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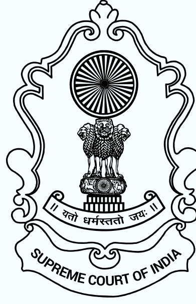

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[2024] 6 S.C.R. 653 : 2024 INSC 393

Selvamani
v.
The State Rep. By The Inspector of Police

(Criminal Appeal No. 906 of 2023)

08 May 2024

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

Issue for Consideration

Appellant was one of the five accused persons who were found guilty of committing the offence of gang rape and was convicted under Section 376(g) and 506(1) of Penal Code, 1860 and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act by the trial court. Whether High Court was justified in dismissing the appeal filed by the Appellant against the conviction when prosecutrix and witnesses turned hostile at the cross examination stage.

Headnotes

Conviction upheld even when prosecutrix and other witnesses turned hostile – Correctness of:

Held: In the present case, the prosecutrix as well as her mother and her aunt have fully supported the prosecution case – FIR came to be lodged immediately on the very same day – The statement of the prosecutrix under Section 164 CrPC was also recorded before the Judicial Magistrate, who has also deposed about the prosecutrix giving the statement and narrating the incident – The medical expert who had examined the victim has clearly stated that prosecutrix was having injuries on her person – No doubt that the prosecutrix and her mother and aunt in their cross-examination, which was recorded three and a half months after the recording of the examination-in-chief, have turned around and not supported the prosecution case – In the present case, it appears that, on account of a long gap between the examination-in-chief and cross examination, the witnesses were won over by the accused and they resiled from the version as deposed in the examination-in-chief which fully incriminates the accused – However, when the evidence of the victim as well as her mother (PW-2) and aunt (PW-3) is tested with the FIR, the statement recorded under Section 164 CrPC and the evidence of the Medical Expert (PW-8), there is sufficient corroboration to the version given by the prosecutrix

* Author

in her examination-in-chief – Reliance is placed on the judgment in the case of **Vinod Kumar v. State of Punjab (2015) 3 SCC 220**, and **Rajesh Yadav and Another v. State of Uttar Pradesh (2022) 12 SCC 200**. [Paras 5, 6, 7, 8, 11, 12 and 13]

Evidence of hostile witness – Reliance upon:

Held: A 3 judge bench of this Court in the case of **Khujji @ Surendra Tiwari v. State of Madhya Pradesh (1991) 3 SCC 627**, relying on the judgments of this Court in the cases of **Bhagwan Singh v. State of Haryana (1976) 1 SCC 389, Sri Rabindra Kumar Dey v. State of Orissa (1976) 4 SCC 233, Syad Akbar v. State of Karnataka (1980) 1 SCC 30**, has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him – The same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof – The evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence (**C. Muniappan and Others v. State of Tamil Nadu (2010) 9 SCC 567)** – The case of **Rai Sandeep alias Deepu v. State (NCT of Delhi) (2012) 8 SCC 21** relied upon by the learned counsel for Appellant can be distinguished, inasmuch as in the said case except a minor abrasion on the right side of the neck below jaw, there were no other injuries on the private part of the prosecutrix, although it was allegedly a forcible gang rape – As such, the said judgment would not be applicable in the present case. [Paras 9, 10 and 14]

Case Law Cited

Khujji @ Surendra Tiwari v. State of Madhya Pradesh [1991] 3 SCR 1 **: (1991) 3 SCC 627;** *Bhagwan Singh v. State of Haryana* [1976] 2 SCR 921 **: (1976) 1 SCC 389;** *Sri Rabindra Kumar Dey v. State of Orissa* [1977] 1 SCR 439 **: (1976) 4 SCC 233;** *Syad Akbar v. State of Karnataka* [1980] 1 SCR 95 **: (1980) 1 SCC 30;** *C. Muniappan and Others v. State of Tamil Nadu* [2010] 10 SCR 262 **: (2010) 9 SCC 567;** *Vinod Kumar v. State of Punjab* [2015] 1 SCR 504 **: (2015) 3 SCC 220;** *Rajesh Yadav and Another v. State of Uttar Pradesh* [2022] 16 SCR 967 **: (2022) 12 SCC 200 – relied on.**

Rai Sandeep alias Deepu v. State (NCT of Delhi) [2012] 6 SCR 1153 **: (2012) 8 SCC 21 – distinguished.**

Selvamani v. The State Rep. By The Inspector of Police

List of Acts

Penal Code, 1860; Tamil Nadu Prohibition of Harassment of Woman Act; Code of Criminal Procedure, 1973.

List of Keywords

Gang rape; Hostile witnesses; Evidence; Cross examination; Long gap between examination-in-chief and cross examination; Corroboration.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 906 of 2023

From the Judgment and Order dated 27.08.2019 of the High Court of Judicature at Madras in CRLA No. 840 of 2012

Appearances for Parties

Rahul Shyam Bhandari, Ms. G. Priytadarshini, Satyam Pathak, Dr. Ratneshwar Chakma, Advs. for the Appellant.

V. Krishnamurthy, Sr. A.A.G., D. Kumanan, Mrs. Deepa. S, Sheikh F. Kalia, Veshal Tyagi, Ms. Richa Vishwakarma, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

B.R. Gavai, J.

1. This appeal challenges the final judgment and order dated 27th August 2019, passed by the learned Single Judge of the High Court of Judicature at Madras[1], whereby vide a common judgment, the High Court dismissed Criminal Appeal Nos. 449 and 840 of 2012. The present Appellant, who is Accused No. 2, had filed the Criminal Appeal No. 840 of 2012, along with Accused Nos. 3 and 4, under Section 374 of Criminal Procedure Code, 1973[2], challenging the judgment and order dated 26th June 2012, passed by the learned Additional District and Sessions Judge, Court No. III, Thirupathur,

1 **Hereinafter referred to as, "High Court".**

2 **Hereinafter referred to as, "CrPC".**

Vellore District[3], in Sessions Case No. 277 of 2010, whereby the trial court had convicted and sentenced the accused persons for offences punishable under Section 376(2)(g) and 506(1) of Indian Penal Code, 1860[4], and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act.

2. The facts, in brief, giving rise to the present appeal are as given below:

2.1 On 28th January 2006, Police Station Vaniyampadi Town received a written information from the victim (PW-1), to the effect that she had been gang raped. On the basis of the said written information, Police Station Vaniyampadi Town registered a First Information Report (FIR), vide P.S. Crime No. 115 of 2006 for the offence punishable under Sections 341, 323, 376 and 506(2) IPC read with Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act. On registration of the FIR, Shri Loganthan, Inspector of Police, Vanianpadi Town Police Station (PW-13) (I.O.) visited the place of occurrence and prepared observation Mahazar and sketch. He recorded the statement of witnesses. The accused persons were arrested. The medical officer examined the victim and her statement was recorded under Section 164 CrPC by the Judicial Magistrate, Thirupattur.

2.2 The prosecution case, in a nutshell, is that the victim was working at Emerald Shoe Company, Vaniyampadi for three years leading upto the day of the incident. On the day of the incident, i.e., 27th January 2006, at about 7 PM, when the victim, aged 22 years, was returning to her house, after completing her work, the Accused No. 1 who was the Manager/Owner of the said Company came to her and told her that he wanted to talk to her about certain matter and so he took her to a place near the Railway Bridge, where already the other four persons (Accused Nos. 2 to 5) were standing, who then forcibly dragged her to a secluded place and threatened to throw her on the railway track if she shouted. They then stripped her. The victim cried for help, upon which she was threatened with a knife. The accused persons committed gang rape on her. Accused No. 1 assaulted the victim as well. The act continued till 3:30 AM, the

3 **Hereinafter referred to as, "trial court".**

4 **Hereinafter referred to as, "IPC".**

next morning, when she escaped and came back to her house. On her return, she informed her mother (PW-2) and aunt (PW-3) and later during the same day, she got the FIR registered.

2.3 At the conclusion of the investigation, a charge-sheet came to be filed by the I.O. in the Court of Vanianpadi Judicial Magistrate. Since the offence charged against the accused persons was triable only by the Court of Sessions, the case was committed to the learned Principal District and Sessions Judge, Vellore, and the same was made over to the learned trial court, for disposal.

2.4 Charges were framed by the trial court under Sections 376(2)(g) and 506(1) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act.

2.5 The accused persons pleaded not guilty and claimed to be tried. To bring home the guilt of the accused, the prosecution examined fourteen (14) witnesses, twenty-five (25) exhibits were marked along with two (2) material objects. The defence of the accused was that they had been falsely implicated. At the conclusion of the trial, the trial court found that the prosecution had proved the case beyond reasonable doubt against the accused persons and so convicted them under Section 376(2)(g) and 506(1) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act and sentenced each accused person to 10 years rigorous imprisonment and fine of Rs. 5,000/- for the offence committed under Section 376(2)(g) IPC, 1-year rigorous imprisonment and fine of Rs. 1,000/- for the offence committed under Section 506(1) IPC and 1-year imprisonment for the offence committed under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, in default of payment of fine they were to undergo 3-months simple imprisonment. The sentence was to run concurrently and the period already undergone was to be set-off. Since the Accused No. 5 had died during the trial, the case against him stood abated.

2.6 Being aggrieved thereby, the accused persons preferred appeal against the final judgment and order of the trial court. There were two appeals before the High Court. Accused No. 1 filed Criminal Appeal No. 449 of 2012 and the Accused Nos. 2 to 4 filed Criminal Appeal No. 840 of 2012. Vide impugned judgment,

the High Court dismissed both the criminal appeals and upheld the findings of the trial court.

2.7 Aggrieved as a result, the present appeal has been filed only on behalf of Accused No. 2.

3. We have heard Shri Rahul Shyam Bhandari, learned counsel appearing on behalf of the appellant and Shri V. Krishnamurthy, learned Senior Additional Advocate General appearing on behalf of the State of Tamil Nadu.

4. Shri Rahul Shyam Bhandari, learned counsel appearing for the appellant, submits that the High Court has grossly erred in dismissing the appeal filed by the appellant herein. It is submitted that the victim (PW-1) as well as her mother-Jaya (PW-2) and her aunt-Jamuna (PW-3) have not supported the prosecution case in their cross examination. Learned counsel for the appellant further submits that the medical evidence also does not support the evidence of the prosecution. Learned counsel for the appellant, relying on the judgment of this Court in the case of ***Rai Sandeep alias Deepu v. State (NCT of Delhi)***[5], submits that when the evidence of the prosecutrix and the medical evidence does not support the prosecution case, the conviction could not be sustainable.

5. In the present case, the prosecutrix as well as her mother-Jaya (PW-2) and her aunt-Jamuna (PW-3) have fully supported the prosecution case. The examination-in-chief of the prosecutrix would reveal that she has stated that when she was returning to her house, the Accused No.1, who is the owner of the company in which she works, came and asked her to come with him for giving details of some official work. Accused No.1 took the victim, where four accused persons were standing and then Accused No.1 asked the prosecutrix to remove her clothes and when she refused, her clothes were removed by the other accused and thereafter they ravished her. The evidence would also show that though she informed that she was at pains, they committed forcible sexual intercourse with her one by one on various occasions. She has stated that, when the accused persons left at around 3 o’clock in the morning, she went home and narrated the version to her mother and relatives. PW-2 and PW-3, mother

5 [2012] 6 SCR 1153 : (2012) 8 SCC 21 : 2012 INSC 322

and aunt of the prosecutrix respectively, have also stated in their evidence that when the prosecutrix came home, she narrated the incident to them. The FIR came to be lodged immediately on the very same day.

6. The statement of the prosecutrix under Section 164 CrPC was also recorded before Smt. Lakshmi Ramesh, Judicial Magistrate (PW-6). PW-6 has also deposed about the prosecutrix, giving the statement and narrating the entire incident.

7. Dr. Indrani, Medical Expert (PW.8), who had examined the victim, has clearly stated that the prosecutrix was having injuries on her person. Her evidence establishes the fact that there was forcible sexual intercourse several times by several persons. Her evidence also shows that on account of the said incident, the victim lost her virginity and there were also abrasions on the private parts of the victim.

8. No doubt that the prosecutrix and her mother and aunt in their cross-examination, which was recorded three and a half months after the recording of the examination-in-chief, have turned around and not supported the prosecution case.

9. A 3-Judge Bench of this Court in the case of ***Khujji @ Surendra Tiwari v. State of Madhya Pradesh***[6], relying on the judgments of this Court in the cases of ***Bhagwan Singh v. State of Haryana***[7], ***Sri Rabindra Kumar Dey v. State of Orissa***[8], ***Syad Akbar v. State of Karnataka***[9], has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.

10. This Court, in the case of ***C. Muniappan and Others v. State of Tamil Nadu***[10], has observed thus:

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6 [1991] 3 SCR 1 : (1991) 3 SCC 627 : 1991 INSC 153

7 [1976] 2 SCR 921 : (1976) 1 SCC 389 : 1975 INSC 306

8 [1977] 1 SCR 439 : (1976) 4 SCC 233 : 1976 INSC 204

9 [1980] 1 SCR 95 : (1980) 1 SCC 30 : 1979 INSC 126

10 [2010] 10 SCR 262 : (2010) 9 SCC 567 : 2010 INSC 553

"**81.** It is settled legal proposition that : (*Khujji case*, SCC p. 635, para 6)

> '*6*. … the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.'

82. In *State of U.P. v. Ramesh Prasad Misra*, (1996) 10 SCC 360] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde v. State of Maharashtra*, (2002) 7 SCC 543], *Gagan Kanojia v. State of Punjab*, (2006) 13 SCC 516], *Radha Mohan Singh v. State of U.P.*,(2006) 2 SCC 450], *Sarvesh Narain Shukla v. Daroga Singh*, (2007) 13 SCC 360] and *Subbu Singh v. State*, (2009) 6 SCC 462.

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising

care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. Vide *Sohrab v. State of M.P.,* (1972) 3 SCC 751, *State of U.P.* v. *M.K. Anthony*, (1985) 1 SCC 505, *Bharwada Bhoginbhai Hirjibhai* v. *State of Gujarat,* (1983) 3 SCC 217, *State of Rajasthan v. Om Prakash*, (2007) 12 SCC 381, *Prithu v. State of H.P.*, (2009) 11 SCC 588, *State of U.P. v. Santosh Kumar*, (2009) 9 SCC 626 and *State v. Saravanan,* (2008) 17 SCC 587"

11. In the case of ***Vinod Kumar v. State of Punjab***[11], this Court has observed thus:

"**51.** It is necessary, though painful, to note that PW 7 was examined-in-chief on 30-9-1999 and was cross-examined on 25-5-2001, almost after 1 year and 8 months. The delay in said cross-examination, as we have stated earlier had given enough time for prevarication due to many a reason. A fair trial is to be fair both to the defence and the prosecution as well as to the victim. An offence registered under the Prevention of Corruption Act is to be tried with all seriousness. We fail to appreciate how the learned trial Judge could exhibit such laxity in granting so much time for cross-examination in a case of this nature. It would have been absolutely appropriate on the part of the learned trial Judge to finish the cross-examination on the day the said witness was examined. As is evident, for no reason whatsoever it was deferred and the cross-examination took place after 20 months. The witness had all the time

11 [2015] 1 SCR 504 : (2015) 3 SCC 220 : 2014 INSC 670

in the world to be gained over. We have already opined that he was declared hostile and re-examined.

52. It is settled in law that the testimony of a hostile witness can be relied upon by the prosecution as well as the defence. In re-examination by the Public Prosecutor, PW 7 has accepted about the correctness of his statement in the court on 13-9-1999. He has also accepted that he had not made any complaint to the Presiding Officer of the court in writing or verbally that the Inspector was threatening him to make a false statement in the court. It has also been accepted by him that he had given the statement in the court on account of fear of false implication by the Inspector. He has agreed to have signed his statement dated 13-9-1999 after going through and admitting it to be correct. It has come in the re-examination that PW 7 had not stated in his statement dated 13-9-1999 in the court that recovery of tainted money was not effected in his presence from the accused or that he had been told by the Inspector that amount has been recovered from the accused. He had also not stated in his said statement that the accused and witnesses were taken to the Tehsil and it was there that he had signed all the memos.

53. Reading the evidence in entirety, PW 7's evidence cannot be brushed aside. The delay in cross-examination has resulted in his prevarication from the examination-in-chief. But, a significant one, his examination-in-chief and the re-examination impels us to accept the testimony that he had gone into the octroi post and had witnessed about the demand and acceptance of money by the accused. In his cross-examination he has stated that he had not gone with Baj Singh to the Vigilance Department at any time and no recovery was made in his presence. The said part of the testimony, in our considered view, does not commend acceptance in the backdrop of entire evidence in examination-in-chief and the re-examination.

xxx xxx xxx

57. Before parting with the case we are constrained to reiterate what we have said in the beginning. We have

expressed our agony and anguish for the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts:

57.1. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of.

57.2. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics.

57.3. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial is to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of the rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons.

57.4. In fact, it is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should

be deferred for such a long time. It is anathema to the concept of proper and fair trial.

57.5. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot be allowed to be lonely; a destitute."

12. Relying on the aforesaid judgments, this Court has taken a similar view in the case of ***Rajesh Yadav and Another v. State of Uttar Pradesh***[12].

13. In the present case also, it appears that, on account of a long gap between the examination-in-chief and cross examination, the witnesses were won over by the accused and they resiled from the version as deposed in the examination-in-chief which fully incriminates the accused. However, when the evidence of the victim as well as her mother (PW-2) and aunt (PW-3) is tested with the FIR, the statement recorded under Section 164 CrPC and the evidence of the Medical Expert (PW-8), we find that there is sufficient corroboration to the version given by the prosecutrix in her examination-in-chief.

14. Insofar as the reliance placed by the learned counsel for the appellant on the judgment of this Court in the case of ***Rai Sandeep alias Deepu*** (supra) is concerned, the said case can be distinguished, inasmuch as in the said case except a minor abrasion on the right side of the

12 [2022] 16 SCR 967 : (2022) 12 SCC 200 : 2022 INSC 148

neck below jaw, there were no other injuries on the private part of the prosecutrix, although it was allegedly a forcible gang rape. As such, the said judgment would not be applicable in the present case.

15. In the result, we find no reason to interfere with the concurrent findings of fact recorded by the trial court as well as the High Court on appreciation of the evidence.

16. The appeal is dismissed.

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

Headnotes prepared by:
Adeeba Mujahid, Hony. Associate Editor
(*Verified by:* Abhinav Mukerji, Sr. Adv.)

Result of the case:
Appeal dismissed.

[2024] 6 S.C.R. 666 : 2024 INSC 414

Prabir Purkayastha
v.
State (NCT of Delhi)

(Criminal Appeal No. 2577 of 2024)

15 May 2024

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

Issue for Consideration

Whether the arrest and subsequent remand of the accused-appellant was vitiated as the copy of the remand application was not provided to him or his counsel before passing of the order of remand thus, not informing him of the grounds of arrest in writing.

Headnotes

Unlawful Activities (Prevention) Act, 1967 – Constitution of India – Articles 22(1) and 22(5) – FIR registered u/ss.13, 16, 17, 18, 22C, UAPA r/w ss.153A, 120B, IPC – Appellant was arrested in connection therewith however, the arrest memo did not contain the 'grounds of arrest' – Appellant subsequently remanded to police custody by Remand Judge – Grounds of arrest were thus, not furnished to the appellant at the time of his arrest and before remanding him to police custody – Arrest and the police custody remand challenged by the appellant – Rejected by Single Judge of the High Court by impugned judgment – Validity:

Held: Requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation – Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal – Grounds of arrest must be communicated in writing to the person arrested of an offence at the earliest – Arrest memo nowhere conveyed the grounds on which the appellant was being arrested – It was simply a proforma indicating the formal 'reasons' for which

* Author

he was being arrested – Copy of the FIR was provided to the Advocate representing the accused for the first time on 5.10.2023 – Appellant was arrested on 3.10.2023 at 5:45 p.m. as per the arrest memo – Investigating Officer (IO) had a clear window till 5:44 p.m. on 4.10.2023 for producing the appellant before the Magistrate concerned and to seek his police custody remand, if required – The advocate of the appellant presented himself at the police station on 3.10.2023 after the appellant was arrested and his mobile number was available with the IO however, the appellant was presented before the Remand Judge at his residence sometime before 6:00 a.m. on 3.10.2023 – A remand Advocate was kept present in the Court purportedly to provide legal assistance to the appellant – This entire exercise was done in a clandestine manner and was a blatant attempt to circumvent the due process of law; to confine the accused to police custody without informing him the grounds on which he was arrested; deprive him of the opportunity to avail the services of the legal practitioner of his choice so as to oppose the prayer for police custody remand, seek bail and also to mislead the Court – The accused having engaged an Advocate to defend himself, there was no reason as to why, information about the proposed remand application was not sent in advance to his Advocate – The remand application was transmitted to the advocate of the appellant after the remand was granted by the Remand Judge which was at 6:00 a.m. as per the remand order dtd. 4.10.2023 – The remand order recorded that the copy of the remand application was sent to the Advocate engaged by the appellant through WhatsApp – These lines give a clear indication of subsequent insertion – The order of remand had already been passed at 6:00 a.m. and hence, the subsequent opportunity of hearing, if any, provided to the counsel was nothing but an exercise in futility – The copy of the remand application in the purported exercise of communication of the grounds of arrest in writing was not provided to the appellant or his counsel before passing of the order of remand dtd. 4.10.2023 which vitiated his arrest and subsequent remand – Arrest of the appellant followed by remand order dtd. 4.10.2023 and the impugned order passed by the High Court are invalid and are quashed and set aside – Appellant entitled to be released from custody by applying the ratio in Pankaj Bansal v. Union of India and Others [2023] 12 SCR 714. [Paras 30, 33, 34, 36, 39, 50, 51]

Unlawful Activities (Prevention) Act, 1967 – s.43B(1) – Prevention of Money Laundering Act, 2002 – s.19(1) – Constitution of India – Article 22(1) – Appellant placed reliance on the judgment in Pankaj Bansal v. Union of India and Others [2023] 12 SCR 714 to contend that in the said case s.19(1) of PMLA which is *pari materia* to s.43B(1) of the UAPA was interpreted and it was held that if the initial arrest is not in conformity with law, mere passing of successive remand orders would not be sufficient to validate the same:

Held: There is no significant difference in the language employed in Section 19(1) of the PMLA and Section 43B(1) of the UAPA – The provision regarding the communication of the grounds of arrest to a person arrested contained in Section 43B(1) of the UAPA is verbatim the same as that in Section 19(1) of the PMLA – The contention advanced by the respondent that there are some variations in the overall provisions contained in Section 19 of the PMLA and Section 43A and 43B of the UAPA would not have any impact on the statutory mandate requiring the arresting officer to inform the grounds of arrest to the person arrested under Section 43B(1) of the UAPA at the earliest because, the requirement to communicate the grounds of arrest is the same in both the statutes – Both the provisions find their source in the constitutional safeguard provided under Article 22(1) of the Constitution – Hence, applying the golden rules of interpretation, the provisions which lay down a very important constitutional safeguard to a person arrested on charges of committing an offence either under the PMLA or under the UAPA, have to be uniformly construed and applied – The interpretation of statutory mandate laid down in Pankaj Bansal on the aspect of informing the arrested person the grounds of arrest in writing has to be applied *pari passu* to a person arrested in a case registered under the provisions of the UAPA. [Paras 17, 19]

Unlawful Activities (Prevention) Act, 1967 – Constitution of India – Articles 20, 21 and 22 – Right to be informed about grounds of arrest in writing – Purpose:

Held: Any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the

arrested person as a matter of course and without exception at the earliest – The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as, this information would be the only effective means for the arrested person to consult his Advocate; oppose the police custody remand and to seek bail – Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed u/ Article 22(1) – The Right to Life and Personal Liberty is the most sacrosanct fundamental right guaranteed u/Articles 20, 21 and 22 – Any attempt to violate such fundamental right, guaranteed by Articles, 20, 21 and 22 of the Constitution of India, would have to be dealt with strictly – The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand – Mere fact that a charge sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused – The plea of the respondent that there was no requirement under law to communicate the grounds of arrest in writing to the appellant is rejected. [Paras 20-22]

Criminal Law – Arrest memo – 'reasons for arrest' *vis-à-vis* 'grounds of arrest' – 'grounds of arrest' cannot be equated with the 'reasons of arrest':

Held: There is a significant difference in the phrase 'reasons for arrest' and 'grounds of arrest' – The 'reasons for arrest' as indicated in the arrest memo are purely formal parameters, viz., to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Investigating Officer – These reasons would commonly apply to any person arrested on charge of a crime whereas the 'grounds of arrest' would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of the accused – Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on

which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail – Thus, the 'grounds of arrest' would invariably be personal to the accused and cannot be equated with the 'reasons of arrest' which are general in nature. [Para 49]

Constitution of India – Article 141 – Plea of the respondent that the judgment in Pankaj Bansal v. Union of India and Others [2023] 12 SCR 714 relied upon by the accused-appellant would not apply to the proceedings of remand made on 4.10.2023 as the appellant was remanded to police custody on 4.10.2023 whereas the judgment in Pankaj Bansal was uploaded on the website of Supreme Court in the late hours of 4.10.2023 and hence, the arresting officer could not be expected to ensure compliance of the directions given therein and thus, the alleged inaction of the IO in furnishing the grounds of arrest in writing to the appellant cannot be called into question as the judgment in Pankaj Bansal was uploaded and brought in public domain after the remand order had been passed:

Held: Said plea is misconceived – Indisputably, the appellant was remanded to police custody on 4.10.2023 whereas the judgment in the case of Pankaj Bansal was delivered on 3.10.2023 – Merely on a conjectural submission regarding the late uploading of the judgment, the respondent cannot be permitted to argue that the ratio of Pankaj Bansal would not apply to the present case – Once this Court has interpreted the provisions of the statute in context to the constitutional scheme and has laid down that the grounds of arrest have to be conveyed to the accused in writing expeditiously, the said ratio becomes the law of the land binding on all the Courts in the country by virtue of Article 141 of the Constitution of India. [Para 45]

Constitution of India – Article 22(5), 22(1) – Respondent referring to language of Article 22(5) contended that even in a case of preventive detention, the Constitutional scheme does not require that the grounds on which the order of detention has been passed should be communicated to the detenue in writing:

Held: Said submission is *ex facie* untenable in eyes of law – It has been the consistent view of this Court that the grounds on

which the liberty of a citizen is curtailed, must be communicated in writing so as to enable him to seek remedial measures against the deprivation of liberty – The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical – Neither of the constitutional provisions require that the 'grounds' of "arrest" or "detention", as the case may be, must be communicated in writing – Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench in Harikisan v. State of Maharashtra and Others [1962] Supp. 2 SCR 918 while examining the scope of Article 22(5) of the Constitution of India would *ipso facto* apply to Article 22(1) of the Constitution of India insofar the requirement to communicate the grounds of arrest is concerned. [Paras 27-29]

Case Law Cited

Harikisan v. State of Maharashtra and Others **[1962] Supp. 2 SCR 918 : 1962 SCC OnLine SC 117 – followed.**

Pankaj Bansal v. Union of India and Others **[2023] 12 SCR 714 : 2023 SCC OnLine SC 1244;** *Roy V.D. v. State of Kerala* **[2000] Supp. 4 SCR 539 : (2000) 8 SCC 590;** *Lallubhai Jogibhai Patel v. Union of India and Ors.* **[1981] 2 SCR 352 : (1981) 2 SCC 427 – relied on.**

Ram Kishor Arora v. Directorate of Enforcement **[2023] 16 SCR 743 : 2023 SCC OnLine SC 1682 – referred to.**

List of Acts

Unlawful Activities(Prevention) Act, 1967; Constitution of India; Penal Code, 1860.

List of Keywords

Remand application; Order of remand; Arrest memo; Grounds of arrest; Grounds of detention; Informing grounds of arrest in writing; Communication of grounds of arrest to person arrested; Police custody remand; Custodial remand; Right to be informed about grounds of arrest; 'Reasons for arrest'; 'Grounds of arrest'; Preventive detention; Order of detention; Order of detention communicated to detenue in writing; Custody or detention illegal; Right to Life and Personal Liberty; Fundamental right.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2577 of 2024

From the Judgment and Order dated 13.10.2023 of the High Court of Delhi at New Delhi in CRLMC No. 7278 of 2023

Appearances for Parties

Kapil Sibal, Siddharth Aggarwal, Sr. Advs., Arshdeep Singh Khurana, Nitin Saluja, Harsh Srivastava, Harshit Mahalwal, Sidak Singh Anand, Manan Khanna, Nikhil Pawar, Ms. Saujanya Shankar, Ms. Rupali Samual, Ms. Pinky Dubey, Ms. Simran Khurana, Ms. Ishita Soni, Ms. Pranya Madan, Saahil Mongia, Advs. for the Appellant.

Suryaprakash V Raju, A.S.G., Zoheb Hussain, Mukesh Kumar Maroria, Annam Venkatesh, Kanu Agrawal, Arkaj Kumar, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. Leave granted.

2. The instant appeal by special leave is preferred on behalf of the appellant for assailing the order dated 13th October, 2023 passed by learned Single Judge of the High Court of Delhi whereby the learned Single Judge dismissed the Criminal Miscellaneous Case No. 7278 of 2023 filed by the appellant seeking the following directions: -

> “A. Declare the arrest of the Petitioner as illegal and in gross violation of the fundamental rights of the Petitioner guaranteed under Article 21 and 22 of the Constitution of India in relation to FIR No. 224/2023 dated 17.08.2023 PS Special Cell, Lodhi Road, Delhi Police;
>
> B. Declare and set aside the Remand Order dated 04.10.2023 passed by the Ld. Special Judge, Patiala House Court as null and void as the same being passed in complete violation of all constitutional mandates including failure to consult and to be defended by legal practitioner of his choice during the Remand Proceedings, being

violative of Petitioner's right guaranteed under Article 22 of the Constitution of India.

C. Direct immediate release of the Petitioner from custody in FIR No. 224/2023 dated 17.08.2023 PS Special Cell, Lodhi Road, Delhi Police."

Brief Facts: -

3. The officers of the PS Special Cell, Lodhi Colony, New Delhi carried out extensive raids at the residential and official premises of the appellant and the company, namely, M/s. PPK Newsclick Studio Pvt. Ltd. ("said company") of which the appellant is the Director in connection with FIR No. 224 of 2023 dated 17th August, 2023 registered at PS Special Cell, Lodhi Colony, New Delhi for the offences punishable under Sections 13, 16, 17, 18, 22C of the Unlawful Activities (Prevention) Act, 1967 (for short "UAPA") read with Section 153A, 120B of the Indian Penal Code, 1860 (hereinafter being referred to as the 'IPC'). During the course of the search and seizure proceedings, numerous documents and digital devices belonging to the appellant, the company and other employees of the company were seized. The appellant was arrested in connection with the said FIR on 3rd October, 2023 vide arrest memo (Annexure P-7) prepared at PS Special Cell, Lodhi Colony, New Delhi.

4. It is relevant to mention here that the said arrest memo is in a computerised format and does not contain any column regarding the 'grounds of arrest' of the appellant. This very issue is primarily the bone of contention between the parties to the appeal.

5. The appellant was presented in the Court of Learned Additional Sessions Judge-02, Patiala House Courts, New Delhi (hereinafter being referred to as the 'Remand Judge') on 4th October, 2023, sometime before 6:00 a.m. which fact is manifested from the remand order (Annexure P-1) placed on record of appeal with I.A. No. 217857 of 2023. The appellant was remanded to seven days police custody vide order dated 4th October, 2023.

6. The proceedings of remand have been seriously criticized as being manipulated by Shri Kapil Sibal, learned senior counsel for the appellant and aspersions of subsequent insertions in the remand order have been made. Hence, it would be apposite to reproduce the remand order dated 4th October, 2023 in pictorial form so as to form a part of this judgment.

7 ANNEXURE P-1

डॉ. हरदीप कौर
Dr HARDEEP KAUR
अतिरिक्त सत्र न्यायाधीश–02
Additional Sessions Judge-02
कमरा नं. 15, प्रथम तल मुख्य भवन
Room No. 15, First Floor, Main Building
पटियाला हाउस कोर्ट,
Patiala House Courts
नई दिल्ली
New Delhi

Present :- Sh. Atul K. Srivastva Ld APP for the State
IO in person
Accused persons present with Remand counsel Sh. Umakant Kataria
Sh. Arshdeep Singh Khurana counsel for accused persons. (Mob. No. 9971140092) through telephone call

An application has been moved by the IO seeking police custody remand of accused Prabir Purkayastha and Amit Chakrobarty for a period of 15 days. copy of remand application sent through whatsapp to counsel for accused persons.

Heard. Record Perused.

considering the intricate nature of investigation required in the instant matter, accused Prabir Purkayastha and Amit Chakrobarty are remanded to police custody for a period of 7 days i.e till 10th Oct.

Application is disposed of accordingly.

Accused persons must be medically examine every 48 hours during their police custody remand.

(Hardeep Kaur)
ASJ-02, PHC
New Delhi
4th Oct. 2023, Time 6.00 AM
अतिरिक्त सत्र न्यायाधीश–02
Additional Sessions Judge-02
नई दिल्ली
New Delhi

7. The appellant promptly questioned his arrest and the police custody remand granted by the learned Remand Judge vide order dated 4th October, 2023 by preferring Criminal Miscellaneous Case No. 7278 of 2023 in the High Court of Delhi which stands rejected by the learned Single Judge of the High Court of Delhi vide judgment dated 13th October, 2023. The said order is subjected to challenge in this appeal by special leave.

Submissions on behalf of the appellant: -

8. Shri Kapil Sibal, learned senior counsel representing the appellant canvassed the following submissions in order to question the proceedings of arrest and remand of the appellant: -

   (i) That the FIR No. 224 of 2023 (FIR in connection of which appellant was arrested) is virtually nothing but a second FIR on same facts because prior thereto, another FIR No. 116 of 2020 dated 26th August, 2020 had been registered by PS EOW, Delhi Police ("EOW FIR") alleging violation of Foreign Direct Investment (FDI) regulations and other laws of the country by the appellant and the company, thereby causing loss to the exchequer. A copy of the said FIR was, however, not provided to the appellant. By treating the EOW FIR as disclosing predicate offences, the Directorate of Enforcement (for short "ED") registered an Enforcement Case Information Report (for short 'ECIR') for the offences punishable under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (for short 'PMLA'). The ED carried out extensive search and seizure operations at various places including the office of the company-M/s. PPK Newsclick Studio Pvt. Ltd., of which the appellant is the Director.

   (ii) The company assailed the ECIR by filing Writ Petition (Crl.) Nos. 1129 of 2021 and 1130 of 2021 wherein interim protection against coercive steps was granted by High Court of Delhi on 21st June, 2021. The appellant was also provided interim protection in an application seeking anticipatory bail vide order dated 7th July, 2021.

   (iii) The FIR No. 224 of 2023 has been registered purely on conjectures and surmises without there being any substance in the allegations set out in the report. The contents of the FIR which were provided to the appellant at a much later stage

discloses a purely fictional story without any fundamental facts or material warranting registration of the FIR.

(iv) Admittedly, the copy of FIR No. 224 of 2023 was neither made available in the public domain nor a copy thereof supplied to the appellant until his arrest and remand which is in complete violation of the fundamental Right to Life and Personal Liberty enshrined in Articles 20, 21 and 22 of the Constitution of India.

(v) Shri Sibal pointed out that the learned Remand Judge, vide order dated 5th October, 2023, allowed the application filed by the appellant seeking certified copy of the said FIR which was provided to the learned counsel for the appellant in the late evening on 5th October, 2023, i.e., well after the appellant had been remanded to police custody.

(vi) That the grounds of arrest were not informed to the appellant either orally or in writing and that such action is in gross violation of the constitutional mandate under Article 22(1) of the Constitution of India and Section 50 of the Code of Criminal Procedure, 1973 (hereinafter being referred to as the 'CrPC').

(vii) Reliance was placed by the learned senior counsel on the judgment of this Court in ***Pankaj Bansal v. Union of India and Others***[1] and it was contended that the mere passing of successive remand orders would not be sufficient to validate the initial arrest, if such arrest was not in conformity with law. Learned senior counsel urged that this Court in the case of ***Pankaj Bansal*** *(supra)* interpreted the provision of Section 19(1) of PMLA which is *pari materia* to the provisions contained in Section 43B(1) of the UAPA. Thus, the said judgment fully applies to the case of the appellant.

(viii) Shri Sibal referred to the observations made in the judgment of ***Pankaj Bansal*** *(supra)* and urged that since the grounds of arrest were not furnished to the appellant at the time of his arrest and before remanding him to police custody, the continued custody of the appellant is rendered grossly illegal and a nullity in the eyes of law because the same is hit by the mandate of Article 22(1) of the Constitution of India.

