely within the domain of Scrutiny Committee based on the inputs received from the Vigilance Cell. The Scrutiny Committee is an expert forum armed with fact finding authority. The High Court ought not to have interfered, especially when Scrutiny Committee had followed the due procedure under Rule 12, 17 and 18 of the 2012 Rules and that there was nothing perverse about a finding of fact.

23. In the instant case, the Scrutiny Committee duly considered the documents placed before it and after due application of mind on being satisfied, accorded reasons for accepting/validating the caste claim of the Appellant herein while accepting/rejecting other certain documents. The Scrutiny Committee heard all the parties in detail complying with the principles of natural justice. Hence, in our considered opinion, the order of Scrutiny Committee did not merit any interference by the High Court in a 'writ of certiorari' under Article 226 of Constitution of India.

24. So far as question as to judicial scope to tinker with Presidential Order is concerned, there is no quarrel that Presidential Order cannot be amended directly or indirectly. However, the whole argument of Respondents to the effect interference by this Court would amount to fiddling with the Presidential Order is not sustainable for the reason that, the case of the Appellant neither calls for any inquiry into a sub-caste nor does it amend the Presidential Order. The Appellant had claimed 'Mochi', the Scrutiny Committee validated and granted the 'Mochi' caste certificate and 'Mochi' caste is clearly mentioned in Entry 11 of the Presidential Order. The argument of the Respondents that a reserved category in one State cannot be granted benefit of reservation in another State has no bearing in the present case since in the instant case, the Appellant did not claim 'Mochi' caste based on her caste in some other State. Rather, the claim was for 'Mochi' based on genealogical caste history of Appellant's forefathers. The Scrutiny Committee has verified the claim of Appellant holding that

Appellant belongs to 'Mochi' caste in accordance with Entry 11 of Presidential Order as application to Maharashtra.

25. Accordingly, in the light of discussion made hereinabove and considering the peculiar facts and circumstances, the instant appeals stand allowed and the impugned judgment passed by the High Court stands set-aside. The validation order dated 03.11.2017 passed by the Scrutiny Committee is restored. Pending application(s), if any, shall also stand disposed of. There shall be no order as to costs.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeals allowed.

[2024] 4 S.C.R. 151 : 2024 INSC 252

Krishnadatt Awasthy

v.

State of Madhya Pradesh & Ors.

(Civil Appeal No. 4806 of 2011)

04 April 2024

[J.K. Maheshwari* and K.V. Viswanathan,* JJ.]

Issue for Consideration

Matter pertains to the selection and appointment of appellants and four others to the post of Shiksha Karmi Grade wherein the selection process, if vitiated by bias, candidates being close relatives of the members of selection committee and non-joinder of parties in the initial appeal, if violative of the natural justice.

Headnotes

Service law – Selection and appointment – Selection process, if vitiated by bias, the candidates being close relatives of the members of selection committee – Non-joinder of parties in the initial appeal, if violative of the natural justice – Post of Shiksha Karmi Grade – Selection and appointment of 249 candidates including ten appellants and four other candidates, who were close relatives of the members of selection committee – Challenged to, before the Collector, by one of the aspirant – Only officers ex-officio impleaded as parties and not the appellants and the members of the selection committee – Cancellation of selection of appellants and four others since the members of the selection committee being their relatives gave them benefit thus, selection process vitiated – Said order upheld in Revision – Writ petition thereagainst, dismissed by the Single Judge of the High Court holding that the appellants were afforded ample opportunity of hearing thus, not joining them as party at the first instance before the Collector, should not prejudice them and plea of violation of principle of natural justice not justified – Division Bench also dismissed the appeal – Interference with:

Held: (per Maheshwari, J.) 'Rule against bias' proved as reasonable likelihood of bias was fully established irrefutably –

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* Author

Ed. Note: Hon'ble Mr. Justice J.K. Maheshwari and Hon'ble Mr. Justice K. V. Viswanathan pronounced separate Judgments. In view of divergent views, vide a common order, it was inter alia directed that the matter be placed before Hon'ble the Chief Justice of India for constitution of a larger Bench.

Without showing prejudice mere non-joinder even at initial stage does not violate the natural justice doctrine – Action of appellants of not controverting their relationship with the parties and not demonstrating the manner in which they have been prejudiced before the revisional authority and the Single Judge and Division Bench of High Court, their representation before the Collector would not have improved their case or compelled the Collector to arrive at a different finding – Plea of non-impleadment is a useless formality and the court should not entangle itself in procedural complexities – In view of the principle of prejudice, the judgment passed by the Single Judge as confirmed in writ appeal reaffirming the judgment of the Collector and Commissioner, setting aside the selection of the appellants does not suffer from any infirmity, warranting interference of this Court – **Held: (per Viswanathan, J.)** When an unsuccessful candidate challenged the selection process, where the specific grievance was against 14 candidates under the category of relatives and the overall figure was 249, at least the candidates against whom specific allegations were made and who were identified ought to have been given notices and made a party – Courts below makes no reference to resolution providing for recusal of committee members who had their close relatives appearing for the interview – Furthermore, the principle of prejudice not applicable since there was a complete denial of opportunity – Breach of principles of natural justice in the proceedings before the Collector at the original stage did not stand cured on account of the proceedings before the revisional authority – Given a chance before the Collector perhaps the appellants would have met each and every objection of the sole complainant – For the failure of complainant and the Collector, the appellants cannot be made to pay – By virtue of interim orders, the appellants are discharging their duties for the past twenty five years, thus, not in the interest of justice to remand the matter for a fresh enquiry – Impugned judgment of the Division Bench set aside – Madhya Pradesh Panchayat (Appeal and Revision) Rules, 1995 – Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 – Madhya Pradesh Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997 [Paras 35, 43, 46, 60, 66, 75-77] – **Per Court:** In view of the divergent views, issuance of directions to the Registry to place the matter before Hon'ble the Chief Justice of India for constitution of a larger Bench.

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In the Judgment of J.K. Maheshwari, J.

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Javid Rasool Bhat & Ors. v. State of Jammu and Kashmir & Ors. [1984] 2 SCR 582 : **(1984) 2 SCC 631 – held inapplicable.**

A.K. Kraipak and others v. Union of India and others [1970] 1 SCR 457 **: (1969) 2 SCC 262;** *J. Mohapatra & Co. & Anr. v. State of Orissa & Anr.* [1985] 1 SCR 322 **: (1984) 4 SCC 103;** *Ashok Kumar Yadav & Ors. v. State of Haryana & Ors.* [1985] Supp. 1 SCR 657 **: (1985) 4 SCC 417;** *Kirti Deshmankar v. Union of India & Ors.* [1990] Supp. 1 SCR 355 : **(1991) 1 SCC 104;** *Gurdip Singh v. State of Punjab & Ors.* **(1997) 10 SCC 641;** *Utkal University v. Nrusingha Charan Sarangi* [1999] 1 SCR 19 **: (1999) 2 SCC 193;** *G.N. Nayak v. Goa University* [2002] 1 SCR 636 : **(2002) 2 SCC 712;** *Govt. Of T.N. v. Munuswamy Mudaliar and Anr.* **(1988) Supp SCC 651 : AIR (1988) SC 2232;** *Bihar State Mineral Development Corporation v. Encon Builders (I) (P) Ltd.* [2003] Supp. 2 SCR 812 : **(2003) 7 SCC 418;** *S. Parthasarathi v. State of Andhra Pradesh* [1974] 1 SCR 697 : **(1974) 3 SCC 459;** *Dr. G. Sarana v. University of Lucknow and others* [1977] 1 SCR 64 **: (1976) 3 SCC 585;** *Sk. Golap and others v. Bhuban Chandra Panda and others* **(1990) SCC Online Cal 264;** *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and others* [2000] Supp. 4 SCR 248: **(2001) 1 SCC 182;** *Ashok Kumar Sonkar v. Union of India & Ors.* [2007] 3 SCR 95 : **(2007) 4 SCC 54;** *H.P. Transport Corpn. v. K.C. Rahi* [2008] 3 SCR 97 : **(2008) 11 SCC 502;** *Jankinath Sarangi v. State of Orissa* **(1969) 3 SCC 392;** *M/s. Escorts Farms (Ramgarh) Ltd. v. Commissioner Kumaon Division Nainital U.P. & Ors.* [2004] 2 SCR 543 : **(2004) 4 SCC 281;** *Canara Bank v. Debasis Das* [2003] 2 SCR 968 : **(2003) 4 SCC 557 – referred to.**

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of Bihar and Others **(2014) 16 SCC 187 : 2014 INSC 276**; *Union of India and Others v. G. Chakradhar* **(2002) 5 SCC 146;** *Abhishek Kumar Singh v. G. Pattanaik and Others* [2021] 5 SCR 305 **: (2021) 7 SCC 613 : 2021 INSC 305**; *Charan Lal Sahu v. Union of India* [1989] Suppl. 2 SCR 597 **: (1990) 1 SCC 613;** *S.L. Kapoor v. Jag Mohan and Others* [1981] 1 SCR 746 **: (1980) 4 SCC 379;** *The State of Uttar Pradesh v. Mohammad Nooh* [1958] 1 SCR 595**;** *Olga Tellis and Others v. Bombay Municipal Corporation and Others* [1985] Supp. 2 SCR 51 : **(1985) 3 SCC 545;** *The Chairman Board of Mining Examination and Chief Inspector of Mines and Another v. Ramjee* [1977] 2 SCR 904 **: (1977) 2 SCC 256;** *B.N. Nagarajan and Ors. v. State of Mysore and Ors.* [1966] 3 SCR 682**;** *Jaswant Singh Nerwal v. State of Punjab and Others* [1991] 1 SCR 411 **: (1991) Supp 1 SCC 313;** *M.C. Mehta v. Union of India* [1999] 3 SCR 1173 **: (1999) 6 SCC 237;** *Aligarh Muslim University and Others v. Mansoor Ali Khan* [2000] Supp. 2 SCR 684 **: (2000) 7 SCC 529 – referred to.**

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List of Acts

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List of Keywords

Selection; Appointment; Selection process; Bias; Members of selection committee; Non-joinder of parties; Natural justice; Shiksha Karmi Grade-III in Janpad Panchayat; Officers ex-officio; Non-impleadment as parties; Opportunity of hearing; Violation of principle of natural justice; Reasonable likelihood of bias; Rule against bias; Violation of *audi alteram partem;* Procedural complexities; Unsuccessful candidate; Notices; Definition of

relative; Recusal of committee members; Principle of prejudice; Judicial review proceedings; Review of the decision-making process; Interim orders; Divergent views; Constitution of a larger Bench.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.4806 of 2011

From the Judgment and Order dated 15.12.2008 of the High Court of M.P at Jabalpur in WA No. 892 of 2008

With

Civil Appeal Nos. 4807, 4808, 4809 of 2011

Appearances for Parties

Neeraj Shekhar, Ashutosh Thakur, Dr. Sumit Kumar, Advs. for the Appellant.

Mrinal Gopal Elker, Shashwat Parihar, Avadhesh Kumar Singh, Rajender Kumar Singh, Ms. Suvarna Singh, Sanjay Kumar Visen, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

J.K. Maheshwari J.

1. After perusal of the judgment and view expressed by esteemed brother Justice K.V. Viswanathan, in the facts of this case, I am not in a position to agree with the reasoning and conclusions as drawn by him, for which detailed reasons supporting my view is in succeeding paragraphs.

2. As per the facts of the case, the controversy in the present case revolves around selection and appointment for the post of Shiksha Karmi Grade-III in Janpad Panchayat Gaurihar, District Chhatarpur in the State of Madhya Pradesh which relates back to the year 1998. The appellants who are ten (10) in number and four (4) other candidates, in total fourteen (14) candidates who were close relatives of the members of selection committee, had been placed in the final selection list of 249 Shiksha Karmi Grade-III. For ready reference the appellants and their relations are described in a tabular form as under: -

Sl. No.	Candidate	Committee Member	Relationship
1.	Krishnadatt Awasthy	Pushpa Dvivedi (Chairman)	Maternal Nephew
2.	Shyama Dvivedi	Pushpa Dvivedi (Chairman)	Sister-in-law (Nanad)
3.	Prabha Dvivedi	Pushpa Dvivedi (Chairman)	Sister-in-law (Devrani)
4.	Rekha Avasthi	Pushpa Dvivedi (Chairman)	Niece
5.	Prabhesh Kumari	Pushpa Dvivedi (Chairman)	Niece
6.	Devendra Awasthi	Pushpa Dvivedi (Chairman)	Nephew (Sister's son)
7.	Sumer Singh	Swami Singh (Member)	Son
8.	Ramrani Singh	Swami Singh (Member)	Daughter in law
9.	Gita Rawat	Pushpa Dvivedi (Chairman)	Sister
10.	Rita Dwivedi	Pushpa Dvivedi (Chairman)	Sister of Vibha who is Devrani of Chairman

Thus, from the table above, the relationship of appellants with the members of the selection committee is apparent and un-disputed.

3. It is not inapposite to mention that at the previous stage of selection, after preparation of the select list of Shiksha Karmi Grade-III by Janpad Panchayat, Gaurihar, the same was challenged by one Kunwar Vijay Bahadur Singh Bundela by filing an appeal before the Collector, District Chhatarpur, who vide order dated 31.08.1998 quashed the selection list and remitted the matter for fresh selection. Pursuant to the directions, fresh selection was conducted and the final selection list consisting of 249 candidates including the names of appellants and four others was published on 16.09.1998. As per the said select list appointment orders were issued on 17.09.1998 appointing the candidates including the present appellants. Being

aggrieved by the selection and appointment of the appellants who were near relatives of members of the selection committee and non-selection of Smt. Archana Mishra who was an aspirant, filed an appeal before the Collector, District Chhatarpur on various grounds including the allegations as quoted in paragraph 14 of the order passed by esteemed brother. It is not in dispute that the present appellants were not impleaded as parties in the appeal before the Collector, though Chief Executive Officer Janpad Panchayat, Block Development Education Officer and the President of the Education Committee were arrayed as parties.

4. On issuing notice in the said appeal, the counter affidavit was filed by the Chief Executive Officer, Janpad Panchayat, attaching the certificate given by the Sarpanch of the Panchayat acknowledging the relationship of the selected/appointed candidates with the members of selection committee. As per the material placed, the findings recorded by the Collector are relevant, which is reproduced as under: -

> "3. ……So far as the question of selection of the relatives of the members of Select Committee is concerned, it is proved that the members of the Committee have selected their relatives and the same is against the principles of law. The facts given in the appeal have been admitted by the Respondent Janpad Panchayat in its Reply that the Committee President Smt. Pushpa Dvivedi's sister-in-law (Nanad) Shyama Dvivedi daughter of Shiv Dass Dvivedi, her sister-in-law (Devrani) Vibha Dvivedi wife of Kailash Dvivedi, two sisters of the Devrani (Vibha Dvivedi) of the Committee President namely Kum. Rashmi Dvivedi and Km. Rita Dvivedi have been appointed at Serial No. 9 and 4 of the Select List. The certificate of Sarpanch has been attached by the Respondent as evidence in this regard. The Respondent has also admitted that Devender Kumar Avasthi son of Brij Bhushan Avasthi, Rekha Awasthi, daughter of Brij Bhushan Awasthi, Pravesh Kumar, daughter of Brij Bhushan Awasthi are also the maternal niece of the Chairman of the Selection Committee. Their Selection No. is 176 and 30 respectively. Chief Executive Officer has also stated in his reply that Summer Singh, son of other member Swami Singh Sengar, daughter in law Ram Rani, wife of Rudra Pratap Singh, nephew

Rajesh Singh Chauhan, son Som Prakash Singh have also been selected. Facts which have been admitted by the Chief Executive Officer in his reply, they are reliable. Chief Executive Officer has admitted in his reply Exh.-A that selection of Badri Prasad, son of Bhagwat Prasad has been made. He has been allocated 9 marks for experience, but the Experience Certificate is not found enclosed with his application. It is also proved from the reply submitted by District Panchayat that selection of Shri Krishan Dutt Awasthi, son of Sita Ram Awasthi has been made at No. 64. He is also the maternal nephew of the Chairman and at Appointment Order No. 90 selection of Geeta Rawat, - Ganga Prasad Rawat has been made. She is the real sister of Chairperson. Committee of District Panchayat has made the selection of his relatives in contravention of various Sections of MP Panchayat Raj Act. It has been restricted in Section 40(C) of Panchayat Raj Act that any of the office bearers shall not cause financial gain to his relatives. As per Section 40(C), act of any of the office bearers of Panchayat to get job for his any relative in Panchayat through his direct or indirect influence or to act to cause financial benefit to any of his relatives like carrying out of any work of the Panchayat through any kind of contract shall amount to gross negligence towards duties under the above Section and in such circumstances, if it is done, then office bearers of the Panchayat could be terminated. In Section 100 of the Act, acquisition of any interest by any member office bearer or employee directly or indirectly in any contract or any employment made is strictly prohibited. In the present case, members of the Committee of the District Panchayat have made the selection of their relatives in order to cause benefit to them in the entire selection procedure, which is contrary to the principles settled by the law. Any person cannot be the judge for himself. There is a principle of natural justice that judge should see all persons with same eye. Selection of the relatives of the members by the members has definitely caused the discrimination with other members. In such circumstances, selection of the relatives of the District Panchayat is not lawful, which is liable to be cancelled…

> As per the facts given in the case like respondents have admitted in the above paras that selection of the relatives of the members has been made in illegal manner, selection of these relatives is cancelled and the appointment so made is terminated."
>
> (emphasis supplied)

From the above observation it can be safely perceived that the members of the selection committee appointed the appellants who were their relatives and had given benefit to them which is arbitrary and discriminatory therefore vitiated.

5. The appellants assailed the said order of Collector by filing revision under Section 5 of the Madhya Pradesh Panchayat (Appeal and Revision) Rules, 1995 (hereinafter referred to as "A&R Rules"). It was submitted that quashment of their appointment by the Collector without joining them and affording an opportunity is in violation of the Principle of Natural Justice. The appellants in the memo of revision had not denied their relationships with the members of the selection committee and only averred that "*it is the wrong allegation that the appointments of the petitioners have been cancelled by the Collector, Chhatarpur on the charge of being relatives.*"

6. The revisional authority (Commissioner Revenue) dismissed the revision vide order dated 14.03.2000, in para (6) of the order it was observed that the selection of the appellants is contrary to Section 40(C) of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereafter referred to as 'Adhiniyam'). The plea of non-joinder and not affording an opportunity of hearing was not found appealing because the relationship of the appellants with the members of the selection committee, gave undue favour to them and the same was not denied. The revisional authority was of the opinion that in the facts and circumstances of the case, not joining the appellants did not prejudice them. Further, the violation of principle of bias attracts in this case which vitiates the selection. However, in absence of any prejudice, decision of the Collector is not required to be altered with.