1 [2023] 12 SCR 714 : 2023 SCC OnLine SC 1244

(ix) Shri Sibal further urged that the view taken by a two-Judge Bench of this Court in ***Ram Kishor Arora v. Directorate of Enforcement***[2] holding the judgment in ***Pankaj Bansal*** *(supra)* to be prospective in operation would also not come in the way of the appellant in seeking the relief. He pointed out that the judgment in the case of ***Pankaj Bansal*** *(supra)* was pronounced on 3rd October, 2023 whereas the illegal remand order of the appellant was passed on 4th October, 2023 and hence, the law laid down in the case of ***Pankaj Bansal*** *(supra)* is fully applicable to the case of the appellant despite the interpretation given in ***Ram Kishor Arora*** *(supra)*.

(x) That the arrest of the appellant is in gross violation of the provisions contained in Article 22 of the Constitution of India, hence, the appellant is entitled to seek a direction for quashment of the remand order and release from custody forthwith.

(xi) That the action of the Investigating Officer in arresting and in seeking remand of the appellant is not only *mala fide* but also fraught with fraud of the highest order.

(xii) Referring to the remand order dated 4th October, 2023, it was contended that the appellant was kept confined overnight by the Investigating Officer without conveying the grounds of arrest to him. He was presented in the Court of the learned Remand Judge on 4th October, 2023 in the early morning without informing Shri Arshdeep Khurana, the Advocate engaged on behalf of the appellant who was admittedly in contact with the Investigating Officer because he had attended the proceedings at the Police Station Lodhi Colony, post the appellant's arrest. In order to clandestinely procure police custody remand of the appellant, the Investigating Officer, presented the appellant at the residence of learned Remand Judge before 6:00 a.m. by informing a remand Advocate Shri Umakant Kataria who had never been engaged by the appellant to plead his cause.

(xiii) Learned Remand Judge remanded the accused to police custody at 6:00 a.m. sharp as is evident from the remand order (*supra*). Shri Arshdeep Khurana, the appellant's Advocate was informed

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about the order granting remand by a WhatsApp message at 7:07 a.m. but the same was an exercise in futility because there was no possibility that the learned Advocate could have reached the residence of the learned Remand Judge in time to oppose the prayer for remand.

(xiv) That, as a matter of fact, the remand application had already been accepted at 6:00 a.m. which fact is manifested from the time appended at the end of the remand order *(supra)*. The learned Remand Judge signed the proceedings by recording the time as 6:00 a.m. Hence, there is no escape from the conclusion that the remand order was passed without supplying copy of the grounds of arrest to the appellant or the Advocate engaged by him. The appellant was intentionally deprived from information about the grounds of his arrest and thereby he and his Advocate were prevented from opposing the prayer of police custody remand and from seeking bail.

(xv) He further urged that the stand taken by the respondent that the grounds of arrest were conveyed to the learned counsel for the appellant well before the learned Remand Judge passed the remand order is unacceptable on the face of the record because the time of passing the remand order is clearly recorded in the order dated 4th October, 2023 as 6:00 a.m. Admittedly, the grounds of arrest were conveyed to Shri Arshdeep Khurana, Advocate for the appellant well after 7:00 a.m. It was contended that the noting made by the learned Remand Judge in the order dated 4th October, 2023 that the learned counsel for the appellant was heard on the application for remand is a subsequent insertion clearly visible from the remand order. The fact of subsequent insertion of these lines is fortified from the fact that the appellant had already been remanded to police custody by the time the Advocate was informed and the copy of the remand application containing the purported grounds of arrest was transmitted to him.

(xvi) That the foundational facts in the FIR No. 224 of 2023 are almost identical to the allegations set out in the EOW FIR. The appellant had been granted protection against arrest by the High Court of Delhi in the EOW FIR. Owing to this protection, the *mala fide* objective of the authorities in putting the appellant

behind bars was not being served and, therefore, a new FIR No. 224 of 2023 with totally cooked up allegations came to be registered and the appellant was illegally deprived of his liberty without the copy of the FIR been provided and without the grounds of arrest being conveyed to the appellant.

9. On these grounds, Shri Sibal implored the Court to accept the appeal, set aside the impugned orders and direct the release of the appellant from custody in connection with the above FIR.

Submission on behalf of the respondent: -

10. *Per contra*, Shri Suryaprakash V. Raju, learned ASG, appearing for the respondent vehemently and fervently opposed the submissions advanced by the learned counsel for the appellant and made the following pertinent submissions:-

(i) He urged that the judgment in the case of ***Pankaj Bansal*** *(supra)* has been held to be prospective in operation by this Court in the case of ***Ram Kishor Arora*** *(supra)*.

(ii) The appellant was remanded to police custody on 4th October, 2023 whereas the judgment in the case of ***Pankaj Bansal*** *(supra)* was uploaded on the website of this Court in the late hours of 4th October, 2023 and hence, the arresting officer could not be expected to ensure compliance of the directions given in the said judgment. He thus urged that the alleged inaction of the Investigating Officer in furnishing the grounds of arrest in writing to the appellant cannot be called into question as the judgment in ***Pankaj Bansal*** *(supra)* was uploaded and brought in public domain after the remand order had been passed.

(iii) Without prejudice to the above, learned ASG urged that as per the appellant's version set out in the pleadings filed before the High Court of Delhi, he was actually remanded to the police custody after 7:00 a.m. With reference to these pleadings, Shri Raju contended that the appellant cannot be heard to urge that he was remanded to the police custody in an illegal manner and without the grounds of arrest having been conveyed to him in writing.

(iv) Learned ASG referred to the provisions contained in Articles 22(1) and 22(5) of the Constitution of India and urged that

there is no such mandate in either of the provisions that the grounds of arrest or detention should be conveyed in writing to the accused or the detenue, as the case may be.

(v) He urged that the right conferred upon the appellant by Article 22(1) of the Constitution of India to consult and to be defended by a legal practitioner was complied with in letter and spirit because the relative of the appellant, namely, Shri Rishabh Bailey, was informed before producing the appellant before the learned Remand Judge. Admittedly, Shri Rishabh Bailey had intimated the appellant's Advocate, Shri Arshdeep Khurana regarding the proposed proceedings of police custody remand of the appellant.

(vi) He urged that the Advocate transmitted a written objection against the prayer for police custody remand over WhatsApp through the Head Constable Rajendra Singh and the learned Remand Judge has taken note of the said objection opposing remand in the remand order dated 4th October, 2023 and thus it would be futile to argue that the order granting remand is illegal in any manner.

(vii) Learned ASG further contended that now the investigation has been completed and charge sheet has also already been filed and, thus, the illegality/irregularity, if any, in the arrest of the appellant and the grant of initial police custody remand stands cured and hence, the appellant cannot claim to be prejudiced by the same.

(viii) He vehemently urged that there are significant differences in the language employed in Section 19 of the PMLA and Section 43A and 43B of the UAPA and, thus, the law as laid down by this Court in ***Pankaj Bansal*** *(supra)* does not come to the aid of the appellant in laying challenge to the remand order.

(ix) Learned ASG further urged that there is a presumption regarding the correctness of acts performed in discharge of judicial functions and hence, the noting recorded in the remand order dated 4th October, 2023 that the Advocate for the appellant had been heard on the remand application and that the grounds of arrest had been conveyed to the appellant cannot be questioned or doubted. He thus implored the Court to dismiss the appeal and affirm the order passed by the High Court of Delhi.

Rejoinder on behalf of learned counsel for the appellant: -

11. Shri Sibal, learned senior counsel for the appellant submitted that the argument advanced by learned ASG that the provisions contained in Section 19 of the PMLA and Section 43A and 43B of the UAPA operate in different spheres, is misconceived. He urged that language of both the provisions is *pari materia* and hence, the law laid down in ***Pankaj Bansal*** *(supra)* fully covers the controversy at hand.

12. Shri Sibal emphasised that on a plain viewing of the order dated 4th October, 2023, it is clear that the lines indicating the sending of the copy of the remand application to the learned counsel for the appellant and the opportunity of hearing provided to the Advocate through telephone call have been subsequently inserted in the order. He thus urged that the plea advanced by Shri Raju, learned ASG that there is a presumption regarding the correctness of judicial proceedings cannot be accepted as a gospel truth in the peculiar facts of the case at hand. He contended that applying the same principle to the remand order dated 4th October, 2023 is counter productive to the stand taken by learned ASG inasmuch as, the order records the time of passing as 6:00 a.m. whereas the Advocate was admittedly informed after 7:00 a.m. Thus, there was no possibility of the remand application being sent to the Advocate or he being heard before passing of the remand order. He, thus, reiterated his submissions and sought acceptance of the appeal.

Discussion and conclusion: -

13. We have given our thoughtful considerations to the submissions advanced at bar and have gone through the material placed on record.

14. Since, learned ASG has advanced a fervent contention regarding application of ratio of ***Pankaj Bansal*** (*supra*) urging that there is an inherent difference between the provisions contained in Section 19 of the PMLA and Section 43A and 43B of the UAPA, it would first be apposite for us to address the said submission.

15. In the case of ***Pankaj Bansal*** *(supra)*, this Court after an elaborate consideration of the provisions contained in PMLA, CrPC and the constitutional mandate as provided under Article 22 held as below: -

> **"32. In this regard, we may note that Article 22(1) of the Constitution provides, inter alia, that no person who is arrested shall be detained in custody without**

being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 of the Act of 2002 enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the Court must be satisfied, after giving an opportunity to the public prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorized officer arrested him/her under Section 19 and the basis for the officer's 'reason to believe' that he/she is guilty of an offence punishable under the Act of 2002. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail**. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 of the Act of 2002, is meant to serve this higher purpose and must be given due importance.**

36. That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested

person against the word of the authorized officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned. Though the ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person straightaway, as held in *V. Senthil Balaji* (supra). Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorized officer in terms of Section 19(1) of the Act of 2002, to the arrested person under due acknowledgment, instead of leaving it to the debatable *ipse dixit* of the authorized officer.

37. The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. Conveyance of this information is not only to apprise the arrested person of why he/she is being arrested but also to enable such person to seek legal counsel and, thereafter, present a case before the Court under Section 45 to seek release on bail, if he/ she so chooses. In this regard, the grounds of arrest in *V. Senthil Balaji* (supra) are placed on record and we find that the same run into as many as six pages. The grounds of arrest recorded in the case on hand in relation to Pankaj Bansal and Basant Bansal have not been produced before this Court, but it was contended that they were produced at the time of remand. However, as already noted earlier, this did not serve the intended purpose. Further, in the event their grounds of arrest were equally voluminous, it would be well-nigh impossible for either Pankaj Bansal or Basant Bansal to record and remember all that they had read or heard being read out for future recall so as to avail legal remedies. More so, as a person who has just been arrested would not be in a calm and collected frame of mind and may be utterly incapable of remembering the

contents of the grounds of arrest read by or read out to him/her. **The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) of the Act of 2002**.

38. We may also note that the grounds of arrest recorded by the authorized officer, in terms of Section 19(1) of the Act of 2002, would be personal to the person who is arrested and there should, ordinarily, be no risk of sensitive material being divulged therefrom, compromising the sanctity and integrity of the investigation. In the event any such sensitive material finds mention in such grounds of arrest recorded by the authorized officer, it would always be open to him to redact such sensitive portions in the document and furnish the edited copy of the grounds of arrest to the arrested person, so as to safeguard the sanctity of the investigation.

39. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in *Moin Akhtar Qureshi* (supra) and the Bombay High Court in *Chhagan Chandrakant Bhujbal* (supra), which hold to the contrary, do not lay down the correct law. **In the case on hand, the admitted position is that the ED's Investigating Officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) of the Act of 2002, we have no hesitation in holding that their arrest was**

not in keeping with the provisions of Section 19(1) of the Act of 2002. Further, as already noted *supra*, the clandestine conduct of the ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained."

(emphasis supplied)

16. Section 19 of the PMLA and Sections 43A, 43B and 43C of the UAPA are reproduced hereunder for the sake of ready reference: -

Section 19 of the PMLA

"**19. Power to arrest.**—(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a [Special Court or] Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the [Special Court or] Magistrate's Court."

Sections 43A, 43B and 43C of the UAPA

"**43A. Power to arrest, search, etc**.—Any officer of the Designated Authority empowered in this behalf, by general or special order of the Central Government or the State Government, as the case may be, knowing of a design to commit any offence under this Act or has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or from any document, article or any other thing which may furnish evidence of the commission of such offence or from any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under this Chapter is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him to arrest such a person or search such building, conveyance or place whether by day or by night or himself arrest such a person or search a such building, conveyance or place.

43B. Procedure of arrest, seizure, etc.—(1) Any officer arresting a person under section 43A shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under section 43A shall be forwarded without unnecessary delay to the officer-in-charge of the nearest police station.

(3) The authority or officer to whom any person or article is forwarded under sub-section (2) shall, with all convenient dispatch, take such measures as may be necessary in accordance with the provisions of the Code.

43C. Application of provisions of Code. —The provisions of the Code shall apply, insofar as they are not inconsistent with the provisions of this Act, to all arrests, searches and seizures made under this Act."

17. Upon a careful perusal of the statutory provisions *(*reproduced *supra)*, we find that there is no significant difference in the language employed in Section 19(1) of the PMLA and Section 43B(1) of the

UAPA which can persuade us to take a view that the interpretation of the phrase 'inform him of the grounds for such arrest' made by this Court in the case of ***Pankaj Bansal*** *(supra)* should not be applied to an accused arrested under the provisions of the UAPA.

18. We find that the provision regarding the communication of the grounds of arrest to a person arrested contained in Section 43B(1) of the UAPA is verbatim the same as that in Section 19(1) of the PMLA. The contention advanced by learned ASG that there are some variations in the overall provisions contained in Section 19 of the PMLA and Section 43A and 43B of the UAPA would not have any impact on the statutory mandate requiring the arresting officer to inform the grounds of arrest to the person arrested under Section 43B(1) of the UAPA at the earliest because as stated above, the requirement to communicate the grounds of arrest is the same in both the statutes. As a matter of fact, both the provisions find their source in the constitutional safeguard provided under Article 22(1) of the Constitution of India. Hence, applying the golden rules of interpretation, the provisions which lay down a very important constitutional safeguard to a person arrested on charges of committing an offence either under the PMLA or under the UAPA, have to be uniformly construed and applied.

19. We may note that the modified application of Section 167 CrPC is also common to both the statutes. Thus, we have no hesitation in holding that the interpretation of statutory mandate laid down by this Court in the case of ***Pankaj Bansal*** *(supra)* on the aspect of informing the arrested person the grounds of arrest in writing has to be applied *pari passu* to a person arrested in a case registered under the provisions of the UAPA.

20. Resultantly, there is no doubt in the mind of the Court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as, this information would be the only effective means for the arrested person to consult his Advocate; oppose the police custody remand

and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India.

21. The Right to Life and Personal Liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon this fundamental right has been frowned upon by this Court in a catena of decisions. In this regard, we may refer to following observations made by this Court in the case of ***Roy V.D. v. State of Kerala***[3]**:-**

> "**7.** The life and liberty of an individual is so sacrosanct that it cannot be allowed to be interfered with except under the authority of law. It is a principle which has been recognised and applied in all civilised countries. In our Constitution Article 21 guarantees protection of life and personal liberty not only to citizens of India but also to aliens."

Thus, any attempt to violate such fundamental right, guaranteed by Articles, 20, 21 and 22 of the Constitution of India, would have to be dealt with strictly.

22. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused.

23. Learned ASG referred to the language of Article 22(5) of the Constitution of India and urged that even in a case of preventive detention, the Constitutional scheme does not require that the grounds on which the order of detention has been passed should be communicated to the detenue in writing. *Ex facie*, we are not impressed with the said submission.

24. The contention advanced by learned ASG based on the language of Article 22(5) of the Constitution of India persuaded us to delve deeper on the issue as to whether it is mandatory to communicate

3 [2000] Supp. 4 SCR 539 : (2000) 8 SCC 590

the grounds of arrest or detention in writing to the accused or the detenue, as the case may be, even though the constitutional mandate under Articles 22(1) and 22(5) of the Constitution of India does not explicitly require that the grounds should be communicated in writing.

25. A Constitution Bench of this Court examined in detail the scheme of Article 22(5) of the Constitution of India in the case of ***Harikisan v. State of Maharashtra and Others***[4] and held that the communication of the grounds of detention to the detenue in writing and in a language which he understands is imperative and essential to provide an opportunity to detenue of making an effective representation against the detention and in case, such communication is not made, the order of detention would stand vitiated as the guarantee under Article 22(5) of the Constitution was violated. The relevant para is extracted hereinbelow:

> " **7.** ….. clause (5) of Article 22 requires that the grounds of his detention should be made available to the detenue as soon as may be, and that the earliest opportunity of making a representation against the Order should also be afforded to him. **In order that the detenue should have that opportunity, it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detenue should be in a position effectively to make his representation against the Order, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him. Communication, in this context, must, therefore, mean imparting to the detenue sufficient knowledge of all the grounds on which the Order of Detention is based. In this case the grounds are several, and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given by the police officer serving those on the detenue would not amount to communication, in**

4 [1962] Supp. 2 SCR 918 : 1962 SCC OnLine SC 117

> **this context, must mean bringing home to the detenue effective knowledge of the facts and circumstances on which the Order of Detention is based.**
>
> (emphasis supplied)

26. Further, this Court in the case of ***Lallubhai Jogibhai Patel v. Union of India and Ors.***[5], laid down that the grounds of detention must be communicated to the detenue in writing in a language which he understands and if the grounds are only verbally explained, the constitutional mandate of Article 22(5) is infringed. The relevant para is extracted hereunder: -

> **"20.** …. "Communicate" is a strong word. It means that sufficient knowledge of the basic facts constituting the "grounds" should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the "ground" to the detenu is to enable him to make a purposeful and effective representation. **If the "grounds" are only verbally explained to the detenu and nothing in writing is left with him, in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed….."**
>
> (emphasis supplied)

27. From a holistic reading of various judgments pertaining to the law of preventive detention including the Constitution Bench decision of this Court in ***Harikisan*** ***(supra)***, wherein, the provisions of Article 22(5) of the Constitution of India have been interpreted, we find that it has been the consistent view of this Court that the grounds on which the liberty of a citizen is curtailed, must be communicated in writing so as to enable him to seek remedial measures against the deprivation of liberty.

28. Thus, there is no hesitation in the mind of this Court that the submission of learned ASG that in a case of preventive detention, the grounds of detention need not be provided to a detenue in writing is *ex facie* untenable in eyes of law.

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5 [1981] 2 SCR 352 : (1981) 2 SCC 427

29. The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that the 'grounds' of "arrest" or "detention", as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would *ipso facto* apply to Article 22(1) of the Constitution of India insofar the requirement to communicate the grounds of arrest is concerned.

30. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.

31. Furthermore, the provisions of Article 22(1) have already been interpreted by this Court in ***Pankaj Bansal*** *(supra)* laying down beyond the pale of doubt that the grounds of arrest must be communicated in writing to the person arrested of an offence at the earliest. Hence, the fervent plea of learned ASG that there was no requirement under law to communicate the grounds of arrest in writing to the accused appellant is noted to be rejected.

32. Now, coming to the facts of the case at hand. Indisputably, FIR No. 224 of 2023 came to be registered on 17th August, 2023. Copy of the FIR was never brought in public domain as the same was not uploaded on the website by the Investigating Agency. Admittedly, the copy of the FIR was not provided to the appellant despite an application having been made in this regard on his behalf till after the order of police custody remand was passed by the learned Remand Judge.

33. The copy of the FIR was provided to Shri Arshdeep Khurana, learned Advocate representing the accused for the first time on 5th October, 2023 and hence, till the time of being deprived of liberty, no communication had been made to the appellant regarding the grounds on which he had been arrested.

34. The accused was arrested on 3rd October, 2023 at 5:45 p.m. as per the arrest memo (Annexure P-7). As per Section 43C of the UAPA, the provisions of CrPC shall apply to all arrests, search and seizures made under the UAPA insofar as they are not inconsistent with the provisions of this Act. As per Section 57 CrPC read with Section 167(1) CrPC, the appellant was required to be produced before the concerned Magistrate within twenty-four hours of his arrest. The Investigating Officer, therefore, had a clear window till 5:44 p.m. on 4th October, 2023 for producing the appellant before the Magistrate concerned and to seek his police custody remand, if so required. There is no dispute that Shri Arshdeep Khurana, learned Advocate, engaged on behalf of the appellant had presented himself at the police station on 3rd October, 2023 after the appellant was arrested and the mobile number of the Advocate was available with the Investigating Officer. Inspite thereof, the appellant was presented before the learned Remand Judge at his residence sometime before 6:00 a.m. on 4th October, 2023. A remand Advocate, namely, Shri Umakant Kataria was kept present in the Court purportedly to provide legal assistance to the appellant as required under Article 22(1) of the Constitution of India. Apparently, this entire exercise was done in a clandestine manner and was nothing but a blatant attempt to circumvent the due process of law; to confine the accused to police custody without informing him the grounds on which he has been arrested; deprive the accused of the opportunity to avail the services of the legal practitioner of his choice so as to oppose the prayer for police custody remand, seek bail and also to mislead the Court. The accused having engaged an Advocate to defend himself, there was no rhyme or reason as to why, information about the proposed remand application was not sent in advance to the Advocate engaged by the appellant.

35. It is apparent that the appellant had objected to the appearance of the remand counsel before the learned Remand Judge and this is the reason, the Investigating Officer undertook a charade of informing of the Advocate engaged by the appellant on mobile. The learned Remand Judge recorded the presence of Shri Arshdeep Khurana, Advocate, mentioning that he had been informed and heard on the remand application through telephone call. The initial information about the accused appellant being presented before the learned Remand Judge was sent by the arresting officer to the appellant's

relative Shri Rishab Bailey at around 6:46 a.m. and he, in turn, informed the Advocate Shri Arshdeep Khurana around 7:00 a.m. These facts are manifested from perusal of the call logs presented for the perusal of the Court. Thus, by the time, the Advocate engaged by the accused appellant had been informed, the order of remand had already been passed. Unquestionably, till that time, the grounds of arrest had not been conveyed to the appellant in writing.

36. The learned ASG had argued that the grounds of arrest were set out in the remand application which was transmitted through WhatsApp to Advocate Shri Arshdeep Khurana. However, the fact remains that the remand application was transmitted to the Advocate Shri Arshdeep Khurana after the remand had been granted by the learned Remand Judge which was at 6:00 a.m. as per the recording made in the remand order (reproduced *supra)*. The contention of the learned ASG that there is variance in time of passing of the remand order as per the pleadings made on behalf of the accused appellant before the High Court of Delhi does not impress us in view of the time recorded in the remand order.

37. Learned Single Judge of the High Court of Delhi held at para No. 31 of the impugned order that the respondent had taken a categoric stand that the grounds of arrest were informed to the appellant orally and the same were also conveyed in writing as per the details set out in the memo of arrest. However, learned ASG fairly did not advance any such argument based on the arrest memo.

38. The interpretation given by the learned Single Judge that the grounds of arrest were conveyed to the accused in writing vide the arrest memo is unacceptable on the face of the record because the arrest memo does not indicate the grounds of arrest being incorporated in the said document. Column No. 9 of the arrest memo (Annexure P-7) which is being reproduced hereinbelow simply sets out the 'reasons for arrest' which are formal in nature and can be generally attributed to any person arrested on accusation of an offence whereas the 'grounds of arrest' would be personal in nature and specific to the person arrested.

"**9. Reason for arrest**

a. Prevent accused person from committing any further offence.

b. For proper investigation of the offence.

c. To prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner.

d. To prevent such person from making any inducement threat or promise to any person acquainted the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Police officer.

e. As unless such person is arrested, his presence in the Court whenever required cannot be ensured."

39. The remand order dated 4th October, 2023(reproduced *supra*) records that the copy of the remand application had been sent to the learned Advocate engaged by the accused appellant through shriApp. A bare perusal of the remand order is enough to satisfy us that these two lines were subsequently inserted in the order because the script in which these two lines were written is much finer as compared to the remaining part of the order and moreover, these two lines give a clear indication of subsequent insertion. It is quite possible that the learned Remand Judge may have heard the learned counsel for the appellant after signing the remand order and thus, these lines were inserted later without intending any harm or malintention but the fact remains that the order of remand had already been passed at 6:00 a.m. and hence, the subsequent opportunity of hearing, if any, provided to the counsel was nothing but an exercise in futility.

40. Learned ASG had argued that the copy of the remand application forwarded over WhatsApp to the learned counsel for the accused appellant gives a complete picture about the grounds of arrest. We feel that any comment on the contents of the remand application and whether the same actually conveyed intelligible grounds of arrest to the accused or whether the same are so vague that it would be impossible to understand, may prejudice the trial of the case.

41. We may, however, briefly mention that the grounds of arrest as conveyed to the Advocate are more or less a narration of facts picked up from the FIR which in itself does not indicate any particular incident or event which gave rise to the alleged offences. However, the law is well settled that the FIR is not an encyclopaedia and is registered just to set the process of criminal justice in motion. The

Investigating Officer has the power to investigate the matter and collect all relevant material which would form the basis of filing of charge sheet in the Court concerned.

42. Extensive arguments were advanced by Shri Sibal, with reference to the stipulations made in Sections 13, 16, 17, 18, 22C of the UAPA in order to contend that even if the FIR and the grounds set out in the remand application are taken to be true on the face of the record, apparently, the same convey just a fictional web spun around conjectures and surmises. It was contended that though a reference is made in the FIR that the appellant and one Neville Roy Singham, a foreign national were found to be discussing how to create a map of India without Kashmir and to show Arunachal Pradesh as a disputed area but the fact remains that no such map was prepared or published or was found in possession of the appellant or on his devices till the date of his arrest.

43. Shri Sibal had also argued that the appellant was arrested without any indication as to how he was connected with the alleged incorrect map of India. He also urged that the FIR refers to farmers' agitation without justifying as to how the appellant was connected with those incidents. He contended that not a single incident is mentioned in the FIR or the remand application which can give rise to the offences alleged and that the FIR was registered without any plausible reason or basis just to victimise the appellant.

44. We do not feel persuaded to examine these aspects at this stage because the same would require entering into the merits of the case. This would be within the domain of the Court examining the matter after the filing of the charge sheet. The core issue in this appeal is regarding the illegality of the process whereby the appellant was arrested and remanded to police custody which does not require examining the merits of the case.

45. It was the fervent contention of learned ASG that in the case of ***Ram Kishor Arora*** *(supra)*, a two-Judge Bench of this Court interpreted the judgment in the case of ***Pankaj Bansal*** *(supra)* to be having a prospective effect and thus the ratio of ***Pankaj Bansal*** *(supra)* cannot come to the appellant's aid. Indisputably, the appellant herein was remanded to police custody on 4th October, 2023 whereas the judgment in the case of ***Pankaj Bansal*** *(supra)* was delivered on 3rd October, 2023. Merely on a conjectural submission regarding the

late uploading of the judgment, learned ASG cannot be permitted to argue that the ratio of ***Pankaj Bansal*** *(supra)* would not apply to the present case. Hence, the plea of Shri Raju, learned ASG that the judgment in ***Pankaj Bansal*** *(supra)* would not apply to the proceedings of remand made on 4th October, 2023 is misconceived.

46. We are of the firm opinion that once this Court has interpreted the provisions of the statute in context to the constitutional scheme and has laid down that the grounds of arrest have to be conveyed to the accused in writing expeditiously, the said ratio becomes the law of the land binding on all the Courts in the country by virtue of Article 141 of the Constitution of India.

47. Now, coming to the aspect as to whether the grounds of arrest were actually conveyed to the appellant in writing before he was remanded to the custody of the Investigating Officer.

48. We have carefully perused the arrest memo (Annexure P-7) and find that the same nowhere conveys the grounds on which the accused was being arrested. The arrest memo is simply a proforma indicating the formal 'reasons' for which the accused was being arrested.

49. It may be reiterated at the cost of repetition that there is a significant difference in the phrase 'reasons for arrest' and 'grounds of arrest'. The 'reasons for arrest' as indicated in the arrest memo are purely formal parameters, viz., to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Investigating Officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the 'grounds of arrest' would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the 'grounds of arrest' would invariably be personal to the accused and cannot be equated with the 'reasons of arrest' which are general in nature.

50. From the detailed analysis made above, there is no hesitation in the mind of the Court to reach to a conclusion that the copy of the remand application in the purported exercise of communication of the grounds of arrest in writing was not provided to the accused appellant or his counsel before passing of the order of remand dated 4th October, 2023 which vitiates the arrest and subsequent remand of the appellant.

51. As a result, the appellant is entitled to a direction for release from custody by applying the ratio of the judgment rendered by this Court in the case of ***Pankaj Bansal*** *(supra)*.

52. Accordingly, the arrest of the appellant followed by remand order dated 4th October, 2023 and so also the impugned order passed by the High Court of Delhi dated 13th October, 2023 are hereby declared to be invalid in the eyes of law and are quashed and set aside.

53. Though we would have been persuaded to direct the release of the appellant without requiring him to furnish bonds or security but since the charge sheet has been filed, we feel it appropriate to direct that the appellant shall be released from custody on furnishing bail and bonds to the satisfaction of the trial Court.

54. We make it abundantly clear that none of the observations made above shall be treated as a comment on the merits of the case.

55. The appeal is allowed in these terms.

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

Headnotes prepared by: Divya Pandey

Result of the case: Appeal allowed.

[2024] 6 S.C.R. 698 : 2024 INSC 413

Rajendra Bhagwanji Umraniya
v.
State of Gujarat

(Criminal Appeal Nos. 2481-2482 of 2024)

09 May 2024

[J B Pardiwala and Manoj Misra, JJ.]

Issue for Consideration

Respondents herein were convicted by the Sessions Court for offence punishable u/s. 325 IPC and were sentenced to undergo rigorous imprisonment of five years. However, the High Court reduced the sentence of five years to four years and further held that if an amount of Rs.2.50 lakh is paid by each of the two respondents, then the respondents need not undergo even the four years of sentence. The question falls for consideration is whether the procedure adopted by the High Court could be said to be in accordance with law.

Headnotes

Code of Criminal Procedure, 1973 – s. 357 – Order to pay compensation – The High Court upheld the conviction of respondents for the offence punishable u/s. 325 IPC and reduced the sentence from five years to four years – The High Court further diluted the order of sentence by asking the accused persons to pay compensation – Correctness:

Held: The provision of Section 357 is victim centric in nature – It has nothing to do with the convict or the sentence passed – The spotlight is on the victim only – The object of victim compensation is to rehabilitate those who have suffered any loss or injury by the offence which has been committed – Payment of victim compensation cannot be a consideration or a ground for reducing the sentence imposed upon the accused as victim compensation is not a punitive measure and only restitutory in nature and thus, has no bearing with the sentence that has been passed which is punitive in nature – The words "any loss or injury" used in Section 357 clearly indicates that the sole factor for deciding the compensation to be paid is the victim's loss or injury as a result of the offence, and has nothing to do with the sentence that has been passed – Section 357 is intended to reassure the victim

that he/she is not forgotten in the criminal justice system – If payment of compensation becomes a consideration for reducing sentence, then the same will have a catastrophic effect on the criminal justice administration – It will result in criminals with a purse full of money to buy their way out of justice, defeating the very purpose of criminal proceedings – Thus, the High Court having once affirmed the conviction and awarded sentence of four years could not have further in lieu of the same reduced it by ordering compensation. [Paras 21, 23, 24, 26]

Compensation – Idea of victim compensation – Theory of victimology:

Held: The idea of victim compensation is based on the theory of victimology which recognizes the harsh reality that victims are unfortunately the forgotten people in the criminal justice delivery system – Victims are the worst sufferers – Victims' family is ruined particularly in cases of death and grievous bodily injuries – This is apart from the factors like loss of reputation, humiliation, etc – Theory of Victimology seeks to redress the same and underscores the importance for criminal justice administration system to take into consideration the effect of the offence on the victim's family even though human life cannot be restored but then monetary compensation will at least provide some solace. [Para 22]

Case Law Cited

Ankush Shivaji Gaikwad v. State of Maharashtra **[2013] 8 SCR 863 : (2013) 6 SCC 770;** *Maru Ram v. Union of India & Others* **[1981] 1 SCR 1196 : (1981) 1 SCC 107;** *Hari Singh v. Sukhbir Singh and Others* **[1988] Supp. 2 SCR 571 : (1988) 4 SCC 551 – referred to.**

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860.

List of Keywords

Order to pay compensation; Victim compensation; Section 357 of the Code of Criminal Procedure, 1973; Reduction of sentence; Dilution of order of sentence by ordering compensation; Idea of victim compensation; Theory of victimology; Criminal Justice Administration; Monetary compensation.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 2481-2482 of 2024

From the Judgment and Order dated 29.10.2015 of the High Court of Judicature of Gujarat in CRLA Nos. 960 and 1330 of 2014

Appearances for Parties

Harin P Raval, Sr. Adv., Pradhuman Gohil, Purvish Jitendra Malkan, Vikash Singh, Ms. Ranu Purohit, Alapati Sahithya Krishna, Rushabh N. Kapadia, Mohit Prasad, Siddharth Singh, Ritvik Bhanot, Ms. Shrestha Narayan, Ms. Urmi H Raval, Ms. Shreya Bhansal, Ms. Swati Ghildiyal, Ms. Devyani Bhatt, Ms. Srujana Suman Mund, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Order

1. Leave granted.

2. Since the issues raised in both the captioned appeals are the same, the parties are also the same and the challenge is also to the self-same judgment and order passed by the High Court, those were taken up for hearing analogously and are being disposed of by this common order.

3. The appellant before this Court is the original first informant (complainant). The appellant lodged a First Information Report No I-179/2012 at the Surendranagar City Police Station for the offence punishable under Sections 147, 148, 149, 427, 323, 325, 506(2), 384 of the Indian Penal Code[1] and Section 135 of the Gujarat Police Act. The FIR was lodged in all against five accused persons.

4. The respondents before this Court are the original accused Nos 1 and 2 respectively. Out of the five accused persons, two were named in the FIR, whereas three were not named. The respondents herein ultimately were put to trial for the offence punishable under Sections 147, 148, 149, 329, 384, 387, 427, 506(2), 323 and 325 respectively of the IPC and Section 135 of the Bombay Police Act.

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1 "IPC"

5. The respondents herein came to be convicted by the Sessions Court for the offence punishable under Section 325 of the IPC and were sentenced to undergo rigorous imprisonment of five years with fine of Rs 5,000/- each. The trial court also convicted the respondents for the offence punishable under Section 323 of the IPC and sentenced them to undergo rigorous imprisonment for a period of one year and for the offence punishable under Section 135 of the Gujarat Police Act, they came to be sentenced with rigorous imprisonment of one year with fine of Rs 1,000/-.

6. The original accused Nos 3, 4, and 5, who were not named in the FIR came to be acquitted by the trial court.

7. Against the judgment and order of conviction passed by the trial court, the respondents herein went in appeal before the High Court.

8. The two captioned appeals before this Court originate from Criminal Appeal (For Enhancement) No 906 of 2014 and Criminal Appeal No 1330 of 2014 decided by the High Court.

9. These two appeals, i.e. Criminal Appeal Nos 906 of 2014 and 1330 of 2014 respectively came to be preferred by the appellant herein, one for enhancement of sentence and the connected appeal against the order of acquittal so far as the original accused Nos 3 to 5 are concerned. It may not be out of place to state at this stage that the respondents as original convicts also preferred Criminal Appeal Nos 723 of 2014 and 733 of 2014 respectively against the order of conviction and sentence.

10. The High Court heard in all five appeals, two filed by the appellant herein, two filed by the respondents and the fifth appeal was filed by the State of Gujarat. The acquittal appeal filed by the State of Gujarat was against the original accused Nos 3 to 5. The High Court disposed of all the five appeals by a common judgment. The operative part of the judgment and order passed by the High Court reads thus:

> "(a) The impugned judgment and order dated 31.05.2014 passed by the learned Sessions Judge, Surendranagar in Sessions Case No.14/2013 is modified only to the extent that sentence imposed upon both original accused no.1 & 2 for conviction u/s.325 IPC is reduced from Five Years to Four Years, without disturbing the order regarding fine and default

sentence. Rest of the impugned judgment and order remains unaltered.

(b) Considering the principle rendered by Apex Court in Ankush Shivaji Gaikwad v. State of Maharashtra, 2013 (6) SCC 770 and the request made by learned counsel Mr. Hriday Buch that both Rs.2.50 lacs each, totalling Rs.5.00 Lacs (Rupees Five Lacs only), to the victim under the provisions of Section 357 Cr.P.C., we do not find any reasons in the facts and circumstances of the case for denying the said benefit in favour of both accused no.1 & 2.

(c) Accordingly, while granting benefit of the judgment rendered in Ankush Shivaji Gaikwad's case (supra) to original accused no.1 & 2, it is directed that if both accused no.1 & 2 deposit a sum of Rs.2.50 lacs each, totalling Rs.5.00 Lacs (Rupees Five lacs only), before the Registry of the concerned Sessions Court, within a period of TEN WEEKS from today, which, in turn, shall be paid as compensation to the victim, then both accused no.1 & 2 are not required to undergo the remainder sentence imposed upon them, which has been modified by this Court as aforesaid. On such deposit being made, the Registry of concerned Sessions Court shall pay the entire amount to the victim, after due verification. It is clarified that if any one or both the accused persons fail to deposit the amount as aforesaid, they shall surrender to custody on expiry of the aforesaid period failing which the investigating agency shall take necessary steps for sending them to jail custody. The impugned judgment and order stands modified accordingly."

11. Thus, it appears that the sentence of five years' imprisonment as imposed by the trial court came to be reduced to four years. The High Court further held that if an amount of Rs 2.50 lakh is paid by each of the two respondents before it, then the respondents need not undergo even the four years' of sentence as reduced by the High Court.

12. In such circumstances referred to above, the appellant (original complainant) is before this Court with the present appeals.

13. Mr Harin P Raval, the learned senior counsel appearing for the complainant vehemently submitted that what has been done by the High Court is something impermissible in law. The amount of compensation which is awarded to the victim has nothing to do with the substantive order of sentence which the court imposes upon holding the accused guilty of the alleged offence. According to Mr Raval, the High Court having reduced the sentence of five years as imposed by the trial court to four years could not have further modified the order of sentence on the premise that the respondents are ready and willing to pay an amount of Rs 5 lakh by way of compensation to the victim. He further submitted that the reliance placed by the High Court on the decision of this Court in the case of **Ankush Shivaji Gaikwad vs State of Maharashtra**[2], is completely misplaced.

14. In such circumstances referred to above, Mr Raval prayed that the impugned judgment of the High Court be set aside and the respondents be asked to undergo sentence of four years' rigorous imprisonment.

15. On the other hand, these appeals have been vehemently opposed by Mr Purvish Malkan, the learned counsel appearing for the respondents (original accused persons). He would submit that no error much less an error of law could be said to have been committed by the High Court in passing the impugned order. He also submitted that it's been now twelve years since the incident had occurred. He also submitted that the amount of Rs 5 lakh has been deposited before the trial court.

16. In such circumstances referred to above, he prayed that there being no merit in these appeals, the same may be dismissed.

ANALYSIS

17. 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 procedure adopted by the High Court, as reflected in paragraph 19 of the operative part of the order, could be said to be in accordance with law.

2 [2013] 8 SCR 863 : (2013) 6 SCC 770

18. Section 357of the Code of Criminal Procedure, 1973 reads thus:

> "357. **Order to pay compensation**.—(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—
>
> *(a)* in defraying the expenses properly incurred in the prosecution;
>
> *(b)* in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a civil court;
>
> *(c)* when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;
>
> *(d)* when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.
>
> (2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.
>
> (3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation,

such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section."

19. Way back in 1981, this Court speaking through Krishna Iyer, J. in **Maru Ram vs Union of India & Others**[3], held that while social responsibility of the criminal to restore the loss or heal the injury is part of the punitive exercise; the length of the prison term is no reparation to the crippled or bereaved and is futility compounded with cruelty. Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. Time and again this Court has reiterated that it is an important provision but courts seldom invoke the same. It empowers the court to award compensation to victims while passing judgment of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused.

20. In *Hari Singh vs Sukhbir Singh and Others*[4], this Court held that the power to award compensation under Section 357 of the CrPC is not ancillary to other sentences, but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. As observed in **Hari Singh** (supra), it is a measure of responding appropriately to crime as well as of reconciling the victim with the offender. It is, a constructive approach to crimes.

21. The High Court having upheld the conviction for the offence punishable under Section 325 of the IPC so far as the two respondents herein are concerned and having reduced the sentence from five years

3 [1981] 1 SCR 1196 : (1981) 1 SCC 107

4 [1988] Supp. 2 SCR 571 : (1988) 4 SCC 551

rigorous imprisonment to four years rigorous imprisonment could not have further diluted the order of sentence by asking the accused persons to pay compensation. In other words, the High Court having once affirmed the conviction and awarded sentence of four years could not have further in lieu of the same reduced it by ordering compensation. To this extent, we have no hesitation in holding that the High Court fell into error.

22. The idea of victim compensation is based on the theory of victimology which recognizes the harsh reality that victims are unfortunately the forgotten people in the criminal justice delivery system. Victims are the worst sufferers. Victims' family is ruined particularly in cases of death and grievous bodily injuries. This is apart from the factors like loss of reputation, humiliation, etc. Theory of Victimology seeks to redress the same and underscores the importance for criminal justice administration system to take into consideration the effect of the offence on the victim's family even though human life cannot be restored but then monetary compensation will at least provide some solace.

23. The provision of Section 357 recognizes the aforesaid and is victim centric in nature. It has nothing to do with the convict or the sentence passed. The spotlight is on the victim only. The object of victim compensation is to rehabilitate those who have suffered any loss or injury by the offence which has been committed. Payment of victim compensation cannot be a consideration or a ground for reducing the sentence imposed upon the accused as victim compensation is not a punitive measure and only restitutory in nature and thus, has no bearing with the sentence that has been passed which is punitive in nature.

24. The words "*any loss or injury*" used in Section 357 of the CrPC clearly indicates that the sole factor for deciding the compensation to be paid is the victim's loss or injury as a result of the offence, and has nothing to do with the sentence that has been passed. Section 357 of CrPC is intended to reassure the victim that he/she is not forgotten in the criminal justice system. It is a constructive approach to crimes based on the premise that mere punishment of the offender may not give solace to the victim or its family.

25. As such, when deciding the compensation which is to be paid to a victim, the only factor that the court may take into consideration is

the convict's capacity to pay the compensation and not the sentence that has been imposed. In criminal proceedings the courts should not conflate sentence with compensation to victims. Sentences such as imprisonment and / or fine are imposed independently of any victim compensation and thus, the two stand on a completely different footing, either of them cannot vary the other. Where an accused is directed to pay compensation to victims, the same is not meant as punishment or atonement of the convict but rather as a step towards reparation to the victims who have suffered from the offence committed by the convict.

26. If payment of compensation becomes a consideration for reducing sentence, then the same will have a catastrophic effect on the criminal justice administration. It will result in criminals with a purse full of money to buy their way out of justice, defeating the very purpose of criminal proceedings.

27. Having held so as above, the last question that falls for our consideration is how do we modify the order of the High Court. According to Mr Raval that part of the High Court's order be set aside and the respondents be directed to undergo sentence of four years' rigorous imprisonment.

28. We could have easily done as submitted by Mr Raval, but in the facts and circumstances of the case, more particularly, keeping in mind that a period of twelve years has elapsed and when the respondents (original convicts) have already deposited the amount of Rs 5 lakh, we are not inclined to direct the respondents to undergo further sentence of four years. However, having said so, we direct each of the respondents to deposit a further sum of Rs 5 lakh, i.e. in all Rs 10 lakh, in addition to what they have already deposited before the trial court. This deposit shall be made within a period of eight weeks from today. The trial court shall disburse the entire amount of Rs 15 lakh to the appellant herein (original complainant) after proper identification.

29. With the aforesaid, the appeals are disposed of.

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

Headnotes prepared by: Ankit Gyan

Result of the case: Appeals disposed of.

[2024] 6 S.C.R. 708 : 2024 INSC 458

Subodh Singh
v.
Union of India and Others

(Civil Appeal No. 6458 of 2024)

16 May 2024

[Hima Kohli and Ahsanuddin Amanullah, JJ.]

Issue for Consideration

Whether the appellant is entitled to additional compensation for the left out portion of land at least @ 5% of the value of the award for a period spreading over 84 months.

Headnotes

Compensation – Additional compensation for the left out portion of land – Payment towards the delay only to two months – Appellant claimed payments towards delay of 84 months – Correctness:

Held: Respondents had acquired a land by Notifications issued u/s. 20(E)(1) of the Indian Railways Act, 1989 – An award was declared on 08.02.2010 in respect of land that respondent acquired – A parcel of land admeasuring 0.0624 Hectare was left out – The High Court vide order dated 20.09.2016 directed the respondents to provide compensation to the appellant for 0.0624 Hectare of land, which was left out, along with additional compensation – While calculating the additional compensation, respondent confined the same to a period of two months for delayed period – Appellant claimed that he was entitled to compensation for a period of 84 months and relied on one Kamla Devi & Ors. – This Court noted that an order dated 18.09.2017, passed by the Competent Authority refers to an order dated 19.07.2017, passed by the High Court in a Writ Petition filed by Kamla Devi and others and goes on to record that after completion of formalities of publication, some portion of the land admeasuring 0.0890 Hectare had been left out, as the same was not required for the subject project – Subsequently, another award was declared in respect of the left out area and additional compensation was paid to the land owners @ 5% per month of the award for a period of 66 months, i.e. from 19.04.2012 to 12.09.2017 – In light of the above, the appellant herein cannot be treated differently in his case, the respondents ought not to have confined the delayed payment on the

Subodh Singh v. Union of India and Others

awarded amount for the left out portion of land to only two months – Thus, the appellant is held entitled to additional compensation for the left out portion of land at least @ 5% of the value of the award for a period spreading over 84 months. [Paras 3, 4, 9, 12]

Case Law Cited

Dedicated Freight Corridor Corporation of India v. Subodh Singh **[2011] 3 SCR 1160 : (2011) 11 SCC 100 – referred to.**

List of Acts

Indian Railways Act, 1989.

List of Keywords

Compensation; Additional compensation; Award; Delay in payment; Payment of additional compensation; Additional compensation for left out portion of land.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6458 of 2024

From the Judgment and Order dated 31.08.2017 of the High Court of Judicature at Allahabad in WC No. 39875 of 2017

Appearances for Parties

S. B. Upadhyaya, Sr. Adv., Aftab Rasheed, Aftab Ali Khan, M. Z. Chaudhary, Mansur Ali Khan, Rahat Ali Chaudhary, M.A. Mansoori, Advs. for the Appellant.

K M Nataraj, A.S.G., Amrish Kumar, Mrs. Indira Bhakar, Anuj Udupa, Manoj Mishra, Chitvan Singhal, Padmesh Mishra, Saurabh Mishra, Shrimay Mishra, Abhinav Pandey, Rakesh Chander, Nirbhaya S Tewari, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

1. Leave granted.

2. The present appeal is directed against the order dated 31st August, 2017, passed by the Division Bench of the High Court of Judicature at Allahabad whereby, the Writ Petition filed by the appellant herein praying *inter alia* for issuing directions to the respondents to pay

additional compensation for the entire land area, subject matter of the Notification dated 12th December, 2008, issued under Section 20(E)(1) of the Indian Railways Act[1], 1989, at the rate higher than 5% per month and further pay interest @ 18% per annum for delay in payment from 30th March, 2011, i.e. the date on which this Court had passed an order in Civil Appeal No. 2794 of 2011[2] titled "*Dedicated Freight Corridor Corporation of India Vs. Subodh Singh*", till the actual date of payment in respect of the award dated 08th February, 2010.

3. It is submitted on behalf of the appellant that the respondents had acquired land in Village Kakrahi, Tehsil and District Auriya, Uttar Pradesh *vide* Notifications dated 10th June, 2008 and 16th December, 2008 issued under Section 20(E)(1) of the Act. An award was declared on 08th February, 2010 only in respect of the land that the respondents required. As a result, a parcel of land admeasuring 0.0624 Hectare was left out. Aggrieved by the said action, the appellant filed a Writ Petition[3] before the High Court for quashing the award dated 08th February, 2010, which was allowed *vide* order dated 12th May, 2010. Challenging the said order, the respondents filed a Petition for Special Leave to Appeal[4] before this Court, which was allowed *vide* judgment dated 30th March, 2011 holding *inter alia* that the acquisition in question had not lapsed and having regard to the second proviso to section 20F(2) of the Act, the land owners would be entitled to an additional compensation for the delay in making the payment in terms of the award dated 08th February, 2010, at a rate not less than 5% of the value of the award for each month of delay.

4. Pursuant to the aforesaid order, the respondent no.2 issued a certificate in respect of the entire parcel of land in terms of the Notification dated 12th December, 2008, again leaving an area of 0.0624 Hectare as free from acquisition proceedings. Being aggrieved by the said decision, the appellant filed another petition[5] before the High Court, which was allowed *vide* order dated 20th September, 2016 and the respondents were directed to provide compensation

1 For short the 'Act'

2 [2011] 3 SCR 1160 : (2011) 11 SCC 100

3 Writ C. No. 14945/2010

4 SLP(Civil) No. 26410 of 2010 (i.e. Civil Appeal No. 2794/2011)

5 Writ C. No. 63467/2011

to the appellant for 0.0624 Hectare of land along with additional compensation within a period of two months.

5. On 19th November, 2016, the respondents prepared a bank draft for a sum of ₹ 2,74,56,000/- (Rupees Two Crores Seventy Four Lakh Fifty Six Thousand) stating that the same was in respect of the compensation payable to the appellant in terms of the order passed by the High Court on 20th September, 2016. While calculating the additional compensation, the respondent no.2 confined the same to a period of two months for the delayed period.

6. Aggrieved by the compensation offered by the respondents limiting the delay to only two months, the appellant approached the High Court by filing yet another petition[6] claiming that he was entitled to compensation for a period of 84 months, which would come to Rs.10,23,28,000/- (Rupees Ten Crores Twenty Three Lakh and Twenty Eight Thousand), on which the impugned order dated 31st August, 2017, has been passed observing that the appellant ought to approach the Arbitrator for determining the additional compensation, by invoking Section 20F (1) of the Act.

7. It is submitted on behalf of the appellant that the respondents have adopted a pick and choose policy in the instant case. While they have paid additional compensation for a period of delay of 66 months to one Smt. Kamla Devi & Ors., who were similarly situated persons like the appellant and their land was also acquired under the very same award, in the case of the appellant the respondents have arbitrarily confined the payment towards the delay only to two months, instead of 84 months.

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

9. At the outset, we may note that the order dated 18th September, 2017, passed by the Competent Authority refers to an order dated 19th July, 2017, passed by the High Court in a Writ Petition[7] filed by Kamla Devi and others and goes on to record that after completion of formalities of publication, some portion of the land admeasuring 0.0890 Hectare had been left out, as the same was not required for

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6 Writ C No. 39875/2017

7 WP No. 65267 of 2012

the subject project. Subsequently, another award[8] was declared in respect of the left out area and additional compensation was paid to the land owners @ 5% per month of the award for a period of 66 months, i.e. from 19th April, 2012 to 12th September, 2017. In the light of the above, the appellant herein is justified in arguing that he cannot be treated differently and in his case, the respondents ought not to have confined the delayed payment on the awarded amount for the left out portion of land to only two months.

10. The aforesaid submission is disputed by learned counsel for the respondents on a plea that no such direction was issued either by this Court or the High Court permitting compensation for the delayed period beyond two months, for which reliance is sought to be placed on the order dated 20th September, 2016 passed by the High Court.

11. The aforesaid submission is taken note of only to be turned down. The period of two months referred to by the High Court in its order dated 20th September, 2016 was only for making payment of the amount. Not that any direction was issued to the respondents to confine the payment of additional compensation only to a period of two months. In fact, the order passed by this Court on 30th March, 2011 is crystal clear and needs no interpretation. Highlighting certain anomalies noticed in Chapter IV A of the Act, particularly Section 20F, this Court referred to the proviso to Section 20F (2) and observed as follows:

> "12. (iii) The second proviso to section 20F (2) requires payment of additional compensation for the delay in making of the award, at the rate of not less than five percent of the value of award, for each month of delay. This vests unguided discretion in the competent authority or the Arbitrator to award additional compensation at any higher rate and gives room for unnecessary litigation at the instance of "entitled persons" claiming higher percentages as additional compensation. It is necessary to consider whether specifying a fixed monthly rate of increase would serve the ends of justice better instead of indicating a minimum rate per month.
>
> xxxx xxxx xxxx

8 Award No. 1/2011-12, dated 19th April, 2012

> "13. In view of our finding that the acquisition has not lapsed, we allow this appeal, set aside the judgment of the High Court, and dismiss the challenge to the acquisition. It is however made clear that in view of the delay in making the award beyond one year, the first respondent shall be entitled to additional compensation as provided under the second proviso to section 20F (2) of the Act. Parties to bear their respective costs."

12. It is apparent from the above that the appellant would be entitled to additional compensation for the delay in making the award @ not less than 5% of the value of the award for each month's delay. In our opinion, there was no reason for the High Court to have relegated the appellant to initiate any arbitration proceedings for determining the additional compensation when the order passed by this Court had clarified the manner in which compensation would be calculated and paid for the delay in making the award for the left out parcel of land.

13. In view of the above discussion, the present appeal succeeds. The appellant is held entitled to additional compensation for the left out portion of land at least @ 5% of the value of the award for a period spreading over 84 months. Needless to state that the amount already paid by the respondents towards the delay, i.e., for a period of two months, shall be duly adjusted. The remaining amount shall be released by the respondents within eight weeks from today. Besides the aforesaid amount, the appellant shall also be entitled to simple interest on the outstanding amount calculated @ 7% per annum from the date the said amount became due and payable, till the same is realized.

14. The appeal is allowed on the above terms while leaving the parties to bear their own expenses.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeal allowed.

[2024] 6 S.C.R. 714 : 2024 INSC 415

Dharnidhar Mishra (D) and Another
v.
State of Bihar and Others

(Civil Appeal No 6351 of 2024)

13 May 2024

[J.B. Pardiwala and Manoj Misra, JJ.]

Issue for Consideration

A land owned by the appellant was acquired and he did not receive any compensation for the same. Before the Division Bench of the High Court, the appellant was informed that value of land was Rs. 4,68,099/-. The Division Bench of the High Court disposed of the Letters Patent Appeal by asking the appellant to file an appropriate application before the concerned authority for disbursement of the value of the land. Whether the High Court committed any error in passing the impugned order.

Headnotes

Land Acquisition Act, 1894 – Payment of compensation – In the year 1977, a land owned by appellant was acquired – Compensation was not paid – The Single Judge of the High Court rejected the writ petition on the count that the petition had been filed after a period of forty-two years of the acquisition – However, the Division Bench of the High Court asked the appellant to file an appropriate application before the concerned authority for disbursement of the value of the land assessed at Rs 4,68,099/- – Correctness:

Held: The High Court in its impugned order has stated that the appellant herein has been informed about the value of the land assessed at Rs 4,68,099 – There is no reason as to on what basis this figure has been arrived at; at what point of time this amount came to be assessed; and the basis for the assessment of such amount – The High Court should have enquired with the State as to why in the year 1977 itself, that is the year in which the land came to be acquired, the award for compensation was not passed – The High Court did not enquire why it took forty-two years for the State to determine the figure of Rs 4,68,099 – The High Court should also have asked the State the basis of the determination of the amount towards compensation – It is a well settled position

of law that after the award towards compensation is passed, if the owner of the land is not satisfied with the quantum, he can even file an appeal for the enhancement of the same – The High Court proceeded on the footing that the amount of Rs 4,68,099 has been assessed and it is now for the appellant to file an appropriate application and get the amount disbursed in his favour – The approach adopted by the High Court is not convincing – The State cannot dispossess a citizen of his property except in accordance with the procedure established by law – The obligation to pay compensation, though not expressly included in Article 300-A of the Constitution, can be inferred in that Article – The Single Judge of the High Court rejected the writ petition only on the ground of delay – It is settled that delay and laches cannot be raised in a case of a continuing cause of action or if the circumstances shock the judicial conscience of the court – In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it – In the circumstances, the impugned order passed by the High Court is set aside and the matter is remitted to the High Court for fresh consideration. [Paras 13, 14, 18, 25, 26, 29]

Case Law Cited

Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai **[2005] Supp. 3 SCR 388 : (2005) 7 SCC 627;** *N. Padmamma v. S. Ramakrishna Reddy* **[2008] 9 SCR 535 : (2008) 15 SCC 517;** *Delhi Airtech Services (P) Ltd. v. State of U.P.* **[2011] 12 SCR 191 : (2011) 9 SCC 354;** *Jilubhai Nanbhai Khachar v. State of Gujarat* **[1994] Supp. 1 SCR 807 : (1995) Supp 1 SCC 596;** *Tukaram Kana Joshi v. MIDC* **[2012] 13 SCR 29 : (2013) 1 SCC 353 – relied on.**

K.T. Plantation (P) Ltd. v. State of Karnataka **[2011] 13 SCR 636 : (2011) 9 SCC 1;** *State of Haryana v. Mukesh Kumar* **[2011] 14 SCR 211 : (2011) 10 SCC 404;** *Vidya Devi v. The State of Himachal Pradesh & Ors.* **[2020] 1 SCR 749 : (2020) 2 SCC 569;** *P.S. Sadasivaswamy v. State of T.N.* **[1975] 2 SCR 356 : (1975) 1 SCC 152 – referred to.**

List of Acts

Land Acquisition Act, 1894; Constitution of India.

List of Keywords

Acquisition of land; Payment of compensation; Assessment of the value of land; Delay in filing petition; Determination of compensation; Dispossession from property; Obligation to pay compensation; Delay and laches; Promotion of justice.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6351 of 2024

From the Judgment and Order dated 07.02.2023 of the High Court of Judicature at Patna in LPA No. 997 of 2019

Appearances for Parties

Dharnidhar Jha, Sr. Adv., Jayesh Gaurav, Ms. Diksha Ojha, Ishwar Chandra Roy, Ranjan Nikhil Dharnidhar, Advs. for the Appellants.

Anshul Narayan, Prem Prakash, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

1 Application for substitution to bring on record the legal heirs of the first petitioner is allowed. Cause title be amended accordingly.

2 Leave granted.

3 This appeal arises from a order passed by the High Court of Judicature at Patna dated 7 February 2023 in the Letters Patent Appeal No 997 of 2019 in Civil Writ Jurisdiction Case No 8408 of 2019 by which the Division Bench of the High Court disposed of the Letters Patent Appeal by asking the appellant herein to file an appropriate application before the concerned authority for disbursement of the value of the land assessed at Rs 4,68,099.

4 The facts giving rise to this appeal may be summarized as under:

In the year 1976, a notification under Section 4 of the Land Acquisition Act was issued for the purpose of construction of State Highway as notified by the State of Bihar. The land owned by the appellant herein was included in Section 4 notification referred to above. Sometime in 1977, the land of the appellant was acquired. However, it is the case of the appellant that not a single penny was paid to him towards compensation.

5 The appellant preferred an appropriate application addressed to the State Government immediately after his land came to be acquired and possession was taken over in the year 1977 for payment of compensation. It is the case of the appellant that State did not even pass any award of compensation and kept the matter in limbo.

6 Years passed by and the appellant kept on requesting the authorities to pass an appropriate award and pay the amount towards compensation.

7 As the respondents did not pay heed to the say of the appellant, he was left with no other option but to file a writ petition in the High Court of Patna. The writ petition was heard by a learned Single Judge and by order dated 19 July 2019 rejected the same only on the count that the petition had been filed after a period of forty-two years of the acquisition. While dismissing the writ petition, the learned Single Judge also observed that the appellant had failed to submit any paper or notification in connection with acquisition of his land for the purpose of payment of compensation.

8 Being dissatisfied with the order passed by the learned Single Judge rejecting his writ petition, the appellant went in appeal. The appeal came to be disposed of by a Division Bench in the following terms:

> "A hard copy of the supplementary affidavit on behalf of the State has been filed across the Board.
>
> Let it be taken on record.
>
> In view of the categorical stand of the State that the land of the appellants had been consumed and that the State is ready to compensate the appellants, nothing remains in this appeal to be decided.
>
> The appellants have been informed about the value of the land has been assessed at Rs 4,68,099/- .
>
> All that the appellants have to do is to file an application before the concerned authority as to how the amount shall be apportioned between him and his son.
>
> It is expected that the decision in that regard by the State Authority shall be taken without any delay as already the matter has become five decades old.
>
> The appeal stands disposed of."

9 Mr. Dharnidhar Jha, the learned senior counsel appearing for the appellant submitted that the State conceded to the fact that the land of the appellant had been acquired and was put to use for the purpose the same was acquired. He would submit that if the State thought fit to acquire the land of his client, then it was obligatory on the part of the State to pass an appropriate award determining the amount towards compensation. He would submit that it is not the case that the appellant herein was lethargic in asserting his rights, but rather kept on requesting the authorities concerned to determine the amount towards compensation and pay the same.

10 On the other hand, the learned counsel appearing for the State of Bihar 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. He would submit that it is not in dispute that the land of the appellant was acquired for a public purpose, but at the same time, it was the duty of the appellant to pursue the matter further for the purpose of getting appropriate compensation determined in accordance with law.

11 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.

12 We take notice of the fact that the Single Judge of the High Court thought fit to reject the writ petition only on the ground of delay and in appeal, the appellate court disposed of the appeal asking the appellant herein to file an application before the concerned authority for disbursement of the amount of compensation.

13 We take notice of two things: First, the High Court in its impugned order has stated that the appellant herein has been informed about the value of the land assessed at Rs 4,68,099. We fail to understand on what basis this figure has been arrived at; at what point of time this amount came to be assessed; and the basis for the assessment of such amount. Secondly, the order of the High Court could be said to be a non-speaking order. Although at this stage, the learned counsel appearing for the State of Bihar submitted that it was an order obtained with the consent of the parties, yet there is nothing to indicate that any consent was given by the appellant herein to pass such an order.

14 The first thing that the High Court should have enquired with the State is as to why in the year 1977 itself, that is the year in which the land came to be acquired, the award for compensation was not passed. The High Court should have enquired why it took forty-two years for the State to determine the figure of Rs 4,68,099. The High Court should also have asked the State the basis of the determination of the amount towards compensation. It is a well settled position of law that after the award towards compensation is passed, if the owner of the land is not satisfied with the quantum, he can even file an appeal for the enhancement of the same. The High Court proceeded on the footing that the amount of Rs 4,68,099 has been assessed and it is now for the appellant to file an appropriate application and get the amount disbursed in his favour.

15 We are not convinced but rather disappointed with the approach of the High Court while disposing of the appeal.

16 There are many issues arising in this litigation and the High Court should have taken little pains to ask the State why it made the appellant run from pillar to post. It is sad to note that the appellant passed away fighting for his right to receive compensation. Now the legal heirs of the appellant are pursuing this litigation.

17 In 1976, when the land of the appellant came to be acquired the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution. Article 31 guaranteed the right to private property, which could not be deprived without due process of law and upon just and fair compensation.

18 The right to property ceased to be a fundamental right by the Constitution (Forty-Fourth Amendment) Act, 1978, however, it continued to be a human right in a welfare State, and a constitutional right under Article 300-A of the Constitution. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300-A, can be inferred in that Article. [See: *K.T. Plantation (P) Ltd. v. State of Karnataka*, (2011) 9 SCC 1]

19 In *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai* reported in (2005) 7 SCC 627, this Court held that:

> "*6*. … Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and *reasonable compensation therefor must be paid*."
>
> (Emphasis supplied)

20 In *N. Padmamma v. S. Ramakrishna Reddy* reported in (2008) 15 SCC 517, this Court held that:

> "*21.If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law*. Article 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of *the provisions of Article 300-A of the Constitution of India, must be strictly construed*."
>
> (Emphasis supplied)

21 In *Delhi Airtech Services (P) Ltd. v. State of U.P.* reported in (2011) 9 SCC 354, this Court recognised the right to property as a basic human right in the following words:

> "*30*. *It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government*. Jefferson was of the view that liberty cannot long subsist without the support of property. "Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed the view that *property itself is the seed-bed which must be conserved if other constitutional values are to flourish, is the consensus among political thinkers and jurists*."
>
> (Emphasis supplied)

22 In *Jilubhai Nanbhai Khachar v. State of Gujarat* reported in 1995 Supp (1) SCC 596, this Court held as follows:

> "*48*. … In other words, Article 300-A only limits the powers of the State that no person shall be deprived of

> his property save by authority of law. *There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A*. In other words, if there is no law, there is no deprivation."
>
> (Emphasis supplied)

23 In *Tukaram Kana Joshi v. MIDC* reported in (2013) 1 SCC 353, this Court held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

24 This Court in *State of Haryana v. Mukesh Kumar* reported in (2011) 10 SCC 404 held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.

25 We regret to state that the learned Single Judge of the High Court did not deem fit even to enquire with the State whether just and fair compensation was paid to the appellant or not. The learned Single Judge rejected the writ petition only on the ground of delay. As held by this court in *Vidya Devi v. The State of Himachal Pradesh & Ors.* reported in (2020) 2 SCC 569, delay and laches cannot be raised in a case of a continuing cause of action or if the circumstances shock the judicial conscience of the court. The condition of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of the case. As held by this Court, it would depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.

26 In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it. [See: *P.S. Sadasivaswamy v. State of T.N.*, (1975) 1 SCC 152]

27 In *Tukaram Kana Joshi v. MIDC* reported in (2013) 1 SCC 353, this Court while dealing with a similar fact situation, held as follows:

> "11. There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. *The functionaries of the State took over possession of the land belonging to the appellants without any sanction of law*. The appellants had asked repeatedly for grant of the benefit of compensation. *The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode*."
>
> (Emphasis supplied)

28 In such circumstances referred to above, we are of the view that we should set aside the impugned order passed by the High Court and remit the matter for fresh consideration.

29 In the result, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is set aside and the matter is remitted to the High Court for fresh consideration. Letters Patent Appeal No 997 of 2019 is restored to its original file. The High Court shall hear both the sides and pass an appropriate order in accordance with what has been observed by this Court in this order. We request the High Court to decide the matter within a period of two months from today.

30 Pending applications, if any, stand disposed of.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeal allowed.

[2024] 6 S.C.R. 723 : 2024 INSC 426

T.N. Godavarman Thirumulpad
v.
Union of India & Ors.

IA No(S). 2930 of 2010, 3963 of 2017, 160714 of 2019, 77320 of 2023 and 79064 of 2023
In
Writ Petition(Civil) No(S). 202 of 1995

16 May 2024

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

Issue for Consideration

Interlocutory applications preferred by the applicant being aggrieved by the inaction of the respondents in deciding the application filed by the applicant seeking permission to construct a health/eco-resort on the subject land being Plot Nos. 14/3 and 14/4, falling in Sheet 2 No. 20, Civil Station, Pachmarhi, District Hoshangabad, Madhya Pradesh.

Headnotes

Environment – Wildlife Sanctuary – Forest Land – Permission to construct a health/eco-resort – Applicant had preferred an application to the Central Empowered Committee and sought permission to construct the health/eco-resort on plot nos. 14/3 and 14/4 asserting that the said chunk of land was not a forest land – However, the prayer made by the applicant was not accepted whereupon, the applications under consideration came to be filed before the Supreme Court – It was contended by the State that the plots in question are subject matter of litigation in writ appeal pending before the High Court and applicant should wait the outcome of the aforesaid writ appeal:

Held: The issue raised by the State of Madhya Pradesh is with respect to the identification of the land owned by the applicant contending that the same forms a part of the Pachmarhi Wildlife Sanctuary – There have been various rounds of litigation and it is not in dispute that applicant herein was never impleaded in any of the proceedings before the Revenue Courts or the High Court – An order passed by the District Collector dated 09.08.2004, purportedly covers entire area of the Plot No. 14 and the transactions done in favour of and by one D, the sale deed executed in favour of

* Author

the applicant and the mutation made in its name had never been questioned in any Court of law – Neither the Revenue Department nor the State Government authorities took the trouble of impleading the applicant as party in any of the litigations – The title acquired by the applicant over the subject plots not having been challenged, attainted finality and thus the State cannot claim a right thereupon simply because at some point of time, the plots came to be recorded as Nazul lands in the revenue records – The categoric stand in the compliance affidavit filed by the State fortifies the claim of the applicant that these plots are falling under the urban area – In this background, the appellant is justified in claiming that its proprietary rights guaranteed under Article 300A of the Constitution cannot be infringed merely on account of the pending writ appeal before the High Court – Nonetheless, the applicant would satisfy the authorities that the plots in question are beyond the Eco-Sensitive Zone – Therefore, it is directed that the application filed by the applicant for raising construction on plot Nos. 14/3 and 14/4 shall be decided objectively by the CEC/Competent Authority of the local body keeping in view the location of the land with reference to the notified boundaries of the ESZ. [Paras 8, 19, 20, 21, 23]

List of Acts

Wild Life(Protection) Act, 1972; Constitution of India.

List of Keywords

Environment; Wildlife Sanctuary; Forest Land; Permission to construct a health/eco-resort; Eco-Sensitive Zone; Proprietary rights guaranteed under Article 300A of the Constitution.

Case Arising From

CIVIL ORIGINAL JURISDICTION: IA Nos. 2930 of 2010, 3963 of 2017, 160714 of 2019, 77320 of 2023 and 79064 of 2023

In

Writ Petition (Civil) No. 202 of 1995

(Under Article 32 of The Constitution of India)

Appearances for Parties

K. Parameshwar, A.C., M.V. Mukunda, Ms. Kanti, Ms. Aarti Gupta, Chinmay Kalgaonkar, Ms. Musharraf Chawdhary, M/s. Lawyer S

Knit & Co, Chanchal Kumar Ganguli, M/s. PLR Chambers and Co., Syed Mehdi Imam, T. Harish Kumar, M/s. Mitter & Mitter Co., Advs. for the Petitioner.

Ms. Aishwarya Bhati, A.S.G., K.M. Natraj, A.S.G., Nalin Kohli, Sr. A.A.G, Saurabh Mishra, Shiv Mangal Sharma, Vaibhav Srivastava, A.A.Gs., D.S. Naidu, Ms. Vibha Datta Makhija, Ms. Archana Pathak Dave, Siddharth Bhatnagar, Ravindra Kumar, Sr Advs., Gurmeet Singh Makker, Ms. Archana Pathank Dave, Ms. Suhashini Sen, S. S. Rebello, Shyam Gopal, Raghav Sharma, Sughosh Subramanyam, Ms. Ruchi Kohli, Shuvodeep Roy, Saurabh Tripathi, Ms. Nimisha Menon, Ms. Shruti Agrawal, Sumit Kumar, Neeraj Shekhar, Animesh Kumar, Amrendra Singh, Ram Bachan Choudhary, Rajeev Nandkishore R. Kumar, Kartik Kumar, Mrs. Kshama Sharma, Mrs. Priya Pramar, Rajesh Kumar Maurya, Niranjan Swami, Raj Kishor Choudhary, Gaichangpou Gangmei, V. Balachandran, S. C. Birla, P. R. Ramasesh, Mrs. Bina Gupta, M/s. Parekh & Co., M/s. K J John and Co, H. S. Parihar, Ms. Baby Krishnan, Ms. Bina Madhavan, Shibashish Misra, Umesh Bhagwat, Mrs. M. Qamaruddin, E. C. Agrawala, Kuldip Singh, Ranjan Mukherjee, K. V. Vijayakumar, P. N. Gupta, Sarad Kumar Singhania, Ms. Jyoti Mendiratta, S. Udaya Kumar Sagar, Ms. Madhu Moolchandani, Ashok Mathur, Rajat Joseph, Gopal Prasad, Mrs. Nandini Gore, Raj Kumar Mehta, M/s. M. V. Kini & Associates, T. Mahipal, Ms. S. Janani, M/s. Arputham Aruna and Co, Surya Kant, E. C. Vidya Sagar, Amit Anand Tiwari, Ms. Adviteeya, Rakesh K. Sharma, Tejaswi Kumar Pradhan, Manoranjan Paikaray, P. K. Tripathy, Mrs. Kanchan Kaur Dhodi, Dharmendra Kumar Sinha, P. Parmeswaran, Ms. Sujata Kurdukar, Ms. Pratibha Jain, Rajeev Singh, Prashant Kumar, Ramesh Babu M. R., Vikrant Singh Bais, Shiva Pujan Singh, Ms. Sharmila Upadhyay, Kamal Mohan Gupta, Sudarsh Menon, Rajesh, M/s. Corporate Law Group, Lakshmi Raman Singh, Rajesh Singh, Mrs. B. Sunita Rao, Gunmaya S Mann, M. C. Dhingra, Ejaz Maqbool, Ms. Sumita Hazarika, Ms. Abha R. Sharma, Abhishek Chaudhary, Himanshu Shekhar, Parth Shekhar, Ms. Ambali Vedasen, Ms. Rachna Ranjan, Shubham Singh, Vijay Singh, Partap Ranjan, Ugranath Kumar, Mahabir Singh, Vivek Kumar, Vishal Prasad, Surajit Paul, Rajat Sinha Roy, Sameer Mehndiratta, Gyanesh Kumar Maheshwari, Ms. Monica Haseja, Bacha Babu Mistry, Md Sontu Mia, Ms. Moni Tomar, Mrs. Manik Karanjawala, Bhavanishankar V. Gadnis, A. Venayagam Balan, Vishwanath Gadnis, Gaurav Pal, C.