7. Aggrieved by the order of revisional authority, appellants filed a writ petition under Article 226 of the Constitution of India before the High

Court. Learned Single Judge with intent to afford an opportunity allowed the appellants herein to inspect the records of selection through their counsel, as spelt out in paragraph 13 of the order of Single Judge which is reproduced as under: -

> "13. During the course of hearing of this petition, as ordered earlier the Chief Executive Officer of the Janpad Panchayat was present with the original records of selection. Shri M.L. Choubey, learned counsel for the petitioners, was granted permission to inspect the records he inspected the records on 29.07.2008. The records have been perused by this Court and is returned back to Shri Shailesh Mishra after perusal."
>
> Later, learned Single Judge formulated following three questions: -
>
> (i) "The first question would be as to whether the appeal was maintainable before the Collector under Rule 3;
>
> (ii) The second question is as to what is the effect of cancellation of the appointment of the petitioners, ordered without hearing them and without impleading them as parties; and,
>
> (iii) The third and final question would be as to whether the Collector and Commissioner were right in interfering with the selection of the petitioners for the reasons indicated by them in the impugned order i.e… the presence of the relatives as members of the selection committee in which petitioners had participated"

8. Question No. (i) relating to maintainability of appeal was answered against the appellants. The said question is not of much relevance at this stage, thus, in my view it is not required to be dealt with in detail. Further, the Learned Single Judge dealt questions no. (ii) and (iii) in detail as they relate to non-joinder of the appellants and affording them an opportunity of hearing and presence of relatives of appellants in the selection committee. The said question had been answered in paragraphs 20, 21, 22 and 23 of the order. In my view para 20 of the order of learned Single Judge is the foundational discussion on the issues therefore it is relevant and reproduced as under: -

"20. Item No.3 of Rule 2 deals with Shiksha Karmi - Grade III, the educational qualification is Higher Secondary Certificate Examination passed, and the Selection Committee is to consist of: (i) Chairperson, Standing Committee of Education of Janpad Panchayat; (ii) Chief Executive Officer, Janpad Panchayat; (iii) Block Education Officer (Member Secretary); (iv) Two specialists in the subject to be nominated by the Standing Committee for Education of whom one shall be woman; and, (v) All members of the Standing Committee of Education of whom at least one belongs to the Scheduled Castes, Scheduled Tribes or OBC. In the present case, there is no dispute that the Selection Committee was constituted as per the aforesaid provision, but presence of two members in the Selection Committee is to be taken note of. The President of the selection Committee is one Smt. Pushpa Dwivedi. She is Chairman of the Education Committee and she has participated in the process of selection of various candidates. Another member of the Selection Committee was one Shri Swami Singh, who is a Member of the Janpad Panchayat and has participated in the process of selection as a Member of the Education Committee. It is found by the Collector and the finding of the Collector is affirmed by the Commissioner to the extent that petitioner No.1 Smt. Shyama Dwivedi is the sister-in-law of the President of the Selection Committee Smt. Pushpa Dwivedi. According to the finding recorded Smt. Pushpa Dwivedi's sister-in-law (Nanand) Smt. Shyama Dwivedi; her Devrani Smt. Vibha Dwivedi; two sisters Rashmi Dwivedi and Rita Dwivedi have been appointed. Apart from these persons, her nephew Devendra Awasthi and her two nieces Ku. Rekha Awasthi and Ku. Prabhesh Kumari have been appointed. That apart, it is found that Smt. Gita Rawat, petitioner No.8, is also sister of Smt. Pushpa Dwivedi. From the aforesaid facts, it is clear that eight members of the family belonging to the President Smt. Pushpa Dwivedi have been selected for appointment on the post in question. Apart from the aforesaid eight persons petitioner Smt. Ramrani Singh is found to be

daughter-in-law of Shri Swami Singh, who was Member of the Committee; Shri Sumer Singh, petitioner No.6, is found to be son of Shri Swami Singh and one of his nephew Shri Rajesh Singh has also been found to be appointed. Finding in this regard is recorded by the Collector and the Commissioner on the basis of the statement made by the Chief Executive Officer. The order-sheets dated 4.6.2002 and 24.6.2002 indicates that petitioners were directed to file affidavits to show as to whether this is a correct fact or not. The order-sheet dated 24.6.2002 indicates that time was sought by learned counsel for the petitioners to file specific affidavit of the petitioners denying their relationship with Members of the Selection Committee or office bearers of the Janpad Panchayat. Even though in pursuance to the aforesaid order, affidavits have been filed, but in these affidavits the facts are not denied and during the course of hearing Shri M.L. Choubey fairly admitted that petitioners are related to Smt. Pushpa Dwivedi and Shri Swami Singh, as recorded by the Collector and the Commissioner and he accepts the same, that being so, the finding recorded by the Collector and the Commissioner to the effect that all the petitioners are very closely related either to the President of the Committee, or its Member is a correct finding. According to the Collector and the Commissioner, the Panchayat Raj Adhiniyam prohibits grant of any undue benefit by Members and office bearers of the Panchayat to any of its relatives or family members. Finding recorded is that in this case some benefit has been granted."

(emphasis supplied)

9. Paragraphs 21, 22 and 23 have already been reproduced by esteemed brother in para 27 in his judgment. Discernibly, in para 21 thereto the arguments regarding presence of the members of the selection committee do not materially affect the selection process was raised by the appellants, which is answered in paragraphs 22 and 23. As reflected from paragraph 22, it drew the inference that one of the appellants had obtained less marks in higher secondary examination but she was accorded higher marks in oral interview

and experience category, and included in her merit. While dealing with the case of other candidates observed they secured less marks in higher secondary in comparison to wait listed candidates and granted more marks in oral interview due to which, they found place in the selection list. In scrutiny of facts and the record learned Single Judge was of the opinion that the appellants herein received less marks in higher secondary whereas many persons whose names appearing in wait list received 78% to 79% marks and they were given less than three marks in oral interview, therefore, they have not been given place in selection list. In paragraph 23 of the order, the Learned Single Judge further dealt with the individual cases of the appellants and concluded that the appellants whose relatives were the members of the selection committee found favour in their appointment, therefore, due to bias such appointments stood vitiated. Applying the said analogy, the arguments of appellant(s) were not found convincing enough to interfere with the orders of the Collector and Commissioner in exercise of scope of Article 226 to warrant interference by the High Court.

10. On analysing the order of the learned Single Judge in detail it is quite vivid that despite affording due opportunity to controvert the factum of relationship with the members of the selection committee and other fact findings, they have not refuted those allegations disputing their relationship. The record of the selection was produced before the Learned Single Judge bench and it was inspected by the advocate of the appellant(s) but they were not in a position to deny such facts and allegations. Accordingly, it was observed that the selection of the appellants who were relatives of the members of the selection committee, is not as per the spirit of Section 40 and 100 of the Adhiniyam which prohibits the office bearers to use any undue benefit to any of its relative and family members. Learned Single Judge applying the principles enunciated in the judgment of the **A.K. Kraipak and others Vs. Union of India and others; (1969) 2 SCC 262** and evaluating the facts refused to exercise the jurisdiction under Article 226 of the Constitution of India. In the light of the judgment of the **State Bank of Patiala and others Vs. S.K. Sharma 1996 (3) SCC 364** learned Single Judge observed that appellants have afforded ample opportunity of hearing therefore not joining them party at the first instance before the Collector, should not prejudice them and the plea of violation of principle of natural justice is not justified.

11. The appellants challenged the order of the learned Single Judge in Writ Appeal before the Division Bench which was dismissed by the impugned judgement and the same is under challenge before us. In the impugned judgement, it is said that relationship of appellants with the members of selection committee has not been denied. Analysing the findings of paras 21 to 23 of learned Single Judge, it is seen how the relatives of the members of the selection committee were given higher marks in interview though they were having less marks in higher secondary and in the category of experience with the other wait-listed candidates who were given less marks in interview with an intent to push down the meritorious candidates in the merit list The Division Bench referring the judgments of **A.K. Karipak (supra), J. Mohapatra & Co. & Anr. Vs. State of Orissa & Anr.; (1984) 4 SCC 103, Ashok Kumar Yadav & Ors. Vs. State of Haryana & Ors.; (1985) 4 SCC 417, Kirti Deshmankar Vs. Union of India & Ors.; (1991) 1 SCC 104, Gurdip Singh Vs. State of Punjab & Ors.; (1997) 10 SCC 641, Utkal University Vs. Nrusingha Charan Sarangi; (1999) 2 SCC 193, G.N. Nayak Vs. Goa University; (2002) 2 SCC 712, Govt. of T.N. Vs. Munuswamy Mudaliar and Anr.; 1988 Supp SCC 651: AIR 1988 SC 2232, Bihar State Mineral Development Corporation Vs. Encon Builders (I) (P) Ltd.; (2003) 7 SCC 418** and in paragraph 23 observed as under: -

> "The present factual matrix is to be tested on the aforesaid enunciation of law. We have reproduced the analysis made by the learned Single Judge. He has categorically recorded that the relatives of the members of the selection committee have been selected. The submission of the learned counsel for the appellants is that if the marks awarded by the interested persons are excluded then also they would be selected. The said submission, if we are permitted to say so, is a justification from hind sight. The result manifests itself. In the case at hand, it does not require Solomon's wisdom that bias is in stricto sensu as from a reasonable mind could be thought. As we have referred to the authorities above, bias is a state of mind at work. Quite apart from above, when the degree of relationship is in quite proximity, bias is to be inferred and the authorities below have inferred the same and after

detailed discussion, the learned Single Judge has given the stamp of approval to the same."

(emphasis supplied)

12. In the backdrop of the above factual matrix, as analysed and recorded, the Division Bench did not find any fault in the findings of two quasi-judicial authorities and learned Single Judge. While dismissing the appeal and refusing to entertain the plea of violation of principle of natural justice, it was observed that since the selected candidates were relatives of the office bearers of the committee, the possibility of reasonable likelihood of bias cannot be obliterated. Once the possibility of likelihood of bias kicks in, the selection process stands vitiated. It is said that in absence of any demonstrable prejudice to the appellants, their appointment cannot be approved. On the plea of not joining them as party before the Collector, the Division Bench observed in paragraph 11 as thus:

"11. The second aspect is whether the orders passed by the Collector and the Commissioner should have been quashed by the learned Single Judge as the appellants who had been visited with adverse civil consequence were not arrayed as parties before the Collector. It is urged by the learned counsel for the appellants that in view of the law laid down in Inderpreet Singh Kahlon (supra) and M/s Laksmi Precision Screws Limited (supa), no person should be visited with an adverse civil consequence without affording him a reasonable opportunity of hearing. There cannot be any cavil on the aforesaid proposition. The learned Single Judge has placed reliance on the decision rendered in State Bank of Patiala and Others v. V.K. Sharma, (1996) 3 SCC 364 to come to hold that unless prejudice is caused due to non-granting of hearing, the orders should not be mechanically interfered with. It is worth noting that the appellants had preferred the revision. They participated in the hearing before the revisional authority in all aspects. The Commissioner had called for the entire selection proceeding and other documents on record were available to the petitioners therein. There was due deliberation in respect of the defence put forth by the

> revisionists. That apart, the learned Single Judge had called for the parties. In view of the aforesaid, we are of the considered opinion that though it was imperative on the part of appellants to implead the affected parties, yet as the affected parties had been given full opportunity from all aspects by the revisional forum as well as by the learned Single Judge, we do not think it apt and apposite to quash the order and remand the matter to the Collector to re-adjudicate singularly on the ground that the appellants herein should have been impleaded as a parties and that the matter should be reheard. The said exercise in the peculiar facts and circumstance so the case is unwarranted."
>
> *(emphasis supplied)*

13. In view of the foregoing, it is clear that while challenging the selection and appointment of the appellant before the Collector, they were not the party. However, in revision they challenged the said and afforded the opportunity but their contentions did not find favour with revisional authority. As per the findings recorded and also by Learned Single Judge, it is clear that the appellants were relatives of the members of the selection committee which is not permissible as per the spirit of Sections 40 and 100 of the Adhiniyam. The Division Bench confirmed those findings holding that in the facts of the case, reasonable likelihood of bias cannot be ruled out. It was also held that at initial stage the appellants were required to be joined as parties before the Collector but because they have been given due opportunity by the revisional authority, before learned Single Judge, it has not caused any prejudice. Looking to the uncontroverted facts only their non-joinder before the Collector would not vitiate the order impugned.

14. In the above factual background, it is required to be appreciated that whether due to non-joining the appellants before the Collector violates the principle of natural justice ? Consequently, whether the findings recorded against the appellants by two quasi-judicial authorities, writ court and the writ appellate court is liable to be interfered with in this appeal?

15. For appreciating the said issue, it is necessary to refer Sections 40 and 100 of the Adhiniyam, which are reproduced as thus: -

"40. Removal of office-bearers of Panchayat- (1) The State Government or the prescribed authority may after such enquiry as it may deem fit to make at any time, remove an office-bearer-

(a) if he has been guilty of misconduct in the discharge of his duties; or

(b) if his continuance in office is undesirable in the interest of the public:

Provided that no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office.

Explanation- For the purpose of this sub-section "Misconduct" shall include-

(a) any action adversely affecting,-

(i) the sovereignty, unity and integrity of India; or

(ii) the harmony and the spirit of common brotherhood amongst all the people of State transcending religious, linguistic, regional, caste or sectional diversities; or

(iii) the dignity of women; or

(b) gross negligence in the discharge of the duties under this Act;

[(c) the use of position or influence directly or indirectly to secure employment for any relative in the Panchayat or any action for extending any pecuniary benefits to any relative, such as giving out any type of lease, getting any work done through them in the Panchayat by an office-bearer of Panchayat.

Explanation. – For the purpose of this clause, the expression "relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law:]"

"100. Penalty for acquisition by a member, office bearer or servant of interest in contract. - If a member or office

> bearer or servant of Panchayat knowingly acquires, directly or indirectly any personal share or interest in any contract or employment, with, by or on behalf of a Panchayat without the sanction of or permission of the prescribed authority he shall be deemed lo have committed an offense under Section 168 of the Indian Penal Code, 1860 (XLV of 1860)."

16. On perusal of the said provision, the intention of the legislators is lucid that a person can be removed from the office mainly on two instances, firstly, if they are guilty of misconduct and secondly, their continuation in office is undesirable in public interest. The provision further attempts to enlist the events which typically fall within the definition of misconduct. Clause (c) of the first explanation to Section 40 encompasses use of position by direct or indirect influence to secure employment for the relatives and extending any pecuniary benefits to them as misconduct. Upon perusal, it is irrefutably inferred that functioning of the Panchayat must be free from influence in selection and appointment and no undue benefit should be given to relatives in employment or any other pecuniary benefit. Otherwise contravention of this provision attracts removal of the office bearers. Further, it is apparent from the Explanation to clause (c), that the term 'relative' encompasses father, mother, brother, sister, husband, wife, son, daughter, mother-in-law father-in-law brother-in-law of the office bearer and such relationships are implied to be falling within the category of 'prohibited degree of relationship' in the matter of employment or to grant pecuniary benefit. Thus, it is explicit that relatives of elected office bearers, if secures an employment by the process where the office bearers were actively participating and controlling the process, it gives cause for removal of such office bearers.

17. As per factual matrix of the instant case, out of 14 candidates whose selection was set aside, 7 fall within the prohibited degree of relationships and others can be said to be in near relation. Though in the present case we are not concerned with the removal of office bearers, nonetheless, we should not lose track of the fact that the conduct of the office bearers in giving undue benefits to their near relatives in an orchestrated manner to deprive other candidates of the opportunities despite them securing more marks in qualifying higher secondary examination, by and large amounts

to 'misconduct' under the law. Upon challenge, the selection and appointment of successful candidates who were alleged to be in relationships with the office bearers has been set aside by the orders of the authorities and the High Court on the ground that the presence of reasonable likelihood of bias vitiates the selection process and consequently the appointment. Further, the plea of their non-joinder at initial stage was not found favour by both, the authorities and the High Court, by stating that since the candidates have been afforded sufficient opportunity however, their non-joinder before Collector would not be detrimental to the principle of natural justice. At this juncture it is imperative to address the question that when the selection and appointment is made in blatant violation of the principle(s) of natural justice what effect would it have on the selection of such candidates?

18. In the case at hand, the appellants countered the findings of Collector, Commissioner, learned Single Judge and the Division Bench on the ground of violation of *audi alteram partem*. It was contended that their appointment was cancelled without joining them at in initial proceedings before the Collector. The principle of natural justice does not solely depend on *audi alteram partem.* It needs to be prefaced by an action of the administrative or quasi-judicial authorities and the courts of common law jurisdiction in India to invalidate the orders based on rule of principle doctrine. The principle of natural justice emphasises the basic values which a common man cherishes throughout. The said principle is based on rules relating to fairness, reasonableness, equity and justice, good faith, and good conscience. It gives assurance of justice with the intent to develop confidence in the justice delivery process. The English law recognized two facets of natural justice *"nemo debet esse judex in propia causa"* which means no one can be a judge in his own cause and "*audi alteram partem"* means no one should be condemned unheard. The preceding principle emphasises about the decision-making authority and the latter emphasises a procedure to be adopted in decision making, however, the deciding authority must be impartial and without bias, therefore, the element of the bias in the mind of the authority is an essential facet and the initial step to observe the principle of natural justice. The preceding principle emphasises that a man should not be a judge in his own cause. Thus as per the first requirement, the person who is involved in

the process including a judge should be impartial and neutral and must be free from bias.