L. Sahu, Ms. Asha Gopalan Nair, Ms. Surabhi Singh, S. R. Setia, Ms. Charu Mathur, Rajiv Mehta, T. V. George, Krishnanand Pandeya, Ratan Kumar Choudhuri, Sudhir Kulshreshtha, E. M. S. Anam, Ms. K. V. Bharathi Upadhyaya, T. N. Singh, Punit Dutt Tyagi, Rathin Das, Irshad Ahmad, G. Prakash, Ms. Binu Tamta, B V Deepak, Gopal Singh, Sudhir Kumar Gupta, A. N. Arora, Ms. Malini Poduval, Ms. C. K. Sucharita, Mrs. Anjani Aiyagari, Mrs. Rekha Pandey, Mohd. Irshad Hanif, Amar Kumar Raizada, Mrs. Sushma, P. V. Yogeswaran, Jitendra Mohan Sharma, Ms. A. Sumathi, Jai Prakash Pandey, Ajit Pudussery, Ms. Hemantika Wahi, Pradeep Kumar Bakshi, Pankaj Kumar Singh, Pawan Kumar Shukla, Brij Pal, Vivek Sharma, V.S. Dubey, K. L. Janjani, Naresh K. Sharma, Tarun Johri, Radha Shyam Jena, Ram Swarup Sharma, Ms. Sushma Suri, Mrs. Rani Chhabra, Ms. Divya Roy, M. Yogesh Kanna, Nishanth Patil, M/s. Venkat Palwai Law Associates, Ms. Mayuri Raghuvanshi, Vivek Jain, Parth Awasthi, Pashupathi Nath Razdan, Ms. Maitreyee Jagat Joshi, Astik Gupta, Tarun Gupta, Ms. Vanshaja Shukla, Ms. Ankeeta Appanna, Siddhant Yadav, Chirag M. Shroff, Ms. Ruchira Goel, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Aditya Krishna, Mayank Aggarwal, Sanjeev Kumar, Naik H.K., Manoj Kumar Sharma, Mrs. Sarbani Kar, Rajeev Kumar Dubey, Kamlendra Mishra, Somesh Chandra Jha, Siddhartha Jha, M/s. V. Maheshwari & Co., Ms. Parul Shukla, P. S. Sudheer, Ramesh Thakur, Sunny Choudhary, Karan Bishnoi, Utkarsh Mishra, Vinod Sharma, Ms. Surbhi Mehta, Rajiv Kumar Choudhry, Aastik Dhingra, Karan Mamgain, Anurag Tandon, Dr. Monika Gusain, P. K. Manohar, S. Gowthaman, A. Karthik, Siddharth Sharma, Raj Bahadur Yadav, Mrs. Ruchi Kohli, Uday Prakash Yadav, Suhasini Sen, S S Rebello, Sughosh Subramanium, Naveen Kumar, James P. Thomas, Sunil Kumar Sharma, Ms. Swati Ghildiyal, Ms. Devyani Bhatt, Krishna Ballabh Thakur, Tushar Kumar, Kaushlendra Kumar, Ms. Rashmi Kumari, Ms. Prity Kumari, Rajul Srivastava, Abhishek Prashad, Ramesh Allanki, Ms. Aruna Gupta, B. K. Pal, Ms. Shalini Kaul, Nishe Rajen Shonker, Ms. Anu K Joy, Alim Anvar, Nishit Agrawal, Romy Chacko, Robin V.s., Sachin Singh Dalal, Sravan Kumar Karanam, Ms. Tayade Pranali Gowardhan, Ms. Shireesh Tyagi, Aniket Singh, Shubhranshu Padhi, Ms. Deepanwita Priyanka, Raghvendra Kumar, Anand Kumar Dubey, Devvrat Singh, Dinesh Chandra Pandey, Dushyant Dahiya, Mrs. Jyoti Pandey, Mrs. Pragya Baghel, Sarvam Ritam Khare, Shreekant Neelappa Terdal,

Ms. Sunieta Ojha, Anirudh Sanganeria, Chinmay Deshpande, Yash Prashant Sonavane, Gopal Balwant Sathe, Aravindh S., Ms. Ekta Muyal, Mrs. Kirti Renu Mishra, Atul Sharma, Renjith B. Marar, Ms. Lakshmi N. Kaimal, Rajkumar Pavothil, Arun Poomulli, Keshavraj Nair, Avinash Krishnakumar, Kaushik Choudhury, Ms. Mrinal Gopal Elker, Dhaval Mehrotra, Binay Kumar Das, Ms. Priyanka Das, Ms. Neha Das, Shivam Saksena, Vipin Kumar Saxena, Chandra Bhushan Prasad, Abhishek Atrey, Dr. Abhishek Atrey, Ms. Vidyottma Jha, V. N. Raghupathy, Manendra Pal Gupta, M/s. D.S.K. Legal, Ms. Shibani Ghosh, Rishad A Chowdhury, Ms. Rashmi Nandakumar, Saurabh Rajpal, Ms. Nidhi Jaswal, Ms. Shalini Singh, Sandeep Kumar Jha, Milind Kumar, Mohit Paul, Mukesh Kumar Maroria, Mrs. Mrinal Elkar Mazumdar, Mukesh Kumar Verma, Neeraj Kumar Sharma, Harish Pandey, Ms. Indira Bhakar, Shashwat Parihar, Piyush Beriwal, M/s. Cyril Amarchand Mangaldas, M. R. Shamshad, Amrish Kumar, Ms. Purnima Krishna, M.F. Philip, Karamveer Singh Yadav, T. R. B. Sivakumar, Sujit Kumar Mishra , Ms. Adarsh Nain, Guntur Pramod Kumar, Ms. Anzu. K. Varkey, Ms. Astha Sharma, Ms. Lihzu Shiney Konyak, Karan Sharma, Ms. Sugandha Anand , Ms. Seita Vaidyalingam, Kumar Anurag Singh, Anando Mukherjee, Mrs. Tulika Mukherjee, Shwetank Singh, Ajay Marwah, Ravindra S. Garia, Shashank Singh, Madan Chandra Karnatkya, Mrs. Vidhya, Sudeep Kumar, Gaurav Kumar Bansal, Vishnu Gupta, Ms. Nandita Bansal, Ms. Rani Mishra, Abhimanyu Tewari, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. These interlocutory applications have been preferred by the applicant M/s Shewalkar Developers Limited being aggrieved by the inaction of the respondents in deciding the application filed by the applicant seeking permission to construct a health/eco-resort on the subject land being Plot Nos. 14/3 and 14/4, falling in Sheet No. 20, Civil Station, Pachmarhi, District Hoshangabad, Madhya Pradesh. The total area of these two plots is around 59,265 sq. ft. and 49,675 sq. ft., respectively.

2. The applicant herein approached the Madhya Pradesh High Court by filing Writ Petition No. 14478 of 2006 seeking a direction to the

respondents to favourably consider the prayer of the applicant. Vide order dated 22nd November, 2006, the Division Bench of Madhya Pradesh High Court permitted the applicant to approach the Central Empowered Committee(hereinafter being referred to as 'CEC') constituted under the directions given by this Court in Writ Petition(Civil) No. 202 of 1995. Consequently, the applicant preferred an application to the CEC seeking permission to construct the health/eco-resort on the land mentioned above asserting that the said chunk of land was not a forest land and had been acquired under valid title deeds and thus, the prayer for permission to construct may be allowed. However, the prayer made by the applicant was not accepted whereupon, the applications under consideration came to be filed before this Court.

3. The State Government had previously taken a stand in its counter that the land in issue falls within the limits of Pachmarhi Wildlife Sanctuary and therefore, by virtue of the directions issued by the CEC vide letter dated 2nd July, 2004, no commercial activity was permissible thereupon, without the permission of this Court.

4. Much water has flown during pendency of the original application(I.A. No.2930 of 2010) which has remained pending for almost 14 years. For sake of convenience, a chronological flow chart of dates and events is narrated hereinbelow in a tabular form: -

CHRONOLOGICAL FLOW CHART OF DATES AND EVENTS		
BACKGROUND FACTS IN RELATION TO I.A. No.2930 of 2010		
S.No.	**DATE**	**EVENT**
1.	01.06.1977	The Government of Madhya Pradesh notified Pachmarhi Sanctuary under Section 18(1) of the Wild Life (Protection) Act, 1972 but did not specify/demarcate the area to be included/excluded in the Sanctuary.
2.	01.05.1991	The owner of the plots in question, Mr. Dennis Torry obtained permission to sale from the Government of Madhya Pradesh as required under Clause 16 of Chapter-IV Part 1 of Revenue Book Circular issued by the Government of Madhya Pradesh.

3.	13.09.1991	The applicant purchased the subject plots of land vide sale deed dated 13th September,1991.
4.	10.05.1996	In light of order dated 10th May,1996 passed by this Court in W.P.(C) No.262 of 1995, the State Government issued instructions to the Collector to expedite the proceedings of settlement of rights in National Parks/Sanctuaries.
5.	23.10.1996	In compliance of the abovementioned order, Collector, Hoshangabad made a proclamation under Section 21 of the Wild Life(Protection) Act, 1972 inviting claims from the affected persons.
6.	20.06.2000	After inviting claims and hearing the objections, Collector, Hoshangabad passed various orders determining the rights of the affected people and vide order dated 20th June, 2000, Civil/ Nazul area of Pachmarhi Town was excluded from the Sanctuary.
7.	15.12.2000	Application was preferred by the applicant seeking mutation based on registered sale deed dated 13th September, 1991. The SDO directed the same to be mutated in the name of M/s Shewalkar Developers Ltd., through Ashutosh Shewalkar.
8.	2002	PIL bearing W.P No. 5937 of 2002 was filed before the High Court seeking directions to stop illegal construction activities in reserved/ protected area at Pachmarhi, wherein a six-member Committee was constituted to examine the issue.
9.	15.01.2004	The High Court vide interim order passed in W.P. No. 5937 of 2002, directed that the order of exclusion of Cantonment and Civil/Nazul area of Pachmarhi Town and 33 revenue villages from the Pachmarhi Sanctuary and settlement of rights passed by the District Collector, Hoshangabad shall remain stayed until further orders.

10.	2005	The report of six-member Committee suggested that Nazul area within the administrative control of SADA and army cantonment area falling in Pachmarhi plateau may be considered to be deleted from the boundary of the Sanctuary.
11.	31.03.2005	The State Government following the advice of the State Wildlife Advisory Board moved the Government of India for seeking approval of National Board for Wildlife(NBWL) for excluding these areas.
12.	24.10.2005	The Standing Committee of the NBWL, vide letter dated 24th October, 2005, recommended exclusion of cantonment and Civil/Nazul Area.
13.	2006	The applicant approached the High Court by filing W.P(C) No. 14478 of 2006, being aggrieved by inaction of the respondents in deciding the application seeking permission to construct health/eco-resort on the subject plots of land.
14.	22.11.2006	The High Court permitted the applicant to move an application before the CEC.
15.	22.02.2007	The applicant preferred an application before the CEC being I.A No. 1008 of 2007.
16.	19.09.2008	The CEC submitted a report dated 16th/19th September, 2008 before this Court, in IA Nos.2202-2203 of 2007, filed by the Cantonment Board.
17.	29.03.2010	The CEC considered the application filed by the applicant seeking permission to construct health/eco-resort and observed that an affidavit dated 1st February, 2010 has been filed by the State Government clearly stating that the applicant's land falls within the Sanctuary and was purchased in violation of the Wild Life(Protection) Act, 1972. The CEC also intimated the applicant that no recommendation could be passed by it in absence of an order passed by the Supreme Court.

I.A. No.2930 of 2010 CAME TO BE FILED BEFORE THIS COURT		
S.No.	**DATE**	**EVENT**
1.	2010	Aggrieved by the order of CEC, the applicant approached this Court by filing I.A. No.2930 of 2010.
2.	2011	Government of Madhya Pradesh filed an affidavit before this Court stating that Pachmarhi Township may be excluded from the forest area of Pachmarhi Sanctuary so that difficulties of the residents of Pachmarhi Township can be sorted out.
3.	12.08.2013	This Court accepted the recommendations of the CEC for excluding 395.939 Ha. land of Civil/Nazul area from the sanctuary in which the subject plots are situated.
4.	15.04.2017	The applicant moved I.A. No.3963 of 2017, seeking to place additional documents on record depicting functional resorts and hotels around the area where the applicant's plot is situated.
5.	09.08.2017	The Ministry of Environment, Forest and Climate Change issued ESZ notification.
6.	16.04.2018	This Court de-tagged I.A. Nos.2929-2931 of 2010 filed by the applicant herein from other I.A.s concerning the cantonment area.
7.	04.10.2018	This Court allowed the application for impleadment for the purposes of directions and the application to place additional documents on record.
8.	19.08.2019	The State Government was directed to file reply to the interlocutory applications.
9.	27.09.2019	This Court directed that response be filed by the State of Madhya Pradesh as well as by the CEC.
10.	13.11.2019	The CEC was directed to examine the matter and submit its report.

11.	16.06.2020	The CEC filed its report before this Court, in terms of orders passed by this Court objecting to the permission sought for by the applicant for constructing health/eco-resort on the plots.
12.	22.11.2023	This Court directed the Collector, Hoshangabad to file an affidavit annexing therewith a map of the aforesaid area of 395.939 hectares specifying as to whether the land belonging to the applicant(s) is within those 395.939 hectares or beyond it. The applicant was directed to place on record as to whether it has obtained the necessary permission for acquiring the land.
13.	13.04.2023	The applicant moved I.A. No.79064 of 2023, seeking leave to amend the I.A. No.2930 of 2010, in light of the CEC report dated 16th June, 2020.
14.	12.02.2024	The State Government filed compliance affidavit in terms of order dated 22nd November, 2023.

5. Another litigation took place regarding other transactions of land done by Dennis Torry and it will be essential to trace the history thereof. Chronological list of events in relation to the plot are being narrated hereinbelow for the sake of ready reference: -

5.1 The District Collector, Hoshangabad registered *suo moto* revisions against the mutation orders issued in favour of Kripa Torry and Sanjay Bhandari(purchasers of land from Dennis Torry) and vide order dated 9th August, 2004, these revisions were allowed holding that the transfer of land by the perpetual land holder Rodrigues in favour of Dennis Torry on 8th September, 1977 was illegal and without force of law and thus, mutation of land in favour of Dennis Torry was illegal. The transfer and consequent mutation in favour of Sanjay Bhandari and Shri Kripa Torry(son of Dennis Torry) was quashed and set aside by the District Collector vide order dated 9th August, 2004.

5.2 The aforesaid order was challenged by the purchasers by filing an appeal to the Board of Revenue, Madhya Pradesh which came to be allowed and the order dated 9th August, 2004

passed by the District Collector was quashed by learned Single Member, Board of Revenue vide order dated 16th April, 2007.

5.3 The Chairman of Revenue Board registered a *suo moto* revision and vide order dated 15th March, 2011, set aside the order passed by the learned Single Member.

5.4 The land owners Shri Sanjay Bhandari and Shri Kripa Torry preferred a Writ Petition No. 8098 of 2011 for questioning the legality of order dated 15th March, 2011 and the said writ petition was allowed by the learned Single Judge of the Madhya Pradesh High Court vide order dated 3rd January, 2014 thereby, reversing the order dated 15th March, 2011 passed by the Board of Revenue.

6. This Court is apprised that the State has preferred an appeal(Writ Appeal No. 2100 of 2019) against the order passed by the learned Single Judge which is still pending adjudication and no order of stay is passed in the said writ appeal.

7. The CEC has submitted a report dated 16th June, 2020 in these proceedings objecting to the permission sought by the applicant. The applicant has also filed objection to the report of the CEC.

8. The issue which has now been raised by the State of Madhya Pradesh is with respect to the identification of the land owned by the applicant contending that the same forms a part of the Pachmarhi Wildlife Sanctuary. Considering the above contention, this Court raised the following query on 22nd November, 2023: -

> "2. We, therefore, direct the Collector, Hosangabad to file an affidavit annexing therewith a map of the aforesaid area of 395.939 hectares and also specify as to whether the land belonging to the applicant(s) is within those 395.939 hectares or beyond that area."

9. In compliance of the said direction, an affidavit has been filed on behalf of the State of Madhya Pradesh(also referred to as, 'compliance affidavit'). The relevant portions thereof are extracted hereinbelow: -

> **"2.** That, this Hon'ble Court has raised following queries to the respondent/State of M.P.:-
>
> (i) To annex the map demarcating an area of 395.939 hectares of the Nazul Land falling in the Panchmarhi

Plateau, which was to be excluded from the Panchmarhi Wildlife Sanctuary as per order dated 12.08.2013 passed by this Hon'ble Court in I.A. No.2202-2203.

In respect of aforesaid, it is pertinent to mention here that the said map demarcating an area of 395.939 hectares of Nazul Land falling in the Panchmarhi Plateau, the Plot No.14/3 area 59255 sq. ft. and 14/4 area 49365 sq. ft. are excluded from Panchmarhi Wildlife Sanctuary and the same are within the area of 395.939 hectares and recorded as Nazul Land in the name of State of M.P.

A true copy of colored map of is being marked and filed herewith as **Annexure A-1**.

(ii) The Collector Hosangabad was directed to file an affidavit annexing therewith a map of the aforesaid area of 395.939 hectares and also specify as to whether the land belonging to the applicant is within those 395.939 hectares or beyond that area.

In respect of aforesaid, it is pertinent to mention here that the Collector, Hoshangabad vide affidavit dated 06.01.2024 stated that the land mentioned, NazulBhumi Sheet No.20, Plot No.14/3 and 14/4, area 59255 sq. ft. and 49365 sq. ft. total area 108900 sq. ft. is situated in Panchmarhi and recorded as maintenance Khasra in the Government of M.P. **The plot No.14/3, 14/4 is within the area of 395.939 hectares which was excluded from the Panchmarhi Wildlife Sanctuary.**

2. That, it is respectfully submitted that in respect of Plot No.14/3 and 14/4 a report was sought from Sub-Divisional Officer, Revenue, Pipariya whereby it was reported that Plot No.14/3 and 14/4 are recorded in name of State of M.P. in Sheet No.20 of Nazul Maintenance Khasra No.2023-24**, said land of Plot No.14/3 and 14/4 is vacant on the spot, there is no kind of construction over there, said plots are situated under urban area of Panchmarhi. Moreover, the permission for construction/re-construction in the Cantonment Board, Panchmarhi lies under the jurisdiction of Chief Executive Officer,**

Cantonment Board, Panchmarhi and the permission for construction/re-construction in the Special Area Development Authority (SADA), Panchmarhi lies with the jurisdiction of Chief Executive Officer, Special Area Development Authority (SADA), Pachmarhi, In respect of above, no permission for construction/re-construction was issued by the Tehsildar, Pipariya.

8. That, on 03.01.2014, the Hon'ble High Court of M.P. at Jabalpur passed an order in W.P. No.8098/2018 in petition filed by Kripa Tori and others challenging the order dated 15.03.2011 of the Board of Revenue. The Hon'ble High Court set aside the order dated 15.03.2011 and thereby restored the previous order dated 22.07.1995 whereby the order of the Nazul Adhikari had been affirmed.

A true copy of the order dated 03.01.2014 passed by the Hon'ble High Court of M.P. at Jabalpur in Writ Petition No.8098/2011 is being marked and filed herewith as **Annexure A-9**.

It is pertinent to mention here that the aforesaid order dated 03.01.2014 of the Hon'ble High Court is in respect of Plot No.14/1 and 14/2 whereas the applicant herein is claiming relief in respect of Plot No.14/3 and 14/4 which were purchased by Ashutosh S/o Shriram Shewalkar and M/s Shewalkar Developers Pvt. Ltd. on 13.09.1991. The said Plot No.14/3 and 14/4 at present are recorded in the name of State of M.P. as Nazul Land. The State of Madhya being aggrieved with the order dated 03.01.2014 has filed an appeal before the Division Bench of the Hon'ble High Court which is pending adjudication as Writ Appeal No.2100/2019.

9. That, it is submitted here that the said proceedings before the Hon'ble High Court pertains to Kripa Tori &Ors. and the present intervenor M/s Shewalkar Developers was not a party before any of the Revenue Courts or the High Courts.

10. That, as per notification dated 19.08.2017, the area under the entire Pachmarhi region admeasuring

> **1532.521 hectares has been declared as "Eco-sensitive Zone" and the Plot No.14/3 and 14/4 fall within the notified boundaries of said notification.**
>
> **11.** That, in view of notification dated 09.08.2017 "no new resort can be constructed and only repairs etc. can be done". Moreover, the Hon'ble High Courtvide interim order dated 01.11.2002 in W.P. No.5937/2002 stayed the construction by making following observation:-
>
> "Subject to hearing other side, further construction in and around Pachmarhi Hill Resort is stayed till further order".
>
> The aforesaid clarification about stay order being applicable only to new construction has been reiterated by the Hon'ble High Court in its order dated 22.01.2004 in following words:-
>
> "By further order dated 13.07.2004, the interim order was clarified that the order of stay will not come in the way of repairing of roads by the State or carrying out repairs to existing building by respective provided, however, that repairs work of any building can be undertaken only after taking due permission from the concerned authority.""
>
> (emphasis supplied)

10. Shri D.S. Naidu, learned senior counsel representing the applicant drew the Court's attention to the order dated 15th December, 2000 passed by the Department Officer(SDO), Pipariya on the application preferred by the applicant seeking mutation based on a registered sale deed dated 13th September, 1991 executed by the land owner Dennis Torry in favour of the applicant. The SDO accepted the said application taking note of the fact that Plot No.14 admeasuring 3,23,365 sq. ft. was entered in the name of Dennis Torry who sought and was granted permission to sell the plot in question, by the Government of Madhya Pradesh vide order dated 1st May, 1991. Thereafter, by a registered sale deed dated 13th September, 1991, Dennis Torry had sold the subject plots of land to Ashutosh Shewalkar on behalf of the applicant company. Consequently, the SDO directed that the land sold by Dennis Torry should be mutated in the name of M/s Shewalkar Developers Ltd. through Ashutosh Shewalkar, resident of Nagpur. There is no dispute that the aforesaid order passed by

the jurisdictional Revenue Officer in favour of the applicant has not been questioned in any Court of law.

11. Shri Naidu also drew the Court's attention to the report of the CEC dated 16th June, 2020, as per which the permission to construct has been denied to the applicant on the ground that the State of Madhya Pradesh had filed an affidavit stating that the land falls in the Pachmarhi Wildlife Sanctuary and that the same had been purchased in violation of the provisions of the Wild Life(Protection) Act, 1972.

12. Shri Naidu contended that this objection raised by the State with reference to the Eco Sensitive Zone(hereinafter being referred to as 'ESZ') notification dated 9th August, 2017 is totally against the material available on record. He drew the Court's attention to the site map dated 26th December, 2023(Annexure A-1 annexed with the compliance affidavit dated 12th February, 2024 filed by the respondent-State of Madhya Pradesh) to contend that as a matter of fact, the land owned by the applicant is located right on the periphery of the Nazul land, at a distance of about 10 kms. from the forest area and therefore, the same is well beyond the ESZ area.

13. Shri Naidu further submitted that in view of the categoric assertion made in the compliance affidavit dated 12th February, 2024, filed on behalf of the State, it is clear that the plots in question are located in the urban area of Pachmarhi and thus, there is no question of these plots being covered either under the wildlife sanctuary or the ESZ area. He thus urged that the applicant deserves the relief sought for.

14. *Per contra*, learned counsel appearing for the respondents have opposed the submissions advanced by Mr. Naidu. Learned counsel for the State of Madhya Pradesh urged that the plots in question are subject matter of litigation in the writ appeal pending before the Division Bench of the Madhya Pradesh High Court and thus, the applicant should await the outcome of the aforesaid writ appeal before seeking permission to construct the health/eco-resort on the land in question.

15. His further contention was that the plots in question are recorded in the name of the State of Madhya Pradesh and hence, the applicant cannot claim any right thereupon.

16. Mr. K. Parameshwar, learned Amicus Curiae appearing on behalf of the CEC submitted that in view of the ESZ notification dated 9th

August, 2017, permission to raise a new construction on the land in question cannot be granted and whatever permissions are sought for, have to be routed through the CEC.

17. Learned counsel appearing for the Union of India adopted the submissions advanced by the standing counsel for the State and learned Amicus Curiae.

18. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the material placed on record.

19. It is not in dispute that the applicant herein was never impleaded in any of the proceedings before the Revenue Courts or the High Court as has been emphatically stated in Para-9 of the compliance affidavit dated 12th February, 2024. It is thus, clear that irrespective of the fact that the order passed by the District Collector dated 9th August, 2004, purportedly covers entire area of the Plot No. 14 and the transactions done in favour of and by Dennis Torry, the sale deed executed in favour of the applicant and the mutation made in its name had never been questioned in any Court of law. Neither the Revenue Department nor the State Government authorities took the trouble of impleading the applicant as party in any of the abovementioned litigations. The title acquired by the applicant over the subject plots not having been challenged, attainted finality and thus the State cannot claim a right thereupon simply because at some point of time, the plots came to be recorded as Nazul lands in the revenue records. The categoric stand in the compliance affidavit filed by the State(reproduced *supra*) fortifies the claim of the applicant that these plots are falling under the urban area.

20. In this background, the applicant is justified in claiming that its proprietary rights guaranteed under Article 300A of the Constitution of India cannot be infringed merely on account of the pending writ appeal before the Madhya Pradesh High Court.

21. Resultantly, we are of the firm opinion that the permission sought by the applicant for raising construction of health/eco-resort cannot be opposed only on account of pendency of the writ appeal before the Madhya Pradesh High Court. However, it can be said without a cavil of doubt that activities, if any, on the Plot Nos. 14/3 and 14/4 purchased by the applicant from Dennis Torry would have to be carried out strictly in accordance with the ESZ notification dated 9th

August, 2017, issued by the Ministry of Environment, Forest and Climate Change. Nonetheless, the applicant would be at liberty to satisfy the authorities that the plots in question are beyond the Eco-Sensitive Zone.

22. Furthermore, since the writ appeal pending before the Madhya Pradesh High Court arises out of the orders passed in relation to the title rights of Dennis Torry, from whom the applicant purchased the plots in question, the activities, if any, undertaken by the applicant on the said plot of land would also remain subject to the outcome of the said writ appeal.

23. We, therefore, direct that the application filed by the applicant for raising construction on plot Nos. 14/3 and 14/4 shall be decided objectively by the CEC/Competent Authority of the local body keeping in view the location of the land with reference to the notified boundaries of the ESZ.

24. While deciding the application filed by the applicant, the authorities shall also bear in mind the fact that it is the pertinent case presented before this Court that a large number of resorts of Madhya Pradesh Tourism Development Corporation and Special Area Development Authority(SADA) are existing on areas abutting the land owned by the applicant.

25. The application/s shall be decided within a period of two months from today. Needless to say, that in the event of any adverse orders being passed, the applicant shall be at liberty to challenge the same as per law.

26. The applications are disposed of in above terms. No order as to costs.

Headnotes prepared by: Ankit Gyan

Result of the case: Applications disposed of.

[2024] 6 S.C.R. 740 : 2024 INSC 422

Rajendra S/o Ramdas Kolhe
v.
State of Maharashtra

(Criminal Appeal No. 2281 of 2011)

15 May 2024

[Abhay S. Oka and Ujjal Bhuyan,* JJ.]

Issue for Consideration

By the judgment and order dated 15.11.2010, the High Court relied upon the written dying declaration of the deceased Ex. 59 recorded by PW-6 and also the oral dying declarations of the deceased made before PW-2, PW-3, PW-4, PW-7 and PW-8 and thereafter upheld the judgment of conviction of the trial court. The appellant was convicted for committing an offence punishable u/s. 302 r/w. s.34 of the IPC and sentenced to suffer life imprisonment. Whether the dying declaration (Ex.59), in the instant case, was the valid piece of evidence.

Headnotes

Evidence Act, 1872 – s.32(1) – Dying Declaration – Conviction under – Prosecution case that victim was confined at her house and assualted – It was alleged that appellant-husband and brother-in-law of victim tied her legs with a towel and her hands with a *gamcha* – The husband poured kerosene all over her body and set her ablaze – Hearing her scream, people gathered outside her house and extinguished flames – Thereafter, she was taken to hospital and after few days she died – However, she gave a dying declaration (Ex.59) and clearly stated about the role played by her husband and brother-in-law – The trial Court convicted appellant-husband u/ss. 302 r/w. s.34 of IPC – The said conviction was upheld by the High Court:

Held: In her dying declaration (Ex. 59), the victim-deceased clearly stated about the role played by the husband (appellant) and the brother-in-law in the incident which led to her burn injuries – The contents of the dying declaration have been proved by PW-6, PW-12 and PW-13 – Though there are certain inconsistencies in their evidence – However, those are not material and do not affect the sub-stratum of her statement – The incident had occurred on 22.07.2002 with the dying declaration recorded on the same day

* Author

within a couple of hours whereas the evidence was tendered in court by the above witnesses after 5 years – Such inconsistencies are bound to be there – In fact, identical statements by the material witnesses may create doubt in the mind of the court about the credibility of such evidence, as being tutored – The attending doctor had certified that the deceased was capable of narrating her statement – The substance of the dying declaration is also borne out by the medical history of the patient recorded by the doctor which has also been proved in evidence – Further, though there are inconsistencies and improvements in the version of the prosecution witnesses, there is however convergence with the core of the narration of the deceased made in the dying declaration and the medical history recorded by the doctor – That being the position, the evidence on record, particularly Ex. 59, clearly establishes the guilt of the appellant beyond all reasonable doubt – That being the position, this Court is inclined to accept the dying declaration of the deceased (Ex. 59) as a valid piece of evidence. [Paras 24, 35]

Evidence – Dying Declaration – Sole basis for conviction:

Held: Once a dying declaration is found to be authentic inspiring confidence of the court, then the same can be relied upon and can be the sole basis for conviction without any corroboration – However, before accepting such a dying declaration, court must be satisfied that it was rendered voluntarily, it is consistent and credible and that it is devoid of any tutoring – Once such a conclusion is reached, a great deal of sanctity is attached to a dying declaration then it can form the sole basis for conviction. [Para 25]

Case Law Cited

Khushal Rao v. State of Bombay [1958] 1 SCR 552 **: AIR (1958) SC 22;** *Kundula Bala Subrahmanyam v. State of Andhra Pradesh* [1993] 2 SCR 666 **: (1993) 2 SCC 684;** *Sher Singh v. State of Punjab* [2008] 2 SCR 959 **: (2008) 4 SCC 265;** *Sudhakar v. State of Madhya Pradesh* [2012] 7 SCR 128 **: (2012) 7 SCC 569 – relied on.**

Paniben (Smt.) v. State of Gujarat [1992] 2 SCR 197 **: (1992) 2 SCC 474;** *Amol Singh v. State of Madhya Pradesh* [2008] 8 SCR 956 **: (2008) 5 SCC 468;** *Lakhan v. State of Madhya Pradesh* [2010] 9 SCR 705 **: (2010) 8 SCC 514;** *Ashabai v. State of Maharashtra* [2013] 1 SCR 115 **: (2013) 2 SCC 224 – referred to.**

List of Acts

Evidence Act, 1872; Penal Code, 1860

List of Keywords

Evidence; Dying declaration; Dying declaration as sole basis of conviction; Correctness of dying declaration; Consistent and credible dying declaration; Voluntary dying declaration; Section 32(1) of Evidence Act, 1872.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2281 of 2011

From the Judgment and Order dated 15.11.2010 of the High Court of Bombay, Bench at Aurangabad in CRLA No.635 of 2008

Appearances for Parties

Sudhanshu S. Choudhary, Sr. Adv., Ms. Rucha A. Pandey, Vatsalya Vigya, Advs. for the Appellant.

Aaditya Aniruddha Pande, Siddharth Dharmadhikari, Bharat Bagla, Sourav Singh, Aditya Krishna, Ms. Raavi Sharma, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Ujjal Bhuyan, J.

Heard learned counsel for the parties.

2. This appeal is directed against the judgment and order dated 15.11.2010 passed by the High Court of Judicature of Bombay, Bench at Aurangabad (hereinafter 'the High Court') dismissing Criminal Appeal No. 635 of 2008, Rajendra Ramdas Kolhe Vs. State of Maharashtra, filed by the appellant thereby confirming the judgment and order dated 23.07.2008 passed by the 3rd Ad Hoc Additional Sessions Judge, Ambajogai ('trial court' hereinafter) in Sessions Case No. 60/2006.

   2.1. It may be mentioned that by the judgment and order dated 23.07.2008, the trial court had convicted the appellant for committing an offence punishable under Section 302 read

with Section 34 of the Indian Penal Code, 1860 (IPC) and sentenced to suffer life imprisonment and to pay a fine of Rs. 25,000/- with a default stipulation. The appeal filed by the appellant against the aforesaid conviction and sentence was dismissed by the High Court.

3. The prosecution case in brief is that wife of the appellant Rekha was a police constable and lived in the police colony at Ambajogai. Her husband i.e. the appellant was serving in the army. He had come home on leave.

3.1. On 22.07.2002, at about 08:30 PM, Rekha had sustained burn injuries in the quarter where she was residing. According to the prosecution, she was subjected to cruelty by her husband Rajendra and brother-in-law Suresh. She was also subjected to sustained cruelty at the hands of her other in-laws including father-in-law, mother-in-law and sister-in-law. On the fateful day, Rekha was beaten by her husband Rajendra and brother-in-law Suresh. They tied her hands with a *gamcha* and her feet by a towel. Then the husband gagged her face. Brother-in-law got a match box and a bottle of kerosene. Husband poured the kerosene on her person and lit the matchstick. In the process, she got completely burnt. She was taken to the hospital by the neighbours where her dying declaration was recorded by PW-6 being Ex. 59 on the basis of which Ambajogai Police Station registered Crime No. 182/2002 under Sections 307, 498A, 342, 323 and 504 read with Section 34 IPC.

3.2. Investigation of the crime was conducted by PW-10. He broke open the locked room where the incident had taken place and seized partially burnt lady's clothes, a bottle containing residue of kerosene, broken mangalsutra etc. Later on, another dying declaration of the victim was recorded by the Special Executive Magistrate being Ex. 65. On 24.07.2002, at about 11:00 PM, Rekha expired due to the burn injuries. Following the same, Section 302 IPC was added to the FIR.

3.3. On completion of investigation, chargesheet was submitted by the police. Appellant alongwith the father-in-law, mother-in-law and sister-in-law of the deceased were arrayed as accused. In so far brother-in-law Suresh is concerned, he was found to

be a juvenile. Therefore, his case was segregated and sent to the Juvenile Justice Board.

3.4. In the trial of the appellant and the three others, prosecution examined in all 13 witnesses. Statements of the accused including the appellant were recorded under Section 313 of the Code of Criminal Procedure, 1973 (Cr.PC). Stand of the defence was that it was not a case of homicide but a case of suicide. In addition to the above, appellant also tendered evidence of a doctor.

3.5. After considering the evidence on record and the rival contentions, the trial court came to the conclusion that prosecution could not prove that the accused persons in furtherance of their common intention had subjected the deceased to harassment and cruelty and thereby committed an offence punishable under Section 498A IPC read with Section 34 thereof. The trial court also did not find any material against the father-in-law, mother-in-law and sister-in-law of the appellant for committing murder of Rekha. However, the trial court accepted the contents of both the dying declarations Ex. 59 and Ex. 65 coupled with the evidence of the prosecution witnesses and held that death of Rekha was homicidal and not accidental. While acquitting the father-in-law, mother-in-law and sister-in-law of the appellant, the trial court held that prosecution had established beyond reasonable doubt that accused No. 4 i.e. the appellant alongwith his minor brother Suresh had in furtherance of their common intention committed murder of Rekha. Therefore, the trial court held the appellant guilty of the offence punishable under Section 302 IPC. After a separate hearing, the trial court sentenced the appellant as above.

4. Aggrieved by the aforesaid order of conviction and sentence, appellant preferred appeal before the High Court. By the judgment and order dated 15.11.2010, the High Court relied upon the written dying declaration of the deceased Ex. 59 recorded by PW-6 and also the oral dying declarations of the deceased made before PW-2, PW-3, PW-4, PW-7 and PW-8 and thereafter upheld the judgment of conviction of the trial court. Holding that the trial court judgment warranted no interference, the appeal was dismissed.

5. This Court by order dated 16.08.2011 had issued notice. Thereafter *vide* order dated 02.10.2011, leave was granted. However, prayer for bail was rejected at that stage.

6. By order dated 30.06.2016, this Court noted that appellant had already undergone about nine years of sentence. Therefore, the sentence was suspended and bail was granted to the appellant.

7. Learned senior counsel for the appellant strenuously argued that there are material contradictions in the evidence of the prosecution witnesses. That apart, the High Court had rightly not relied upon Ex. 65 i.e. the dying declaration recorded by the Special Executive Magistrate as that was not proved. In so far Ex. 59 dying declaration is concerned, he submits that PW-12, the doctor, had given the time of recording the dying declaration as 11:45 PM, both as the starting point as well as the time of conclusion which is a significant lacuna. It casts a serious doubt about the credibility of the declaration. He submits that since the courts below had discarded the theory of domestic violence, there could be no other reason for the appellant to commit murder of his wife. As a matter of fact, it has come on record that the appellant had tried to save the deceased and in the process had got burnt on his right hand. He had taken the deceased alongwith his brother to the hospital. That being the position, the conviction and sentence is liable to be interfered with.

   7.1. On the other hand, learned counsel for the respondent supports the conviction and sentence of the appellant. He submits that the evidence on record clearly establishes beyond any reasonable doubt the guilt of the appellant. Prosecution could successfully prove the guilt of the appellant beyond any reasonable doubt. The dying declaration Ex. 59 is too significant to be overlooked. Minor discrepancies here and there cannot impeach the prosecution case. Therefore, there is no reason to interfere with the judgment of conviction as affirmed by the High Court. The appeal should be dismissed.

8. Submissions made by learned counsel for the parties have received the due consideration of the Court.

9. At the outset, it would be apposite to dilate on the evidence tendered by the material prosecution witnesses before we proceed to the written dying declaration Ex. 59.

10. PW-2 is Rajendra, a police constable. In his examination in chief, he stated that the deceased was serving as a lady police constable at Ambajogai Police Station. She was residing in a quarter in the police colony in front of his quarter. On the date and time of the incident, he saw many ladies residing in the police colony standing near the quarter of the deceased alongwith a few police constables. PW-2 went there and made enquiries. One constable Rajgire, who was his neighbour, told him that husband and brother-in-law of Rekha had set her on fire by pouring kerosene. She was taken to the S.R.T.R. Hospital at Ambajogai for treatment. Thereafter PW-2 alongwith Sayyed Aslam went to the hospital and saw Rekha taking treatment in the OPD. Police constable Sayyed Chand was present in the OPD. He asked Rekha in the presence of PW-2 and his friend as to how she had sustained the burn injuries. Rekha told that her husband and brother-in-law had set her on fire by pouring kerosene. According to her, she got married about two years ago. She was treated properly for about 15 days. Thereafter, her father-in-law, mother-in-law, sister-in-law and brother-in-law used to instigate her husband whenever he used to come home on leave from the army. They used to tell him that she was retaining her entire salary instead of handing over the same to her in-laws. They also raised questions on her character which was cited as the reason for not handing over her salary to them. On such instigation, the husband used to abuse and assault her.

10.1. Though she was selected for the police sports competition at Beed on 14.07.2002, her husband did not allow her to participate in the sports competition. On the day of the incident, she was not allowed to come out of the house for the whole day. Between 08:30 PM to 09:00 PM, her husband and brother-in-law tied her hands with a *gamcha*; they also tied her legs with a towel. The brother-in-law brought a bottle of kerosene and a matchbox and gave to the husband. Thereafter, her husband gagged her mouth by one hand and poured kerosene on her person by the other hand. The husband then lighted the matchstick from the matchbox and set her on fire.

10.2. PW-2 stated that when he had gone to the hospital, the husband and brother-in-law of Rekha were not present.

10.3. In his cross-examination, PW-2 stated that in his statement before the police, it was not recorded that the in-laws of Rekha

had told her husband that she was not paying the salary for which Rekha was abused and assaulted. In the statement under Section 161 Cr.P.C., it was also not recorded that Rekha was selected for the police sports competition on 14.07.2022. The statement made by him that Rekha's husband i.e. the appellant had closed her mouth by one hand and poured kerosene by the other hand, was also found not mentioned in the Section 161 statement. However, he stated that PW-6 Assistant Sub Inspector Dake had recorded the statement of Rekha in detail in the hospital when PW-2 was present.

11. PW-3 Kausalyabai is the mother of the deceased Rekha. She stated that after marriage, Rekha was properly treated by her husband and other in-laws for about 15 days. Thereafter, they started ill-treating her on the ground that she did not part with her salary. Her elder daughter Shyamla had telephoned her and told her that Rekha was set on fire by her husband Rajendra and her brother-in-law Suresh. She came to the hospital at Ambajogai along with her son and daughter-in-law and met Rekha. Rekha told PW-3 that her husband and brother-in-law had poured kerosene and set her on fire. At that time, her mother-in-law, father-in-law and sister-in-law were present. Rekha had told her that her neighbours had shifted her to the hospital while her husband and in-laws fled away.

    11.1. In her cross-examination, she stated that police had recorded her statement after the death of Rekha. She acknowledged that police had not recorded in her Section 161 statement that her daughter Rekha was subjected to cruelty by her husband and in-laws; and on the day of the incident, she was confined to the house. It was also not recorded that accused Rajendra and Suresh had set her on fire by pouring kerosene. She had not stated before the police when Rekha's husband and brother-in-law had set her on fire; that father-in-law and sister-in-law were also present and that all of them ran away. According to her, though she had stated before the police that all the accused were present in the house and after setting Rekha on fire, all of them fled from the house, the same was not recorded.

12. Brother of the deceased, Milind, is PW-4. In his examination-in-chief, he stated that the in laws, brother-in-law and sister-in-law of

deceased Rekha had suspected her character. They used to incite the appellant about the character of the deceased and non-sharing of her salary with them. He stated that husband and brother-in-law of Rekha had killed her by setting her on fire. When he came to know about the incident, he alongwith his wife, children and mother came to Ambajogai on the same night i.e. on 22.07.2002 and met Rekha in the hospital. When he made enquiries with her, she told him that her husband and brother-in-law had set her on fire. In the hospital, none of her in-laws were present. On their arrival in the hospital, PW-4 found his sister Shyamla near Rekha. While taking treatment, Rekha died on 24.07.2002.

12.1. In his cross-examination, he stated that when he had gone to the hospital, his sister (the deceased) was completely burnt and was groaning. He stated that the police had recorded his statement as per his say. Though he had stated before the police that in the hospital, his sister Rekha had informed him that her husband and brother-in-law had set her on fire, he could not assign any reason why the police did not record the same.

13. We may now turn to the evidence of PW-7, Sayyed Chand, who was also a policeman serving in the Ambajogai Police Station and residing in the police colony. In his evidence-in-chief, he stated that at about 09:00 PM, he heard hue and cry in the colony. When he came out of his house, he saw people gathered near the quarter of lady police constable Dhokne i.e. the deceased. Police head constable Rajgire and women members in the crowd informed him that lady police constable Dhokne was set on fire by her husband and her brother-in-law. He and Rajgire entered into the house of Dhokne and extinguished the fire. Both the hands of Rekha were tied by a towel. Rajgire untied the hands. At that time, the husband and brother-in-law were present in the house. Somebody brought an auto-rikshaw in which Dhokne, her husband and brother-in-law went to the hospital. He went to the hospital on the motorcycle of another person whose name he did not know. But when he reached the hospital, the husband and brother-in-law were not present. He got Dhokne (Rekha) admitted in the hospital. When he enquired with Dhokne (Rekha), she told him that her mother-in-law and father-in-law had told her husband that she was not behaving properly and was not sharing her salary with them. Therefore, her husband and brother-in-law set her on fire.

13.1. In his cross-examination, PW-7 stated that police had recorded his statement on 23.07.2002 in the morning at the police station. According to him, though he had stated before the police that he and Rajgire had entered the house of Dhokne where they found her hands and legs were tied by a towel, whereafter they had extinguished the fire while Rajgire untied the hands and legs of Rekha, the same was not reduced to writing by the police. He had also stated that at that time, the husband and brother-in-law of Rekha were present in the house but this was also not recorded by the police. His statement that Rekha's mother-in-law and father-in-law used to inform her husband that she was not behaving properly, was also not recorded by the police.

14. Police head constable Rajgire is PW-8. In his examination-in-chief, he stated that as he was serving in the Ambajogai Police Station, he used to reside in the police colony. 22.07.2002 was his weekly holiday. Therefore, he was at home. The quarter of Rekha Dhokne, lady police constable, was in front of his quarter in the police colony. On 22.07.2002, between 08:30 PM to 09:00 PM, he heard cries of a lady from the house of Dhokne. On hearing the cries, he and his wife came out of his house and entered the house of Dhokne. At that time, Dhokne was completely burnt. He and his wife poured water on her person and extinguished the fire. At that time, husband and brother-in-law of Rekha Dhokne were standing near the door of the house. Rekha was saying loudly that her husband and brother-in-law had set her on fire. When somebody brought an auto-rikshaw, her husband and brother-in-law took her to the S.R.T.R. Hospital in the said auto rikshaw. On 24.07.2002, Rekha Dhokne died while taking treatment in the hospital. His supplementary statement was recorded by the police on 25.07.2002. According to him, he had learnt that the in-laws of Rekha were demanding that she should part with her salary and since she was unwilling to do that, she was set on fire.

14.1. In his cross-examination, PW-8 stated that though he had told the police that when he and his wife had extinguished the fire, the husband and brother-in-law of Rekha were present near the door of the house, this is not reflected in his police statement. However, his statement that when his wife was pouring water on the person of Dhokne, husband Rajendra

and brother-in-law Suresh were standing nearby, was recorded in his statement under Section 161 Cr.P.C.

15. PW-10 is Uttam, the police inspector, who had investigated the case. He stated that he had visited the crime scene alongwith two panchas. He had seized half burnt parker petticoat, gown, one water bottle smelling of kerosene, one half burnt stick, broken mangalsutra, lock etc. The seizure list was prepared by him and signed by the panchas.

15.1. In his cross-examination, he stated that on receiving information from the medical officer of the hospital that Rekha Dhokne had sustained burn injuries, he had directed PW-6 to record the dying declaration of her, entry of which was made in the station diary. In so far the Section 161 statement of PW-2 is concerned, he stated that PW-2 did not state before him that Rekha had told him that her husband had gagged her mouth by one hand and had poured kerosene on her person by the other hand. Regarding the Section 161 statement of PW-3, he stated that PW-3 did not say that the accused were demanding money from Rekha and that they were subjecting her to cruelty by not providing her food, confining her to the house and on the day of the incident, accused Rajendra and Suresh had set her on fire by pouring kerosene. He further stated that PW-3 Kausalyabai had not stated in her Section 161 statement that Shyamla had informed her that accused Rajendra and his brother Suresh had killed Rekha by setting her on fire. Further, PW-3 did not say before him that all the accused ran away from the house after setting Rekha on fire. Regarding PW-4, he stated that PW-4 in his Section 161 statement did not mention that his sister Rekha had told him that her husband and brother-in-law had set her on fire. As regards PW-7 Sayyed Chand, PW-10 stated that PW-7 did not state in his Section 161 statement that he and Rajgire had entered into the house of Dhokne, that both her legs and hands were tied by a towel and that they had extinguished the fire. PW-7 did not say that Rajgire had untied the legs and hands of Rekha and at that time her husband and brother-in-law were present. PW-7 also did not state that Rajgire and the women members in the crowd had informed him that Rekha's husband and brother-in-law had set her on fire. PW-8 in her Section 161 statement, also did not say

that the husband and brother-in-law were present at the time when Rekha was burning.

16. Dr. Prashant Mohan Kedari is PW-12. On 22.07.2002, he was on duty as a resident medical officer in the S.R.T.R. Medical College and Hospital at Ambajogai having completed his MBBS that year with one year internship. He was incharge of burn ward No. 14 that day. PW-9 Bilkis Kachhi, the Special Executive Magistrate, came to the hospital to record the dying declaration of the patient Rekha who was being treated there. On her enquiry, PW-12 examined the patient and found that she was conscious and able to give statement. Statement of the patient in Ex. 65 was recorded by PW-9 (however, we need not go into this aspect of the matter as the High Court did not accept Ex. 65 as a valid piece of evidence). Thereafter, he was shown Ex. 59 which is another dying declaration of the deceased. He stated that there are two endorsements and signatures in Ex. 59. The signatures below the endorsements at both the places were of Dr. Kiran Kurkure i.e. PW-13.

    16.1. In his cross-examination, he stated that he had not made any endorsement regarding his examination of the patient on 22.07.2002 in any document. At about 11:30 PM, he started clinical examination of the patient which went on for about 10 minutes.

17. Dr. Kiran Kurkure is PW-13. At the relevant point of time, he was serving as medical officer in the S.R.T.R. Medical College and Hospital at Ambajogai. At about 10:15 PM on 22.07.2002, a patient by the name Rekha, wife of Rajendra Kolhe, was brought to the hospital by the police. Though she was having 99% burns, she was conscious. Her statement was recorded at 11:45 PM. At that time, he was present. He stated that at the time of recording of her statement, the patient Rekha was conscious and was in a position to give statement. He further stated that he had put an endorsement on the statement (Ex. 59). It also bore his endorsement to the effect that the patient was fit for giving statement at present which was signed by him. He stated that the contents of Ex. 59 were correct. He proved his endorsements and the signatures on Ex. 59. He also stated that he had put an endorsement before recording the statement and another endorsement after recording the statement; the endorsement date and time was in his handwriting. Regarding

the second endorsement after recording of the statement, he stated that the endorsement was his but by mistake he had mentioned the time as 11:45 PM. He also stated that at the time of admission of the patient, he had recorded the history narrated by her. The patient had informed him that her husband had set her on fire. He asserted that he had correctly recorded the history as narrated by the patient. It was in his own handwriting, the contents of which were proved by him (Ex. 117).

17.1. Though PW-13 was extensively cross-examined, nothing inconsistent or contradictory to what he had stated in his evidence-in-chief could be extracted.

18. We will analyze the evidence of PW-12 and PW-13 at the time of examination of Ex. 59. Before proceeding to Ex. 59, let us briefly analyze the evidence of the prosecution witnesses discussed thus far.

19. In his evidence-in-chief, PW-2 stated that constable Rajgire was in the crowd in front of the residence of Rekha and that he had told him that the husband and brother-in-law of Rekha had set her on fire by pouring kerosene on her person. While Rekha was undergoing treatment in the hospital, constable Sayyed Chand asked her in the presence of PW-2 as to how she had sustained the burn injuries. In response, Rekha stated that her husband and brother-in-law had set her on fire by pouring kerosene. She had further stated that her in-laws used to instigate her husband whenever he used to come home on leave from the army, raising question marks over her character and citing that as the reason for not parting with her salary. This would be enough for the husband to abuse and assault her which ultimately led to the incident in question. However, in his cross-examination, PW-2 admitted that police had not included in his Section 161 statement that the in-laws of Rekha had told her husband that she was not handing over her salary to them for which Rekha was abused and assaulted. It was also not mentioned in the statement under Section 161 Cr.P.C. that the appellant had gagged the mouth of Rekha by one hand and poured kerosene on her person by the other hand. However, he stated that he was present in the hospital when PW-6 had recorded the statement of Rekha in detail (Ex. 59).

19.1. Likewise, in her cross-examination, PW-3 admitted that it was not mentioned in her statement recorded under Section 161 Cr.P.C. that her daughter Rekha was subjected to cruelty by

her husband and in-laws. It was also not recorded that Rekha was confined to the house on the day of the incident. She had also not stated before the police that Rekha's husband and brother-in-law had set her on fire.

19.2. Similarly, in the statement of PW-4 recorded under Section 161 Cr.P.C., there was no mention that Rekha had informed him that her husband and brother-in-law had set her on fire.

19.3. There was also no mention in the statement of PW-7 before the police that he and Rajgire had entered the house of Rekha where they found her legs and hands were tied by a towel whereafter they had extinguished the fire and untied her. The said statement also did not contain that husband and brother-in-law of Rekha were present in the house while she was burning. It was also not recorded that the mother-in-law and father-in-law used to inform the husband that Rekha was not behaving properly.

19.4. In his cross-examination, PW-8 admitted that he did not mention in his statement under Section 161 Cr.P.C. that when PW-8 and his wife had extinguished the fire, the husband and brother-in-law of Rekha were present near the door of the house. However, it was mentioned that when his wife was pouring water on the person of Rekha, her husband and brother-in-law were standing nearby.

19.5. The above improvements in evidence by the prosecution witnesses were brought on record during the cross-examination of PW-10, the investigating officer. Therefore, in addition to certain contradictions here and there, there is clear improvement in the version of the prosecution witnesses when they tendered evidence before the court. However, even in his cross-examination, PW-2 stated that PW-6 had recorded the statement of Rekha in detail in the hospital. This now brings us to the statement of Rekha made in the hospital which was recorded by PW-6 i.e. Ex. 59. While examining Ex.59, we will also analyze the evidence of PW-12 and PW-13.

20. In Ex.59, the deceased had stated that she was appointed as lady police constable in the police department on 12.12.1996. About three months prior to the date of the incident, she got transferred to the

Ambajogai Police Station. She had married the appellant about two years ago. Appellant was employed in the army and posted at Jodhpur. About eight days prior to the date of the incident, he had come home on leave of fifteen days. She used to stay alongwith her in-laws in a quarter in the police colony at Ambajogai. After marriage, she was treated well for only about fifteen days. Thereafter, her mother-in-law and brother-in-law accused her of bad behaviour and suspected her character. She was subjected to verbal and physical abuse. The in-laws demanded that she should handover her salary to them. When she declined, they would harass and abuse her as to why she needed her salary. The brother-in-law would instigate her other in-laws and her husband(appellant) as and when he was at home on leave that she was behaving badly for which the appellant should leave her. Because of such instigation, the husband(appellant) used to beat her. Though she was selected for the police sports competition at Beed, appellant refused to allow her to participate therein.

20.1. On 22.07.2002, appellant and her brother-in-law Suresh did not allow the deceased to go out of the house. Confining her to the house, she was physically assaulted. In the evening, they tied her legs with a towel and her hands with a *gamcha*. While her husband gagged her mouth, the brother-in-law got a matchbox and a bottle of kerosene. The husband poured the kerosene all over her body and lit a matchstick which set her ablaze. Her gown got burnt and, in the process, she suffered severe burns. At that time, the right hand of her husband(appellant) also got burnt.

20.2. When she screamed, the husband and brother-in-law opened the door and ran away. Somehow, she could come outside. Then, people who had gathered outside her house extinguished the flames, put her in an auto and took her to the hospital.

21. PW-6 was serving as Assistant Sub-Inspector in the Ambajogai Police Station. He was on duty on 22.07.2002. In his evidence, he stated that the Police Station Officer of the police station had asked him to record the statement of Rekha who was admitted in the S.R.T.R. Hospital for burns. He made inquiries with the nurses serving in the burn ward where Rekha was being treated. He had visited the hospital at about 11:30 PM. Within 5 to 10 minutes, he started

recording the statement of Rekha. Before recording the statement, he had requested the nurses to call the doctor whereafter Dr. Kiran Kurkure, PW-13, came. PW-13 examined Rekha and certified that she was in a position to give her statement. Thereafter, PW-6 recorded the statement of Rekha. But before recording her statement, he ensured that Rekha was in a position to give the statement. In his evidence, he narrated what Rekha had told him and what he had recorded. He stated that he had correctly recorded the statement of Rekha as per her say. He had read over the contents of the statement narrated by her and recorded by him to Rekha and she said that those were correct. As she was unable to sign or put her thumb impression because she was severely burnt, PW-6 obtained the toe impression of her right leg. PW-13 had put his endorsements with signatures both prior to recording her statement and at the conclusion of her statement. Thereafter, PW-6 put his signature on both the pages. In his evidence, he proved the statement of Rekha which was shown to him.

22. PW-12 Dr. Prashant Kedari stated in his evidence that the two endorsements and signatures on Ex. 59 were that of Dr. Kiran Kurkure, PW-13.

23. PW-13 in his evidence stated that the statement of Rekha was recorded at 11:45 PM and he was present. Rekha was conscious and was in a position to give her statement. He proved his two endorsements and signatures below the endorsements. He also proved the correctness of the contents of Ex. 59. He explained that in the second endorsement, he had mentioned the time as 11:45 PM by mistake. He also asserted that at the time of admission of Rekha in the hospital, he had recorded the medical history narrated by Rekha. He proved the contents thereof (Ex. 117).

24. From the above, it is evident that in her dying declaration (Ex. 59) Rekha clearly stated about the role played by the husband (appellant) and the brother-in-law in the incident which led to her burn injuries. The contents of the dying declaration have been proved by PW-6, PW-12 and PW-13. Though there are certain inconsistencies in their evidence, it is quite natural. Moreover, those are not material and do not affect the sub-stratum of her statement. The incident had occurred on 22.07.2002 with the dying declaration recorded on the same day within a couple of hours whereas the evidence

was tendered in court by the above witnesses after 5 years. Such inconsistencies are bound to be there. In fact, identical statements by the material witnesses may create doubt in the mind of the court about the credibility of such evidence, as being tutored. That being the position, we are inclined to accept the dying declaration of the deceased (Ex. 59) as a valid piece of evidence.

25. The law relating to dying declaration is now well settled. Once a dying declaration is found to be authentic inspiring confidence of the court, then the same can be relied upon and can be the sole basis for conviction without any corroboration. However, before accepting such a dying declaration, court must be satisfied that it was rendered voluntarily, it is consistent and credible and that it is devoid of any tutoring. Once such a conclusion is reached, a great deal of sanctity is attached to a dying declaration and as said earlier, it can form the sole basis for conviction.

26. Section 32(1) of the Indian Evidence Act, 1872 deals with dying declaration. Since the said provision is relevant, it is extracted hereunder:

> [32.] Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. – Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:-
>
> (1) When it relates to cause of death. – When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.
>
> Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

26.1. Section 32 says that statements made by a person who is dead or who cannot be found etc., be it in written form or oral, are themselves relevant facts. As per situation(1), when the relevant facts relate to the cause of death, such a statement would be relevant whether the person who made it was or was not at the time of making the statement under expectation of death. Such a statement would be relevant whatever may be the nature of the proceedings in which the cause of his death comes into question. The relevancy is not confined to the cause of his death but also to the circumstances of the transaction which resulted in his death.

27. In *Khushal Rao vs. State of Bombay*[1], this Court examined the principles governing acceptance of dying declaration. After examining the relevant provisions of the Evidence Act and various judicial pronouncements, this Court laid down the following conclusions:

(i) it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;

(ii) each case must be determined on its own facts, keeping in view the circumstances in which the dying declaration was made;

(iii) it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;

(iv) a dying declaration stands on the same footing as another piece of evidence. It has to be judged in the light of surrounding circumstances and with reference to the principles governing weighing of evidence;

(v) a dying declaration which has been recorded by a competent Magistrate in the proper manner stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character;

(vi) in order to test the reliability of a dying declaration, the court has to keep in view various circumstances including the condition

1 [1958] 1 SCR 552 : AIR 1958 SC 22

of the person concerned to make such a statement; that it has been made at the earliest opportunity and was not the result of tutoring by interested parties.

28. The above conclusions were reiterated by this Court in *Paniben (Smt.) vs. State of Gujarat*[2]. This Court declared that there is neither any rule of law nor of prudence that a dying declaration cannot be acted upon without corroboration. However, the court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination; the deceased should be in a fit and proper state to make the declaration. But once the court is satisfied that the dying declaration is true and voluntary, it can base conviction on it without corroboration.

29. This Court highlighted the significance of a dying declaration in *Kundula Bala Subrahmanyam vs. State of Andhra Pradesh*[3]. The general rule is that hearsay evidence is not admissible. Unless the evidence tendered is tested by cross-examination, it is not creditworthy. However, Section 32(1) of the Evidence Act is an exception to this general rule. This Court observed as under:

> 18. * * * * *
> A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes a very important and a reliable piece of evidence and if the court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration. * * * * *

2 [1992] 2 SCR 197 : (1992) 2 SCC 474

3 [1993] 2 SCR 666 : (1993) 2 SCC 684

30. Elaborating further, this Court in *Sher Singh vs. State of Punjab*[4] held that acceptability of a dying declaration is greater because the declaration is made in extremity. When a party is on the verge of death, one rarely finds any motive to tell falsehood. It is for this reason that the requirements of oath and cross-examination are dispensed with in the case of a dying declaration.

31. In *Sudhakar vs. State of Madhya Pradesh*[5], this Court observed thus:

> 20. The "dying declaration" is the last statement made by a person at a stage when he is in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the truth and only the truth. Normally in such situations the courts attach the intrinsic value of truthfulness to such statement. Once such statement has been made voluntarily, it is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate a person, then the courts can safely rely on such dying declaration and it can form the basis of conviction. More so, where the version given by the deceased as dying declaration is supported and corroborated by other prosecution evidence, there is no reason for the courts to doubt the truthfulness of such dying declaration.

32. When there are more than one dying declaration, this Court in *Amol Singh vs. State of Madhya Pradesh*[6], clarified that it is not the plurality of the dying declarations that matter. On the contrary, it is the reliability of a dying declaration which is significant. If there are inconsistencies between one dying declaration and the other, the court has to examine the nature of the inconsistencies, i.e., whether those are material or not.

33. In *Lakhan vs. State of Madhya Pradesh*[7], this Court held that where there are multiple dying declarations with inconsistencies between them, the court would have to scrutinize the facts very carefully and, thereafter, take a decision as to which of the declarations is worth reliance.

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4 [2008] 2 SCR 959 : (2008) 4 SCC 265

5 [2012] 7 SCR 128 : (2012) 7 SCC 569

6 [2008] 8 SCR 956 : (2008) 5 SCC 468

7 [2010] 9 SCR 705 : (2010) 8 SCC 514

34. Again, in *Ashabai vs. State of Maharashtra*[8], this Court observed that when there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated independently on their own merit as to the evidentiary value of each. One cannot be rejected merely because of certain variations in the other.

35. As already discussed above, there is no reason for us to doubt the correctness of the dying declaration of the deceased (Ex. 59) which has been proved in evidence. Attending doctor has certified that the deceased was capable of narrating her statement. The substance of the dying declaration is also borne out by the medical history of the patient recorded by the doctor which has also been proved in evidence. Further, though there are inconsistencies and improvements in the version of the prosecution witnesses, there is however convergence with the core of the narration of the deceased made in the dying declaration and the medical history recorded by the doctor. That being the position, the evidence on record, particularly Ex. 59, clearly establishes the guilt of the appellant beyond all reasonable doubt.

36. We are mindful of the fact that appellant is on bail since the year 2016. Nevertheless, having sieved through the evidence carefully, we have no hesitation in our mind that appellant is guilty of committing the offence and that the guilt has been proved beyond all reasonable doubt.

37. In view of the above, the appeal is dismissed. Appellant is directed to surrender before the trial court within a period of two weeks from today to carry out his sentence.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeal dismissed.

8 [2013] 1 SCR 115 : (2013) 2 SCC 224

[2024] 6 S.C.R. 761 : 2024 INSC 433

Dani Wooltex Corporation & Ors.
v.
Sheil Properties Pvt. Ltd. & Anr.

(Civil Appeal No. 6462 of 2024)

16 May 2024

[Abhay S. Oka* and Pankaj Mithal, JJ.]

Issue for Consideration

When can the power under clause (c) of sub-section (2) of section 32 of the Arbitration and Conciliation Act, 1996 be exercised; Is it the Arbitral Tribunal's duty to fix a meeting for hearing; Whether the failure of the claimant to request the Arbitral Tribunal to fix a date for hearing, *per se*, is the ground to conclude that the proceedings have become unnecessary; Whether abandonment of claim by a claimant can be a ground to invoke clause (c) of sub-section (2) of section 32.

Headnotes

Arbitration and Conciliation Act, 1996 – Clause (c) of sub-section (2) of section 32 – When can the power under clause (c) of sub-section (2) of section 32 of the Arbitration and Conciliation Act, 1996 be exercised:

Held: The power under clause (c) of sub-section (2) of Section 32 of the Arbitration Act can be exercised only if, for some reason, the continuation of proceedings has become unnecessary or impossible – Unless the Arbitral Tribunal records its satisfaction based on the material on record that proceedings have become unnecessary or impossible, the power under clause (c) of sub-section (2) of Section 32 cannot be exercised – If the said power is exercised casually, it will defeat the very object of enacting the Arbitration Act. [Para 21(a)]

Arbitration and Conciliation Act, 1996 – Is it the Arbitral Tribunal's duty to fix a meeting for hearing:

Held: It is the Arbitral Tribunal's duty to fix a meeting for hearing even if parties to the proceedings do not make such a request – It is the duty of the Arbitral Tribunal to adjudicate upon the dispute referred to it – If, on a date fixed for a meeting/hearing, the parties

* Author

remain absent without any reasonable cause, the Arbitral Tribunal can always take recourse to the relevant provisions of the Arbitration Act, such as Section 25. [Para 21(b)]

Arbitration and Conciliation Act, 1996 – Whether the failure of the claimant to request the Arbitral Tribunal to fix a date for hearing, *per se*, is the ground to conclude that the proceedings have become unnecessary:

Held: The failure of the claimant to request the Arbitral Tribunal to fix a date for hearing, *per se*, is no ground to conclude that the proceedings have become unnecessary. [Para 21(c)]

Arbitration and Conciliation Act, 1996 – Clause (c) of sub-section (2) of section 32 – Whether abandonment of claim by a claimant can be a ground to invoke clause (c) of sub-section (2) of section 32:

Held: The abandonment of the claim by a claimant can be a ground to invoke clause (c) of sub-section (2) of Section 32 – The abandonment of the claim can be either express or implied – The abandonment cannot be readily inferred – There is an implied abandonment when admitted or proved facts are so clinching that the only inference which can be drawn is of the abandonment – Only if the established conduct of a claimant is such that it leads only to one conclusion that the claimant has given up his/her claim can an inference of abandonment be drawn – Even if it is to be implied, there must be convincing circumstances on record which lead to an inevitable inference about the abandonment – Only because a claimant, after filing his statement of claim, does not move the Arbitral Tribunal to fix a date for the hearing, the failure of the claimant, *per se*, will not amount to the abandonment of the claim. [Para 21 (d)]

Arbitration and Conciliation Act, 1996 – Clause (c) of sub-section (2) of section 32 – A part of first appellant's (D) property was permitted to be developed by S under Development agreement – A MOU was also executed between the first appellant and M, by which first appellant agreed to sell another portion of property to M – Dispute arose – A consensus was reached between all the three parties to appoint a Arbitrator – Arbitral Tribunal had to deal with claims filed by both S and M – M's claim culminated in an award on 06.05.2017 –

However, arbitral proceedings based on claim filed by S did not proceed – First Appellant filed an application invoking the Arbitral Tribunal power under Clause (c) of sub-section (2) of section 32 of the Arbitration Act contending that S had abandoned arbitral proceedings – Following, the Arbitral Tribunal terminated arbitral proceedings – However, the Single Judge of the High Court directed the tribunal to continue with the proceedings – Propriety:

Held: The question is whether S abandoned its claim filed before the Arbitrator – S had regularly attended meetings held to hear M's claim – During the period during which the claim of M was heard, at no stage, the Arbitrator suggested that the claim of S could be heard simultaneously – On the contrary, from the conduct of the parties and the Arbitrator, an inference can be drawn that M's claim was given priority – In any case, there is no express abandonment – Even if it is to be implied, there must be convincing circumstances on record which lead to an inevitable inference about the abandonment – In the facts of the case, there was no abandonment either express or implied – In a case where the claim is abandoned, the Arbitrator can take the view that it would be unnecessary to continue the proceedings based on the already abandoned claim – In this case, the inference of the abandonment has been drawn by the Arbitrator only on the grounds that S did not challenge the M award and took no steps to convene the meeting of the Arbitral Tribunal – The failure to challenge the award on M's claim will not amount to abandonment of the claim filed by S – In the claim submitted by S, a prayer was made in the alternative for passing an award in terms of money against the first appellant – Therefore, there was absolutely no material on record to conclude that S had abandoned its claim or, at least, the claim against the first appellant. [Para 20]

Case Law Cited

NRP Projects Pvt. Ltd. & Anr. v. Hirak Mukhopadhyay & Anr., **2012 SCC OnLine Cal 10496;** *Kothari Developers v. Madhukant S Patel,* **Arbitration Petition (L) No.29362 of 2022;** *Lalitkumar V Sanghavi & Anr. v. Dharamdas V Sanghavi & Ors.* **[2014] 3 SCR 558 : 2014 (7) SCC 255;** *Godrej and Boyce Manufacturing Company Limited v. Municipal Corporation of Greater Mumbai & Ors.* **[2023] 6 SCR 56 : 2023 SCC Online 592 – referred to.**

List of Acts

Arbitration and Conciliation Act, 1996.

List of Keywords

Exercise of power under clause (c) of sub-section (2) of section 32 of the Arbitration and Conciliation Act, 1996; Abandonment of claim; Arbitral proceeding becoming unnecessary and impossible; Express and implied abandonment of claim; Absence in arbitral proceedings; Fixing of date of hearing by Arbitral Tribunal.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No.6462 of 2024

From the Judgment and Order dated 03.07.2023 of the High Court of Judicature at Bombay in ARBP No.472 of 2021

Appearances for Parties

Nakul Divan, Sr. Adv., Gaurav Agarwal, Mahesh Agarwal, Rishi Agrawala, Ankur Saigal, Gaurav Mehta, Ms. S. Lakshmi Iyer, Vikrant Shetty, Ms. Vidisha Swarup, Ms. Tansi Fotedar, Ms. Soumil Jhanwar, E. C. Agrawala, Advs. for the Appellants.

Shekhar Naphade, Sr. Adv., Vikas Mehta, Farah Hashmi, Ms. Aishwarya Dash, Prashant Pratap, Adith Nair, Vinayak Sharma, Sahil Gandhi, Ruben Vakil, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

1. Leave granted.

2. In this appeal, the issue involved is about the legality and validity of the order of termination of the arbitral proceedings under clause (c) of sub-section (2) of Section 32 of the Arbitration and Conciliation Act, 1996 (for short, 'the Arbitration Act') passed by the Arbitral Tribunal.

FACTUAL ASPECTS

3. A brief reference to the factual aspects will be necessary to appreciate the issue. The first appellant, Dani Wooltex Corporation, is a partnership firm that owned certain land in Mumbai. The first

respondent, Sheil Properties (for short, 'Sheil'), a private limited company, was engaged in real estate development. The second respondent, Marico Industries (for short, 'Marico'), is also a limited company in the consumer goods business. A part of the first appellant's property was permitted to be developed by Sheil under the Development Agreement dated 11th August 1993 (for short, 'the Agreement'). A Memorandum of Understanding (MOU) was executed by and between the first appellant and Marico, by which the first appellant agreed to sell another portion of its property to Marico. Under the MOU, Marico was given the benefit of a certain quantity of FSI/TDR. Marico issued a public notice inviting objections, to which Sheil submitted an objection and stated that any transaction between the first appellant and Marico would be subject to the Agreement. The dispute between the first appellant and Sheil led Sheil to institute a suit (Suit no.2541 of 2006) for the specific performance of the MOU as modified by the alleged consent terms. The first appellant and Marico were parties to the said suit. Marico also filed a suit (Suit no.2116 of 2011) against the first appellant herein, and Sheil was also made a party defendant to the suit. A consensus was reached amongst the three parties, and a senior Member of the Bar was appointed as the sole Arbitrator. The order of appointment of the sole Arbitrator was passed on 13th October 2011 in the suit filed by Marico. The order records that the dispute in the suit was referred to the arbitration. On 17th November 2011, the suit filed by Sheil was disposed of by referring the dispute in the said suit to the same sole Arbitrator. Thus, the Arbitral Tribunal had to deal with the claims filed by Sheil and Marico, both against the first appellant. Both Sheil and Marico filed their respective statements of claim. It appears that the arbitral proceeding based on Marico's claim was heard earlier, culminating in an award on 6th May 2017. For whatever reasons, the arbitral proceeding based on the claim filed by Sheil did not proceed.