19. In the English judgement of **R Vs. Rand, (1866) LR 1 QB 230**, Blackburn, J observed thus "…*Wherever there is a real likelihood that the judge would, from kindred or any other cause, have a bias in favour of one of the parties, it would be very wrong in him to act; and we are not to be understood to say, that where there is a real bias of this sort this Court would not interfere;.."*

20. In another English judgment **R Vs. Sussex JJ, ex parte McCarthy (1924) 1 KB 256**, the King's Bench quashed the conviction on the ground of bias. Lord Hewart, CJ posed the question as thus: -

> "… The question therefore is not whether in this case the deputy clerk made any observation or offered any criticism which he might not properly have made or offered; the question is whether he was so related to the case in its civil aspect as to be unfit to act as clerk to the justices in the criminal matter."

and answered as under: -

> "… The answer to that question depends not upon what actually was done but upon what might appear to be done. Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice. Speaking for myself, I accept the statements contained in the Justices' affidavit, but they show very clearly that the deputy clerk was connected with the case in a capacity which made it right that he should scrupulously abstain from referring to the matter in any way, although he retired with the Justices; in other words, his one position was such that he could not, if he had been required to do so, discharge the duties which his other position involved. His twofold position was a manifest contradiction. In those circumstances I am satisfied that this conviction must be quashed, unless it can be shown that the applicant or his solicitor was aware of the point that might be taken, refrained from taking it, and took his chance of an acquittal on the facts, and then, on a conviction being recorded, decided to take the point.

21. In the case of **R Vs. Camborne JJ, ex parte Pearce, (1955) 1 QB 41** the QB observed that

> 'real likelihood was the proper test and that a real likelihood of bias had to be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries'
>
> The question arose before the QB was
>
> "… 'What interest in a judicial or quasi-judicial proceeding does the law regard as sufficient to incapacitate a person from adjudicating or assisting in adjudicating on it upon the ground of bias or appearance of bias?"

After discussing various judgements, it was held that –

> "In the judgment of this Court the right test is that prescribed by Blackburn, J., namely, that to disqualify a person from acting in a judicial or quasi-judicial capacity upon the ground of interest (other than pecuniary or proprietary) in the subject-matter of the proceeding, a real likelihood of bias must be shown. This Court is further of opinion that a real likelihood of bias must be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries."
>
> In the present case, for example, the facts relied on in the applicant's statement under RSC Order 59 Rule 3(2), might create a more sinister impression than the full facts as found by this Court, all or most of which would have been available to the applicant had he pursued his inquiries upon learning that Mr Thomas was a member of the Cornwall County Council, and none of these further facts was disputed at the hearing of this motion.
>
> The frequency with which allegations of bias have come before the courts in recent times seems to indicate that Lord Hewart's reminder in Sussex JJ case [(1924) 1 KB 256: 1923 All ER Rep 233] that it is of fundamental importance that justice should not only be done, but

> should manifestly and undoubtedly be seen to be done' is being urged as a warrant for quashing convictions or invalidating orders upon quite unsubstantial grounds and, indeed, in some cases upon the flimsiest pretexts of bias. Whilst endorsing and fully maintaining the integrity of the principle reasserted by Lord Hewart, this Court feels that the continued citation of it in cases to which it is not applicable may lead to the erroneous impression that it is more important that justice should appear to be done than that it should in fact be done."

22. In the case of **Metropolitan Properties Co. (FGC) Ltd. Vs. Lannon, (1969) 1 QB 577,** Lord Denning observed and held as thus**: -**

> "the principle evolved by Lord Hewart, CJ that 'justice should not only be done, but manifestly and undoubtedly be seen to be done'. In considering whether there was 'real likelihood' of bias, Court does not look at the mind of the decision-maker himself. "The Court looks at the impression which would be given to other people. Even if, he was as impartial as could be, nevertheless, if right-minded persons would think that, in the circumstances, there was a 'real likelihood' of bias on his part, then he should not sit. And if he does sit, his decision cannot stand."
>
> "There must be circumstances from which a reasonable man would think it likely or probable that the justice, or chairman, as the case may be, would, or did, favour one side at the expense of the other. The Court will not enquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think that he did."

The said test was explained in the case of **Hannam Vs. Bradford Corporation, (1970) 2 All ER 690** as thus: -

> "If a reasonable person who has no knowledge of the matter beyond knowledge of the relationship which subsists between some members of the tribunal and one of the parties would think that there might well be bias and there is in his opinion a real likelihood of bias. Of course, someone else with inside knowledge of the characters of the members in question might say "Although things don't look very well, in fact there is no real likelihood of bias."

That, however, would be beside the point, because the question is not whether the tribunal will in fact be biased, but whether a reasonable man with no inside knowledge might well think that it might be biased."

23. In another English judgment **R Vs. Gough, 1993 AC 646**, the question came before the House of Lords which used the expression 'real danger' of bias while applying the test of reasonable likelihood of bias. The Court emphasised the term "possibility of bias" rather than "probability of bias" and held as under: -

> "… In my opinion, if, in the circumstances of the case (as ascertained by the court), it appears that there was a real likelihood, in the sense of a real possibility, of bias on the part of a justice or other member of an inferior tribunal, justice requires that the decision should not be allowed to stand. I am by no means persuaded that, in its original form, the real likelihood test required that any more rigorous criterion should be applied. Furthermore, the test as so stated gives sufficient effect, in cases of apparent bias, to the principle that justice must manifestly be seen to be done, and it is unnecessary, in my opinion, to have recourse to a test based on mere suspicion, or even reasonable suspicion, for that purpose."
>
> "In conclusion, I wish to express my understanding of the law as follows. I think it possible, and desirable, that the same test should be applicable in all cases of apparent bias, whether concerned with Justices or members of other inferior tribunals, or with jurors, or with arbitrators. Likewise, I consider that, in cases concerned with jurors, the same test should be applied by a Judge to whose attention the possibility of bias on the part of a juror has been drawn in the course of a trial, and by the court of appeal when it considers such a question on appeal. Furthermore, I think it unnecessary, in formulating the appropriate test, to require that the court should look at the matter through the eyes of a reasonable man, because the court in cases such as these personifies the reasonable man; and in any event the court has first to ascertain the relevant circumstances from the available evidence,

knowledge of which would not necessarily be available to an observer in court at the relevant time. Finally, for the avoidance of doubt, I prefer to state the test in terms of real danger rather than real likelihood, to ensure that the court is thinking in terms of possibility rather than probability of bias. Accordingly, having ascertained the relevant circumstances, the court should ask itself whether, having regard to those circumstances, there was a real danger of bias on the part of the relevant member of the tribunal in question, in the sense that he might unfairly regard (or have unfairly regarded) with favour, or disfavour, the case of a party to the issue under consideration by him…."

24. The above said English principles having been adopted by the Indian Courts, the Constitutional Bench in the celebrated judgment of **A.K. Kraipak and others (supra)** held as thus:

"…..The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct."

(emphasis supplied)

25. Further, in the case of **S. Parthasarathi Vs. State of Andhra Pradesh; (1974) 3 SCC 459** while drawing distinction of bias, "real likelihood" and "reasonable suspicion", the Court expanded the scope of bias. The relevant paragraphs of the said judgment are reproduced as under: -

"13. ……We are of the opinion that the cumulative effect of the circumstances stated above was sufficient to create in the mind of a reasonable man the impression that there was a real likelihood of bias in the inquiring officer. There must be a "real likelihood" of bias and that means there must be a substantial possibility of bias. The Court will

have to judge of the matter as a reasonable man would judge of any matter in the conduct of his own business (see R. v. Sunderland, JJ.) [(1901) 2 KB 357 at 373]

14. The test of likelihood of bias which has been applied in a number of cases is based on the "reasonable apprehension" of a reasonable man fully cognizant of the facts. The courts have quashed decisions on the strength of the reasonable suspicion of the party aggrieved without having made any finding that a real likelihood of bias in fact existed (see R. v. Huggins [(1895) 1 QB 563] ; R. v. Sussex, JJ., ex. p. McCarthy [(1924) 1 KB 256] ; Cottle v. Cottle [(1939) 2 All ER 535] ; R. v. Abingdon, JJ. ex. p. Cousins [(1964) 108 SJ 840] .) But in R. v. Camborne, JJ. ex. p Pearce [(1955) 1 QB 41 at 51] the Court, after a review of the relevant cases held that real likelihood of bias was the proper test and that a real likelihood of bias had to be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries.

XXX XXX XXX

16. The tests of "real likelihood" and "reasonable suspicion" are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a

> reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision..."

26. This Court while emphasising upon bias in the case of **Dr. G. Sarana Vs. University of Lucknow and others; (1976) 3 SCC 585** held that what has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration. In case, the member of the group or board may be in a position to influence the other, then his bias is likely to operate in a subtle manner.

27. In the case of **J. Mohapatra & Co. & Anr. (supra)**, this Court emphasised that the doctrine of necessity applies not only to judicial matters but also to quasi-judicial and administrative matters. While reiterating the principle of bias, it has been held that doctrine of necessity cannot be invoked because the members of the committee were appointed by a Government Resolution and some of them were appointed because they were holding official position. Such members, by virtue of the orders or statutes were made a part of the selection committee, are required to inform their position to the Government, however, without taking such recourse they cannot take a plea to apply the doctrine of bias.

28. This Court in another Constitution Bench case of **Ashok Kumar Yadav & Ors. (supra)** has reaffirmed the principle of bias holding that if a selection committee is constituted for the purpose of selecting candidates on merits and one of the members of the selection committee is closely related to a candidate appearing for the selection, it would not be enough for such member merely to withdraw from participation in the interview of the candidate and ask the authorities to nominate another person in his place on the selection committee, because otherwise all the selections made would be vitiated on account of reasonable likelihood of bias affecting the process of selection.

29. In the case of **Sk. Golap and others Vs. Bhuban Chandra Panda and others; 1990 SCC Online Cal 264**, while dealing with the issue of likelihood of bias, applying the principle "justice should not only be done but it should be seen to have been done" the Court held as under: -

> "7. ……We have no hesitation in believing also that he had no personal contact with the writ petitioners who were his erst-while clients since the previous writ petition was not decided in the recent past. These considerations do not, however, detract from the validity of the legal objection raised on behalf of the appellants. It is not necessary for the appellants to establish that the learned single Judge actually had a bias and that the said bias was the cause of the adverse verdict. The test to be applied in such cases is not whether in fact a bias has affected the judgment but whether there was a real likelihood of bias. The answer depends not upon what actually was done but upon what might appear to be done. Justice must be rooted in confidence; and confidence is destroyed when right minded people may have reason to go away thinking: "the Judge might have been biased."

30. Similarly, in the case of **Kirti Deshmankar** **(supra)** this Court re-emphasised that if the mother-in-law of the selected candidate was interested in the admission of her daughter-in-law, her presence in the meeting of the council vitiates the selection and it was not necessary to categorically establish the bias. The Court observed that if in the selection process it is shown that there was a reasonable likelihood of bias, it is sufficient to set aside the such selection.

31. This Court in the case of **G.N. Nayak** **(supra)** again emphasising the element of impartiality in the mind of judicial, quasi-judicial or administrative body held as thus: -

> "33. Bias may be generally defined as partiality or preference. It is true that any person or authority required to act in a judicial or quasi-judicial matter must act impartially.
>
> "If however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the Judge, then no one has ever had a fair trial and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions and the processes of education, formal and informal, create attitudes which precede reasoning in particular instances and which, therefore, by definition, are prejudices." [Per Frank, J. in Linahan, Re, (1943) 138 F 2d 650, 652]

> 34. It is not every kind of bias which in law is taken to vitiate an act. It must be a prejudice which is not founded on reason, and actuated by self-interest — whether pecuniary or personal. Because of this element of personal interest, bias is also seen as an extension of the principles of natural justice that no man should be a judge in his own cause. Being a state of mind, a bias is sometimes impossible to determine. Therefore, the courts have evolved the principle that it is sufficient for a litigant to successfully impugn an action by establishing a reasonable possibility of bias or proving circumstances from which the operation of influences affecting a fair assessment of the merits of the case can be inferred".

32. The case of **Gurdip Singh (supra)** is a case of similar nature as on hand, in paragraph 3 of the said case, this Court has observed as thus:

> "3. .....It has been established beyond doubt that the father of Respondent 3 being the Secretary of the Managing Committee of the school participated in the selection of his daughter, Respondent 3 and later on confirmation was given about such selection in favour of Respondent 3 where Respondent 3 by virtue of improper selection also constituted as one of the members of the Managing Committee giving confirmation. In the aforesaid circumstances, we set aside the selection of Respondent 3 as the Headmistress of the said school."

33. On the other side, learned counsel for the appellants has heavily placed reliance on the judgment of **Javid Rasool Bhat & Ors. Vs. State of Jammu and Kashmir & Ors.; (1984) 2 SCC 631** to contend that in absence of any allegation of mala fide, it would not be right to set aside the selection merely because one of the candidates happened to be related to a member of the selection committee who abstained from participating in the interview of that candidate. The case of **Javid Rasool Bhat (supra)** is based on a written and oral test wherein the member of the selection committee for oral test was unaware of the marks obtained by the candidate in the written examination. The father of the candidate who was on the interview panel had left the premise at the time of

interview. Thus, the Court found that there was no bias. While in the present case, as per the procedure prescribed and discussed, the members of selection committee were aware, how many marks have been obtained by individual candidates in qualifying exam and also in experience category and by shortage of how many marks they may be out from the merit list of selection. The members were aware that their relatives would appear for interview, therefore, they themselves passed a resolution on 01.08.2003 prior to starting the process of selection and decided to abstain from the interview of those particular candidates. Having knowledge of the fact that their relatives are appearing and even without intimating the same to the higher authorities for change of selection committee, they had participated in the process of selection and about 5% relatives got selected and appointed by such an act. Therefore, in my opinion the judgment of **Javid Rasool Bhat** **(supra)** is disqualifiable on facts and is of no help to the appellants.

34. As ascertained from the discussion above, whether in a particular case, principles of natural justice have been contravened or not is a matter for the courts to decide from case to case. However, even with all its vagueness and flexibility, its two elements have generally been accepted, viz, (i) that the body in question should be free from bias, and (ii) that it should hear the person affected before it decides the matter. The first principle denotes that the adjudicator should be disinterested and unbiased; the prosecutor himself should not be a judge; the judge should be a neutral and disinterested person; a person should not be a judge in his own cause; a person interested in one of the parties to the dispute should not, even formally, take part in the adjudicatory proceedings. The basis of this principle is that justice should not only be done, but should manifestly and undoubtedly be seen to be done. According to **Lannon (Supra)**, the actual existence of bias is not necessary. The test is "reasonable likelihood of bias", if a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision. Mere apprehension of bias is not enough and there must be cogent evidence available on record to come to the conclusion. In my view the said Doctrine has been adopted in pith and substance by Indian Courts.

35. As per the judgment of **Ridge Vs. Baldwin; 1964 AC 40**, it is said that the doctrine of natural justice is not only to secure justice but

to prevent the miscarriage of justice. Such doctrine was held to be incapable of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances would amount to prevent the miscarriage of justice. In the case of **Russell Vs. Duke of Norfolk; (1949) 1 All ER 109 (CA)**, As Tucker, L.J. has expounded when the principles of natural justice are required to be seen, everything will depend on the actual facts of the case. He observed as thus: -

> "The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with and so forth."

36. On reverting to the facts of the present case and as observed in the table in Para 2 of this judgement, five of the present appellants fall within the prohibited degree of relatives as prescribed in the explanation of Section 40 of the Adhiniyam, while the remaining five have near relationships with the Committee members. It is also to observe that their relationships have not been denied by the present appellants at any juncture of this litigation. The process of selection is the same in which some of the appellants having prohibited degree of relationship and near relationship. To apply the test of reasonable likelihood of bias, the relationship of candidates with the office bearers is material which may have relevance when an action for removal of the office bearer is required**.** But by such an act substantial likelihood of bias in selection of relatives by the members of the Committee cannot be ruled out from the mind of a reasonable man as expressed by Lord Denning in the case of **Metropolitan Properties Co. (FGC) Ltd. (supra).** Additionally, the observation of the learned Single Judge in paragraphs 17, 21, 22 and 23 of his judgement demonstrate the orchestrated manner in which bias has vitiated the selection process. In my view, it is sufficient to plant the seed of likelihood of bias in the mind of a reasonable man, thus, the test of reasonable likelihood of bias as propounded in the abovementioned judgements is satisfied if tested on the anvil of the facts of the present case.

37. In the present case, in my considered opinion, the findings recorded by the two quasi-judicial authorities, writ court and writ appellate court are based on the analysis of reasonable likelihood of bias

which rightly stirs bias in the mind of a common man who could not get selected because the appellants have relations with the members of the selection committee. The detailed analysis of irregularities has been explained by the learned Single Judge and has been re-affirmed by the Division Bench. In my view the said stamp of approval should not be disturbed by this Court in exercise of jurisdiction under Article 136 of the Constitution of India.

38. Appellants have also vehemently contended that they have not been afforded an opportunity to be heard at the first stage before the collector, thus, non-adhesion to the principle of natural justice vitiates the process. At this stage, it is also crucial to mention that Indian Courts time and again have reiterated that principles of natural justice are neither treated with absolute rigidity nor as imprisoned in a straitjacket. It has many facets. Sometimes, this doctrine is applied in a broad way, sometimes in a limited or narrow. Applicability and requirements of natural justice depend upon the facts and circumstances of the case and it is not possible to lay down rigid rules as to when the principles of natural justice are to apply; nor as to their scope and extent. Everything depends on the facts and circumstances.

39. In the case of **Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and others; (2001) 1 SCC 182**, this Court on refinement of principles of natural justice observed in paragraph 2 as thus: -

> "2. While it is true that over the years there has been a steady refinement as regards this particular doctrine, but no attempt has been made and if we may say so, cannot be made to define the doctrine in a specific manner or method. Strait-jacket formula cannot be made applicable but compliance with the doctrine is solely dependent upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action suffers from the vice of non-compliance with the doctrine, the law courts in that event ought to set right the wrong inflicted upon the person concerned and to do so would be a plain exercise of judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most-accepted methodology of a governmental action."

In view of the above, due to steady refinement as regards to the doctrine of natural justice, there cannot be any straitjacket formula to apply. The doctrine will now be termed as a synonym of fairness in the concept of justice and stand as the most-accepted methodology for a governmental action.