4. The first appellant addressed a communication to the Arbitral Tribunal on 26th November 2019, followed by another communication dated 7th January 2020 requesting the Arbitral Tribunal to dismiss the claim of Sheil on the ground that the company had abandoned the claim. In response, the Arbitral Tribunal fixed a meeting on 11th March 2020. As Sheil did not attend the meeting, the next meeting was fixed on 18th March 2020. The meeting scheduled for 18th March 2020 was not held. Due to the COVID-19 pandemic, the next meeting

could be held only on 12th August 2020, when the Arbitral Tribunal directed the first appellant to file a formal application for dismissal of the claim of Sheil and permitted Sheil to file a reply. Accordingly, on 27th August 2020, the first appellant filed an application invoking the Arbitral Tribunal's power under clause (c) of sub-section (2) of Section 32 of the Arbitration Act. The contention raised by the first appellant in the said application was that Sheil's conduct of not taking any steps for eight years shows that the said company abandoned the arbitral proceedings. Sheil filed an affidavit and specifically contended that no ground was made out to act under Section 32(2)(c) of the Arbitration Act. Sheil also raised other factual contentions and denied the allegation of abandonment.

5. The Arbitral Tribunal passed an order on 1st December 2020 terminating the arbitral proceedings in the exercise of power under Section 32(2)(c) of the Arbitration Act. The Arbitral Tribunal relied upon a decision of the Calcutta High Court in the case of ***NRP Projects Pvt. Ltd. & Anr. v. Hirak Mukhopadhyay & Anr***[1]. Sheil filed an application before the High Court of Judicature at Bombay to challenge the legality and validity of the order of the Arbitral Tribunal by taking recourse to Section 14(2) of the Arbitration Act. By the impugned judgment and order, the learned Single Judge set aside the order of termination of the proceedings passed by the Arbitral Tribunal and directed the Arbitral Tribunal to continue the proceedings. We may note here that I.A. no.180843 of 2023 reveals that on 26th July, 2023, the learned sole Arbitrator informed the parties of his unwillingness to continue as the sole Arbitrator.

SUBMISSIONS

6. Mr Nakul Divan, the learned senior counsel appearing for the first appellant, pointed out that the learned Single Judge of the High Court of Judicature at Bombay in her judgment dated 13th January 2023 in the case of ***Kothari Developers v. Madhukant S Patel***[2] held that the Arbitral Tribunal was entitled to invoke its power under Section 32(2)(c) of the Arbitration Act if it is proved that the proceedings have become unnecessary due to the claimant's inaction. He submitted

1 2012 SCC OnLine Cal 10496

2 *Arbitration Petition (L) No.29362 of 2022*

that Section 14 of the Arbitration Act does not empower the Court to second-guess the Arbitral Tribunal, especially when the decision of the Arbitral Tribunal is based on the appreciation of facts and a plausible view has been taken. The learned senior counsel further pointed out that the Arbitral Tribunal attempted to ensure Sheil's participation in Marico's arbitration. After the award in the case of Marico, Sheil declined to attend the meeting held on 11th March 2020 by the Arbitral Tribunal. It is submitted that there is nothing on record to indicate that the arbitration based on Sheil's claim was to proceed after Marico's arbitration, and there is no material placed on record to that effect. He submitted that the Arbitral Tribunal had rendered a finding of fact on the stand taken by Sheil, which cannot be disturbed by the Court. He submitted that Sheil's plea that it was awaiting the decision in the Marico arbitration could not be accepted as the Arbitral Tribunal never indicated that the arbitration based on Sheil's claim would proceed only after the Marico arbitration was over. He submitted that Sheil took no interest in moving the Arbitral Tribunal for a long time since 2012. He submitted that the word "unnecessary" used in Section 32(2)(c) of the Arbitration Act will have to be widely or liberally interpreted.

7. Mr Shekhar Naphade, the learned senior counsel appearing for Sheil, contended that without recording a positive finding that it is either unnecessary or impossible to continue the proceedings, the power under Section 32(2)(c) of the Arbitration Act cannot be exercised. Relying upon the decision on this Court in the case of ***Lalitkumar V Sanghavi & Anr. v. Dharamdas V Sanghavi & Ors.***[3]**,** the learned senior counsel submitted that the Court, while exercising the power under Section 14(2) of the Arbitration Act, is required to go into the issue of the legality of the termination of mandate by the Arbitral Tribunal. He submitted that the abandonment cannot be inferred. He relied upon a decision of this Court in the case of ***Godrej and Boyce Manufacturing Company Limited v. Municipal Corporation of Greater Mumbai & Ors***[4]**.** He submitted that suits filed by Marico and Sheil were separate suits, and, therefore, arbitral proceedings were also separate. Marico and Sheil had not sought any relief

3 [2014] 3 SCR 558 : (2014) 7 SCC 255

4 [2023] 6 SCR 56 : 2023 SCC Online 592

against each other. However, as there was an overlap between the two references concerning the enforceability of the consent terms, the parties agreed to proceed with Sheil's reference after Marico's reference was decided. He further submitted that after preliminary directions were issued on 8th November 2011 regarding the filing of pleadings, no further directions were issued by the sole Arbitrator in the reference of Sheil. He submitted that the decision of the Calcutta High Court in the case of ***NRP Projects Pvt. Ltd.***[1] is confined to the facts of the case before it. He submitted that Marico's reference took six years, and that is the reason for postponing Sheil's reference. The learned senior counsel would, therefore, submit that the interference made by the High Court in the arbitral proceedings under Section 14 of the Arbitration Act was certainly justified.

CONSIDERATION OF SUBMISSIONS

8. Chapter V of the Arbitration Act contains provisions regarding the conduct of arbitral proceedings. If parties do not agree on the timelines for filing statements of claim and defence, under sub-section (1) of Section 23, the Arbitral Tribunal has the power to determine the timelines for filing pleadings. Sub-section (4) of Section 23, incorporated with effect from 23rd October 2015, provides that the filing of pleadings (statements of claim and defence) shall be completed within six months from the date the learned Arbitrator or all the learned Arbitrators, as the case may be, receive notice of their appointment in writing.

9. After the pleadings are complete, the next stage is of hearing. Sub-section (2) of Section 24 provides that parties shall be given sufficient advance notice of any hearing or meeting of the Arbitral Tribunal for inspections of documents, goods or other property.

10. The issue of the parties' default is dealt with in Section 25 of the Arbitration Act. Section 25 reads thus:

> **"25. Default of a party**.—Unless otherwise agreed by the parties, where, without showing sufficient cause,—
>
> (a) **the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;**

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited.

(c) **a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.**"

(emphasis added)

Clause (a) of Section 25 of the Arbitration Act provides that on the failure of the claimants to communicate the statement of claim in accordance with sub-section (1) of Section 23, the Arbitral Tribunal shall terminate the proceedings. Clause (b) of Section 25 provides that if the respondent fails to communicate his statement of defence in accordance with sub-section (1) of Section 23, the Arbitral Tribunal shall continue the proceedings. Clause (c) of Section 25 provides that if a party fails to appear at an oral hearing or to produce documents, the Arbitral Tribunal may continue the proceedings and make the arbitral award on the basis of whatever evidence is available with it. The power to terminate arbitral proceedings on the claimant's default to file a statement of claim is the only provision under the Arbitration Act to terminate the arbitral proceedings apart from Section 32.

11. The Arbitration Act has two provisions for terminating an Arbitrator's mandate. Sections 14 and 15 are the relevant sections. The Arbitrator is empowered to withdraw from his office, which terminates his mandate. However, the arbitral proceedings continue by the arbitrator's substitution.

12. The order of termination passed by the learned Arbitrator, in this case, gives an impression that he was of the view that unless parties move the Arbitral Tribunal with a request to fix a meeting or a date for the hearing, the Tribunal was under no obligation to fix a meeting or a date for hearing. The appointment of the Arbitral Tribunal is made with the object of adjudicating upon the dispute covered by the arbitration clause in the agreement between the

parties. By agreement, the parties can appoint an Arbitrator or Arbitral Tribunal. Otherwise, the Court can do so under section 11 of the Arbitration Act. An Arbitrator does not do *pro bono* work. For him, it is a professional assignment. A duty is vested in the learned Arbitrator or the Arbitral Tribunal to adjudicate upon the dispute and to make an award. The object of the Arbitration Act is to provide for an efficient dispute resolution process. An Arbitrator who has accepted his appointment cannot say that he will not fix a meeting to conduct arbitral proceedings or a hearing date unless the parties request him to do so. It is the duty of the Arbitral Tribunal to do so. If the claimant fails to file his statement of claim in accordance with Section 23, in view of clause (a) of Section 25, the learned Arbitrator is bound to terminate the proceedings. If the respondent to the proceedings fails to file a statement of defence in accordance with Section 23, in the light of clause (b) of Section 25, the learned Arbitrator is bound to proceed further with the arbitral proceedings. Even if the claimant, after filing a statement of claim, fails to appear at an oral hearing or fails to produce documentary evidence, the learned Arbitrator is expected to continue the proceedings as provided in clause (c) of Section 25. Thus, he can proceed to make an award in such a case.

13. On a conjoint reading of Sections 14 and 15, it is apparent that an Arbitrator always has the option to withdraw for any reason. Therefore, he can withdraw because of the parties' non-cooperation in the proceedings. But in such a case, his mandate will be terminated, not the arbitral proceedings.

14. Now, we come to Section 32 of the Arbitration Act, which reads thus:

> **"32. Termination of proceedings.—** (1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).
>
> (2) **The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—**
>
> (a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings."

(emphasis added)

Section 32 provides for the termination of the arbitral proceedings in the following contingencies:

a. On making final arbitral award;

b. On the Claimant withdrawing his claim as provided under clause (a) of sub-section (2) of Section 32;

c. Parties agreeing on termination of arbitral proceedings as provided under clause (b) of sub-section (2) of Section 32; or

d. When the Arbitral Tribunal finds that the continuation of proceedings has become unnecessary or impossible for any other reason, as provided under clause (c) of sub-section (2) of Section 32.

15. Therefore, clause (c) of sub-section (2) of Section 32 can be invoked for reasons other than those mentioned in sub-section (1) of Section 32 and clauses (a) and (b) of sub-section (2) of Section 32. Under clause (c), the mere existence of a reason for terminating the proceedings is not sufficient. The reason must be such that the continuation of the proceedings has become unnecessary or impossible. In a given case, when a claimant files a claim and does not attend the proceedings, clause (a) of Section 25 comes into operation, resulting in the learned Arbitrator terminating the proceedings. If, after filing a claim, the claimant fails to appear at an oral hearing or fails to produce documentary evidence, it cannot be said that the continuation of proceedings has become unnecessary. If the claimant fails to appear at an oral hearing after filing the claim, in view of clause (c) of Section 25, the learned Arbitrator can proceed with the arbitral proceedings. The fact that clause (c) of Section 25 enables the

Arbitral Tribunal to proceed in the absence of the claimant shows the legislature's intention that the claimant's failure to appear after filing the claim cannot be a ground to say that the proceedings have become unnecessary or impossible.

16. Therefore, if the party fails to appear for a hearing after filing a claim, the learned Arbitrator cannot say that continuing the arbitral proceedings has become unnecessary. Abandonment by the claimant of his claim may be grounds for saying that the arbitral proceedings have become unnecessary. However, the abandonment must be established. Abandonment can be either express or implied. Abandonment cannot be readily inferred. One can say that there is an implied abandonment when admitted or proved facts are so clinching and convincing that the only inference which can be drawn is of the abandonment. Mere absence in proceedings or failure to participate does not, *per se,* amount to abandonment. Only if the established conduct of a claimant is such that it leads only to one conclusion that the claimant has given up, his/her claim can an inference of abandonment be drawn. Merely because a claimant, after filing his statement of claim, does not move the Arbitral Tribunal to fix a date for the hearing, it cannot be said that the claimant has abandoned his claim. The reason is that the Arbitral Tribunal has a duty to fix a date for a hearing. If the parties remain absent, the Arbitral Tribunal can take recourse to Section 25.

17. Now, coming to the facts of the case, we must note here that Sheil and Marico had filed separate suits. In the suit filed by Marico, an order was passed on 13th October 2011, referring the dispute involved therein to the sole Arbitrator. Similarly, in the suit filed by Sheil, the order of reference to the learned Arbitrator was passed on 17th November 2011. Therefore, by two separate orders, two arbitral proceedings were ordered to be initiated. In one proceeding, the claimant was Marico. The first appellant and Sheil were the respondents. In the other, Sheil was the claimant. The first appellant and Marico were the respondents. In fact, in the minutes of the preliminary meeting dated 8th November 2011, it is noted that the learned Arbitrator issued directions to Marico and Sheil to file their statements of claim. Therefore, even the learned Arbitrator proceeded on the footing that there were two distinct claimants and claims. They were directed to file their statements of claim in the respective arbitral proceedings.

After that, on 20th December 2011, the learned Arbitrator granted an extension of time to complete the pleadings. Both the claimants filed their respective statements of claim. The learned Arbitrator first conducted arbitral proceedings in which the claimant was Marico. Paragraph 10 of the award dated 6th May 2017 made on Marico's claim is very relevant, which reads thus:

> "**10.** The 2nd Respondent has also filed a reply to the Statement of Claim. However, no evidence was led by the 2nd Respondent (either documentary or oral) nor was any argument addressed by the 2nd Respondent to me, **although the 2nd Respondent was present at all hearings of this arbitration.**"
>
> (emphasis added)

The respondent no.2 before the Arbitral Tribunal was Sheil, as can be seen from the cause title of the award. Thus, Sheil was represented throughout before the Arbitral Tribunal during the hearing of the claim of Marico. Therefore, it cannot be said that the first respondent herein (Sheil) remained absent. On the contrary, it was present at all hearings. Nothing is placed on record to show that simultaneously with the arbitral proceedings based on the claim of Marico, any meeting or date was fixed by the learned Arbitrator for hearing the claim of Sheil. The first meeting on Sheil's claim was fixed on 11th March 2020 when COVID-19 pandemic had already set in.

18. The application made by the first appellant under Section 32(2)(c) of the Arbitration Act, in short, raised the following contentions:

a. Sheil did not bother to pursue its claim for eight years after filing the statement of claim;

b. Sheil did not attend the meeting of 11th March 2020;

c. Sheil attended the next meeting held on 12th August 2020 and informed the learned Arbitrator that it wished to press its claim and

d. Sheil has abandoned its claim.

19. Sheil filed an affidavit in reply to the said application filed by the first appellant. In the reply, a contention has been raised that the reference filed by Marico was taken up first and therefore, till the

award was made on 6th May 2017, there was no requirement on the part of Sheil to take any further steps. The affidavit of evidence of Mr. Sanjay Patel was affirmed on 16th April 2017 and was kept ready. Sheil has pleaded that there was a requirement to change its advocate. After Sheil engaged the services of M/s. Markand Gandhi & Co., its senior partner fell ill and died on 1st May 2018. As regards the meeting held on 11th March 2020, Sheil claimed that it had deputed one Mr Utsav Ghosh to attend the meeting. He reached late after the meeting dispersed.

20. The question is whether Sheil abandoned its claim filed before the learned Arbitrator. As stated earlier, Sheil regularly attended meetings held to hear Marico's claim. During the period during which the claim of Marico was heard, at no stage, the learned Arbitrator suggested that the claim of Sheil could be heard simultaneously. On the contrary, from the conduct of the parties and the learned Arbitrator, an inference can be drawn that Marico's claim was given priority. Two meetings were convened in March 2020 in connection with Sheil's claim. In March 2020, the COVID-19 was spreading its wings in our country. The second meeting in March 2020 was admittedly not held. In any case, there is no express abandonment. Even if it is to be implied, there must be convincing circumstances on record which lead to an inevitable inference about the abandonment. In the facts of the case, there was no abandonment either express or implied. In a case where the claim is abandoned, the learned Arbitrator can take the view that it would be unnecessary to continue the proceedings based on the already abandoned claim. In this case, the inference of the abandonment has been drawn by the learned Arbitrator only on the grounds that Sheil did not challenge the Marico award and took no steps to convene the meeting of the Arbitral Tribunal. The failure to challenge the award on Marico's claim will not amount to abandonment of the claim filed by Sheil in January 2012. In the claim submitted by Sheil, a prayer was made in the alternative for passing an award in terms of money against the first appellant. Therefore, we hold that there was absolutely no material on record to conclude that Sheil had abandoned its claim or, at least, the claim against the first appellant. Till the award dated 6th May 2017 was passed in Marico's claim, Sheil's representative was always present at all hearings till the passing of the award. After the award, the learned Arbitrator never convened a meeting to deal with Sheil's claim until

11th March 2020. Hence, the finding of the learned Arbitrator that there was abandonment of the claim by the first appellant is not based on any documentary or oral evidence on record. The finding is entirely illegal. Such a finding could never have been rendered on the material before the Arbitral Tribunal. Thus, the learned Arbitrator committed illegality.

21. To conclude,

a. The power under clause (c) of sub-section (2) of Section 32 of the Arbitration Act can be exercised only if, for some reason, the continuation of proceedings has become unnecessary or impossible. Unless the Arbitral Tribunal records its satisfaction based on the material on record that proceedings have become unnecessary or impossible, the power under clause (c) of sub-section (2) of Section 32 cannot be exercised. If the said power is exercised casually, it will defeat the very object of enacting the Arbitration Act;

b. It is the Arbitral Tribunal's duty to fix a meeting for hearing even if parties to the proceedings do not make such a request. It is the duty of the Arbitral Tribunal to adjudicate upon the dispute referred to it. If, on a date fixed for a meeting/hearing, the parties remain absent without any reasonable cause, the Arbitral Tribunal can always take recourse to the relevant provisions of the Arbitration Act, such as Section 25;

c. The failure of the claimant to request the Arbitral Tribunal to fix a date for hearing, *per se,* is no ground to conclude that the proceedings have become unnecessary; and

d. The abandonment of the claim by a claimant can be a ground to invoke clause (c) of sub-section (2) of Section 32. The abandonment of the claim can be either express or implied. The abandonment cannot be readily inferred. There is an implied abandonment when admitted or proved facts are so clinching that the only inference which can be drawn is of the abandonment. Only if the established conduct of a claimant is such that it leads only to one conclusion that the claimant has given up his/her claim can an inference of abandonment be drawn. Even if it is to be implied, there must be convincing circumstances on record which lead to an inevitable inference

about the abandonment. Only because a claimant, after filing his statement of claim, does not move the Arbitral Tribunal to fix a date for the hearing, the failure of the claimant, *per se*, will not amount to the abandonment of the claim.

22. Therefore, for the reasons recorded above, we concur with the view taken by the learned Single Judge. The appeal is, accordingly, dismissed with no order as to costs. As the learned sole Arbitrator has withdrawn from the proceedings, the parties shall take necessary steps to get the substituted Arbitrator appointed in accordance with law.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeal dismissed.

[2024] 6 S.C.R. 777 : 2024 INSC 451

Shaji Poulose
v.
Institute of Chartered Accountants of India & Others

(Transferred Case (Civil) No. 29 of 2021)

17 May 2024

[B.V. Nagarathna* and Augustine George Masih, JJ.]

Issue for Consideration

Council of the Institute of Chartered Accountants of India, if competent to impose, by way of Guidelines, a numerical restriction on the maximum number of tax audits that could be accepted by a Chartered Accountant, u/s. 44AB of the 1961 Act, in a Financial Year by way of a Guideline; the restrictions imposed, if unreasonable, arbitrary and illegal and thus, violative of the right guaranteed to Chartered Accountants u/Art. 19(1)(g) and impermissible u/Art. 14 of the Constitution; and exceeding of the specified number of tax audits, if can be deemed to be 'professional misconduct'.

Headnotes

Chartered Accountants Act, 1949 – Income Tax Act, 1961 – s. 44AB – Audit of accounts – Clause 6 of Guidelines No.1-CA(7)/02/2008 dated 08.08.2008 issued by the Institute of Chartered Accountants of India, restricting the number of tax audits that a Chartered Accountant could carry out which was initially thirty and later raised to forty-five and thereafter to sixty in an assessment year – Petitioners undertook audits u/s. 44AB of the IT Act, 1961 over and above the number of tax audits specified as per the Guidelines dated 08.08.2008 – Issuance of the notices to the petitioners for violation of the Guideline which was a misconduct – Initiation of disciplinary proceedings by the Institute against the petitioners – Challenge to the Guidelines as well as to the disciplinary proceedings:

Held: Clause 6.0, Chapter VI of the Guidelines dated 08.08.2008 and its subsequent amendment is valid and not violative of Art. 19(1)(g) as it is a reasonable restriction on the right to practise the profession by a Chartered Accountant and is protected or justifiable u/Art. 19(6) – However, the said clause 6.0, Chapter VI

* Author

of the Guidelines dated 08.08.2008 and its subsequent amendment is deemed not to be given effect to till 01.04.2024 – Thus, all proceedings initiated pursuant to the impugned Guideline in respect of the writ petitioners and other similarly situated Chartered Accountants quashed – Institute at liberty to enhance the specified number of audits that a Chartered Accountant can undertake u/s. 44AB, if it deems fit – Writ petitioners or any other member of the Institute at liberty to make a representation. [Para 50]

Chartered Accountants Act, 1949 – s. 22 – Income Tax Act, 1961 – s. 44AB – Guidelines No.1-CA(7)/02/2008 dt 08.08.2008 restricting the maximum number of tax audits that could be accepted by a Chartered Accountant, u/s. 44AB of the Income Tax Act, 1961, in a Financial Year – Competency of the Council of the Institute of Chartered Accountants of India, to impose restriction, by way of Guidelines:

Held: Council of the Institute had the legal competence to frame the impugned Guideline restricting the number of tax audits that a Chartered Accountant could carry out which was initially thirty and later raised to forty-five and thereafter to sixty in an assessment year, the breach of which would result in professional misconduct, in terms of clause 1 of Part II of the Second Schedule of the 1949 Act – It is not vitiated on account of there being lack of competency or powers to frame the Guideline by the Council of the Institute – Issuance of the Guidelines dt 08.08.2008 by the Institute not hit by the vice of excessive delegation – Thus, the Regulation or Guideline issued by the Council, being a part of clause 1 of Part II of the Second Schedule have to be read as part and parcel of the 1949 Act itself – Delegation of powers to add newer types of misconducts by way of a regulation or Guideline neither excessive nor ultra vires u/s. 22. [Paras 13.1-13.3]

Chartered Accountants Act, 1949 – Income Tax Act, 1961 – s. 44AB – Council of the Institute of Chartered Accountants of India, imposing by way of Guidelines No.1-CA(7)/02/2008 dated 08.08.2008 , a numerical restriction on the maximum number of tax audits that could be accepted by a Chartered Accountant, u/s. 44AB of the Income Tax Act, 1961, in a Financial Year by way of a Guideline – Restrictions imposed, if unreasonable, arbitrary and illegal and thus, violative of the right guaranteed to Chartered Accountants u/Art. 19(1)(g) and impermissible u/Art. 14 of the Constitution:

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Held: Guidelines dated 08.08.2008 and its subsequent amendment is valid and not violative of Art. 19(1)(g) and is protected or justifiable u/Art.19(6) – Ample material placed to establish that the legislation comes within the permissible limits of clause (6) – By virtue of being a licensee, a privilege is conferred on Chartered Accountants – It is in pursuance of the primary goal of public interest that a further privilege u/s. 44AB was extended to Chartered Accountants to conduct quality tax audits subject to reasonable restrictions, so as to enable the interest of the public exchequer – Court must consider the public interest involved not only from the perspective of the Chartered Accountants but rather from the perspective of the general public – Chartered Accountants is a profession-licensed by the State that also discharges public duties crucial in public interest – Compulsory tax audits was neither an inherent part of the practice of Chartered Accountant nor essential function which could be claimed as a fundamental right u/Art.19(1)(g) – Where public interest was the genesis of a privilege being extended to Chartered Accountants and not a right, it is reasonable that the Institute, would have the authority to regulate the privilege extended to Chartered Accountants in a reasonable manner deemed appropriate to serve public interest – Public interest involved in the instant petitions being pervasive is evidenced through CAG's recommendation to the Government to insert a provision in the statute book putting a cap on the number of tax audits permissible – Also restriction placed u/s.224 of the Companies Act with regard to the number of companies which could be audited by an auditor or firm of auditors is also an instance of regulation of the profession of Chartered Accountants intended by the Parliament to ensure that standard and quality in the audit of accounts of companies are maintained – Furthermore, where the devolution of privilege is justifiably restricted in public interest and such restriction has rational nexus with the objects sought to be achieved, the restriction cannot be held unreasonable due to hardship faced by a certain section of professionals. [Paras 19, 22,24-25, 29, 33, 36-37, 50]

Chartered Accountants Act, 1949 – Income Tax Act, 1961 – s. 44AB – Clause 6 of Guidelines No.1-CA(7)/02/2008 dt 08.08.2008 issued by the Institute of Chartered Accountants of India, restricting the number of tax audits that Chartered Accountant could carry out which was initially thirty and later raised to forty-five and thereafter to sixty in an assessment year – Petitioners undertook audits u/s.44AB over and above

the number of tax audits specified as per the Guidelines – Exceeding specified number of tax audits, if 'professional misconduct' – Institute initiating disciplinary proceedings only against few Chartered Accountants, including petitioners, while majority of Chartered Accountants who had breached the Guideline not facing any proceeding, if discriminatory:

Held: There has been an uncertainty in law due to a similar Guideline being successfully assailed and during the pendency of the matter before this Court the impugned Guideline being enforced and selective implementation of the same by the Institute – Initially notices were sent only selectively to Chartered Accountants who had completed more than two hundred audits not to all who had breached the impugned Guideline – For the limited period of uncertainty, the rule against doubtful penalization as a principle could, in the interest of justice and equity, be made applicable and the benefit of uncertainty be given to those subjected to misconduct proceedings in the instant writ petitions and to also those Chartered Accountants who may have received notices from the Institute and who may not have approached any court of law or to other similarly situated Chartered Accountants – Disciplinary proceedings initiated against the petitioners is quashed, since only the writ petitioners have been proceeded against, while around twelve thousand Chartered Accountants who had breached the Guideline were left out – Furthermore, a reasonable provision may with the passage of time become unreasonable – As regards, the restriction on the specified audits u/s. 44AB, Minutes of the Council of the Institute reflect that with the passage of time, the number of tax audits to be permitted have been repeatedly deliberated, re-evaluated and increased, subject to final decision taken by the Council – Since the last revision to sixty tax audits was made a decade ago, the Council to consider if the time is ripe to enhance the specified number of tax audits – Institute at liberty to enhance the specified number of tax audits that could be undertaken by the Chartered Accountants. [Paras 46, 47]

Chartered Accountants Act, 1949 – s. 22 – "professional or other misconduct" – Definition:

Held: s. 22 defines "professional or other misconduct" to deem to include any act or omission provided in any of the Schedules – However, nothing in s. 22 shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of s. 21 to inquire into the conduct of any

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member of the Institute under any other circumstances – Schedules which enumerate various kinds of misconducts are not exhaustive or static – With the passage of decades and with the emerging varieties of misdemeanour, omissions or commissions of Chartered Accountants which are not in consonance with professional ethics and would amount to misconduct can be defined under the Schedules so as to ensure quality service being rendered by the Chartered Accountants as professionals and there could be newer misconducts which could be included in the Schedules in the form of regulations or Guidelines – Part II of Second Schedule has delegated the power to the Council to make any regulation or Guideline, the breach of which would amount to a misconduct – This delegation to define and enumerate a misconduct by way of a regulation or a Guideline is a legislative device adopted by the Parliament so as to leave it to the discretion of the Council of the Institute to incorporate, define and insert a Guideline or a regulation, the breach of which would result in misconduct committed by Chartered Accountant. [Para 13.1]

Chartered Accountants Act, 1949 – Scheme and object of the enactment – Stated. [Paras 7.1-7.12]

Chartered Accountants – Role and importance of:

Held: Chartered Accountants can serve as effective catalysts in securing the virtuous circle of trust between the taxpayer and the tax administration – This is because a large proportion of the tax payers in India seek advice of Chartered Accountants – Integrity and standards of Chartered Accountants determine the efficiency in the functioning of the nation's taxation system – Onus is on Chartered Accountants to ensure that the Nation's businesses do indeed conform to high corporate governance standards – By providing the foundation for compilation of credible financial statements, the accounting profession facilitates market discipline, engenders confidence among various stakeholders and reduces the possibility of misleading information that can disrupt stability of financial systems – Thus, the need for quality assessments particularly u/s. 44AB of the IT Act, 1961 – Chartered Accountants must themselves comply with the relevant laws and regulations and avoid any conduct that discredits the profession – Chartered Accountants must refuse to represent clients who insist on resorting to unfair means – Chartered accountants are relevant not only in securing corporate governance, but governance in broader contexts too – Chartered Accountants face many different responsibilities

to the profession; to the tax administration; to the client and to the economy at large – Integrity, objectivity, professional competence and due care and confidentiality must be the doctrines guiding their work ethic. [Paras 49.1, 49.3-49.6]

Chartered Accountancy – Institute of Chartered Accountants of India – Role of:

Held: Institute has a significant role in ensuring the dynamism of the Chartered Accountancy course curriculum and the credibility of the examinations – Institute must be committed towards convergence of accounting, auditing and ethical standards with international practices and for its endeavour towards securing the highest standards of corporate governance – True test however, lies in application and enforcement of these standards in the Indian context. [Para 48]

Income Tax Act, 1961 – s. 44AB – Audit of accounts – Object and purpose of:

Held: s. 44AB provides that every person carrying on business, whose total sale, turnover or gross receipts exceed Rs.10 crore, and every person carrying on a profession, if his gross receipts exceed Rs.50 lakhs, in any previous year, is required to get his accounts of such previous year audited and verified by a Chartered Accountant – Said provision is called “compulsory tax audits” – Object and purpose of s. 44AB is to prevent evasion of taxes, plug loopholes enabling tax avoidance and also facilitate tax administration. [Para 7.14]

Case Law Cited

B.P. Sharma v. Union of India [2003] Supp. 2 SCR 684 **: (2003) 7 SCC 309;** *Minerva Talkies, Bangalore v. State of Karnataka* [1988] 2 SCR 511 **: AIR 1988 SC 526;** *B.K. Kamath v. The Institute of Chartered Accountants* **(2003) 2 KLJ 21 – relied on.**

Saghir Ahmad v. State of U.P. [1955] 1 SCR 707 **: (1954) 2 SCC 399;** *Institute of Chartered Financial Analysts of India v. Council of the Institute of Chartered Accountants of India* [2007] 6 SCR 1127 **: (2007) 12 SCC 210 – distinguished.**

Raja Video Parlour v. State of Punjab [1993] Supp. 1 SCR 149 **: (1993) 3 SCC 708;** *Kusum Ingots & Alloys Ltd. v. Union of India* [2004] Supp. 1 SCR 841 **: (2004) 6 SCC 254;** *Municipal Corporation of Greater Mumbai v. Anil Shantaram Khoje* [2014] 3 SCR 511 **: (2016) 15 SCC 726;** *Modern Dental College and Research Centre*

v. State of Madhya Pradesh [2016] 3 SCR 579 **: (2016) 7 SCC 353;** *V. Sasidharan v. Peter and Karunakar* [1985] 1 SCR 601 **: (1984) 4 SCC 230;** *Aswini Kumar Ghose v. Arabinda Bose* [1953] 1 SCR 1 **: (1952) 2 SCC 237;** *Devata Prasad Singh Chaudhuri v. Chief Justice and Judges of Patna High Court* [1962] 3 SCR 305**;** *Shri R. Nanabhoy v. Union of India* **(1982) SCC Online Del. 210;** *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association CSI CINOD Secretariat, Madras* [1992] 2 SCR 999 **: (1992) 3 SCC 1;** *Pathumma v. State of Kerala* [1978] 2 SCR 537 **: (1978) 2 SCC 1;** *M/s Laxmi Khandsari v. State of U.P.* [1981] 3 SCR 92 **: (1981) 2 SCC 600;** *Deepak Theatre, Dhuri v. State of Punjab* [1991] Supp. 3 SCR 242 **: 1992 Suppl. 1 SCC 684;** *T. Velayudhan Achari v. Union of India* [1993] 1 SCR 832 **: (1993) 2 SCC 582;** *All-India Federation of Tax Practitioners v. Union of India* [2007] 9 SCR 147 **: (2007) 7 SCC 527;** *Kerala Ayurveda Paramparya Vaidya Forum v. State of Kerala* [2018] 5 SCR 566 **: (2018) 6 SCC 648;** *Nagar Rice and Flour Mills v. N. Teekappa Gowda and Bros.* [1970] 3 SCR 846 **: (1970) 1 SCC 575;** *Hathising Manufacturing Co. Ltd. v. Union of India* [1960] 3 SCR 528**;** *Sakhawant Ali v. State of Orissa* [1955] 1 SCR 1004 **: (1954) 2 SCC 758;** *Mohd. Faruk v. State of M.P.* [1970] 1 SCR 156 **: (1969) 1 SCC 853;** *K. K. Kochuni v. States of Madras and Kerala* [1960] 3 SCR 887 **: (1958) SCC OnLine SC 12;** *Krishnan Kakkanth v. Govt. of Kerala* [1996] Supp. 7 SCR 487 **: (1997) 9 SCC 495;** *Sukumar Mukherjee v. State of W.B.* [1993] Supp. 1 SCR 339 **: (1993) 3 SCC 723;** *P.V. Sivarajan v. Union of India* [1959] Supp. 1 SCR 779 **: AIR (1959) SC 556;** *Jindal Paper & Plastics v. Union of India* **(1997) 10 SCC 536;** *Kasinka Trading v. UOI* [1994] Supp. 4 SCR 448 **: (1995) 1 SCC 274;** *Malpe Vishwanath Acharya v. State of Maharashtra* [1997] Supp. 6 SCR 717 **: (1998) 2 SCC 1;** *Motor General Traders v. State of A.P.* [1984] 1 SCR 594 **: (1984) 1 SCC 222 – referred to.**

Stephen Otis & Joseph F. Gassman v. E. A. Parker **187 U.S. 606 (1903); (1903) SCC OnLine US SC 22;** *Ohralik v. Ohio State Bar Association* **436 U.S. 447 (1978);** *Williamson vs. Lee Optical Co.* **348 U.S. 483 (1955);** *Semler v. Oregon State Board of Dental Examiners* **294 U.S. 608 (1935);** *Goldfarb v. Virginia State Bar* **421 U.S. 773, 792, (1975) – referred to.**

Books and Periodicals Cited

Halsbury Laws of England, 5th Edn. Volume 96 (2018); Francis Bennion on Statutory Interpretation (8th Edn, 2020 at Section 26.4) **– referred to.**

List of Acts

Chartered Accountants Act, 1949; Constitution of India; Income Tax Act, 1961; Taxation Laws (Amendment) Act, 1975; Finance Act, 1984; Finance Bill, 1984; Income Tax Rules, 1962; Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007; Chartered Accountants (Amendment) Act, 2006; Government of India Act, 1935; Companies Act, 1956; Auditors Certificate Rules; Companies Act, 1913; Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Act, 2022; Chartered Accountants Regulations, 1988.

List of Keywords

Chartered Accountants; Professional misconduct; Reasonable restriction on the right to practise the profession by a Chartered Accountant; Delegation; Excessive delegation; Numerical restriction on the maximum number of tax audits; Public interest; Privilege; Compulsory tax audits; Virtuous circle of trust; Integrity and standards of Chartered Accountants; Nation's taxation system; Compilation of credible financial statements; Unfair means; Professional or other misconduct; Misconduct; Misdemeanour, omissions or commissions of Chartered Accountants; Professional ethics; Corporate governance; Prevent evasion of taxes; Tax avoidance; Tax administration.