40. This Court in the case of **Ashok Kumar Sonkar Vs. Union of India & Ors.; (2007) 4 SCC 54** while dealing with the principle of natural justice doctrine observed that it is well settled that the said doctrine cannot be put in any straitjacket formula. It may not be applied in each case unless prejudice is shown. It is not necessary where it would be a futile exercise. The similar observations have been made by this Court in the case of **H.P. Transport Corpn. v. K.C. Rahi, (2008) 11 SCC 502.** In the said case, this Court in paragraphs 7 and 8 has observed as thus: -

> "7. The principle of natural justice cannot be put in a straitjacket formula. Its application depends upon the facts and circumstances of each case. **To sustain a complaint of non-compliance with the principle of natural justice, one must establish that he has been prejudiced thereby for non-compliance with principle of natural justice**.
>
> 8. In the instant case we have been taken through various documents and also from the representation dated 19-10-1993 filed by the respondent himself it would clearly show that he knew that a departmental enquiry was initiated against him yet he chose not to participate in the enquiry proceedings at his own risk. In such event plea of principle of natural justice is deemed to have been waived and he is estopped from raising the question of non-compliance with principles of natural justice. In the representation submitted by him on 19-10-1993 the subject itself reads "Departmental Enquiries". It is stated at the Bar that the respondent is a law graduate, therefore, he cannot take a plea of ignorance of law. Ignorance of law is no excuse much less by a person who is a law graduate himself."

41. The theory of prejudice had further been considered by this Court in the case of **Jankinath Sarangi Vs. State of Orissa; (1969) 3 SCC**

392, this Court while dealing with the facts of the case observed as thus: -

> "5. …..If anything had happened the earth would have swollen rather than contracted by reason of rain and the pits would have become bigger and not smaller. Anyway the questions which were put to the witnesses were recorded and sent to the Chief Engineer and his replies were received. No doubt the replies were not put in the hands of the appellant but he saw them at the time when he was making the representations and curiously enough he used those replies in his defence. In other words, they were not collected behind his back and could be used to his advantage and he had an opportunity of so using them in his defence. We do not think that any prejudice was caused to the appellant in this case by not examining the two retired Superintending Engineers whom he had cited or any one of them. The case was a simple one whether the measurement book had been properly checked. The pleas about rain and floods were utterly useless and the Chief Engineer's elucidated replies were not against the appellant. In these circumstances a fetish of the principles of natural justice is not necessary to be made. We do not think that a case is made out that the principles of natural justice are violated."

42. In my considered opinion, the principle of law laid down on prejudice in the case of **S.K. Sharma (supra)** duly applies in the facts of this case in such a scenario. In the said case in paragraph 33, the Court summarises the principle emerging on discussion of the issue of violation of the doctrine of natural justice. The relevant paragraph of the seven principles are reproduced as thus: -

> "33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):
>
> (1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory

provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. **Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed.** Except cases falling under — "no notice", "no opportunity" and "no hearing" categories, **the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively.** If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the

enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] . The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/ regulations/statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) **While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/ Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice**. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of

the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

After going through the facts of this case as discussed above, the present case falls within the ambit of the principle laid down in paragraph 33 (3) and (6), of the above case.

43. In the recent decision this Court in **State of Uttar Pradesh Vs. Sudhir Kumar Singh & Ors.; 2020 SCC Online SC 847**, in paragraph 39 explaining the principle of natural justice and prejudice theory has been made which is reproduced as thus: -

"(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. **The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused**.

(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3) No prejudice is caused to the **person complaining of the breach of natural justice where such person does not dispute the case against him or it.** This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, **in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.**

(4) **In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused.** This conclusion must be drawn

by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The **"prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."**

In view of the foregoing, it is clear that the doctrine of natural justice would not apply as a straitjacket formula, violation of one limb of natural justice that is *audi altrem partem* can be accepted when the prejudice has been shown to be caused. A person who alleges the breach of the principle of natural justice is required to dispute the case against him in order to establish prejudice. In the cases where facts are not in dispute, the courts ought to refrain from passing order of remand. Lastly, the exception of prejudice must be more than the reasonable suspicion and should exist as strongly as a matter of fact.

44. In the narration of the facts as discussed above, it is clear that the appellants have emphasized on their non-joinder at the initial stage before the Collector. A bare perusal of the order passed by the Collector reflects that it is based on the counter-affidavit filed by the Janpad Panchayat whereby it is established that the appellants were related to the members of the selection committee. Subsequently, the collector held the process to be vitiated by bias by applying the test of reasonable likelihood of bias. Once again, upon challenge being made by the appellants before the revisional authority, their relationship with the members of the selection committee was not disputed yet violation of doctrine of *audi altrem partem* was alleged merely due to non-joinder. After hearing them, the plea of non-impleadment did not find force before the revisional authority and the challenge did not succeed. Aggrieved appellants moved a writ petition before the High Court where ample opportunity was given by learned Single Judge and they were allowed to inspect the records. Thus, an opportunity to controvert the findings of the Collector and the Commissioner and factual narration thereof was duly afforded. After sufficient opportunities given by the Ld. Single Judge, the

appellants neither denied their relationship with the members of the selection committee nor demonstrated that how the findings are perverse or contrary to record, causing any prejudice to them.

45. In the sequel of above factual narration, first limb of natural justice that is 'rule against bias' was proved as reasonable likelihood of bias was fully established irrefutably. The violation of another limb i.e. *audi alteram partem,* which is procedural, has been prayed by the appellants on the pretext of their non-joinder at the initial stage; in my opinion, without showing prejudice mere non-joinder even at initial stage does not violate the natural justice doctrine in the case at hand.

46. As discussed, time and again, Indian Courts have emphasized that procedural formalities can be dispensed with when facts are admitted and undisputed and no apparent prejudice is caused to the parties from the alleged non-compliance of the procedure. The Courts have propounded 'useless formality' theory which revolves around the idea that in cases where there are admitted or undisputed facts, procedures and formalities may lose their relevance or serve no meaningful purpose, since the outcome may be no different in the absence thereof. This Court in ***M/s. Escorts Farms (Ramgarh) Ltd. v. Commissioner, Kumaon Division, Nainital, U.P. & Ors.*** **2004 (4) SCC 281** observed that "*rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits*".

47. This Court in the case of ***Canara Bank v. Debasis Das*****, (2003) 4 SCC 557** where order of removal was passed against charged employee as he could not produce his written brief within the time as provided, the order of removal was passed without considering his written brief. Upon preferring statutory appeal, though the employee filed written brief yet he could not convince the appellate authority and it was dismissed. While exercising writ jurisdiction, the Learned Single Judge Bench allowed the writ petition on the ground of violation of natural justice which was confirmed by Learned Division Bench of the High Court. This Court while exercising its jurisdiction under Art. 136 quashed the order of the Learned Single Judge and the Division Bench based on the finding of violation of natural justice.

> 12. Residual and crucial question that remains to be adjudicated is whether principles of natural justice have been violated; and if so, to what extent any prejudice has been caused. It may be noted at this juncture that in some cases it has been observed that where grant of opportunity in terms of principles of natural justice does not improve the situation, "useless formality theory" can be pressed into service.
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> 23. As was observed by this Court we need not go into "useless formality theory" in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned counsel for the appellants, unless failure of justice is occasioned or that it would not be in public interest to dismiss a petition on the fact situation of a case, this Court may refuse to exercise the said jurisdiction (see *Gadde Venkateswara Rao* v. *Govt. of A.P.* [AIR 1966 SC 828]). It is to be noted that legal formulations cannot be divorced from the fact situation of the case.

48. Circling back to the facts of the instant case, when the hindsight a reasonable man looks at the action of appellants of not controverting their relationship with the parties and not demonstrating the manner in which they have been prejudiced before the revisional authority and Learned Single Judge Bench and Learned Division Bench of High Court, one would not be hesitant to hold that their representation before the collector would not have improved their case or compelled the collector to arrive at a different finding. Hence, in such a scenario, the plea of non-impleadment is a useless formality and the court should not entangle itself in procedural complexities.

49. In view of the principle of prejudice as carved out in the aforesaid judicial precedents and in the facts of this case, in my considered view the judgment passed by the learned Single Judge as confirmed in writ appeal reaffirming the judgment of the Collector and Commissioner, setting aside the selection of the appellants does not suffer from any infirmity, warranting the scope of interference of this Court in exercise of power under Article 136 of the Constitution of India. Accordingly, the appeals filed by the appellants stand dismissed affirming the order(s) impugned.

K.V. Viswanathan, J.

1. Important questions in administrative law arise for consideration in these appeals. These are four Civil Appeals. They are filed in all by ten individuals. Together they call in question the judgment dated 15.12.2008 of the Division Bench of the High Court of Judicature at Jabalpur in Writ Appeal Nos. 892 of 2008, 896 of 2008, 879 of 2008 and 878 of 2008. The appointments of the appellants as Shiksha Karmis-Grade III in the Janpad Panchyat, Gaurihar stands set aside by the proceedings before the Courts below. Aggrieved, they are before this Court.

Relevant facts:

2. The Madhya Pradesh Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997 (hereinafter referred to as 'the Recruitment Rules') were framed in exercise of the powers conferred by sub-section (2) of Section 53, sub-section (1) of Section 70 read with sub-section (1) of Section 95 of the Madhya Pradesh Panchayat Raj Adhiniyam, 1993.

3. Under Rule 2(h), a "Shiksha Karmi" means the person appointed by Zila Panchayat or Janpad Panchayat, as the case may be, for teaching in the schools under their control.

4. Rule 5 prescribes the Methods of Selection and Recruitment. It provides for two modes of selection, namely, by direct recruitment and by promotion.

5. Under Rule 5(8), the Selection Committee for direct recruitment was statutorily prescribed and was to consist of members as specified in Schedule II and was to be constituted by the Zila Panchayat or the Janpad Panchayat. Under Schedule II for Siksha Karmi Grade III, the Selection Committee was to consist of the following:-

    1. Chairperson, Standing Committee of Education of Janpad Panchayat;

    2. Chief Executive Officer, Janpad Panchayat;

    3. Block Education Officer (Member Secretary);

    4. Two specialist in the subject to be nominated by the Standing Committee for Education of whom one shall be woman; and

5. All members from the Standing Committee of whom atleast one belongs to Scheduled Castes, Scheduled Tribes or OBC, in case there is no SC/ST/OBC member in the Standing Committee then the same shall be nominated from the General Body.

6. Under sub-rule (9) of Rule 5, the Committee was to assess the candidates called for interview and award marks as follows:-

   a) 60% marks for marks obtained in the qualifying examination as prescribed;

   b) 25% marks for teaching experience;

   c) 15% marks for oral test which may include i) communication skills in local dialect ii) knowledge of local environment iii) general knowledge iv) training and teaching aptitude and v) any other test which the Selection Committee may deem fit.

7. Under Rule 12, Appeal against the order passed under the recruitment rules may be made as per the provisions of the Adhiniyam. Rule 12 of the rules reads as under:-

   "12. **Appeal**.- Appeal against the order passed under these rules may be made as per provision of the Adhiniyam."

8. Independently, there is the Madhya Pradesh Panchayats (Appeal and Revision) Rules, 1995 (hereinafter referred to as 'the A&R Rules').

9. Under Rule 3 of the A&R Rules, the appeal was to lie in the case of an order passed by the Janpad Panchayat to the Collector of the District.

10. Rules 5 and 9, which are important are extracted hereinbelow:

   "**5. Revision**. - (1) (a) The State Government, the Commissioner, the Director of Panchayat, the Collector may on its/his own motion or on the application by any party, at any time for the purpose of satisfying itself/himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of, the authority subordinate to it/him call for and examine the record of any case pending before, or disposed of by, such authority and may pass such order in reference thereto as it/he may think fit :

Provided that it/he shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard:

Provided further that no application for revision shall be entertained against an order appealable under the Act.

(b) An application for revision by any party shall only be entertained if it is on the point of law and not on facts.

(2) Notwithstanding anything contained in sub-rule (1),-

(i) Where proceedings in respect of any case have been commenced by the State Government under sub-rule (1), no action shall be taken by other Officer mentioned in the said sub-rule in respect thereof; and

(ii) Where proceedings in respect of any such case have been commenced by the Officer mentioned in sub-rule (1), the State Government may either refrain from taking any action under this rule in respect of such case until the final disposal of such proceeding by such officer or may withdraw such proceeding and pass such order as it may deem fit.

9. Power of appellate or revisional authority.- The appellate or revisional authority after giving an opportunity to parties to be heard and after such further enquiry, if any, as it may deem necessary subject to the provisions of the Act and the rules made thereunder, may confirm, vary or set aside the order or decision appealed against."

These are the important rules for the disposal of this case.

Resolution for recusal – during Interview:

11. The Standing Committee of the Janpad Panchayat, before the recruitment process, on 01.08.1998, passed a resolution whereunder it was resolved that members of the selection committee whose close relatives are candidates will not participate in the proceedings/ deliberations and the two marks available to them for allotment to the candidate will be allotted to the Chief Executive Officer.

12. It was also resolved that if any close relative of any member, officer or subject expert appears for interview, then the marks to be given

by that member, officer or subject expert should be given by the Chief Executive Officer and that member, officer or subject expert shall not be present at the venue of interview. The relevant part of the resolution is extracted hereinbelow:-

> "(C) Letter No. 423/S.T.98 dated 26.07.1998 of the Collector, Chhatarpur was read over by Chief Executive Officer, in which it has been mentioned that at the time of recruitment of teachers those members and officers also take part in the interview whose close relatives are the candidates due to which the entire selection process is likely to be affected. Therefore, the directions are given to immediately examine whether any candidate is the close relative of the member of the Committee in the interview. If any near relative of the member or the officer is the candidate, then such member or officer should not be present on the date of interview and any impartial person should be kept in his place. The Committee unanimously decided that if any close relative of any member, officer or subject expert appears for interview then the marks to be given by that member, officer or subject specialist should be given by Chief Executive Officer and that member, officer or subject expert shall not be present at the venue of interview. This resolution has been passed unanimously."

(Emphasis supplied)

Appointment of the appellants:

13. The Janpad Panchayat, Gaurihar, after conducting the process of selection by direct recruitment, published the select list on 16.09.1998 and 249 candidates were notified for appointment. Orders of appointment were issued on 17.09.1998. The appellants joined duties and started discharging their functions. This is an undisputed fact.

Proceedings by R-4 – without impleading the appellants:

14. On 29.09.1998, Archana Mishra (R-4), who did not qualify, filed an Appeal (though called an appeal it is in the nature of an original proceeding challenging the selection) to the Collector, Chhatarpur. Only three people ex-officio, were made the respondents, namely, i) The Chief Executive Officer, Janpad Panchayat, Gaurihar; ii) Block Development Education Officer, Janpad Panchayat, Gaurihar

and iii) the President, Education Committee, Development Block Gaurihar. The appointed candidates were not impleaded. What is of importance to note is in para 9 of the memo of appeal, few of the selected candidates were named and the appointments challenged. Archana Mishra (R-4), inspite of having knowledge did not implead them. Para 9 is extracted hereunder:-

> "9. That the nepotism has been adopted during the selection process by violating the principles of natural justice by misusing the post by the President of the Select Committee and other members by appointing their relatives, for example the candidates who have been selected at Serial No. 56 and 57 of the Selection List are Shyama Dvivedi daughter of Shiv Dass Dvivedi who is the sister-in-law (Nanad) of Educational Committee's President Smt. Pushpa Dvivedi and her sister-in-law (Devrani) Smt. Vibha Dvivedi wife of Kailash Dvivedi, her nephew (sister's son) Devender Kumar Avasthi and her niece (sister's daughter) Rekha Avasthi daughter of Bran Bhushan Avasthi. In the same way, by misusing his post, the member of the Committee namely Swami Singh Senger has got selected his son Shamsher Singh (112), his daughter-in-law Ramrani wife of Rudra Pratap Singh (195), nephews Rajesh Singh Chauhan and Om Prakash Singh Chauhan and the Member Shri Harsh Vardhan Tripathi has got selected his real nephew Ravinder Singh son of Shri Jitender Singh Tripathi."

It will be clear that at least five of the appellants were named in the body of the appeal memo. This is set out to show that the present was not a case where the selected candidates remained unidentified. Even the members of the Committee against whom certain allegations were made were not impleaded by Respondent No.4. The following grievances were set out in the Appeal: a) The selection of candidates in the interview and the process of selection was very clumsy; b) There were a lot of irregularities and instances of corruption committed by the Selection Committee; c) Nepotism was adopted by the President of the Selection Committee and other members by violating the principles of natural justice and misusing their posts; and d) Some instances were set out to indicate how few selected candidates were the relatives of the members of the Selection Committee.

Order of the Collector:

15. By an order of 02.06.1999, the Collector allowed the Appeal even in the absence of the appointed candidates being made parties. He set aside the selection of 14 candidates (including the selection and appointment of the 10 appellants herein). Concerning the marks awarded to the appellant – Archana Mishra, it was, however, held by the Collector that marks for experience were given by the Committee and that she was also interviewed. As such, it was held that it was not possible to consider the determination of marks in the interview, since it was the discretion of the Committee to give the marks.

16. However, on the question of selection of the relatives of the members of the Selection Committee, it was held that members of the Selection Committee have selected their relatives. It was also held that these facts had been admitted by the Janpad Panchayat in its reply. It was held that evidence of relationship was certified by the Sarpanch, whose certificate was attached as evidence by the respondent. It was held that as far as the Committee President was concerned, the Committee President's husband's sister, husband's brother's wife, nieces (2), nephews (2), sister, sister-in-law's sister (2) were alleged to have been appointed. It was also found that in the reply to the Chief Executive Officer it has been mentioned that the Standing Committee Member Swamy Singh's sons and daughter-in-law and nephew; and one son of Bhagwat Prasad had been selected. In all, 14 individuals including the 10 appellants by name, figured in the order of the Collector in para 3.

17. The Collector found that under Section 40(c) of the Panchayat Raj Act, any of the Office Bearers shall not cause financial gains to their relatives. It was also found that under Section 100 of the Panchayat Raj Act, acquisition by any member, office bearer or employee of any interest directly or indirectly in any contract or employment was strictly prohibited.

18. The Collector held that there was no necessity to summon the relatives since it was proved that the appointment of the relatives was contrary to the procedure. It was also held that since the ex-officio respondents have admitted about the selection of the relatives, the selection of the 14 candidates, including the 10 appellants, was cancelled and their appointments were terminated.

19. It is important to notice at this stage itself, Section 40(c) and Section 100 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993, which reads as under:-

> "40 (c) the use of position or influence directly or indirectly to secure employment for any relative in the Panchayat or any action for extending any pecuniary benefits to any relative, such as giving out any type of lease, getting any work done through them in the Panchayat by an office-bearer of Panchayat.
>
> *Explanation.-For the purpose of this clause, the expression 'relative' shall mean father, mother, brother, sister, husband, wife, son, daughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law :*
>
> **100. Penalty for acquisition by a member, office bearer or servant of interest in contract.** - If a member or office bearer or servant of Panchayat knowingly acquires, directly or indirectly any personal share or interest in any contract or employment, with, by or on behalf of a Panchayat without the sanction of or permission of the prescribed authority he shall be deemed to have committed an offense under Section 168 of the Indian Penal Code, 1860 (XLV of 1860)"

20. Under the explanation to Section 40(c), nieces, nephews, sister-in-law's sister are not covered under the definition of relative. Of the fourteen candidates, whose appointments were set aside, without making them parties, several fall outside the definition of relative even going by the case of the Complainant. Of the total 14, seven fell outside the definition. Of the ten before us, five fall in the category outside the definition of relative. Since the appointed candidates were not made parties, these facts could not be brought to notice.

Revision before the Commissioner:-

21. On a revision being filed by the appellants, an interim order staying the execution of the order of 02.06.1999 was made on 25.06.1999. The interim order was also given effect to. The appellants were posted back to their respective positions. In the revision, the appellants canvassed the ground of the violation of principles of natural justice. Before the revisional authority, the appellants specifically contended

that they were appointed in accordance with law based on the merit list and that there was no irregularity. They disputed the allegation that they were appointed on account of the fact that they were relatives. However, the Commissioner rejected the argument holding that, if selection has been made in violation of the scheme, then the same can be cancelled without giving an opportunity. The Revisional Authority failed to notice that the entire selection had not been cancelled and only the selection of the 14 appointees including the 10 appellants had been cancelled. Ultimately, the revision was dismissed by an order of the Commissioner dated 14.03.2000. Since the order of the Commissioner in revision proceedings is crucial, the operative part is extracted hereinbelow:-

> "6. (sic) On going through the record received for consideration on the arguments of both the parties, I have found that while examining the selection process, the Collector, Chhatarpur has clearly mentioned in his order dated 02.06.1999 that the members of the Selection Committee have selected their relatives. The respondent Janpad Panchayat has admitted that the Committee President Smt. Pushpa Dvivedi's sister-in-law (Nanad) Shyama Dvivedi, her daughter Shiv Dass Dvivedi, her sister-in-law (Devrani) Smt. Vibha, two real sisters of her sister-in-law namely Kumari Rashmi Dvivedi and Kumari Rita Dvivedi have been selected at Serial No. 9 and 4 of the Select List. The Respondent has also admitted that Devender Kumar Avasthi son of Brij Bhushan Avasthi is the nephew (sister's son) of President and Rekha Avasthi daughter Brij Bhushan Avasthi, Pravesh Kumari daughter of Brij Bhushan Avasthi are also the nieces (sister's daughters) of the President who have been selected at Serial No. 176 and 30 of the Select List. The Chief Executive Officer has also mentioned in his reply that another Member Swami Singh Senger's son Sumer Singh, daughter-in-law Raamrani wife of Rudra Pratap Singh, nephew Rajesh Singh Chauhan son of Som Prakash Singh have also been selected. 9 marks on the basis of experience have been given to the selected candidate Badri Prasad son of Bhagwat Prasad but the Experience Certificate has not been attached with his application. Shri

> Krishan Dutt Avasthi son of Sita Ram Avasthi, who has been selected at Serial No. 64, is the nephew (sister's son) of President and Gita Rawat (selected at Serial No. 190 of the appointment order) is the real sister of the President. In this way, after the above examination, holding of the Collector, Chhatarpur that the Select Committee of the Janpad Panchayat has selected their relatives contrary to the provisions of section 40-C of Madhya Pradesh Panchayat Raj Act and the selection rules, is. completely justified in view of the facts. So far as the plea of the Revisionists that the information and the opportunity of hearing was not given to the Revisionists in the appeal by the Collector, Chhatarpur nor they have been joined in the present appeal, therefore, the order dated 2.6.1999 is liable to be set aside, I am not agreed to this argument. (sic) In this regard, the Hon'ble High Court has clearly established in "Hira Lal Patel Versus Chief Executive Officer, Janpad Panchayat, Sargarh" reported in 1998 Volume-2 M.P.W.N. 39 that if the selection has not been made in accordance to the scheme then the same can be cancelled without giving the opportunity of hearing.
>
> It clearly appears from the above facts of the case that selection of the petitioners has been made contrary to the provisions of Madhya Pradesh Panchayat Raj Act, 1993 and principles prescribed for the selection. In the above situation, the order dated 02.06.1999 passed by the Collector, Chhatarpur is not liable to be interfered…."

Writ Petitions in the High Court:

22. The appointed candidates totaling eleven (including the ten appellants herein) filed Writ Petition No. 2522 of 2000 before the High Court of Madhya Pradesh at Jabalpur. On 03.03.2000, in the writ petition filed, an order directing maintenance of status *quo* was made. The writ petition came to be dismissed by the learned Single Judge on 31.07.2008. Before the learned Single Judge, grounds of violations of natural justice were argued. Apart from that, one of the other main grounds argued was that the role played by the relatives has not been examined and that it was not established whether the selection was influenced by their participation.

23. It was pointed out that pursuant to the resolution passed before the selection by the Standing Committee on 01.08.1998, the relatives concerned had left the process of selection during the interview of the candidates who were their relatives. It was also pointed out that the marks to be given by the relatives were, as per the resolution, allotted to the Chief Executive Officer, who gave the marks. As such, it was argued that there was no reason to set aside the selection merely because there were relatives in the Selection Committee since they had recused when the case of the relatives came up. Yet another ground about the maintainability of the appeal was raised. Since that was not pressed before us, that is not being elaborated herein.

Reasons of the learned Single Judge:

24. The learned Single Judge permitted inspection of the records to the counsel for the appellants. The learned Single Judge held that the argument of violation of natural justice was to be tested on the touchstone of actual prejudice. It was held by the learned Single Judge that when action or orders are challenged on the ground of non-grant of hearing, mechanical interference is not to be resorted to. The learned Single Judge held that the prejudice caused due to non-grant of hearing and the fact of the prejudice on the final outcome ought to be established.

25. The learned Single Judge noticed that wherever statutes contemplate a hearing, hearing ought to be given. However, the learned Single Judge overlooked the specific provision in Rule 9 of the A&R Rules which applied to the present case. The learned Single Judge relied on the judgment of ***State Bank of Patiala and Others*** vs. ***S.K. Sharma***, (1996) 3 SCC 364 and held that the order setting aside the appointment could not be quashed on the grounds of violation of natural justice. The learned Single Judge also held that the proceedings did not stop with the Collector; that the matter travelled to the Commissioner where full opportunity of hearing was granted. The learned Single Judge held that the Commissioner decided the revision afresh on merits after hearing each and every objection of the appellants. Here again, the learned Single Judge completely overlooked Rule 5(1)(b) of the A&R Rules which clearly stipulated that an application for revision by any party shall be entertained only on point of law and not on facts.

26. The learned Single Judge further held that, during the course of hearing in the writ petition, entire documents were made available. It was held that the petitioners were not able to demonstrate as to what prejudice was caused by non-grant of hearing by the Collector.

27. Dealing with the argument that the presence of the relatives did not influence the selection, it was held:

> "21. It is not in dispute that Smt. Pushpa Dwivedi and Shri Swami Singh were Members of the Selection Committee and they participated in the process of selection. However, the resolution and other documents only indicate that when relatives of Smt. Pushpa Dwivedi appeared for the interview, she left the interview board and the two marks available with her for allotment to the candidate were allotted by the Chief Executive Officer. Similarly, when relatives of Shri Swami Singh appeared for the interview, he is said to have left the proceedings and the two marks available with him were allotted by the Chief Executive Officer. On this ground, it was emphasized by Shri M.L. Choubey that the presence of relatives was of no consequence and it has not materially affected the process of selection. This aspect requires consideration.
>
> 22. As already indicated hereinabove under the statutory rules, out of l00 marks to be allotted 60% marks is based on the educational qualification. 25% marks is to be allotted by the Members of the Committee on the basis of experience and various other factors and thereafter 15% marks is to be allotted for oral interview. Records indicate that in the Selection Committee there were about 10 Members and out of these Members, two marks each were to be allotted by Smt. Pushpa Dwivedi, Shri Swami Singh, Smt. Rajrani Shukla - Member, Shri Bhurelal Khangar - Member, Shri Harshvardhan Singh, another Member. Thereafter, one mark each were to be allotted by Shri Ramdeo Patel, representative of MLA; Shri C.L. Maravi, Chief Executive Officer; Shri K.S. Chauhan - Block Education Officer; Ku. Meera Vishwakarma - Subject Expert; and, Shri A.P. Ahirwar, another Subject Expert. In this manner 15 marks were allotted. If the allotment made

of marks under various category is taken note of and if it is compared with the marks allotted to some of the wait-listed candidates certain disparities can be apparently seen. Petitioner Smt. Shyama Dwivedi had obtained 50% in the Higher Secondary Certificate Examination. Accordingly, she has been allotted 30% marks for qualification. In the oral interview, she is allotted 11.10 marks. After adding the marks for experience she has received 58.10 marks. Compared to this is the case of Shri Yogendra Nigam, Shri Yogendra Soni, Shri Shivsharan, Shri Dinesh Kumar and Shri Satyendra Kumar. All these persons have received more than 75% marks in the Higher Secondary Certificate Examination and, therefore, they have received very high marks approximately between 46-47% for educational qualification, but by giving them only 3 marks in the interview their overall total percentage is kept around 50 and they are eliminated from the process of selection. In this manner, some benefit is granted to each of the petitioners. That apart, petitioner Smt. Vibha Dwivedi has received 57% marks in the Higher Secondary Certificate Examination; petitioners Devendra Awasthy and Krishnadutt Awasthi have received 55% and 69% marks; whereas petitioner Sumer Singh son of Shri Swami Singh has received 53% marks, accordingly their percentage for the qualifying examination is very less compared to other wait-listed candidates. These persons have been allotted 12.25, 8.95 and 15 marks in the interview and their overall mark is made over 55, so as to bring them within the zone of consideration. It is, therefore, apparent from a scrutiny of these results that most of the petitioners have received very less marks in the qualifying examination i.e. Higher Secondary Certificate Examination, whereas many persons whose name appear in the wait-list have received 78% and 79% marks in the qualifying examination, but they are allotted very low marks in the interview and experience, in some cases even less than 3 marks is allotted in the oral interview, as a result their selection is adversely effected. This is the reason why the Collector and the Commissioner thought it appropriate to interfere in the matter.

> 23- Petitioner No.6 Sumer Singh is son of Shri Swami Singh, a Member of the Selection Committee, and he has been allotted full 15 marks i.e. 100% marks have been allotted by each of the Committee Members. It is found that in this manner benefit in some way or the other is extended to each of the petitioners and this is the reason why the Collector and the Commissioner interfered in the matter. It is further found that one Badri Prasad, son of Bhagwat Prasad has been appointed and he has been given 9 marks for the experience, but in his file no experience certificate is available. It is found that petitioner Gita Rawat is the real sister of Smt. Pushpa Dwivedi and she has been selected after giving her high marks in the oral interview, even though she has only received 55% marks in the qualifying examination i.e. Higher Secondary. It is clear from a perusal of the records that eight close relatives of Smt. Pushpa Dwivedi, President of the Selection Committee, and Shri Swami Singh, a Member of the Selection Committee, have been appointed. The relatives selected are either sons, daughter, sisters, sister-in-law of the Members and after appreciating all these factors, the Collector and the Commissioner found that the selection of these close relatives are vitiated."

28. Thereafter, the learned Single Judge held that there was no case warranting interference under Article 226 of the Constitution of India and dismissed the writ petition. The learned Single Judge also relied on the judgment of this Court in ***A.K. Kraipak and Others*** vs. ***Union of India and Others***, (1969) 2 SCC 262.

Appeal to the Division Bench:

29. The matter was carried in appeal to the Division Bench. Before the Division Bench, the arguments on violation of natural justice and the correctness of the procedure adopted by the Selection Committee were canvassed. It was reiterated by the appellants that no case of the Selection Committee members influencing the selection of their relatives has been made out. The Division Bench cites the Single Judge's reliance on ***S.K. Sharma*** ***(supra)*** to hold that unless prejudice is caused due to non-grant of hearing, the order ought not to be mechanically interfered with. The following crucial findings of the Division Bench are important:

> "…. In view of the aforesaid, we are of the considered opinion that though it was imperative on the part of appellants to implead the affected parties, yet as the affected parties had been given full opportunity from all aspects by the revisional forum as well as by the learned single Judge, we do not think it apt and apposite to quash the order and remand the matter to the Collector to re-adjudicate singularly on the ground that the appellants herein should have been impleaded as parties and that the matter should be reheard. The said exercise in the peculiar facts and circumstances of the case is unwarranted."

30. Ultimately, the Division Bench though held that it was imperative on the part of Respondent No.4 to implead the affected parties, however, since the affected parties had been given full opportunity before the revisional authority and the learned Single Judge, thought it fit not to interfere. Thereafter, it examined the issue as to whether the selection was vitiated because of the participation of the relatives. On this aspect, it extracted the findings of the learned Single Judge and after relying on ***A.K. Kraipak (supra)*** and other cases in the context of bias upheld the order of the learned Single Judge. It appears that even during the pendency of the writ appeal, the appellants continued to work.

Appeal in this Court:

31. Challenging the order of the Division Bench dated 15.12.2008, special leave petitions were filed and on 19.01.2009, while issuing notice, this Court granted status *quo* in the matter. Thereafter, leave was granted on 12.05.2011 and the ad-interim orders granted earlier were made absolute till the disposal of the appeals.

Contentions of the parties:-

32. Before us, Mr. Neeraj Shekhar, learned counsel for the appellants has reiterated the contentions raised in the courts below on the issue of violation of natural justice and also about the factum of the committee members not influencing the selection. Reliance is placed on ***Daffodills Pharmaceuticals Limited and Another vs. State of Uttar Pradesh and Another***, 2019:INSC:1366 = (2020) 18 SCC 550 and ***Javid Rasool Bhat and Others vs. State of Jammu and Kashmir and Others***, (1984) 2 SCC 631. Learned counsel for

the appellants has also sought to distinguish *A.K. Kraipak (supra)* and *S. K. Sharma (supra)*. He also relied upon ***Chairman, State Bank of India and Another vs. M.J. James***, 2021:INSC:732 = (2022) 2 SCC 301 to highlight the distinction between cases of "no opportunity at all" and "adequate opportunity". Ultimately, it is pleaded that the appellants have been working for the last 25 years and that one of the appellants has, in fact, retired while others are on the verge of retirement. A chart has been filed to show that some of the appellants have received lesser marks than the complainant as well as the parties who seek to implead themselves here, which is set out hereinbelow.

Chart Indicating Marks of Interview-

S. NO	NAME OF THE APPLICANT	MARKS OBTAINED IN % (INTERMEDI-ATE)	60% OF MARKS OBTAINED	MARKS ON EXPERIENCE	MARKS OBTAINED IN INTERVIEW	TOTAL
488	**KRISHNA DUTT AWASTHY** S/O SITA RAM AWASTHY	69.72	41.77	9(ONE YEAR)	8.95	59.72
2098	**REKHA AWASTHY** D/O BRIJ BHUSHAN AWASTHY	63	37.80	17(TWO YEAR)	4.35	59.15
49	**SMT. RAM RANT SINGH SENGAR** D/O SHRI RUDRA PRATAP SINGH	58.80	35.28	17(TWO YEAR)	7.35	59.65
1231	**PRAWESH KUMARI** D/O BRIJ BHUHAN AWASTHY	58.62	35.17	17(TWO YEAR)	4.95	57.12
1587	**SMT. SHYAMA DIWEDI** D/O SHIV DAS DWIVEDI	50	30	17(TWO YEAR)	11.10	58.10
1588	**SMT. VIBHA DIWEDI** D/O KAILASH DWIVEDI	57.25	34.35	17(TWO YEAR)	5.40	56.75

1228	**RITA DIWEDI** D/O J.P. DIWEDI	68.00	40.80	9(ONE YEAR)	8.4	58.20
332	**SUMMER SINGH** S/O SWAMI SINGH	53.33	31.99	17(TWO YEAR)	15	63.99
1590	**GITA RAWAT** D/O GANGA PD. RAWAT	55.12	33.00	17(TWO YEAR)	5.30	55.30
2099	**DEVENDRA AWASTHY**	55	33.00	17(TWO YEAR)	12.25	62.25
1230	**RASHMI DWIVEDI** D/O J.P DWIVEDI	73.55	44.13	9(ONE YEAR)	4.40	57.53

Charts showing marks obtained by the Respondent No. 4 (Complainant) -

S. NO	**NAME OF THE APPLICANT**	**MARKS OBTAINED IN % (INTERMEDI-ATE)**	**60% OF MARKS OBTAINED**	**MARKS ON EXPERIENCE**	**MARKS OBTAINED IN INTERVIEW**	**TOTAL**
524	**ARCHANA MISHRA**	47.75	28.65	17(TWO YEAR)	4.65	50.30

Charts showing marks obtained by the Applicants (Impleadment) –

S. NO	**NAME OF THE APPLICANT**	**MARKS OBTAINED IN % (INTERMEDI-ATE)**	**60% OF MARKS OBTAINED**	**MARKS ON EXPERIENCE**	**MARKS OBTAINED IN INTERVIEW**	**TOTAL**
124	**RAM SAKHA** S/O RAM MILHAN HARDENIA	46.25	27.75	17(TWO YEAR)	13.60	58.35
538	**ANIL KUMAR** S/O VIPIN BIHARI	60	36	9(ONE YEAR)	13.70	58.70
227	**SAJID HUSSAIN** S/O JAMUED HUSSAIN	72.62	43.57	---	15	58.57

33. We have also heard Ms. Mrinal Gopal Elker, learned counsel for the respondent-State of M.P. and Mr. Avadhesh Kumar Singh, learned counsel for respondent No. 4 – Archana Mishra and the parties who have filed applications for impleadment. Though no formal orders of impleadment were made, arguments were heard on the application. They contend that the orders of the Collector, revisional authority, learned Single Judge and the Division Bench warranted no interference. They relied on ***S.K. Sharma*** ***(supra)*** and reiterated the aspect of there being no prejudice due to the non-compliance of the principles of natural justice. They highlighted the fact that even though the appellants received less marks in the basic qualifying examination, they have obtained higher marks in the interview; that relatives have come to be appointed; that there was reasonable likelihood of bias and that the relatives of committee members have obtained higher marks during the interview. They also relied on Section 40(c) and Section 100 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam. They relied on the judgments of this Court on the aspect of bias and likelihood of bias, among them being, ***Dr. (Mrs.) Kirti Deshmankar*** vs. ***Union of India and Others***, (1991) 1 SCC 104, ***J. Mohapatra and Co. and Another*** vs. ***State of Orissa and Another***, (1984) 4 SCC 103, ***Ashok Kumar Yadav and Others vs. State of Haryana and Others, (1985) 4 SCC 417,*** ***A.K. Kraipak*** ***(supra)*** and ***Reference under Article 317(1) of the Constitution of India, In Re*** (2009) 1 SCC 337. They prayed for the dismissal of the appeals. The intervenors have also filed written statements supporting the State and reiterating the submissions that natural justice did not cause any prejudice.