Case Arising From

CIVIL ORIGINAL JURISDICTION: Transferred Case (Civil) No. 29 of 2021

From the Judgment and Order dated 09.12.2020 of the Supreme Court of India in T.P. (C) No. 2849 of 2019

With

Writ Petition (Civil) Nos. 267, 272 371, 581, 670, 1084, 1200, 1256, 1291, 1295 and 1360 of 2021, Writ Petition (Civil) Nos. 32, 186 and 833 of 2022, Transferred Case (Civil) Nos. 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39 of 2021 and Transferred Case (Civil) Nos. 32, 33, 34, 35, 36, 37, 38, 39, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 , 64, 66, 67, 68, 69, 70,71, 72, 73, 74, 75, 76, 77, 78, 79, 81, 82, 83, 84, 85, 86, 87 and 88 of 2023

Shaji Poulose v.
Institute of Chartered Accountants of India & Others

Appearances for Parties

P.S. Patwalia, Rajshekhar Rao, Preetesh Kapur, Sr. Advs., Pai Amit, Ms. Pankhuri Bhardwaj, Abhiyudaya Vats, Nikhil Pahwa, Kushal Dube, Tathagata Dutta, Ms. Vanshika Dubey, P. Ashok, Ms. Lochana S. Babu, Smarhar Singh, Kunal Sharma, Jai Krishna Singh, Vikas Chopra, Ms. Shweta Kumari, Manoj Kumar, Rishi Raj, Manish K. Bishnoi, M. Anand, Shubhendu Bhattarcharyya, Ms. Ila Shikhar Sheel, Hitesh Lodwal, Arjun Garg, Shobhit Jain, Aakash Nandolia, Ms. Sagun Srivastava, Ms. Kriti Gupta, Nirmal Kumar Ambastha, Ms. Ashmita Bisarya, Sanjay Dutt, Ms. Lakshmi N. Kaimal, E. M. S. Anam, Ashwin Kumar Das, Ms. Aditi Anil Dani, Rangasaran Mohan, Ishan Roy Chowdhury, Ms. Surbhi Mehta, Tapesh Kumar Singh, Sukant Vikram, Prashant Bhardwaj, Aditya P. Singh, Animesh Dubey, Ravi Raghunath, Aakashi Lodha, Goutham Shivshankar, Ms. Ruchira Goel, Adit Jayeshbhai Shah, Ms. Sharanya Sinha, Ms. Shagun Parashar, K. Paari Vendhan, Anas Tanwir, Ebad, Parijat Kishore, Sanyat Lodha, Advs. for the Petitioner.

K.M. Natraj, ASG, Arvind P. Datar, Rupesh Kumar, Sr. Advs., Pramod Dayal, Nikunj Dayal, Raj Bahadur Yadav, Piyush Beriwal, Ms. Swayam Prabha Das, Shivank Pratap Singh, Shashank Bajpai, Ashok Panigrahi, Vatsal Joshi, Prahlad Singh, Diwakar Sharma, Amrish Kumar, Wills Mathews, Ms. Nanditta Batra, Paul John Edison, Ms. Shweta Garg, Advs. for the Respondent.

Petitioner-in-person

By Courts Motion

Judgment / Order of the Supreme Court

Judgment

Nagarathna, J.

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The petitioners herein are Chartered Accountants who have challenged the validity of Clause 6 of Guidelines No.1-CA(7)/02/2008 dated 08.08.2008 issued by the Institute of Chartered Accountants of India (hereinafter referred as, "respondent-Institute"), under powers conferred by the Chartered Accountants Act, 1949 (hereinafter referred to as "the 1949 Act") on the ground that the same is illegal, arbitrary and violative of Article 19(1)(g) of the Constitution of India.

1.1 Some of the present writ petitions have been filed before this Court under Article 32 of the Constitution while others were filed before various High Courts invoking Article 226 thereof. By order dated 09.12.2020, this Court transferred the writ petitions pending before various High Courts to this Court. That is how, these cases have been clubbed and were heard together and are being disposed of by this common order.

1.2 The petitioners are, specifically, aggrieved by the mandatory ceiling limit imposed by Clause 6.0, Chapter VI of said Guidelines on the number of tax audits that a Chartered Accountant can accept in a financial year under Section 44AB of the Income Tax Act, 1961 (hereinafter referred to as, "IT Act, 1961"). Additionally, and importantly, the petitioners seek a direction for quashing and/or setting aside of the disciplinary proceedings initiated by the respondent-Institute in pursuance of the Impugned Guideline. Clause 6.0, Chapter VI of Guidelines dated 08.08.2008 provides that a member of the Institute in practice shall not accept, in a financial year, more than the "specified number of tax audit assignments" under Section 44AB of the IT Act, 1961. It further provides that in the case of a firm of Chartered Accountants, the "specified number of tax audit assignments" shall be construed as the specified number of tax audit assignments for every partner of the firm.

1.3 At the outset, we find it pertinent to note that the ceiling limit, that is the subject of controversy has not been stagnant but has, on the basis of several factors, been increased by the Council of respondent-Institute during the passage of time. Initially, the Council of respondent-Institute v*ide* Notification No.1/CA(7)/3/88 dated 13.01.1989 set a limit of thirty audits, in exercise of powers conferred on it under Clause (ii), Part II, Second Schedule of the 1949 Act. Further, in February 2014, *vide* resolution adopted at the 331st Meeting of the Council of respondent-Institute, the ceiling limit in question was specified as sixty and presently stands the same.

Bird's Eye View of the Controversy:

2. The controversy that has arisen in these petitions is two-fold: firstly, whether the respondent-Institute, constituted under the 1949 Act, had the competency to impose a restriction of the nature and effect herein? If the answer is in the affirmative, secondly, whether a Chartered Accountant's right "*to practice any profession"* as provided under Article 19(1)(g) of the Constitution, is unreasonably restricted by a ceiling limit imposed by respondent-Institute on the number of tax audits, under Section 44AB, that can be accepted by a Chartered Accountant in a financial year? In other words, whether a Chartered Accountant can be restricted from undertaking more tax audits

than specified by the respondent-Institute? Whether the impugned Guideline is saved under Article 19(6) of the Constitution of India?

Historical Perspective:

3. It is apposite for us, at this juncture, to preface the origin of Section 44AB in the IT Act, 1961, popularly known as the *compulsory audit provision* and the ceiling limit imposed by the respondent-Institute on the Chartered Accountants by way of a Guideline, violation of which would result in a misconduct.

3.1 With the aim of examining and suggesting legal and administrative measures for countering evasion and avoidance in direct taxation in the country, the Government of India on 02.03.1970, constituted a High Power Committee of Experts, namely, the Direct Taxes Enquiry Committee, under the chairmanship of Justice K.N. Wanchoo, retired Chief Justice of India. In December 1971, the Wanchoo Committee submitted its Final Report to the Government of India. A bare perusal of *Chapter 1 – Introduction, Direct Taxes Enquiry Committee-Final Report* elucidates that the Wanchoo Committee was asked to examine and recommend:

(a) concrete and effective measures (i) to unearth black money and prevent its proliferation through further evasion; (ii) to check avoidance of tax through various legal devices, including the formation of trusts; and (iii) to reduce tax arrears,

(b) examine various exemptions allowed by the tax laws with a view to their modification, curtailment or withdrawal, and

(c) indicate the manner in which tax assessment and administration may be improved for giving effect to all its recommendations.

3.2 In order for the tax administration to become more efficient, the Committee, *inter alia,* made other extensive recommendations, in *Chapter 2 – Black Money and Tax Evasion* and recommended insertion of a statutory provision for compulsory audit of accounts. The Committee noted that mandatory audit, simultaneously with compulsory maintenance of accounts, would ensure that books and records are properly maintained; the taxpayer's income is faithfully presented, and proper presentation is facilitated before

the Assessing Officer. It was further understood that information furnished by the Auditor along with his certificate would enable building up of information for cross-verification leading to prevention of tax evasion and identification of new assessees. At *para 2.145,* it was interestingly noted that earlier Committees and Working Groups had also deliberated on a provision providing for compulsory audit. In furtherance, it was noted that the Working Group of the Administrative Reforms Commission had favoured compulsory audit by Chartered Accountants of persons with income over Rs.50,000 but it was finally decided that due to *limited number of Chartered Accountants* at that point in time, it may not be possible for all assesses to secure their services, except at heavy cost and delay. Noting, at *para 2.148,* that an auditor can devote more time to examination and verification of accounts than an Income-Tax Officer, the Wanchoo Committee recommended insertion of a provision for mandatory presentation of audited accounts and if found necessary, in practice, future evolution of proforma for furnishing of information by auditors.

3.3 It is pertinent to highlight that by the Taxation Laws (Amendment) Act, 1975, Section 142(2A) was inserted to the IT Act, 1961 conferring special power of audit by a Chartered Accountant in certain cases where so sought by the Assessing Officer.

3.4 Thereby, only a few of the recommendations of the Wanchoo Committee were accepted in the first instance and legislated upon by the Parliament. As per the respondent-Institute, this conspicuously reflects that the Parliament did not favour compulsory tax audit provision of all sizeable cases by Chartered Accountants and as a necessary corollary, the opportunity to conduct tax audits must be seen as a privilege extended by a statute.

3.5 Later, the provision for compulsory audits found favour with the Parliament and was inserted by the Parliament through Finance Act, 1984. The then Finance Minister, while introducing the budget through the Finance Bill, 1984 stated in Parliament as under:

> “With the reduction in rates and expeditious disposal of assessments, I believe there will now be no excuse

> for any leniency to be shown to those who abuse our laws, such cases will necessarily have to be dealt with severely. In order to discourage tax avoidance and tax evasion, I am also introducing some further measures. In all cases where the annual turnover exceeds Rs. 20 lakhs or where the gross receipts from a profession exceed Rs. 10 lakhs, I am providing for a compulsory audit of accounts. **This is intended to ensure that the books of account and other records are properly maintained and faithfully reflect the true income of the taxpayer. …**"
>
> ***(emphasis supplied)***

3.6 The relevant portion of the Memorandum explaining the provisions in Finance Bill, 1984, which proposed to introduce Section 44AB, reads as under:

> "16. A proper audit for tax purposes would ensure that the books of account and other records **are properly maintained and that they faithfully reflect the income of the tax payer and claims for deductions are correctly made by him.** Such audit would also help in checking fraudulent practices. It can also facilitate the administration of tax laws by proper presentation of the accounts before the tax authorities and **considerably saving the time of the assessing officers in carrying out routine verifications,** like checking correctness of totals and verifying whether purchases and sales are properly vouched or not. **The time of the assessing officers thus saved could be utilized for attending to more important investigational aspects of a case.**"
>
> ***(emphasis supplied)***

3.7 Finally, Clause No. 11 of the Finance Bill, 1984 (Bill No. 11 of 1984), was introduced in Parliament to give effect to the proposals of the Central Government. Resultantly, Section 44AB of the IT Act, 1961 was inserted and came into force w.e.f. 01.04.1985, providing for compulsory audit. Section 44AB, as it stood then, provided that every person carrying on business,

if his total sale, turnover or gross receipts exceed Rs.40 Lakhs and every person carrying on a profession, if his gross receipts exceed Rs.10 Lakhs, in any previous year, is required to get his accounts of such previous year audited by an Accountant and obtain before the specified date, a report of the audit in the prescribed form duly signed and verified. Explanation (i) to the Section 44AB clarified that the word 'accountant' shall have the meaning as in the Explanation to sub-section (2) of Section 288. The present position is that a tax audit, under Section 44AB, can be undertaken only by a Chartered Accountant. For immediate reference, Section 44AB when it was introduced is extracted as under:

> "**44AB. Audit of accounts of certain persons carrying on business or profession**.—Every person,—
>
> (a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds forty lakh rupees in any previous year or years relevant to the assessment year commencing on the 1st day of April, 1985 or any subsequent assessment year; or
>
> (b) carrying on profession shall, if his gross receipts in profession exceed ten lakh rupees in any previous year or years relevant to the assessment year commencing on the 1st day of April, 1985 or any subsequent assessment year,
>
> get his accounts of such previous year or years audited by an accountant before the specified date and obtain before that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:
>
> Provided that in a case where such person is required by or under any other law to get his accounts audited by an accountant, it shall be sufficient compliance with the provisions of this section if such person gets

the accounts of such business or profession audited under such law before the specified date and obtains before that date the report of the audit as required under such other law and a further report in the form prescribed under this section.

Explanation.—For the purposes of this section,—

(i) "accountant" shall have the same meaning as in the *Explanation* below sub-section (2) of section 288;

[(ii) "specified date", in relation to the accounts of the previous year or years relevant to an assessment year, means the date of the expiry of four months from the end of the previous year or, where there is more than one previous year, from the end of the previous year which expired last before the commencement of the assessment year, or the 30th day of June of the assessment year, whichever is later.'."

3.8 Pragmatically, the insertion of Section 44AB meant that persons covered by the provision must compulsorily get their accounts of relevant assessment year audited by a Chartered Accountant before the specified date and obtain a report of such audit in the prescribed form duly signed and verified by the Chartered Accountant furnishing the particulars stipulated in the rules made by the Central Board of Direct Taxes (for short, "CBDT") and annex them to their returns filed in accordance with Section 139 of the IT Act, 1961. Consequently, Rule 6G to the Income Tax Rules, 1962 was inserted.

3.9 At this chronological juncture, a perusal of relevant material indicates that the objective of the insertion of Section 44AB was multifold: firstly, it was intended that compulsory audit will discourage tax avoidance and tax evasion by allowing faithful reflection of income of the taxpayer and only appropriate claims for deductions. Secondly, and importantly, as Chartered Accountants can devote more time to examination and verification of accounts than an Assessing Officer, it was believed that a compulsory audit would save considerable and precious time of

assessing officers. Thirdly, it was hoped that proper presentation of income and records in a structured and presentable manner will be facilitated by compulsory audit. Comprehensively, it is apparent that the intent behind Section 44AB was not to codify an essential extant practice of the Chartered Accountant's profession but to mandate tax audits to prevent evasion of taxes, plug loopholes leading to tax avoidance and also facilitate tax administration, thereby ensuring that the economic system does not result in concentration of wealth to the common detriment.

3.10 Post insertion of Section 44AB in the statute book and in pursuance of its operation, CBDT noted that the quality of tax audits was deteriorating as some Chartered Accountants were completing fifty tax audits a month. It is apparent on the face of the material perused that such a finding would run counter to the long sought and deliberated goal of plugging the loopholes in tax administration and saving considerable and precious time of assessing officers by presentation of quality audit reports. To remedy this, authorities in tax administration were of the view that the Government could impose a ceiling on maximum number of audits an auditor could undertake. *Vide* letter dt. 19.01.1988, CBDT sought comments from the Secretary, Institute of Chartered Accountants of India on possibly restricting the number of tax audits a Chartered Accountant may be permitted to complete in a year. The contents of the CBDT letter dated 19.01.1988 are reproduced as under:

> "F.No.225/2/88-IT.ALL
> Government of India
> Ministry of Finance
> Department of Revenue
> (C.B.D.T.)
>
> New Delhi, Dated the 19th January, 1988.
>
> Shri R.L. Chopra,
> Secretary,
> Institute of Chartered Accountants of India,
> I.P. Estate,
> New Delhi.
>
> Sub: Fixation of number of tax audit per auditor.

Dear Sir,

As per the provisions of Section 44AB of the Income Tax Act, a class of assesses have to get their accounts audited by auditor. This audit has to be completed by a particular date as provided in Section 44AB of the Act. It has been represented that some of the auditors are completing around 50 audits in a month which result in the deterioration of the quality of audit. It has, therefore, been that the Government may fix the maximum number of audits which an auditor may be allowed to undertake under the provisions of Section 44AB of the Income Tax Act. In this connection reference has also been invited to Section 224 of the Companies Act whereby the number of company audits which a Chartered Accountant can do has been restricted to 20.

2. You are requested to kindly send your comments regarding the suggestion of restricting the number of audits under Section 44AB of the Income Tax Act which a Chartered Accountant may be permitted to complete. The number of audits as in the case of Section 224 of the Companies Act may also be indicated. I would request you to kindly forward the comments of the Institute at the earliest.

Yours faithfully,
Sd/-
(M.G.C. Goyal)
Officer on Special Duty (IT.ALL)
Central Board of Direct Taxes."

3.11 After consideration of the aforesaid letter, the Professional Development Committee of the respondent-Institute at its 90th Meeting held on 22.02.1988 recommended that every Chartered Accountant be permitted to conduct a maximum of twenty tax audits of non-corporate assessees every year in addition to entitlement of audits conducted under the Companies Act and other statutes. Considering the recommendation of the Professional Development Committee, on 28.04.1988–30.04.1988, the Council of the respondent-Institute in its 133rd

Meeting decided to issue a Notification under Clause (ii) of Part II of the Second Schedule of the 1949 Act specifying that w.e.f. 01.04.1989 a member of the respondent-Institute in practice shall be deemed guilty of professional misconduct, if he accepts in a financial year more than thirty assignments of tax audit, be they in respect of corporate or non-corporate assessees. It was further decided that in case of a partnership firm, the number of tax audits shall be counted at the rate of thirty assignments per partner of thirty tax audit. In pursuance of this decision, Notification No.1/CA(7)/3/88 dated 13.01.1989 was issued by the Council, setting the limit of thirty tax audits. Admittedly, at this point, the ceiling limit was intended as only a self-regulatory mechanism to be followed by all members.

3.12 The *vires* and constitutionality of aforesaid Notification No. 1/CA(7)/3/88, dated 13.01.1989 was the subject of much litigation before several High Courts. In fact, the Notification was successfully challenged by a practicing Chartered Accountant, in Writ Petition No.5925 of 1989 before the Madras High Court. The legality and validity of the Notification No.1/CA(7)/3/88, dated 13.01.1989 as also Notification No.1-CA(7)/15887 dated 25.05.1987 was also assailed in Writ Petition No.5926 of 1989. The central challenge in both writ petitions was to the Notifications being violative of Article 19(1)(g) of the Constitution. Of imminent interest is the constitutional challenge to the ceiling limit in Writ Petition No.5925/1989. The Madras High Court observed that '*accepting a legitimate professional engagement by a professional can never be considered unprofessional and be made a misconduct'*. It was further noted that, once a person acquires the requisite qualifications to be a Chartered Accountant, he would be free to engage himself in the profession restricted only by conduct marred with dishonesty and inviting condemnation. Therefore, it was observed that the Act and the Rules could bring in restrictions or provisions only for the purpose of attaining the aforesaid professional standards. The judgment in Writ Petition No.5925 of 1989 was affirmed by the Division Bench in Writ Appeal Nos.1452-1453 of 1998, on 24.03.2005. Furthermore, in SLP(C) Nos. 14370-14371/2005 preferred by respondent-Institute, this Court *vide* Order dated 29.07.2005, issued notice and granted a stay on the operation

of the judgment of learned Division Bench of Madras High Court. The aforesaid captioned Special Leave Petitions were admitted as Civil Appeal Nos. 7208-7209 of 2005.

3.13 Certain other High Courts dismissed the challenge to the *vires* and constitutionality of the Notification dated 13.01.1989. Amongst others, four such petitions filed before the Madhya Pradesh High Court have been brought to our attention, being Miscellaneous Petition No.2844 of 1989 – *Prem Chand vs. Institute of Chartered Accountants of India*; Miscellaneous Petition No.2792 of 1990 – *Ram Narain vs. Institute of Chartered Accountants of India;* Miscellaneous Petition No.4202 of 1992 – *Arun Grover vs. Institute of Chartered Accountants of India; and* Miscellaneous Petition No.3307 of 1993 – *Anil Kumar Gupta vs. Institute of Chartered Accountants of India.* The challenge in all the above captioned petitions was to the validity and legality of the Notification dated 13.01.1989. By way of a common judgment dated 18.04.1995 passed by the Division Bench of the Madhya Pradesh High Court, the aforesaid writ petitions were dismissed holding that the Notification does not take away the right of petitioners to carry on their profession but only placed a ceiling limit for purposes of effective and business-like audit. Furthermore, the Division Bench of the High Court found that public interest was met by distribution of work amongst many Chartered Accountants. Against the aforesaid judgment of the Division Bench of Madhya Pradesh High Court, leave was granted by this Court in Special Leave Petition (Civil) No.21988 of 1995 but the Civil Appeal was dismissed as withdrawn by order dated 04.05.1999. Before the Madhya Pradesh High Court, in another Writ Petition No.2085 of 1993 – *Prakash Mehta vs. ICAI*, the validity and legality of the Notification dated 13.01.1989 was challenged. However, the said writ petition was dismissed by the said High Court by its order dated 16.05.2005.

3.14 Further, a challenge to Notification dated 13.01.1989 was dismissed by the High Court of Kerala *vide* judgment dated 25.02.2003 in O.P. No. 3775 of 1991. Dismissing the challenge, it was noted that Section 30(2)(k) of the 1949 Act vests power on the Council to make regulations for regulating and maintaining the status of members of the Institute and standard of professional qualifications of members of the Institute. It was noted that the

restriction therein, as it does here, confined the ceiling limit only to tax audit assignments accepted under Section 44AB and not to any other audit work, unless otherwise restricted under any law. Noting the importance attributed to a certificate of audit issued by a Chartered Accountant and its concomitant serious public interest, it was further noted that audit is a time-bound work demanding precision and that the intent of the restriction was to ensure quality and accuracy in execution. It was further noted that on recommendation of the Professional Development Committee, the Notification had been issued by the Council of Chartered Accountants, which is composed of its members, by its members and for its members. Observing that under Section 15 of the 1949 Act, it is the duty and function of the Council to make provision for regulating and maintaining the status of members of the Institute and that Section 30(2)(k) empowers the Council to frame regulations in that regard, the restriction was held to be reasonable. It is also pertinent to highlight that the judgments in writ petitions before the Madras High Court and Madhya Pradesh High Court were considered and the latter High Court found itself in disagreement with the Madras High Court on the ground that the restriction had been imposed by a competent statutory body of professionals in the interest of the profession. It was reasoned that no interference was warranted when the statutory body had taken a decision within its powers in the interest of the profession. Against the aforesaid judgment of the High Court of Kerala, Writ Appeal No.1116/2003 was filed before the Division Bench of the Kerala High Court but was dismissed as infructuous on 14.01.2016 on account of the death of the writ petitioner therein.

3.15 At the 184th Meeting of the Council in the year 1997, it considered the issue of certain Chartered Accountants exceeding the prescribed limit and proceeded to refer the matter to the Committee for Ethical Standards and Unjustified Removal of Auditors (CESURA) for a detailed review on the limit of thirty tax audits in a year and also to examine the issue of developing a suitable mechanism for the purpose of monitoring such limit. CESURA, in its 58th Meeting held on 25.02.1997 recommended that the Council, before developing a suitable mechanism for the purpose of monitoring such limit, should ask members to submit a report on the number of tax audits carried out by them

in a prescribed format. At its 186th Meeting, the Council took up the recommendation of the CESURA and asked members to submit a report on the number of tax audits carried out by them, as per the prescribed format appearing at pages 61 to 63 of the Guidance Note on Tax under Section 44AB of the IT Act, 1961. In pursuance of the decision of the Council taken at the 186th Meeting, an announcement was published in April, 1998 whereby members were requested to furnish the reports on number of tax audits carried out by them in the financial year corresponding to the assessment year 1997-98.

3.16 After several iterations of the announcement calling for the reports from members, the Council at its 197th Meeting, held on 16.01.1999-18.01.1999, considered the matter of review of limit of thirty tax audits in a year. It is important to note that members, even in the year 1999, were of the view that the objective of calling the information was only to review the limit and not to take disciplinary action and requested the President to suitably publish the view of the Council. In pursuance thereof, an announcement was published in the Institute's Journal in March, 1999, the relevant portion of it is reproduced as under:

> "*Dear Colleague*,
>
> March is a month of marching ahead.
>
> X X X
>
> *Ceiling on Tax Audit Under Section 44AB*
>
> The revision of ceiling on tax audit under Section 44AB of the Income Tax Act is under consideration of the Council. In order to enable the Council to take an appropriate decision in the matter, members are requested to comply with the requirements called for in the format published in the Journal. **The information is being collected only for statistical purposes and will be treated as confidential.**
>
> X X X
>
> Yours in professional fellowship
>
> New Delhi S.P. Chhajed,
> March 1, 1999 President"

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3.17 At the 66th Meeting of the CESURA, held on 08.09.1999 and 05.10.1999, 12,196 reports received from members/firms were examined and it was concluded that the average number of Tax Audits done by a member came out to be about 14-15 audits per partner/proprietor. Reviewing the same at the 205th Meeting of the Council held from 15.12.1999-17.12.1999, it was decided that since the average number of tax audits done by a member/partner of a firm came to be about 14 to 15 audits, therefore, no change was warranted. Notably, the minutes of 205th Meeting of the Council record the Institute's President's reference to a relevant paper presented in CAPA Conference at Korea in 1989. The minutes of the said Meeting describe the paper discussed in the Meeting of the Council as under:

> "The main thrust of the Korean paper was that when there was ceiling on audit, there was less competition. When less competition was there, the audit reports were qualified. When there was no ceiling, a member was free to accept any number of Tax Audits as a result of which there was more competition finally resulting in unqualified audit reports."

3.18 Considering that fourteen years had passed since the last ceiling limit was fixed in 1989 and that the number of persons eligible to tax audit had considerably increased due to the change in limits prescribed under Section 44AB, IT Act, 1961, the Financial Law Committee meeting of the respondent-Institute, held on 12.09.2003, recommended that the Council may increase the ceiling limit for tax audit assignments to fifty. However, the Council at its 236th Meeting decided against increasing the limit from thirty to fifty tax audits per member.

3.19 In exercise of powers conferred on the respondent-Institute by clauses (c) and (d) of Sub-section (2) of Section 29A, read with Sub-section (4) of Section 21 and Sub-sections (2) and (4) of Section 21B of the 1949 Act, the Central Government notified the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The said Rules came into effect from 27.02.2007.

3.20 At the 268th Meeting, held on 30.04.2007 – 02.05.2007, the Council discussed whether it should revise the ceiling limit on number of tax audits. The Council was divided on the issue whether the Council should increase the ceiling limit of tax audits although factors such as the increased permeation of access to technology and consequential increased professional competence of auditors, dynamic and increasing economy, growth of new and specialized areas of practices, and such other factors prevailed. The Council, finally authorized its President to decide upon an appropriate increase in the ceiling on number of tax audits after taking into consideration the views expressed by its members. In pursuance thereof, on 11.05.2007, the respondent-Institute increased the limit on number of tax audits from thirty to forty-five per Chartered Accountant per year.

3.21 At this stage it is pertinent to note that the respondent-Institute was of the opinion that the extant self-regulatory mechanism was ineffective in ensuring compliance of the maximum limit. Therefore, the 1949 Act was amended by the Parliament by the Chartered Accountants (Amendment) Act, 2006 (hereinafter referred to as "Amendment Act, 2006") by which the erstwhile Notifications were superseded by Guidelines dated 08.08.2008. In view of the above development, this Court by order dated 01.04.2013 dismissed the Civil Appeal Nos.7208-7209 of 2005 as having become infructuous. For ease of reference, the said order is extracted as under:

"Civil Appeal No(s). 7208-7209 of 2005

Decided on April 1, 2013

ORDER

These appeals have been preferred against the impugned judgment and order dated 24.3.2005 passed in Writ Appeal No .1452 & 1453/1998 by the High Court of Madras quashing the notifications issued by the appellant by which it has quashed the notifications dated 25.5.1987 and 13.1.1989 by which certain regulatory measures have been taken by the appellant against its members.

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Mr. N.K. Poddar, learned senior counsel appearing for the appellant stated that both these notifications do not survive. They have been withdrawn and subsequently two guidelines have been issued by the appellant on 8th August, 2008 for regulating the business of its members. However, subsequently one of them had also been withdrawn in 2011 and today only one guidelines is issued for which the appellant has not received any representation, ventilation or any grievance from any member of the appellant association in respect of the existing guidelines which deals with Section 44 A(b) of the Income Tax Act, 1961. Mr. Poddar further submitted that in case, the appellant receives any representation against such existing guidelines, the highest body of the appellant will consider it and will take a decision as to whether such guidelines would continue or require any kind of modification.

In view of the above, we do not propose to hear the appeals on merit and the same are dismissed as having become infructuous. However, in case any member is aggrieved of the existing guidelines and files a representation before the appellant, the appellant shall consider it and pass appropriate order, and if any member is aggrieved thereof whether he has made representation or not, would have right to challenge it before the appropriate forum.

With the aforesaid observations, the appeals stand dismissed. Before parting with the case, we express our thanks to Shri K.V. Vishwanathan, learned senior counsel, Amicus Curiae, for rendering assistance in the instant case."

3.22 In a further exercise of review of the limit, at the 331st Meeting of the Council held in February 2014, it was again decided to increase the limit on accepting tax audits from forty-five to sixty w.e.f. from the financial year 2014-15.

3.23 In order to establish that the restriction has been incisively deliberated upon and the need of the restriction has been

supported by expert practitioners over an extended period of time, the respondent-Institute has placed heavy reliance on the above-discussed CBDT letter dated 19.01.1988 and the Report of the Comptroller and Auditor General of India (for short, "CAG"), being No. 32 of 2014, tiled ***"Performance Audit on Appreciation of Third Party (Chartered Accountant) Reporting in Assessment Proceedings",*** presented to the Parliament on 19.12.2014.

3.24 Our attention was drawn to '***Section 3.6 Control on number of tax audit assignment'*** of the CAG's Report wherein pertinent observations were made on effectuating control on Chartered Accountants undertaking tax audit assignments under Section 44AB of the IT Act, 1961. Highlighting the relationship between the number of tax audits undertaken and the quality of tax audits, the CAG reported that there was no system in field offices of Income-Tax Department (for short, "ITD") to monitor compliance by Chartered Accountants of ceiling limit set by respondent-Institute. The CAG was informed by the respondent-Institute, in September 2014, that even though Chartered Accountants have been provided with Form of Tax Audit particulars to be maintained by members/Firm, maintenance of such records is a self-regulatory mechanism and can be called upon by respondent-Institute for checking adherence to the Guidelines. However, any formal complaint received by respondent-Institute was acted upon within the framework provided in the Chartered Accountants Act and the Misconduct Rules, 2007 framed thereunder.

3.25 As per information provided by DGIT(Systems), ITD to the CAG in August, 2014:

a. 65,898 Chartered Accountants submitted at least one Tax Audit Report (TAR) for AY 2013-14. Further, out of total 65,898 records of Chartered Accountants:

   i. 81.13% Chartered Accountants adhered to the limit of forty-five prescribed by ICAI (Institute of Chartered Accountants of India).

   ii. 18.87% submitted more than forty-five TARs (Tax Audit Reports).

   iii. Excess number of tax audits ranged from 46 to 2471.

b. A table showing twenty-two Chartered Accountants who issued more than forty-five TARs for the annual year 2013-2014 ranged from 401 TARs up to 2471 TARs.

The CAG Report pointed out that the purpose of maintenance of quality audit work had suffered due to no monitoring mechanism of this crucial ceiling limit by either respondent-Institute or ITD as per the following statistics:

Stratification of total TARs issued by Chartered Accountant for Assessment Year 2013-14

(*vide* CAG Report No. 32/2014, Section 3.6)

Range of TARs issued	Total Number of Accountants	Percentage of Total Accountants
1-45	53,463	81.13
46-100	10,838	16.45
101-200	1,364	2.07
201-300	166	0.25
301-400	45	0.07
401-500	10	0.02
501-1000	11	0.02
> 1000	1	0
Total Accountants	65,898	100

Note: 81.13% adhered to the ceiling limit.

Therefore, the CAG, at ***Section 3.11(d) Recommendations*** of the same Report recommended that the:

d. Ministry may ensure limiting the tax audit assignments in order to ensure quality of Tax Audit.

3.26 The Ministry replied contending that the respondent-Institute, as an expert statutory body, would lay down restrictions on the number of tax audits and be capable of enforcing it. However, the CAG noted that Chartered Accountants have been assigned very crucial work of tax audit and therefore, the introduction of a suitable control mechanism in the IT system, by the Ministry,

in consultation with respondent-Institute, was in the interest of the revenue for ensuring quality of tax audit.

3.27 Respondent-Institute at its 339th Meeting held from 23.12.2014 to 25.12.2014 discussed the report of the CAG and in pursuance thereof, a group of Council Members was constituted on 24.01.2015 to study the report of the CAG for the year ending March, 2014 and place its findings before the Council for appropriate direction. The Council decided to refer all cases, where ceiling was exceeded, to the Director (Discipline).

3.28 It is averred that respondent-Institute had no mechanism to record exact data on number of tax audits undertaken by a Chartered Accountant until the respondent-Institute made it mandatory in 2019 that submission of all tax audit reports undertaken by a Chartered Accountants be marked with a 'Unique Document Identification Number ('UDIN'). Lacking such a mechanism, the respondent-Institute, seeking to initiate disciplinary proceedings for professional misconduct for carrying out tax audits assignments under Section 44AB of the IT Act, 1961, treated data gathered by the CAG as complaints and issued communications to some petitioner-Chartered Accountants who accepted more than specified limit of tax audits for the Assessment Year 2013-14, namely, forty-five.

3.29 It was submitted on behalf of respondent-Institute in the course of proceedings that it decided to issue communications to only those Chartered Accountants who had conducted more than 200 tax audits in a relevant Assessment Year. As of date, the respondent-Institute has issued only 276 notices although there has been violation by over ten thousand Chartered Accountants.

3.30 Aggrieved by the aforesaid communications seeking initiation of disciplinary proceedings for professional misconduct, several petitioner-Chartered Accountants have challenged the impugned Guidelines dated 08.08.2008 as well as the communications initiated by the respondent-Institute before respective High Courts having jurisdiction. In some writ petitions pending before various High Courts, stay of the disciplinary proceedings initiated by the respondent-Institute has been granted.

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3.31 In order to avoid multiplicity of proceedings and conflicting decisions by various High Courts seized of identical issues, respondent-Institute filed Transfer Petition (Civil) Nos. 2849-2859 of 2019 and 727-728 of 2020 before this Court seeking transfer of the various Writ Petitions pending in the High Courts of Kerala, Madras and Calcutta to this Court. By order dated 09.12.2020, a three-Judge Bench of this Court, in T.P.(C) Nos. 2849-2859 of 2019, noting in paragraph 16 that the question involved was of public importance and necessitated a comprehensive settlement of the question of law, allowed the transfer petitions. Consequently, the writ petitions were withdrawn from the respective High Courts and transferred to this Court. Thereafter, by subsequent orders passed by this Court, all the identical writ petitions pending before various High Courts were transferred to this Court. That is why, all these transferred cases and the writ petitions filed under Article 32 of the Constitution of India have been heard together. The relief sought in these writ petitions are similar and hence the relief sought in Writ Petition No. 25662 of 2016 before Kerala High Court [Transferred Case (Civil) No.29 of 2021 before this Court] are extracted as under:

"RELIEFS:-

(a) Declare that the restriction imposed by Ext P2 circular on the number of tax audits is discriminatory, unreasonable and violative of article 19(1)(g) of the Indian Constitution.

(b) To call for records leading to Ext P2 guidelines 2008 and issue a writ in the nature of certiorari or any other appropriate writ, order or direction and quash and set aside chapter VI of Ext P2, which deals with tax audit assignments under section 44AB of the Income Tax Act 1961.

(c) To call for records leading to Exhibit P3, Exhibit P7 and Exhibit P9 and issue a writ in the nature of certiorari or any other appropriate writ order or direction, setting aside Ext P3, P7 and P9 as the same is violative of fundamental rights guaranteed under Article 14 and l9(1)(g) and also against the direction in Ext Pl judgment.

(d) To direct the highest body of the 1st respondent to pass orders on Ext P5 representation filed by the petitioner.

(e) To grant such other appropriate reliefs to the Petitioner as this Hon'ble Court may deem fit and proper in the interest of justice."

Hence, this Court has now come to be seized of the present petitions and questions involved therein.

Submissions:

4. We have heard learned senior counsel Sri V. Giri, Sri P.S. Patwalia, Sri Preetesh Kapur, Sri Rajashekhar Rao, Sri Tapesh Kumar Singh and learned counsel Sri Manish K. Bishnoi, Sri Pai Amit, Sri Goutham Shivshankar, Sri Nirmal Kumar Ambastha, Sri Ashwin Kumar Das, Sri B. Ramana Kumar and other learned counsel for the petitioners and learned senior counsel for the respondents Sri Arvind P. Datar ably assisted by Sri Nikunj Dayal, Advocate and learned counsel for the intervenors Sri Wills Mathews.

Submissions of the Petitioners:

4.1 Leading the arguments, Sri V. Giri submitted that the primary case of the petitioners is that the impugned Chapter VI of the Guidelines dated 08.08.2008 imposing an unreasonable restriction on a Chartered Accountant duly qualified to practice the profession of Chartered Accountancy in India is violative of Article 19(1)(g) of the Constitution. Furthermore, the impugned Guidelines are arbitrary and lack any rational nexus with the objects sought to be achieved by the 1949 Act, namely, the regulation and maintenance of the status and standard of professional qualifications of the members of the Institute.

4.2 Learned senior counsel appearing for petitioners submitted that the intention of the 1949 Act was to provide for a rigorous test and exemplary qualification to enter into the sphere of the profession of accountants in practice and once in possession of requisite qualification, such a person is entitled to follow a profession which is exclusive and special on its own merit without any kind of restriction except for a conduct amounting to misconduct within the rigours of the 1949 Act. As a consequence, petitioners

contended that accepting a legitimate professional engagement by a professional can never be considered unprofessional or be considered a misconduct.