Questions for consideration:

34. On the above factual background, the following questions arise for consideration:-

i) Were the principles of natural justice violated, during the conduct of the proceedings before the Collector under Rule 3 of the A&R Rules, 1995 read with Rule 12 of the Recruitment Rules?

ii) If indeed there was a violation of the *audi alteram partem* rule, would the appellants still fail for want of demonstration of any prejudice being caused to them?

iii) Further, if indeed there was violation of the *audi alteram partem* rule before the Collector, did the violation stand cured on

account of the availment of the revisional proceedings before the higher authority?

iv) On facts, are the appellants entitled to a declaration of the invalidity of the orders setting aside their appointments to the post of Shiksha Karmi Grade-III?

Question Nos. 1 & 2:

i) Were the principles of natural justice violated, during the conduct of the proceedings before the Collector under Rule 3 of the A&R Rules, 1995 read with Rule 12 of the Recruitment Rules?

ii) If indeed there was a violation of the *audi alteram partem* rule, would the appellants still fail for want of demonstration of any prejudice being caused to them?

35. It is an undisputed factual position that the appellants, after a process of selection, were appointed as Shiksha Karmi Grade-III in the Panchayat and orders of appointments were issued to them on 17.09.1998. It is also undisputed that the appellants joined the post and started discharging their duties. This being the undisputed factual position, when Archana Mishra (R-4) challenged the selection and the consequential appointment, there was an obligation on her part, under Rule 9, to implead the selected candidates whose selection she was expressly challenging. At least at the stage when the Collector identified all the 14 names, Rule 9 of the A&R Rules, ought to have been complied with and notices ought to have been issued giving an opportunity to the selected candidates to set out their version and thereafter hold such enquiry as the Collector may deem necessary. This was also not done. This is all the more when only the appointment of the 14 candidates of the 249 appointees/ candidates were set aside on the ground that they were relatives and it was not a case of setting aside of the entire selection. It is well settled that in service matters when an unsuccessful candidate challenges the selection process, in a case like the present where the specific grievance was against 14 candidates under the category of relatives and when the overall figure was only 249, at least the candidates against whom specific allegations were made and who were identified ought to have been given notices and made a party. This Court has, even in cases where the selected candidates were too large, unlike in the present case, held that even while adjudicating

the writ petitions at least some of the selected candidates ought to be impleaded even it is in a representative capacity. It has also been held that in service jurisprudence, if an unsuccessful candidate challenges the selection process the selected candidates ought to be impleaded. [See ***J.S. Yadav*** vs. ***State of Uttar Pradesh and Another***, (2011) 6 SCC 570 (para 31) and ***Prabodh Verma and Others*** vs. ***State of Uttar Pradesh and Others***, (1984) 4 SCC 251 (para 28) and ***Ranjan Kumar and Others*** vs. ***State of Bihar and Others***, 2014:INSC:276 = (2014) 16 SCC 187 (paras 4,5,8,9 & 13)] This is not a case where the allegation was that the mischief was so widespread and all pervasive affecting the result of the selection in a manner as to make it difficult to sift the grain from the chaff. It could not be said and it is not even the case of the State that it was not possible to segregate the allegedly tainted candidates from the untainted candidates. [See ***Union of India and Others vs. G. Chakradhar***, (2002) 5 SCC 146 (paras 7 & 8), ***Abhishek Kumar Singh*** vs. ***G. Pattanaik and Others***, 2021:INSC:305 = (2021) 7 SCC 613 (para 72).

36. From time immemorial, the importance of the *audi alteram partem* rule has been emphasized and re-emphasized in several judicial pronouncements. Two of them are set out to highlight the underlying rationale. Chief Justice Sabyasachi Mukharji in ***Charan Lal Sahu*** vs. ***Union of India,*** (1990) 1 SCC 613 felicitously described its importance:-

> "124. … It is true that not giving notice, was not proper because principles of natural justice are fundamental in the constitutional set up of this country. No man or no man's right should be affected without an opportunity to ventilate his views. We are also conscious that justice is a psychological yearning, in which men seek acceptance of their viewpoint by having an opportunity of vindication of their viewpoint before the forum or the authority enjoined or obliged to take a decision affecting their right…."
>
> [Emphasis supplied]

The above passage very much echoes what Lord Megarry said in ***John*** vs. ***Rees and Others***, [1969] 2 All E.R. 274 at 309 FG:-

> "It may be that there are some who would decry the importance which the courts attach to the observance of

> the rules of natural justice. "When something is obvious," they may say, "why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start." Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events."
>
> [Emphasis supplied]

37. This Court has held that the principles of natural justice reinforce the maxim that *justice should not only be done but should be seen to be done*. It has been held that non-observance of natural justice is itself prejudice to any individual. [***S.L. Kapoor*** vs. ***Jag Mohan and Others***, (1980) 4 SCC 379]. It has been held that the principle that no one can be inflicted with an adverse order without being afforded a minimum opportunity of hearing was a constant lode star that has lit the judicial horizon of this country. [See ***Daffodills Pharmaceuticals Limited and Another*** ***(supra)***]. Even the Division Bench, in the impugned order, recognizes the fact that it was imperative to implead affected parties though ultimately it rested the case on certain exceptions which did not apply. This aspect has been elaborated hereinbelow.

38. In the light of the specific rule namely, Rule 9 of the A&R Rules, there was no escape from the fact that the affected parties, like the appellants, ought to have been impleaded by the Collector. Even *de hors* Rule 9, if civil consequences are to result to a party, opportunity ought to be given.

39. One of the two reasons given to justify the violation of the *audi alteram partem* rule is the finding that prejudice caused due to non-grant

of hearing has not been established. Reference has been made to ***S.K. Sharma* (supra)** to justify this conclusion.

40. It is time to have a closer look at the facts in ***S.K. Sharma* (supra)** to understand as to in what circumstances that exception was carved out. The grievance raised by the delinquent employee in ***S.K. Sharma* (supra)** was not that there was total absence of notice. The grievance was that a set of nine documents including the statements of three individuals was not supplied to him. The delinquent was advised to peruse, examine and take notes of the said documents/statements half an hour before the commencement of the enquiry proceedings. It was admitted that the list of documents/statements was supplied. This Court found that though the copies of the statements were not supplied, the delinquent was permitted to peruse the same more than three days prior to the examination of the witnesses. In that background, the Court examined the question whether under the circumstances there was substantial compliance of the clause in the regulations, providing for supply of copies of statements, not later than three days before the commencement of the examination by the witness before the enquiring authority. It was expressly noticed in the judgment that the records of the case did not disclose that the delinquent had protested about denial of adequate opportunity to cross-examine.

41. In fact, ***S.K. Sharma's* case (supra)**, after noticing the leading case of ***Ridge vs. Baldwin*,** 1964 AC 40 expressly records that where there is total violation of principles of natural justice, the violation would be of a fundamental nature. ***S.K. Sharma's* case (supra)** explicitly records that "a distinction ought to be made between violation of the principle of natural justice, *audi alteram partem,* as such and violation of a facet of the said principle. In other words, distinction between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity", was highlighted. The principle in ***S.K. Sharma's* case (supra)** about the distinction between "no opportunity" and "no adequate opportunity" has also been followed in ***M.J. James* (supra)**.

42. Unlike in ***S.K. Sharma's* case (supra)** on which both the learned Single Judge and the Division Bench have relied upon to non-suit the appellants, the present is a case of no notice and no hearing in breach of an express rule.

43. In the present case, before the Collector, only the Complainant – Archana Mishra and the ex-officio respondents were arrayed as parties. Allegations directly on the conduct of the appellants and the committee members were traded thick and fast. The order of the Collector and the Revisional Authority, in fact, makes no reference either to the definition of relative in the explanation to Section 40(c) or to the resolution providing for recusal of committee members who had their near relations appearing for the interview. The categories excluded from the definition of relatives are also not noticed. Based on inferences drawn from the records produced by the ex-officio respondents, conclusive findings were recorded by the Collector and the appointments of the appellants and four others were set aside. The order of the revisional authority is a reiteration of the order of the Collector. These have been endorsed in the judgment of the learned Single Judge and the Division Bench.

44. As this Court observed in ***Charan Lal Sahu (supra)***, justice is a psychological yearning in which individuals seek acceptance of their viewpoint by having an opportunity, before their rights are affected. Lord Megarry in ***John vs. Rees and Others (supra)*** rightly emphasized the feeling of resentment to those who find that decision against them has been made behind their back. Those are telling observations.

45. The material that worms into the record behind the back of a party does have a tendency to condition the minds of the reviewing authorities. Very often, it may happen that the said one-sided version smuggled in stealthily, may cloud their mind and make them oblivious to the plight of the party who is denied *audi alteram partem*. Strong convictions then get mollified; the initial sense of outrage gets dampened and the feeling of unfairness that engulfed one at the commencement of the proceeding may slowly wither away. The opposing parties to justify the breach may then hunt for a rule from the basket of exceptions to the principles of *audi alteram partem* and offer it, to lend a veneer of legitimacy to the order originally made in violation of the principles of natural justice. All this may seduce the mind and propel it to condone the total denial of opportunity. A conscious effort needs to be made to steer clear of that trap.

46. The principle of prejudice as set out in ***S.K. Sharma's case (supra)*** had absolutely no application to the present case as the present was

a case of complete denial of opportunity. The exception was wrongly invoked and misapplied to the facts of the present case.

Question No.3

Does the violation at the original stage of the principles of natural justice stand cured by the revisional proceeding?:-

47. The second reason given by the learned Single Judge and affirmed by the Division Bench was that the appellants had full opportunity before the revisional authority and the High Court. The relevant finding from the judgment of the learned Single Judge is extracted hereinbelow:-

> "17. Even though when the appeal was filed by respondent Smt. Archana Mishra before the Collector, petitioners were never heard and the Collector passed the order without hearing the petitioners, the matter did not end there. Petitioners availed of the opportunity of filing a revision before the Commissioner. When the matter travelled to the Commissioner in this manner, full opportunity of hearing was granted to the petitioners and the entire selection record and other documents, which formed the basis for passing of the order by the Collector, were available before the Commissioner, petitioners had access to the same and Commissioner decided the revision afresh on merits after considering each and every objection of the petitioners. Thereafter, during the course of hearing in this petition also, the entire selection proceedings and other documents were available on record and the petitioners were given full opportunity to demonstrate before this Court that their selection was proper or that the finding with regard to their relatives participating in the selection process is an incorrect or improper finding. Petitioners admitted that their relatives had participated in the selection, but only argued that their presence did not influence their selection. This is a matter which can be looked into on the basis of the material available on record and during the course of hearing of this petition, the petitioners were not in a position to demonstrate as to what was the prejudice caused for non-grant of hearing by the Collector. Even if no hearing was granted before the Collector, but when

> full opportunity of hearing was granted and was availed of by the petitioners before the Commissioner in the revision and when the Commissioner had passed the order after so hearing the petitioners, merely because petitioners were not impleaded as party in the proceedings held before the Collector it cannot be said that the entire action of the appellate authority and the revisional authority stands vitiated on this ground. This is a case where petitioners had ample opportunity of putting up their defence and objections before the Commissioner and the Commissioner having appreciated the dispute on merits after hearing the petitioners, this court is not inclined to interfere in the matter merely on the technical ground of non-grant of opportunity. It has to be held that non-grant of opportunity during the proceedings held before the Collector does not vitiate the action taken against the petitioners as they were given full and reasonable opportunity by the Commissioner before passing the order and petitioners having availed of the same, cannot have any grievance on this count. Accordingly, the second ground of attack also fails being unsustainable."

The above finding for a start overlooks Rule 5(1)(b) and the body of case law that are relevant.

48. The question about whether at all the breach of natural justice can be cured at the appellate stage and if so in what circumstances has vexed the courts for the last several decades. In England, it was Lord Megarry who spoke first in ***Leary vs. National Union of Vehicle Builders,*** [1970] 2 All ER 713. The learned Judge had no doubt in his mind when he proclaimed, "*As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body.*" This remained the legal position till ***Ferd Dawson Calvin vs. John Henry Brownlow Carr & Ors.,*** (1979) 2 WLR 755 came on the horizon. Lord Wilberforce, speaking for the Privy Council felt that the principle elucidated by Lord Megarry was too broadly stated. The Privy Council held:

> "It remains to apply the principles above stated to the facts of the present case. In the first place, their Lordships

> are clearly of the view that the proceedings before the Committee were in the nature of an appeal, not by way of an invocation, or use, of whatever original jurisdiction the Committee may have had. The nature of the appeal is laid down by Section 32 of the Australian Jockey Club Act 1873, and by the Rules. Under the Act, the appeal is to be in the nature of a re-hearing - a technical expression which does little more than entitle the Committee to review the facts as at the date when the appeal is heard (see *Builders Licensing Board (N.S.W.) v. Sperway Constructions (Sydney) Pty. Ltd.* (1976) 51 A.L.J.R. 260, 261, per Mason J.), not one which automatically insulates their findings from those of the Stewards. The decision is to be " upon the real merits and justice of the case " -- an injunction to avoid technicalities and the slavish following of precedents but not one which entitles the Committee to brush aside defective or improper proceedings before the Stewards. The section is then required to be construed as supplemental to and not in derogation of or limited by the Rules of Racing. This brings the matter of disputes and discipline clearly into the consensual field. The Rules of Racing (Local Rules 70-74) allow the Committee to take account of evidence already taken and of additional evidence, and confer wide powers as to the disposal of appeals."

49. The issue was again grappled with by the House of Lords in ***Lloyd and Others vs. McMahon,*** [1987] 1 AC 625 which ultimately gravitated to the view that the answer to the question would depend on the particular statutory provision providing for the higher remedy. Lord Bridge of Harvich stated the following in his judgment:

> "…This is because the question arising in the instant case must be answered by considering the particular statutory provisions here applicable which establish an adjudicatory system in many respects quite unlike any that has come under examination in any of the decided cases to which we were referred. We are concerned with a point of statutory construction and nothing else."
>
> In their Lordships opinion:

> "…But I cannot see any reason why it should be necessary to seek leave to invoke the supervisory jurisdiction of the court when any party aggrieved by the certificate is entitled as of right to invoke the much more ample appellate jurisdiction which the statute confers. It is the very amplitude of the jurisdiction which, to my mind, is all- important. Whether the auditor has decided to certify or not to certify, the court is empowered to confirm or quash the decision, to vary the decision if a certificate has been issued by the auditor, and in any case to give any certificate which the auditor could have given. The language describing the court's powers could not possibly be any wider. Procedurally there is nothing either in the statute or in the relevant rules of court to limit in any way the evidence which may be put before the court on either side…."

50. Applying this test in ***Lloyd*** ***(supra)***, the answer in the present case is simple. Rule 5(1)(b) of the A&R Rules does not provide an ample review or a full-fledged enquiry at the revisional stage. The revision was to be entertained only if it is on the point of law and not on facts. The discussion, however, on this issue would not be complete unless a survey of the judgments of this Court is done.

51. The seeds for this thought-process was sown by Chief Justice S.R. Das in **The State of Uttar Pradesh** vs. **Mohammad Nooh**, 1958 SCR 595. In fact, Justice Jeevan Reddy noticed this judgment in ***S.K. Sharma's*** ***case (supra)***. Chief Justice Das speaking for the majority in the Constitution Bench held as follows:-

> "On the authorities referred to above it appears to us that there may conceivably be cases-and the instant case is in point-where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice

> and all accepted rules of procedure and which offends the superior court's sense of fair play the superior court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned. This would be so all the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it. We say no more than that."

52. In ***Shri Farid Ahmed Abdul Samad and Another*** vs. ***The Municipal Corporation of the City of Ahmedabad and Another***, (1976) 3 SCC 719, an attempt was made to cover up the breach of the *audi alteram partem* rule by seeking refuge under the principle that proceedings in the higher body would cure the breach in the original body. Justice P.K. Goswami, speaking for a three-Judge Bench, rebuffed it and echoed sentiments similar to the one expressed in ***Lloyd*** ***(supra)*** in the following words:-

> "22. We should make it clear that provision for appeal is not a complete substitute for a personal hearing which is provided for under Section 5A of the Land Acquisition Act. This will be evident from a perusal of Clause 3 of Schedule B itself. The character of the appeal contemplated under Clause 3(ii) of Schedule B is only with regard to the examination of the following aspects:
>
> (1) whether the order or approval of the plan is within the powers of the Bombay Act, and
>
> (2) whether the interests of the appellant have been substantially prejudiced by any requirement of this Act not having been complied with.

> The appeal is confined under Clause 3 of Schedule B to the examination of only the twin aspects referred to above. There is no provision for entertainment of any other relevant objection to the acquisition of land. For example a person whose land is acquired may object to the suitability of the land for the particular purpose acquired. He may again show that he will be at an equal disadvantage if his land and house have to be acquired in order to provide accommodation for the poorer people as he himself belongs to the same class of the indigent. He may further show that there is a good alternative land available and can be acquired without causing inconvenience to the occupants of the houses whose lands and houses are sought to be acquired. There may be other relevant objections which a person may be entitled to take before the Commissioner when the whole matter is at large. The Commissioner will be in a better position to examine those objections and consider their weight from all aspects and may even visit the locality before submitting his report to the Standing Committee with his suggestions. For this purpose also a personal hearing is necessary. The appeal court under the Schedule B to the Bombay Act, on the other hand, is not required under Clause 3 to entertain all kinds of objections and it may even refuse to consider the objections mentioned earlier in view of the truncated scope of the hearing under Clause 3(ii) as noted above. We are, therefore, unable to accept the submission that the appeal provided for under Schedule B is a complete substitute for a right to personal hearing and as such by necessary implication ousts the applicability of Section 5A of the Land Acquisition Act."

53. In ***Institute of Chartered Accountants of India vs. L.K. Ratna and Others***, (1986) 4 SCC 537, Justice R.S. Pathak (as the learned Chief Justice then was) negated a valiant attempt by the counsel for the appellant to cling on to the appellate proceeding as a panacea for the violation of *audi alteram partem* at the original stage. His Lordship aligned with the *Leary* line of reasoning.

> "17. It is then urged by learned counsel for the appellant that the provision of an appeal under Section 22-A of the Act is a complete safeguard against any insufficiency in

the original proceeding before the Council, and it is not mandatory that the member should be heard by the Council before it proceeds to record its finding. Section 22-A of the Act entitles a member to prefer an appeal to the High Court against an order of the Council imposing a penalty under Section 21(4) of the Act. It is pointed out that no limitation has been imposed on the scope of the appeal, and that an appellant is entitled to urge before the High Court every ground which was available to him before the Council. Any insufficiency, it is said, can be cured by resort to such appeal. Learned counsel apparently has in mind the view taken in some cases that an appeal provides an adequate remedy for a defect in procedure during the original proceeding. Some of those cases as mentioned in Sir William Wade's erudite and classic work on "Administrative Law" 5th edn. But as that learned author observes (at p. 487), "in principle there ought to be an observance of natural justice equally at both stages", and

> If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing: instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial.

And he makes reference to the observations of Megarry, J. in *Leary v. National Union of Vehicle Builders*. Treating with another aspect of the point, that learned Judge said:

> If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion, will nevertheless have the effect of depriving

> the member of his right of appeal when a valid decision to expel him is subsequently made. Such a deprivation would be a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body.
>
> The view taken by Megarry, J. was followed by the Ontario High Court in Canada in *Re Cardinal and Board of Commissioners of Police of City of Cornwall*. The Supreme Court of New Zealand was similarly inclined in *Wislang v. Medical Practitioners Disciplinary Committee*, and so was *the Court of Appeal of New Zealand in Reid v. Rowley*".

54. The learned Judge (Pathak, J.) followed up the above principle by setting out an approach to cases, which repays study. It was held:

> "18. But perhaps another way of looking at the matter lies in examining the consequences of the initial order as soon as it is passed. There are cases where an order may cause serious injury as soon as it is made, an injury not capable of being entirely erased when the error is corrected on subsequent appeal. For instance, as in the present case, where a member of a highly respected an publicly trusted profession is found guilty of misconduct and suffers penalty, the damage to his professional reputation can be immediate and far-reaching. "Not all the King's horses and all the King's men" can ever salvage the situation completely, notwithstanding the widest scope provided to an appeal. To many a man, his professional reputation is his most valuable possession. It affects his standing and dignity among his fellow members in the profession, and guarantees the esteem of his clientele. It is often the carefully garnered fruit of a long period of scrupulous, conscientious and diligent industry. It is the portrait of his professional honour. In a world said to be notorious for its blase attitude towards the noble values of an earlier generation, a man's professional reputation is still his most sensitive pride. In such a case, after the blow suffered by

the initial decision, it is difficult to contemplate complete restitution through an appellate decision. Such a case is unlike an action for money or recovery of property, where the execution of the trial decree may be stayed pending appeal, or a successful appeal may result in refund of the money or restitution of the property, with appropriate compensation by way of interest or mesne profits for the period of deprivation. And, therefore, it seems to us, there is manifest need to ensure that there is no breach of fundamental procedure in the original proceeding, and to avoid treating an appeal as an overall substitute for the original proceeding."

55. ***L.K. Ratna's case*** ***(supra)*** was distinguished in ***United Planters Association of Southern India*** vs. ***K.G. Sangameswaran and Another***, (1997) 4 SCC 741. That was a case where the jurisdiction of the Appellate Authority to record evidence and to come to its own conclusion on the questions involved was very wide. The appellate provision provided that even if the evidence is recorded in the domestic enquiry and the order of dismissal is passed thereafter, it would still be open to the appellate authority to record evidence. In those state of affairs, this Court, in para 18, 27 and 28 of the said judgment, has held as under:-

"18. From a perusal of the provisions quoted above, it will be seen that the jurisdiction of the Appellate Authority to record evidence and to come to its own conclusion on the questions involved in the appeal is very wide. Even if the evidence is recorded in the domestic enquiry and the order of dismissal is passed thereafter, it will still be open to the Appellate Authority to record, if need be, such evidence as may be produced by the parties. Conversely, also if the domestic enquiry is ex parte or no evidence was recorded during those proceedings, the Appellate Authority would still be justified in taking additional evidence to enable it to come to its own conclusions on the articles of charges framed against the delinquent officer.

27. The learned counsel, in support of his arguments that the defect is not curable has placed reliance on the decision of this Court in *Institute of Chartered Accountants*

of India v. L. K. Ratna. It was, no doubt, laid down in this case that a post-decisional hearing cannot be an effective substitute of pre-decisional hearing and that if an opportunity of hearing is not given before a decision is taken at the initial stage, it would result in serious prejudice, inasmuch as if such an opportunity is provided at the appellate stage, the person is deprived of his right of appeal to another body. There may be cases where opportunity of hearing is excluded by a particular service or statutory rule. In *Union of India v. Tulsiram Patel*, pre-decisional hearing stood excluded by the second proviso to Article 311(2) of the Constitution and, therefore, the Court took the view that though there was no prior opportunity to a government servant to defend himself against the charges made against him, he got an opportunity to plead in an appeal filed by him that the charges for which he was removed from service were not true. Principles of natural justice in such a case will have to be held to have been sufficiently complied with. In *Maneka Gandhi v. Union of India* and in *Liberty Oil Mills v. Union of India* an opportunity of making a representation after the decision was taken, was held to be sufficient compliance. All depends on facts of each case.

28. In the instant case, the appellant has contended that the respondent did not participate in the domestic enquiry in spite of an opportunity of hearing having been provided to him. He was also offered the inspection of the documents, but he did not avail of that opportunity. He himself invoked the jurisdiction of the Appellate Authority and the order of dismissal passed against him was set aside on the ground that the appellant did not hold any domestic enquiry. It has already been seen above that the Appellate Authority has full jurisdiction to record evidence to enable it to come to its own conclusion on the guilt of the employee concerned. Since the Appellate Authority has to come to its own conclusion on the basis of the evidence recorded by it, irrespective of the findings recorded in the domestic enquiry, the rule laid down in *Ratna case* will not strictly apply and the opportunity of hearing which is

being provided to the respondent at the appellate stage will sufficiently meet his demands for a just and proper enquiry.

[emphasis supplied]

56. In ***Jayantilal Ratanchand Shah*** vs. ***Reserve Bank of India and Others***, (1996) 9 SCC 650, A Constitution Bench of this Court held that opportunity even if assumed to be denied at the original stage, no grievance could be raised as the appellate authority gave such an opportunity:

> "16. In impugning the order of the Currency Officer of the Bank it was submitted on behalf of the petitioner that no opportunity of being heard was given to the Society so as to enable it to explain the reasons for delay in submitting the declaration form. Even if we proceed on the assumption that such an opportunity of personal hearing was imperative to comply with the rules of natural justice the petitioner cannot raise any grievance on that score for the appellate authority gave them such an opportunity before dismissing their appeal. This apart, as noticed earlier, the appellate authority has given detailed reasons for its inability to accept the explanation of the Society for not filing the declaration in time…."
>
> The provision providing for appeal in Section 8(3) of the High Denomination Bank Notes (Demonetisation) Act, 1978 reads as under:-
>
> "8(3). Any person aggrieved by the refusal of the Reserve Bank to pay the value of the notes under sub-section (2) may prefer an appeal to the Central Government within fourteen days of the communication of such refusal to him."

57. Three other cases need only a brief mention. In ***Olga Tellis and Others vs. Bombay Municipal Corporation and Others***, (1985) 3 SCC 545, (Para 51) Chief Justice Y.V. Chandrachud found that no opportunity was given to the petitioners. However, it was observed that hearing in ample measure was given by this Court. Ultimately, the case was found to be covered by the exception carved out in ***S.L. Kapur*** ***(supra)*** and writ was denied since on admitted and indisputable facts only one conclusion was possible. It was held that Court should not issue futile writs. For the issue under consideration,

this is really not an authority. Equally so, in ***Charan Lal Sahu (supra)***, the Court expressly recorded that on the facts and circumstances of that case, since sufficient opportunity was available when the review application was heard on notice, no further opportunity was necessary. The Court recorded that it could not be said that injustice was done and further recorded that "to do a great right" after all it is permissible sometimes "to do a little wrong". That case concerned a challenge to the validity of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985.

58. In ***The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another*** vs. ***Ramjee***, (1977) 2 SCC 256 cited by the learned counsel for the private respondents in the written submissions again does not directly deal with this issue. There the issue was about the interpretation of Regulation 26 of the Coal Mines Regulations, which read as under:-

> "**26. Suspension of an Overman's Sirdar's, Engine driver's, shot firer's or Gas-testing Certificate-** (1) If, in the opinion of the Regional Inspector, a person to whom an Overman's, Sirdar's, Engine-driver's, Shot-firer's or Gas-testing Certificate has been granted is incompetent or is guilty of negligence or misconduct in the performance of his duties, the Regional Inspector may, after giving the person an opportunity to give a written explanation, suspend his certificate by an order in writing.
>
> (2) Where the Regional Inspector has suspended a certificate under sub-regulation (1) he shall within a week of such suspension report the fact to the Board together with all connected papers including the explanation if any received from the person concerned.
>
> (3) The Board may, after such inquiry as it thinks fit, either confirm or modify or reduce the period of suspension of the certificates, or cancel the certificate."

In this case, the delinquent handed over an explosive to an unskilled hand resulting in injury to an employee. The Regional Inspector of Mines immediately enquired and on the delinquent's virtual admission found the incident to be true. The Regional Inspector gave an opportunity for explanation and, after considering the materials before

him, forwarded the papers to the Chairman with a recommendation for cancellation of the certificate under Regulation 26. The Board had an explanation (styled appeal) from the delinquent and also recommendation by the Regional Inspector for cancellation of the certificate. The Regional Inspector had not suspended the delinquent but had merely held an enquiry and made a recommendation for cancellation of the certificate. One of the delinquent's argument in this Court was that since the Regional Inspector did not suspend the respondent's certificate, the Board had no jurisdiction and that the Regional Inspector had no power to recommend, but only to report and that the recommendation influenced the Board. It was further argued that the Board should have given a fresh opportunity to be heard before cancellation. The argument was repelled by holding that the difference between suspension plus report and recommendatory report was a distinction without a difference. It was also held that the delinquent had filed an appeal against the report of the Regional Inspector to the Chairman of the Board. He was heard in compliance with the Regulation 26.

In conclusion, Justice Krishna Iyer held the following:-

"15. These general observations must be tested on the concrete facts of each case and every miniscule violation does not spell illegality. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures."

Not only was that a case where the Regional Inspector held an enquiry, additionally, the Board also heard the delinquent. That was not a case on the issue under consideration here. This case also is of little assistance to the respondents.

59. The principles deducible are as follows:-

i) *audi alteram partem* as a facet of natural justice wherever applicable at the original stage ought to be strictly complied with.

ii) In cases where the jurisdiction of the appellate/revisional/higher body is circumscribed like in ***Farid (supra)*** and in the case at

hand, courts ought to reject the argument that the hearing before the appellate/revisional/ higher body, has cured the breach of the *audi alterm partem* rule at the original stage.

iii) Ordinarily, violation of the *audi alteram partem* rule, at the original stage, will not be curable in appeal/revision. However, if the jurisdiction of the appellate/revisional/higher body is comprehensive as found in ***Jayantilal Ratan Chand*** ***(supra)*** and ***Sangameswaran*** ***(supra),*** the Courts may be justified in concluding on the given facts, that the breach of the *audi alteram partem* rule, in the original stage, has stood redressed due to the scope and sweep of the higher proceeding. However, it will be purely within the discretionary power of the court depending on the facts of the case. This, in turn, will depend on the court being satisfied that the fair opportunity given by the higher body has ensured complete justice. Even in cases where the appellate jurisdiction/jurisdiction of the higher body is comprehensive as found in the provisions of the ***Jayantilal Ratan Chand*** ***(supra)*** and ***Sangameswaran*** ***(supra),*** there may be circumstances where the court may find that the violation does not stand cured. If, on a given set of facts, the court is of the opinion that ample opportunity has not been forthcoming and complete justice has not been done, the court in its discretion, will be justified in concluding that the violation of the principles of natural justice does not stand cured. In exercising the discretion, the court will be justified in factoring in the circumstances as the one set out in para 18 of ***L.K. Ratna*** ***(supra).***

60. Applying the above principles, it is found that the present case is covered by proposition (ii) above. The revisional power is severely circumscribed by Rule 5(1)(b) of the A& R Rules and is confined to points of law.

61. In view of that, on facts, it is held that the breach of principles of natural justice in the proceedings before the Collector did not stand cured on account of the proceedings before the revisional authority. Equally so, judicial review proceedings being a review of the decision-making process and not being a merits review, such proceedings also cannot be a cure for the violation of the *audi alteram partem* rule before the fact-finding authority.

Question No.4

To what relief the appellants are entitled to?

62. As would be clear from the sequence of facts set out above, the appellants were appointed as Shiksha Karmi Grade-III and they joined their duties in September, 1998. Of all the candidates who appeared, only one of them - Archana Mishra (R-4) took up the matter in challenge and filed proceedings before the Collector under Rule 3 of the A&R Rules read with Section 12 of the Recruitment Rules. Before the Collector, she impleaded only the Officers ex-officio. Even though allegations of *mala fide* and favouritism in the markings during interview were made neither the members of the Committee in their individual capacity nor the selected and appointed candidates, like the appellants were made parties. A reading of the order of the Collector and the revisional authority, discloses that, the resolution passed by the Standing Committee of the Panchayat on 01.08.1998 providing for recusal of the committee members from the statutory committee and for re-allocation of marks by vesting it in the Chief Executive Officer, was not even discussed in the orders. It is difficult to speculate, what the response of the Collector and the revisional authority would have been, if they were posted of the recusal resolution. Neither in the order of the Collector nor in the order of the revisional authority is the definition of relative as available in explanation 40(c) of the M.P. *Adhiniyam* set out or discussed. Admittedly, seven out of the 14 candidates did not come within the definition of 'relative', under the explanation to Section 40(c).

63. Learned counsel for the appellants here have, citing the resolution of 01.08.1998, contended that adequate precautions like recusal and absence from the venue was taken. Learned counsel contends that there is no material to show that the committee members influenced the selection process. Even the Collector, it is pointed out, has recorded in the order that it was not possible for the Collector to consider the determination of the marks of interview since it was the discretion of the committee. Even after so holding, the Collector set aside the appointments only of the appellants merely on the basis that there was an admission by the Chief Executive Officer, impleaded ex-officio, about the factum of some candidates being related to the committee members. While the Collector and the revisional authority only put it on the factum of some candidates being related, without

examining the definition of relative, the learned Single Judge drew some inferences additionally based on the qualifying marks and the marks awarded in the interview.

64. It will be of interest to notice that in ***B.N. Nagarajan and Ors.*** Vs. ***State of Mysore and Ors.,*** [1966] 3 SCR 682, a similar inference drawn only on the basis of the low qualifying marks was not favourably looked at by this Court. This Court held:-

> "… For example, it was alleged in para 15 that one Shri D.C. Channe Gowda who is the son-in-law of the Second Member of the Public Service Commission, Shri Appajappa, was an ordinary B. E. Graduate with only 49.8% marks. But even if he had only 49.8% of the marks, this is not conclusive to show that he should not have been selected because the whole object of interviewing candidates is to judge their eligibility or suitability apart from the standard displayed by them in the written examination. We are unable to hold that on these facts any mala fides or collateral object has been proved."

65. What is also of concern is that the resolution of recusal, even though specifically argued before the learned Single Judge, has been brushed aside only because of the inferences drawn based on the marks. There was gross violation of the principles of natural justice at the original stage and on facts it is held that the violation did not get cured at the revisional stage.

66. Neither the learned Single Judge nor the Division Bench have examined the legal effect of the resolution dated 01.08.1998 providing for recusal. Learned counsel for the appellants has placed reliance on the judgment in ***Javid Rasool Bhatt*** ***(supra)*** which also distinguishes the judgment in ***A.K. Kraipak*** ***(supra)***. Learned Counsel relies on the following paragraph in ***Javid Rasool Bhatt*** ***(supra)***.

> "14. Great reliance was placed by the learned counsel on *A.K. Kraipak v. Union of India* on the question of natural justice. We do not think that the case is of any assistance to the petitioners. It was a case where one of the persons, who sat as member of the Selection Board, was himself one of the persons to be considered for selection. He participated in the deliberations of the Selection Board when the

claims of his rivals were considered. He participated in the decisions relating to the orders of preference and seniority. He participated at every stage in the deliberations of the Selection Board and at every stage there was a conflict between his interest and duty. The Court had no hesitation in coming to the conclusion that there was a reasonable likelihood of bias and therefore, there was a violation of the principles of natural justice. In the case before us, the principal of the Medical College, Srinagar, dissociated himself from the written test and did not participate in the proceedings when his daughter was interviewed. When the other candidates were interviewed, he did not know the marks obtained either by his daughter or by any of the candidates. There was no occasion to suspect his bona fides even remotely. There was not even a suspicion of bias, leave alone a reasonable likelihood of bias. There was no violation of the principles of natural justice."

67. It is also seen that ***Javid Rasool Bhatt*** ***(supra)*** finds express mention and approval in ***Ashok Kumar Yadav*** ***(supra)*** [Para 18].

"18……The procedure adopted by the Selection Committee and the member concerned was in accord with the quite well-known and generally accepted procedure adopted by the Public Service Commissions everywhere. It is not unusual for candidates related to members of the Service Commission or other Selection Committee to seek employment. Whenever such a situation arises, the practice generally is for the member concerned to excuse himself when the particular candidate is interviewed. We notice that such a situation had also been noticed by this Court in the case of *Nagarajan* v. *State of Mysore* where it was pointed out that in the absence of mala fides, it would not be right to set aside the selection merely because one of the candidates happened to be related to a member of the Selection Committee who had abstained from participating in the interview of that candidate. Nothing unusual was done by the present Selection Committee. The girl's father was not present when she was interviewed. She was one among several hundred candidates. The marks obtained by her in the written test were not even known

> when she was interviewed…. In the case before us, the Principal of the Medical College, Srinagar, dissociated himself from the written test and did not participate in the proceedings when his daughter was interviewed. When the other candidates were interviewed, he did not know the marks obtained either by his daughter or by any of the candidates. There was no occasion to suspect his bona fides even remotely. There was not even a suspicion of bias, leave alone a reasonable likelihood of bias. There was no violation of the principles of natural justice.
>
> We wholly endorse these observations."
>
> (emphasis supplied)

68. Equally so, in ***Jaswant Singh Nerwal*** vs. ***State of Punjab and Others***, 1991 Supp (1) SCC 313 distinguishing ***A.K. Kraipak*** ***(supra),*** this Court reiterated the finding in ***Javid Rasool Bhatt*** ***(supra)*** and ***B.N. Nagarajan*** ***(supra).***

69. Learned counsel for the appellants rightly argued that in ***Javid Rasool Bhatt*** ***(supra),*** while the Chairman of the J&K Public Service Commission was the Chairman of the Selection Committee, the other two members were the Principal of the two government medical colleges in Srinagar and Jammu, respectively. As contended by the learned counsel for the appellants, even to a case other than a Public Service Commission the principle of recusal has been recognized and that judgment in ***Javid Rasool Bhatt*** ***(supra)*** has been endorsed in ***Ashok Kumar Yadav*** ***(supra).***

70. In the present case, it was a statutory committee framed under the Recruitment Rules and to ensure a fair selection, recusal resolution was passed by the standing committee before the selection. ***J. Mohapatra*** ***(supra)*** recognizes the distinction between committees constituted under administrative measures and committees under statutory rules or regulations, while explaining the ease with which composition in cases of non-statutory committees could be changed.

71. Learned counsel drew attention to the chart (set out in para 32 above) to demonstrate that, in some instances, the marks obtained by the Complainant - Archana Mishra and the parties seeking impleadment in the interview, were more than the marks secured by some of the appellants. Had an opportunity being given to them before the

Collector they would have demonstrated these facts, to dispel the argument of bias and favouritism, contends the learned counsel.

72. Learned counsel for the State and the parties seeking impleadment have vehemently countered these submissions. They contended first that the principle of ***Ashok Kumar Yadav*** ***(supra)*** can only apply to Public Service Commissions. They relied on ***Reference under Article 317(1) of the Constitution of India, In Re*** (2009) 1 SCC 337 to reinforce this point. This contention overlooks the fact that ***Javid Rasool Bhatt*** ***(supra)*** affirmed in ***Ashok Kumar Yadav*** ***(supra)*** was not a case of Public Service Commission. It is only that the Chairman of the Public Service Commission was the Chairman of the selection committee with the other two Members in that case being the Members of the two Government Medical Colleges in Srinagar and Jammu respectively. Moreover, in the present case, the Committee is a statutory Committee set up under the Recruitment Rules of 1997. This aspect is independent of the point of breach of natural justice at the original stage.

73. Learned counsel for the State and the private respondents contends that the selection and appointment is vitiated on the ground of bias and likelihood of bias irrespective of recusal of the relative members in the committee. The judgment of ***Dr. (Mrs.) Kirti Deshmankar*** ***(supra)*** cited by them was a case where the mother-in-law of the candidate did not recuse. Equally so, in the case of ***J. Mohapatra*** ***(supra)*** there was no recusal. The judgment of ***A.K. Kraipak*** ***(supra)*** cited by them also stands distinguished in ***Javid Rasool Bhatt*** ***(supra),*** ***Ashok Kumar Yadav*** ***(supra)*** and in ***Jaswant Singh Nerwal*** ***(supra)*** for the reasons rightly stated therein.

74. This is not a case where from the facts, only one admitted or indisputable factual position emerges, warranting denial of the issuance of the writ. This Court, following the limited exception carved out by Chinnappa Reddy, J. in ***S.L.Kapur*** ***(supra)*** has held that since Courts do not issue futile writs, in cases where on admitted or indisputable facts only one conclusion is possible, then writs will not follow. This is, even if there was violation of principles of natural justice. This principle has been followed in ***M.C. Mehta*** vs. ***Union of India***, (1999) 6 SCC 237 and ***Aligarh Muslim University and Others*** vs. ***Mansoor Ali Khan***, (2000) 7 SCC 529. These cases have no application whatsoever to the facts of the present case. This

is not such a case. In this case, it could not be said that only one admitted or indisputable factual position is possible. Hence issue of a writ will not be futile.

75. Given a chance before the Collector perhaps the appellants would have met each and every objection of the sole Complainant-Archana Mishra (R-4). Perhaps they may have not. One does not know. Respondent No.4 ought to have impleaded the candidates who were selected and appointed, including the appellants, before the Collector. Even if she failed, the Collector ought to have given an opportunity to implead, with a stern direction that failure to implead would result in a dismissal. This is all the more so in the teeth of Rule 9 of the A&R Rules. For the failure of Respondent No.4 and the Collector, the appellants cannot be made to pay.

76. Approaching the home stretch, one question still remains:- Whether at this distance of time should the matter be remitted back to the Collector for a fresh enquiry? The selection is of the year 1998. By virtue of interim orders through out, the appellants have functioned in office and are discharging their duties for the past more than twenty five years. One of them has even superannuated. At this distance of time, it will not be in the interest of justice to remand the matter for a fresh enquiry.

77. In view of the above, the appeals are allowed. The judgment of the Division Bench of the High Court passed in the writ appeals are set aside. The result would be that the appeal filed by Respondent No.4 Archana Mishra before the Collector, Chhatarpur, would stand dismissed. The appellants would be entitled to continue in service, deeming their appointments as valid and would be entitled to all service benefits. No order as to costs.

Headnotes prepared by: Nidhi Jain

Result of the case:
Matter to be placed before Hon'ble CJI for constitution of larger Bench.

[2024] 4 S.C.R. 234 : 2024 INSC 272

Manikandan
v.
State by the Inspector of Police

(Criminal Appeal No. 1609 of 2011)

05 April 2024

[Abhay S. Oka* and Pankaj Mithal, JJ.]

Issue for Consideration

Matter pertains to the tutoring of the material witnesses by the police and its effect on the prosecution case.

Headnotes

Evidence – Witnesses – Tutoring of the material witnesses by the police – Effect:

Held: This is a blatant act by the police to tutor the material prosecution witnesses-interested witnesses – It amounts to gross misuse of power by the police machinery – Police cannot be allowed to tutor the prosecution witness – On facts, the appellants convicted and sentenced u/ss. 302/34 IPC – Day before the evidence of the prosecution witnesses was recorded before the trial court, witnesses were called to the Police Station and were taught to depose in a particular manner – Their evidence will have to be discarded as there is a distinct possibility that the said witnesses were tutored by the police on the earlier day – This conduct becomes more serious as other independent eyewitnesses, though available, were withheld – Furthermore, defence of the accused was that they were not present at the place of the incident at the time of the incident – One of the prosecution witness admitted that accused was working in another village – Thus, serious doubt created about the genuineness of the prosecution case – Benefit of substantial doubt to be given to the appellants – Before the appellants were enlarged on bail, they had undergone incarceration for more than 10 years – Thus, the courts below erred in convicting the appellants – Impugned judgments and orders set aside, and the appellants acquitted of the offences alleged against them. [Paras 8, 9]

Judicial deprecation – Blatant act by the police to tutor the material prosecution witnesses at the police station:

Held: This amounts to gross misuse of power by the Police machinery – This kind of interference by the Police with the

* Author

judicial process is shocking – Director General of Police of the State to cause an enquiry to be made into the conduct of the police officials of tutoring the witnesses at the concerned Police Station – Appropriate action to be initiated against the erring officials in accordance with the law. [Paras 8, 10]

Case Law Cited

No.15138812Y L/Nk Gursewak Singh v. Union of India & Anr. [2023] 10 SCR 1139 **: 2023 SCC OnLine SC 882 : [2023] INSC 648;** *Ram Manohar Singh v. State of Uttar Pradesh* **(2023) SCC OnLine SC 1084;** *Ghapoo Yadav & Ors. v. the State of M.P.* [2003] 2 SCR 69 **: (2003) 3 SCC 528;** *Sukhbir Singh v. State of Haryana* [2002] 1 SCR 1152 **: (2002) 3 SCC 327;** *Sandhya Jadhav v. State of Maharashtra* [2006] 3 SCR 632 **: (2006) 4 SCC 653;** *Prakash Chand v. State of H.P.* [2004] Supp. 3 SCR 389 **: (2004) 11 SCC 381;** *Pulicherla Nagaraju v. State of A.P.* [2006] Supp. 4 SCR 633 **: (2006) 11 SCC 444 – referred to.**

List of Acts

Penal Code, 1860.

List of Keywords

Evidence; Witnesses; Tutoring of witnesses by police; Interested witnesses; Misuse of power by the police machinery; Eye witnesses; Incarceration; Judicial process.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.1609 of 2011

From the Judgment and Order dated 15.09.2009 of the High Court of Madras in CRLA No. 250 of 2009

With

Criminal Appeal No. 407 of 2019

Appearances for Parties

G. Sivabala Murugan, Mailysamy, Selvaraj Mahendran, C.Adhikesavan, P.V. Hari Krishnan, P. Soma Sundaram, R Nedumaran, B Ragunath, Mrs. N.C Kavitha, Vijay Kumar, Advs. for the Appellant.

Dr. Joseph Aristotle S., Ms. Shubhi Bhardwaj, Ms. Vaidehi Rastogi, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

FACTUAL ASPECTS

1. The appellant in Criminal Appeal No. 407 of 2019 is the accused no.1, and the appellant in Criminal Appeal No.1609 of 2011 is the accused no.2. The Trial Court convicted both the appellants for an offence punishable under Section 302, read with Section 34 of the Indian Penal Code, 1860 (for short, 'the IPC'). By the impugned judgment, the High Court has confirmed the conviction and life sentence of the appellants.

2. We are referring to the prosecution case in brief. The name of the deceased is Balamurugan. He was staying with his parents – PW-I Mahalingam and PW-2 Veerammal. According to the prosecution case, the deceased had instructed accused no.1 to deliver idlis at his home. On 4th October 2007, at about 9 pm, the deceased came home and enquired with his mother PW-2 whether accused no.1 had delivered the idlis. On learning that accused no.1 had not delivered the idlis, he immediately went out and reached the house of accused no.1. It appears that there was a commotion due to his altercation with the accused no.1. According to the prosecution case, after hearing the commotion, PW-2 and PW-3 (the brother-in-law of the deceased) rushed to the spot. Accused no.2 was present at the spot. After that, accused no.1 entered his house, brought with him a billhook and assaulted the deceased with the billhook. The first blow fell on the right index finger of the deceased. Thereafter, the deceased ran away to the nearby garden of one Karunanidhi. The accused followed him. The accused no.2 held the deceased, and accused no.1 assaulted the deceased with the billhook on his neck. Both the accused fled after that. According to the prosecution case, PW-2, PW-3, PW-4 (sister of PW-1), and PW-5 (son of PW-4) witnessed the incident.

SUBMISSIONS

3. The learned counsel appearing for the appellant pointed out that the first information report shows that the incident occurred at

10.30 pm. However, from the approximate time of death mentioned in the post-mortem notes, it appears that the incident must have happened before 7 pm. His second submission is that though other independent eyewitnesses were available, the prosecution had chosen to examine only the witnesses closely related to the deceased who were interested and tutored witnesses. Therefore, their testimony deserves to be discarded. Without prejudice, his further submission is that it was the deceased who went to the house of accused no.1 to enquire about the failure of accused no.1 to deliver idlis at his home. The fight started only because the deceased went to the house of accused no.1. He submitted that the post-mortem notes show that the deceased sustained one cut injury on his neck and one minor injury to his finger. He further submitted that there was a sudden fight between the deceased and the accused no.1, and in their sudden fight, without any premeditation, the accused no.1 assaulted the deceased. He would, therefore, submit that this is a case where Exception 4 of Section 300 of IPC will apply, and thus, it will amount to an offence under Part 1 of Section 304 of IPC. He relied upon various decisions of this Court in the cases of:-

(i) ***No.15138812Y L/Nk Gursewak Singh v. Union of India & Anr.***[1]

(ii) ***Ram Manohar Singh v. State of Uttar Pradesh***[2]

(iii) ***Ghapoo Yadav & Ors. v. the State of M.P.***[3]

(iv) ***Sukhbir Singh v. State of Haryana***[4]

(v) ***Sandhya Jadhav v. State of Maharashtra***[5]

(vi) ***Prakash Chand v. State of H.P.***[6] ***and***

(vii) ***Pulicherla Nagaraju v. State of A.P.***[7]

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1 [2023] 10 SCR 1139 : 2023 INSC 648 : 2023 SCC OnLine SC 882

2 2023 SCC OnLine SC 1084

3 [2003] 2 SCR 69 : (2003) 3 SCC 528

4 [2002] 1 SCR 1152 : (2002) 3 SCC 327

5 [2006] 3 SCR 632 : (2006) 4 SCC 653

6 [2004] Supp. 3 SCR 389 : (2004) 11 SCC 381

7 [2006] Supp. 4 SCR 633 : (2006) 11 SCC 444

4. The learned counsel appearing for the respondent - State urged that the evidence of PW-2 to PW-5 is free of any material contradictions and omissions and, thus, inspires confidence. He submitted that the fact that accused no.1, after a dispute with the deceased, entered his house, brought billhook and then assaulted the deceased shows that there was a clear intention on his part to assault the deceased. Learned counsel submitted that after one blow was given by the accused no.1 on the index finger of the deceased, the deceased attempted to run away. Both the accused chased the deceased; the accused no.2 held the deceased, and after that, accused no.1 gave a fatal blow to the neck of the deceased with Billhook. He urged that Exception 4 of Section 300 of IPC will not apply in this case.

OUR VIEW

5. We have perused the evidence of the material prosecution witnesses. PW-1 is the father of the deceased, who had admittedly not seen the incident. PW-2 is the mother of the deceased. PW-2 in her examination-in-chief stated thus:

> "About one year ago, my son came at 9.00 P.M. to house. My son asked me whether the 1st accused Siva had given idli to me. I told him Siva did not give idli. Immediately thereafter he said that he will go and ask Siva why he did not give idli and went from there. Thereafter, after sometime we heard a sound from the side of Siva's house. I ran and saw there. By that time, the 1st accused Siva had cut my son with the billhook. That cut fell on the index finger. Immediately my son escaped and ran towards the tract of Karunanidhi. Immediately Siva and Manikandan chased my son and ran behind him and Manikandan had held my son. Siva had cut my son on his neck. My son inclined and fell down. I ran and screamed 'Ayyo, Ayyo'. By hearing my noise, Annappattu, Ganesan, Arivazhagi, Velayudham came there running. The accused had thrown the billhook in their hands. After I saw my son, and lifted him, I came to know that my son was dead."

6. In her examination-in-chief, she attempted to make out a case that the accused had spoken ill about her daughter-in-law. Admittedly, she did not say so in her statement recorded by the police. Most importantly, in the cross-examination by the advocate for accused

no.1, she stated, "Yesterday, I, my husband and other witnesses went to Haridwarmangalam Police station. There, the police authorities taught us how to adduce evidence." It is pertinent to note that the evidence of PW-1 to PW-5 was recorded on 20th November 2008. Thus, it is apparent that on 19th November 2008, the first five interested witnesses, PW-1 to PW-5, who were closely related to the deceased, were called to the Police Station and were taught by the police how to depose against the accused. It is pertinent to note that the prosecution did not put questions to the witness by way of re-examination on this aspect. The investigation officer did not offer any explanation for this. Therefore, we must proceed on the footing that the first five witnesses were "taught" at the Police Station how to depose. This happened a day before the day their evidence was recorded before the Court.

7. PW-3 is the brother-in-law of the deceased. He deposed that he was residing near the house of the accused no.1. His version in the examination-in-chief about the incident is the same as the version of PW-2. PW-4 knew the family of the deceased and the accused, as he stated that the accused were residing in the same colony in which he was residing. His version of the incident in the examination-in-chief is the same as that of PW-2 and PW-3. PW-5 also knew the accused and the family of the deceased as he was also staying in the same colony in which the accused were staying. His version of the actual incident of the assault is the same as the other three prosecution eyewitnesses. PW-3 to PW-5 were admittedly the relatives of the deceased. PW-5, in his cross-examination, stated that he, along with five persons, attempted to prevent accused no.1 from assaulting the deceased. The other five witnesses referred to by PW-5 have not been examined as witnesses.

8. Thus, the scenario which emerges is that precisely a day before the evidence of PW-1 to PW-5 was recorded before the Trial Court, they were called to the Police Station and were taught to depose in a particular manner. One can reasonably imagine the effect of "teaching" the witnesses inside a Police Station. This is a blatant act by the police to tutor the material prosecution witnesses. All of them were interested witnesses. Their evidence will have to be discarded as there is a distinct possibility that the said witnesses were tutored by the police on the earlier day. This kind of interference by the Police with the judicial process, to say the least, is shocking. This amounts

to gross misuse of power by the Police machinery. The Police cannot be allowed to tutor the prosecution witness. This conduct becomes more serious as other eyewitnesses, though available, were withheld. We are surprised that both the Courts overlooked this critical aspect. It is pertinent to note that the defence of the accused, as can be seen from the line of cross-examination, was that they were not present at the place of the incident at the time of the incident. PW-2 admitted that accused no.1 was working in another village called Tirrupur. Although available, independent witnesses were not examined by the Prosecution. Therefore, adverse inference must be drawn against the prosecution. Hence, there is a serious doubt created about the genuineness of the prosecution case. The benefit of this substantial doubt must be given to the appellants. Before the appellants were enlarged on bail by this Court, they had undergone incarceration for more than 10 years.

9. Therefore, in our considered view, both the Sessions Court and the High Court have committed an error in convicting the appellants. Hence, the appeals are allowed. The impugned judgments and orders are set aside, and the appellants are acquitted of the offences alleged against them. Their bail bonds stand cancelled.

10. The Director General of Police of the State of Tamil Nadu shall cause an enquiry to be made into the conduct of the police officials of tutoring PW-1 to PW-5 at the concerned Police Station. Needless to add, appropriate action shall be initiated against the erring officials in accordance with the law.

Headnotes prepared by: Nidhi Jain

Result of the case: Appeals allowed.