4.3 To highlight the arbitrariness of the restriction, it was contended on behalf of the petitioners that the restriction lacks any reasonable classification and reasonable nexus with the objects sought to be achieved. If the ceiling limit has been imposed on audits under Section 44AB, to achieve purity and quality of work, the restriction should have been imposed on the volume of work, as evidenced from the number of transactions and not on the number of audits. It was argued that a single audit work itself could be voluminous and occupy significant amount of a Chartered Accountant's time, whereas another audit work itself could be completed with relative ease and within a limited time.

4.4 Furthermore, it was contended that the impugned Guidelines lack any reasonable classification or reasonable differentia on putting a ceiling limit on the number of tax audits under Section 44AB, IT Act, 1961 insofar as no maximum cap is placed on other audit assignments under the IT Act, 1961 that are carried out by Chartered Accountants with similarly taxing reporting requirements, such as Sections 44AD, 44AE, 44AF of the IT Act, 1961. In furtherance of the above, it was also urged that the impugned Guidelines, in effect, also discriminate between Chartered Accountants practicing in smaller cities and towns as they are not in a position to charge the fee for each tax audit assignment in the same manner which can be charged by a Chartered Accountant practicing in big metropolitan cities. In effect, it was contended that the restriction will cause a more significant drop in the income of Chartered Accountants practicing in *mofussil* areas. As a result of this uneven restriction, an efficient Chartered Accountant may be able to complete the entire audit work within a short duration and remain unemployed for the rest of the year, was the submission made.

4.5 As further contended by the petitioners, the main object of the 1949 Act, is to regulate the conduct of the members of the respondent-Institute in carrying out their professional duties and the exercise of agency by a Chartered Accountant in choosing his own volume of work cannot be considered professional

misconduct. Furthermore, where the Act and Rules made thereunder would be entitled to bring restrictions or provisions only for the purpose of attaining the prescribed professional standards, a mere choice of work could not be considered professional misconduct.

4.6 During the course of arguments, analogies were often drawn to the legal profession to argue that, it is, firstly, inconceivable that a cap could be put on the number of cases that an advocate can take up and, secondly, there is no norm, custom, or practice of the profession that would require the rule-making body to ensure equitable distribution of work to younger Chartered Accountants. Relatedly, it was contended that the equitable distribution of work cannot automatically lead to betterment of the standards of chartered accountancy profession in the country.

4.7 It was further submitted on behalf of the petitioners that a Chartered Accountant's fundamental right to practice the profession is unreasonably restricted as there is no sanctity in the ceiling limit prescribed by the respondent-Institute. According to the petitioners, such a restriction ignores the differentiation in professional competence, sincerity, experience, ability and other factors that would enable a Chartered Accountant to complete more than the specified limit while simultaneously ensuring compliance with all quality standards. The petitioners also vehemently argued that all auditors cannot be assumed to take equal time in completing a tax audit and the consequential conclusion that a Chartered Accountant would be able to satisfactorily fulfil his obligations only up to specified tax audit assignments under Section 44AB of the IT Act, 1961 would be fallacious. Furthermore, according to petitioners, by classifying both in the same category, the Guidelines fail to acknowledge the difference in competency between a senior Chartered Accountant who has years of experience, reputation, facility of ten articled clerks and availability of other audit staff with a fresh Chartered Accountant who has no articled clerk and no audit staff. Reliance in this regard was placed on ***Raja Video Parlour vs. State of Punjab*, (1993) 3 SCC 708 ("Raja Video Parlour"),** wherein this Court held that limiting the maximum seating capacity to 50, irrespective of the size of the screen in a cinema hall was unconstitutional and violative of Article 19(1)(g).

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4.8 Learned counsel for the petitioners have vehemently argued that in the absence of any statistics or data supporting the restriction on the number of tax audits and a related reasonable explanation justifying such a cap, this restriction could not be justified under Article 19(6) of the Constitution. Thereby, the petitioners have contended, that the limit on the number of tax audits a Chartered Accountant could accept has no reasonable nexus with the provisions of Section 44AB.

4.9 The petitioners have also drawn our attention to allegedly-identical Notification No.1/CA(7)/3/88 dated 13.01.1989 issued by the Council of the respondent-Institute in exercise of powers conferred under Clause (ii) of Part II of Second Schedule to the 1949 Act. It was highlighted that said Notification brought a restriction of the exact nature, function and importantly, restrictive effect wherein a ceiling limit of thirty tax audits was imposed under Section 44AB of the IT Act, 1961. The petitioners have placed most significant reliance on the fact that the said Notification was quashed and held to be *ultra vires* the Constitution by a judgment of the Madras High Court dated 13.07.1998 in Writ Petition (C) No.5925 of 1989 and the same was affirmed by a Division Bench of the same Court.

4.10 The contention is that the respondent-Institute issued impugned Guidelines dated 08.08.2008 during the pendency of the challenge to the Madras High Court judgment before this Court, solely to negate the binding dictum of judgment of the Madras High Court. Neither was any permission of this Court sought by respondent-Institute nor was this Court informed on 01.04.2013 that new Guidelines were of identical nature as the Notification impugned therein. Importantly, the argument of the petitioners is that the respondent-Institute could not have issued notices or instituted disciplinary proceedings, as doing so would be in teeth of the dictum laid by the Madras High Court which had not been reversed on merits by this Court. Reliance was placed by learned counsel for the petitioners on ***Kusum Ingots & Alloys Ltd. vs. Union of India*, (2004) 6 SCC 254 ("Kusum Ingots & Alloys Ltd.")**, to contend that when the Madras High Court had quashed an identical Notification dated 13.01.1989, the same was in effect throughout the territory of India. It was held in ***Kusum Ingots & Alloys Ltd.*** as under:

> “**22.** The Court must have the requisite territorial jurisdiction. An order passed on a writ petition questioning the constitutionality of a parliamentary Act, whether interim or final keeping in view the provisions contained in clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act.”

4.11 Challenge to procedural impropriety in issuance of the impugned Guidelines was also advanced by the petitioners. It was highlighted that impugned Guidelines were not issued in compliance with provisions of the 1949 Act as the Regulations made by the Council of the respondent-Institute were not notified in the official Gazette of India and despite the requirements of Section 30B of the Act, Impugned Guidelines were not laid before both Houses of Parliament. Thereby, it was contended, that the impugned Guidelines do not have the sanction of law. Therefore, learned senior counsel and learned counsel for the petitioners contended that the Guidelines dated 08.08.2008 may be struck down as running foul of Articles 19(1)(g) and 14 of the Constitution of India.

4.12 Learned senior counsel for petitioner in Writ Petition(C) No.1360 of 2021, Sri P.S. Patwalia relied upon the judgment of this Court in ***Institute of Chartered Financial Analysts of India vs. Council of the Institute of Chartered Accountants of India*, (2007) 12 SCC 210, (“Institute of Chartered Financial Analysts of India”)** to contend that undertaking more tax audits could not possibly classify as professional misconduct. According to the learned senior counsel, the aforesaid case assists their submissions insofar as it was held that classification of an activity must be looked at pragmatically and within the structural context and realities. Therein, it was held that acquiring a qualification could not be construed as a professional misconduct and consequentially, such a restriction was held to be violative of Articles 14 and 19(1)(g). On a similar ground, emphasizing the sanctity of a right guaranteed under Article 19(1)(g), reliance was placed on paras 14 and 15 of the judgment in ***B.P. Sharma vs. Union of India*, (2003) 7 SCC 309, (“B.P. Sharma”)**, wherein this Court held as unconstitutional, a ban on carrying on a

private profession or self-employment on attaining a certain age specified by the State in the absence of any reasons therefor.

4.13 Learned senior counsel appearing for the petitioners in Writ Petition (C) No.267/2021 argued that by no stretch of imagination could the restriction as sought to be imposed herein could be achieved simply through a resolution – a delegated legislation not specifically provided for by the Parliament to impose a quantitative restriction. It was further contended that the Guidelines are *ultra vires* the provisions of the Act inasmuch as there is no power at all under the Act to lay down a maximum limit on the number of tax audits. Learned senior counsel focused on the language of the Preamble of the 1949 Act to argue that the Act was sought by the Parliament to 'make provisions' to regulate the profession. Thereby, any regulation made has to relate to a specific provision and no omnibus power to regulate has been granted to the Council.

4.14 Learned senior counsel Sri Patwalia further contended that the power to issue Guidelines has been conferred for the first time by the Amendment Act, 2022 by way of insertion of sub-clause (fa) and hence the impugned Guideline issued earlier in the year 2008 is without authority of law. Furthermore, it was contended that where Section 30B of the 1949 Act provides for power to make Regulations "for the purpose of carrying out the objects of the Act", subject to the following conditions: (i) prior approval of the Central Government under Sub-section (3) of Section 30 and (ii) the requirement under Section 30-B of laying the same before Parliament. The Council could not have circumvented the aforesaid mandatory safeguards by resorting to power under Section 15, especially when creating penal consequences. Reliance in this regard was placed on ***Municipal Corporation of Greater Mumbai vs. Anil Shantaram Khoje*, (2016) 15 SCC 726, ("MCGM")** to contend that a regulation comes into operation only after promulgation in the official gazette.

4.15 Furthermore, learned senior counsel Sri Preetesh Kapur submitted that a restriction of this nature, to be found good in law, must have a legitimate nexus to the object sought and also, necessarily satisfy the proportionality test elucidated by this Court in ***Modern Dental College and Research Centre***

***vs. State of Madhya Pradesh*, (2016) 7 SCC 353, ("Modern Dental College and Research Centre").** Learned counsel contended that where a fundamental right of an individual is abridged, justification of the restriction needs more than mere demonstration of power; that the aforesaid position forms a part of our jurisprudence.

4.16 Learned senior counsel elucidated that a significant effect of the present restriction would be that a structural advantage is accrued to partnership firms over sole practitioners as a partnership firm of Chartered Accountants will be able to take up more multiples of tax audits than an individual practitioner permissibly can under the Guidelines. Learned counsel contended that a Chartered Accountant has a fundamental right to carry out tax audit, guaranteed under Article 19(1)(g) and such a right could not be bartered away to colleagues in a partnership firm.

4.17 Learned senior counsel also argued that the impugned Guideline is hit from the vice of excessive delegation as a resolution, by itself, could not penalize as misconduct for taking on more clients. Also, reliance was placed on ***V. Sasidharan vs. Peter and Karunakar*, (1984) 4 SCC 230, ("V. Sasidharan")** wherein this Court had held that the office of a lawyer is not a commercial establishment under the Shop & Establishments Act, 1968 (Kerala Act). Relying on the aforesaid, it was contended by learned counsel that a technical profession stands on a different footing to other professions and while a prescription for technical qualification would be a reasonable restriction under Article 19(6), any other restriction on a profession must be carefully construed.

4.18 It was argued by learned senior counsel Sri Singh that professions have existed even before the Constitution came into being. Prior to the enforcement of the Constitution, an attempt to move a legislation to restrict the practice of a profession was subject to seeking the assent of Governor-General, in case of Federal Legislature, and the Governor in case of provincial legislature. Importantly, the Governor-General could not have given sanction, if a legislation was framed to restrict lawful practice of the profession, except in 'public interest'. As per

learned counsel, the position could not have been said to be worse off after the coming into force of our Constitution, i.e. after repeal of the Government of India Act, 1935. That even if there were some safeguards and guardrails, the same could only be further emboldened. To buttress his submissions, learned counsel Sri Singh also laid emphasis on the judgment of a Constitution Bench of this Court in ***Aswini Kumar Ghose vs. Arabinda Bose*, (1952) 2 SCC 237, ("Aswini Kumar Ghose")** and ***Devata Prasad Singh Chaudhuri vs. Chief Justice and Judges of Patna High Court*, (1962) 3 SCR 305, ("Devata Prasad Singh Chaudhuri")**, to contend that a rule made by an authority to deny the right to exercise essential part of a function would be a serious invasion on the statutory right to practice.

4.19 Learned senior counsel, Sri Rajshekhar Rao, appearing for some of the petitioners submitted on the importance of professional identity of a Chartered Accountant. He also argued that the object of attaining quality has no nexus with the imposed restriction which, effectively restricts both the practitioner and the client in making a choice. It was pressed that the consequences of a punishment being imposed by the respondent-Institute are grave insofar as besides the punishment imposed, various audit works namely, Bank Audit etc. have a requirement that the auditor must not have suffered any kind of punishment for professional misconduct.

4.20 According to learned senior counsel, the Council of respondent-Institute, under powers conferred on it by the 1949 Act, deems a member to be qualified and competent to dutifully practice the services required of a Chartered Accountant and thereby, imposition of a blanket ban by the same Council without any qualitative assessment imposes an onerous penalty on the rights of a Chartered Accountant. More so, to attach a label of professional misconduct without any qualitative assessment, simply due to exceeding the maximum limit, would be incongruous with the object sought and damage future potential prospects without any established relationship between numerical benchmark and quality.

4.21 Reliance was placed by the petitioners on a judgment of the High Court of Delhi in ***Shri R. Nanabhoy vs. Union of India,***

1982 SCC Online Del. 210 : CWP No. 2398/81, ("Shri R. Nanabhoy"). It was held by Wad, J. therein that Section 233(B) and Section 637(A) of the Companies Act, 1956 did not empower the Central Government to impose any restriction on the number of cost audits which a cost accountant may undertake. Noting that there was no material to base such a restriction, he further found that such a cap on maximum number of audits was arbitrary and in violation of Article 14 of the Constitution.

4.22 It was also canvassed on behalf of the petitioners that where the challenge to an erstwhile *in pari materia* Notification was not decided on merits the respondent-Institute erred in initiating disciplinary proceedings and imposing punishments, especially where a stay on the operation of the judgment of Madras High Court had been granted. Reliance was placed on ***Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association CSI CINOD Secretariat, Madras*, *(1992) 3 SCC 1 ('Chamundi Mopeds')*.** Petitioners therefore sought the reliefs as noted above by allowing the writ petitions.

Submission of the Respondents:

5. *Per contra*, learned senior counsel Sri Arvind Datar, ably assisted by learned counsel Sri Nikunj Dayal, contended that the Guideline with regard to exceeding the specified number of tax audits being a misconduct was inserted pursuant to the communication received from the CBDT and with the aim of maintaining quality in tax audits. According to learned senior counsel, putting a cap on the tax audits to be undertaken by the Chartered Accountants under Section 44AB of the IT Act, 1961, would not in any way restrict the freedom envisaged under Article 19(1)(g) of the Constitution of India. The said cap has been envisaged in public interest and therefore saved under Article 19(6) of the Constitution of India.

5.1 Learned senior counsel Shri Datar submitted that all writ petitioners herein have breached the Guideline and undertaken more than the specified number of tax audits as envisaged, thereby clearly committing a misconduct. Therefore, they would have to face the disciplinary proceedings initiated by the respondent-Institute and cannot assail the validity of the Guideline by either questioning the competence of the

respondent-Institute in making such a Guideline or the manner in which the said Guideline was introduced on the statute book.

5.2 That, the Guidelines dated 08.08.2008 were issued in exercise of powers under clause (i) of Part II of the Second Schedule of the 1949 Act and in its role as the only statutory body for regulating and governing the profession of Chartered Accountants, the respondent-Institute can define misconduct to ensure quality and professional good conduct. Further, the object is not to prohibit practice of but only to maintain quality in audit work, which is wholly in the interest of the general public including the ITD. It was further contended that the objects of both, the instant Guidelines dated 08.08.2008 and the erstwhile Notification dated 13.01.1989 have been to ensure efficiency, improve quality service, ensure maintenance of high standards of performance and to have equitable distribution of tax audit work amongst members of the respondent-Institute.

5.3 Learned senior counsel for the respondent-Institute submitted that the notified limit on tax audits has been decided by the Council, an expert body, on consideration of all pragmatic limitations and other work undertaken by a Chartered Accountant besides tax audit under Section 44AB, IT Act,1961. Section 139 of the IT Act, 1961 mandatorily requires every assessee, governed by provisions of Section 44AB of the IT Act, 1961, to file tax audit report along with his return before the due date – presently, 30th September of every year. That being the case, the respondent-Institute contended that a Chartered Accountant cannot conceivably complete more than the specified number of audits in a period of 25-30 weeks, i.e., from April-September of the relevant assessment year.

5.4 Learned senior counsel sought to repel the argument that the petitioners' right under Article 19(1)(g) is violated by the restriction. Instead, it was argued that the right of an Indian citizen under the Constitution to practice any profession is not an absolute right but can be appropriately limited under Article 19(6). It was submitted that the right to practice as a Chartered Accountant is conferred by the 1949 Act and the same may be limited by conditions and limitations stipulated under the Act or Regulations or Guidelines framed thereunder. The contention

of the respondent-Institute was that under Article 19(1)(g), what is available is a right to practice as a Chartered Accountant in accordance with the 1949 Act and the Guidelines or regulations made thereunder which is subject to reasonable restrictions.

5.5 Sri Datar took us through a wide variety of professional work that can be undertaken by a Chartered Accountant in practice such as statutory corporate audit, representation before tax authorities, consultation, audits under Section 44AF, audits under Section 141(3)(g) of the Companies Act, etc. It was contended that the ceiling has been imposed only in respect of the statutory tax audits under Section 44AB of the IT Act, 1961, which form a class by themselves as they involve more time and effort and are significantly more onerous.

5.6 On the question of professional misconduct, respondent-Institute sought to argue that the expression 'professional misconduct' cannot be construed to mean only an irregularity or an act of lowering of dignity of the profession. Rather, the respondent-Institute being a regulatory body of professionals can define misconduct to control and penalize a deviation from the quality compliance standards, *inter alia*, for which the respondent-Institute has been established by the Parliament to ensure. Reliance was placed on Section 30 of the 1949 Act, read with clause (i) of Part II of the Second Schedule of the 1949 Act, to act effectively for ensuring compliance with standards of the Institute by penalizing a deviation as a misconduct.

5.7 Learned senior counsel for the respondent-Institute argued that a serious public purpose involved behind the Notification is visible under the 1949 Act which seeks to regulate the profession, hence the impugned Guidelines are issued to ensure maintenance of quality and standards in the work done and services rendered by Chartered Accountants. This would also aid in better and equitable distribution of work amongst the Chartered Accountants and to avoid concentration of professional work in a few hands, to ensure which is also a duty cast upon the Council in furtherance of its regulatory functions under the said Act. As per the respondent-Institute, the Council is in the best position to have definite information about deterioration in the quality of work, as also monopolization – both relevant factors

in taking a decision on the maximum number of tax audits to be accepted.

5.8 It was also contended that a reduction in income and/or client base is not a ground in itself to say that fundamental rights of a professional are affected. Nor can there by a comparison with the Advocate's profession.

5.9 To contravene the contention raised by petitioners that neither does the 1949 Act contemplate distribution of available work amongst Chartered Accountants, nor is there any obligation to provide work for young Chartered Accountants, it was contended that under the 1949 Act, the respondent-Institute has a responsibility to regulate the profession and hence, the Guidelines have been made to ensure quality work and equitable distribution of work amongst Chartered Accountants which objects are indisputably in furtherance of that statutory duty.

It was also submitted that the Division Bench of Madras High Court did not consider the judgment of the learned Single Judge of the Kerala High Court in ***B.K. Kamath vs. The Institute of Chartered Accountants, (2003) 2 KLJ 21, ("B.K. Kamath")***. However, the judgment of learned Single Judge of the Madras High Court was considered and dealt with by the Kerala High Court.

5.10 Learned senior counsel, Sri Datar placed reliance on a judgment of this court in ***Pathumma vs. State of Kerala, (1978) 2 SCC 1, ("Pathumma")***, in support of his contention that a just balance between the fundamental rights and the larger and broader interest of society must be struck by this Court while trying to protect fundamental rights. Furthermore, it was argued that this Court should defer to the Legislature in appreciating the needs of the people and interfere only when the statute is clearly violative of the right conferred on the citizens under Part III of the Constitution. In addition to the foregoing, reliance was also placed on ***M/s Laxmi Khandsari vs. State of U.P., (1981) 2 SCC 600, ("M/s Laxmi Khandsari")***, to submit that if the restrictions imposed appear to be consistent with the Directive Principles of State Policy in Part IV of the Constitution they would have to be upheld as the same would be in public interest and reasonable. Further, according to learned senior counsel, in judging the reasonableness, this Court should bear

in mind that the present restriction is imposed in furtherance of Part IV of the Constitution.

5.11 Further reliance was also placed on ***Minerva Talkies, Bangalore vs. State of Karnataka, AIR 1988 SC 526 ("Minerva Talkies"),*** in support of the contention that Chartered Accountants have no unrestricted fundamental right to carry on the profession unregulated by the provisions of the the 1949 Act, including the regulations made and the Guidelines issued thereunder in the interest of general public and the society at large. In ***Minerva Talkies,*** this Court had upheld the restriction to limit the number of cinema shows to four in a day. This Court had further held that no law can be held to be unreasonable merely because it results in reduction in the income of the citizen.

5.12 Learned senior counsel, Sri Datar, also argued that the power to regulate a particular business or profession implies the power to prescribe and enforce all such just and reasonable rules and regulations, as may be deemed necessary for conduct of business or profession in a proper and orderly manner *vide* ***Deepak Theatre, Dhuri vs. State of Punjab, 1992 Suppl. (1) SCC 684, ("Deepak Theatre").*** Reliance was further placed by the respondents on ***T. Velayudhan Achari vs. Union of India, (1993) 2 SCC 582, ("T. Velayudhan Achari")***, wherein it was held that limiting the number of depositors that can be accepted by an individual, firm or unincorporated associations under Section 45S(1) of the Banking Laws (Amendment) Act, 1983 is not violative of Article 19(1)(g) of the Constitution, as it is in public interest that larger interests of the depositors are protected.

5.13 The judgment of Delhi High Court in ***Shri R. Nanabhoy,*** was sought to be distinguished from the present case by citing the presence of both legislative sanction and expert opinion, *vide* CBDT Letter dated 19.01.1988 and CAG Report No.32 of 2014, supporting the utility of the measure in achieving the objects sought, namely, quality and accuracy in such audits.

5.14 Therefore, it was prayed by the respondent-Institute that all the writ petitions/transferred cases filed before various High Courts and this Court challenging the validity of Chapter VI of the Council Guidelines No.1-CA(7)/02/2008 dated 08.08.2008

issued by the respondent-Institute be held to be devoid of any merits and thereby dismissed.

Points for Consideration:

6. Having heard learned senior counsel and learned counsel appearing for the respective parties and upon perusal of the record, the following points would arise for our consideration:

   (i) Whether the Council of the respondent-Institute, under the 1949 Act, was competent to impose, by way of Guidelines, a numerical restriction on the maximum number of tax audits that could be accepted by a Chartered Accountant, under Section 44AB of the IT Act, 1961, in a Financial Year by way of a Guideline?

   (ii) Whether the restrictions imposed are unreasonable and therefore, violative of the right guaranteed to Chartered Accountants under Article 19(1)(g) of the Constitution?

   (iii) Whether the restrictions imposed are arbitrary and illegal and therefore, impermissible under Article 14 of the Constitution?

   (iv) Whether exceeding such specified number of tax audits can be deemed to be 'professional misconduct'?

   (v) What order?

Legal Framework:

7. At this stage, the relevant provisions of the 1949 Act must be perused. The Government of India framed the Auditors Certificate Rules in 1932 in exercise of the powers conferred by Section 144 of the Indian Companies Act, 1913. While the accountancy profession in India was regulated under those Rules, in order to have a permanent regulation of accountancy profession, it was found necessary to have a body to secure and maintain all the requisite standards of professional qualifications, discipline and conduct of the accountancy.

   7.1 In the above context, of particular relevance is the Statement of Objects and Reasons of the 1949 Act (*see* Gazette of India, 11-09-1948, Pt. V, p. 709), which is reproduced hereunder:-

> "STATEMENT OF OBJECTS AND REASONS
>
> 1. The accountancy profession in India is at present regulated by the Auditors Certificates Rules framed

> in 1932 in exercise of the powers conferred on the Government of India by Section 144 of the Indian Companies Act, 1913, and the Indian Accountancy Board advises Government in all matters relating to the profession and assists it in maintaining the standards of the professional qualifications and conduct required of the members of the profession. The majority of the Board's members are elected by Registered Accountants members of the profession from all parts of India. These arrangements have, however, all long been intended to be only transitional, ***to lead up to a system in which such accountants will, in autonomous association of themselves, largely assume the responsibilities involved in the discharge of their public duties by securing maintenance of the requisite standard of professional qualifications, discipline and conduct,*** the control of the Central Government being confined to a very few specified matters.
>
> 2. The Bill seeks to authorise the incorporation by statute of such an autonomous professional body and embodies a scheme which is largely the result of a detailed examination of the whole position by an *ad hoc* expert body constituted for the purpose, after taking into account the views expressed by the various Provincial Governments and public bodies concerned."
>
> ***(emphasis supplied)***

Therefore, the 1949 Act was enacted with the object of incorporating an autonomous professional body of accountants that would, in respect of discharge of their public duties, provide for uniform regulation of the profession. Thereby, it is apparent that the relationship of the profession to public duty is closely present even in the earliest statutory prescription.

7.2 It is pertinent to note that the long title and preamble of the 1949 Act was amended, w.e.f. 10.05.2022, *vide* the Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Act, 2022, to substitute "regulation and development" instead of the extant "regulation".

The amended long title and preamble of the 1949 Act reads as under:

> "An Act to make provision for the **regulation and development** of the profession of Chartered Accountants."
>
> ***(emphasis supplied)***

7.3 Section 2 of the 1949 Act deals with interpretation and the relevant clauses of Section 2 are extracted as under:

> **"2. Interpretation.-** (1) In this Act, unless there is anything repugnant in the subject or context,–
>
> x x x
>
> (b) "chartered accountant" means a person who is a member of the Institute;
>
> (c) "Council" means the Council of the Institute;
>
> x x x
>
> (e) "Institute" means the Institute of Chartered Accountants of India constituted under this Act;
>
> x x x
>
> (2) A member of the Institute shall be deemed "to be in practice", when individually or in partnership with chartered accountants in practice, or in partnership with members of such other recognised professions as may be prescribed, he, in consideration of remuneration received or to be received,–
>
> (i) engages himself in the practice of accountancy; or
>
> (ii) offers to perform or performs services involving the auditing or verification of financial transactions, books, accounts or records, or the preparation, verification or certification of financial accounting and related statements or holds himself out to the public as an accountant; or
>
> (iii) renders professional services or assistance in or about matters of principle or detail relating to accounting procedure or the recording,

presentation or certification of financial facts or data: or

(iv) renders such other services as, in the opinion of the Council are or may be rendered by a chartered accountant in practice;

and the words "to be in practice" with their grammatical variations and cognate expressions shall be construed accordingly.

Explanation.– An associate or a fellow of the Institute who is a salaried employee of a chartered accountant in practice or a firm of such chartered accountants or firm consisting of one or more chartered accountants and members of any other professional body having prescribed qualifications shall, notwithstanding such employment, be deemed to be in practice for the limited purpose of the training of articled assistants."

7.4 Section 3 deals with incorporation of Institute of Chartered Accountants of India while Section 7 states that every member of the Institute is to be known as Chartered Accountant. *Vide* Section 9, the Council of the Institute is constituted for the management of the affairs of the Institute and for discharging the functions assigned to it under the Act and its functions are delineated in Section 15. The above-mentioned Sections are extracted as under:

"3. Incorporation of the Institute.-

(1) All persons whose names are entered in the Register at the commencement of this Act and all persons who may hereafter have their names entered in the Register under the provisions of this Act, so long as they continue to have their names borne on the said Register, are hereby constituted a body corporate by the name of the Institute of Chartered Accountants of India, and all such persons shall be known as members of the Institute.

(2) The Institute shall have perpetual succession and a common seal and shall have power to acquire,

hold and dispose of property, both movable and immovable, and shall by its name sue or be sued.

x x x

7. Members to be known as Chartered Accountants. - Every member of the Institute in practice shall, and any other member may, use the designation of a chartered accountant and no member using such designation shall use any other description, whether in addition thereto or in substitution therefor:

Provided that nothing contained in this Section shall be deemed to prohibit any such person from adding any other description or letters to his name, if entitled thereto, to indicate membership of such other Institute of accountancy, whether in India or elsewhere, as may be recognised in this behalf by the Council, or any other qualification that he may possess, or to prohibit a firm, all the partners of which are members of the Institute and in practice, from being known by its firm name as Chartered Accountants.

x x x

9. Constitution of the Council of the Institute.-

(1) There shall be a Council of the Institute for the management of the affairs of the Institute and for discharging the functions assigned to it under this Act.

(2) The Council shall be composed of the following persons, namely :–

(a) not more than thirty-two persons elected by the members of the Institute from amongst the fellows of the Institute chosen in such manner and from such regional constituencies as may be specified:

Provided that a fellow of the Institute, who has been found guilty of any professional or other misconduct and whose name is removed from the Register or has

been awarded penalty of fine, shall not be eligible to contest the election,–

(i) in case of misconduct falling under the First Schedule of this Act, for a period of three years;

(ii) in case of misconduct falling under the Second Schedule of this Act, for a period of six years,

from the completion of the period of removal of name from the Register or payment of fine, as the case may be;

(b) not more than eight persons to be nominated in the specified manner, by the Central Government.

(3) No person holding a post under the Central Government or a State Government shall be eligible for election to the Council under clause (a) of sub-section (2).

(4) No person who has been auditor of the Institute shall be eligible for election to the Council under clause (a) of sub-section (2), for a period of three years after he ceases to be an auditor.

x x x

15. Functions of Council.-

(1) The Institute shall function under the overall control, guidance and supervision of the Council and the duty of carrying out the provisions of this Act shall be vested in the Council.

(2) In particular, and without prejudice to the generality of the foregoing powers, the duties of the Council shall include –

(a) to approve academic courses and their contents;

(b) the examination of candidates for enrolment and the prescribing of fees therefor;

(c) the regulation of the engagement and training of articled and audit assistants;

(d) the prescribing of qualifications for entry in the Register;

(e) the recognition of foreign qualifications and training for the purposes of enrolment;

(f) the granting or refusal of certificates of practice under this Act;

(g) the maintenance and publication of a Register of persons qualified to practice as chartered accountants;

(h) the levy and collection of fees from members, examinees and other persons;

(i) subject to the orders of the appropriate authorities under the Act, the removal of names from the Register and the restoration to the Register of names which have been removed;

(j) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;

(k) the carrying out, by granting financial assistance to persons other than members of the Council or in any other manner, of research in accountancy;

(l) the maintenance of a library and publication of books and periodicals relating to accountancy;

(m) to enable functioning of the Director (Discipline), the Board of Discipline, the Disciplinary Committee and the Appellate Authority constituted under the provisions of this Act;

(n) to enable functioning of the Quality Review Board;

(o) consideration of the recommendations of the Quality Review Board made under clause (a) of Section 28B and the details of action taken thereon in its annual report; and

(p) to ensure the functioning of the Institute in accordance with the provisions of this Act and in performance of other statutory duties as may be entrusted to the Institute from time to time."

7.5 Clause (fa) was inserted by the 'Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Act, 2022' and the same reads as under:

> **"15. Functions of Council.-**
>
> (2) In particular, and without prejudice to the generality of the foregoing powers, the duties of the Council shall include –
>
> x x x
>
> (fa) to issue guidelines for the purpose of carrying out the objects of this Act;"

7.6 Chapter V of the 1949 Act deals with Misconduct. Section 22 defines professional or other misconduct as under:

> **"22. Professional or other misconduct defined.-** For the purposes of this Act, the expression "professional or other misconduct" shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this Section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances."

Section 22 of the 1949 Act defines "professional or other misconduct" to include any act or omission provided in any of the Schedules to the Act. Clause (1) of Part II of the Second Schedule to the Act stipulates that a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct if he contravenes any of the provisions of the Act or the regulations made thereunder or any Guidelines issued by the Council of the respondent-Institute. For immediate reference the same reads as under:

> "**PART II: Professional misconduct in relation to members of the Institute generally**
>
> A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he –

(1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;"

Therefore, if a member of the Institute contravenes the provisions of the aforesaid Chapter VI of the Guidelines dated 08.08.2008, he shall be deemed to be guilty of professional misconduct under the 1949 Act. Clause 6 is extracted as under:

"**Chapter VI**

Tax Audit assignments under Section 44AB of the Income-tax Act, 1961

6.0. A member of the Institute in practice shall not accept, in a financial year, more than the "specified number of tax audit assignments" under Section 44AB of the Income-tax Act, 1961.

Provided that in the case of a firm of Chartered Accountants in practice, the "specified number of tax audit assignments" shall be construed as the specified number of tax audit assignments for every partner of the firm.

Provided further that where any partner of the firm is also a partner of any other firm or firms of Chartered Accountants in practice, the number of tax audit assignments which may be taken for all the firms together in relation to such partner shall not exceed the "specified number of tax audit assignments" in the aggregate.

Provided further that where any partner of a firm of Chartered Accountants in practice accepts one or more tax audit assignments in his individual capacity, the total number of such assignments which may be accepted by him shall not exceed the "specified number of tax audit assignments" in the aggregate.

Provided also that the audits conducted under Section 44AD, 44AE and 44AF of the Income-tax Act, 1961 shall not be taken into account for the

purpose of reckoning the "specified number of tax audit assignments".

6.1. Explanation:

For the above purpose, "the specified number of tax audit assignments" means –

(a) in the case of a Chartered Accountant in practice or a proprietary firm of Chartered Accountant, 45 tax audit assignments, in a financial year, whether in respect of corporate or non-corporate assesses.

(b) in the case of firm of Chartered Accountants in practice, 45 tax audit assignments per partner in the firm, in a financial year, whether in respect of corporate or non-corporate assesses.

6.1.1 In computing the "specified number of tax audit assignments" each year's audit would be taken as a separate assignment.

6.1.2 In computing the "specified number of tax audit assignments", the number of such assignments, which he or any partner of his firm has accepted whether singly or in combination with any other Chartered Accountant in practice or firm of such Chartered Accountants, shall be taken into account.

6.1.3 The audit of the head office and branch offices of a concern shall be regarded as one tax audit assignment.

6.1.4 The audit of one or more branches of the same concern by one Chartered Accountant in practice shall be construed as only one tax audit assignment.

6.1.5 A Chartered Accountant being a part time practicing partner of a firm shall not be taken into account for the purpose of reckoning the tax audit assignments of the firm.

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6.1.6 A Chartered Accountant in practice shall maintain a record of the tax audit assignments accepted by him relating to each financial year in the format as may be prescribed by the Council."

The Council at its 331st meeting held from 10th to 12th February, 2014 decided to increase the "specified number of tax audit assignments" for practicing Chartered Accountants, as an individual or as a partner in a firm, from forty-five to sixty. The said limit will be effective for the audits conducted during the financial year 2014-15 and onwards.

7.7 Section 21 refers to Disciplinary Directorate, while Section 21A deals with Board of Discipline and Section 21B deals with Disciplinary Committee. Section 21C states that the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the powers of a Civil Court. These provisions have to be read with the Schedules to the 1949 Act. The First Schedule of the 1949 Act deals with professional misconduct in relation to Chartered Accountants in practice and it enumerates various types of misconduct. It has four Parts. Part I deals with professional misconduct in relation to Chartered Accountants in practice. Part II deals with professional misconduct in relation to members of the Institute in service. Part III deals with professional misconduct in relation to members of the Institute generally. Part IV deals with other misconduct in relation to members of the Institute generally. Part I of the Second Schedule speaks about professional misconduct in relation to Chartered Accountants in practice while Part II deals with professional misconduct in relation to members of the Institute generally. Part III thereof refers to other misconduct in relation to members of the Institute generally.

7.8 The First Schedule has to be read as part of Sections 21(3), 21A(3) and 22, while the Second Schedule has to be read as part of Sections 21(3), 21B(3) and 22.

In particular, what is relevant is with regard to a member of the Institute, whether in practice or not, contravening any of the provisions of the Act or the regulations made thereunder or any Guideline issued by the Council, who shall be deemed to be guilty of professional misconduct. What falls for interpretation in this batch

of cases is the expression “any Guidelines issued by the Council”. The Institute issued, *inter alia,* the Guidelines by Notification dated 08.08.2008.

7.9 According to the petitioners, the object of ensuring quality of audits would be served better by frequent reviews by the Quality Review Board established under Section 28A. The said section is reproduced as under:

“28A. Establishment of Quality Review Board

(1) The Central Government shall, by notification, constitute a Quality Review Board consisting of a Chairperson and ten other members.

(2) The Chairperson and members of the Board shall be appointed from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy.

(3) Five members of the Board shall be nominated by the Council and other five members shall be nominated by the Central Government.”

7.10 Section 30 gives the Council of respondent-Institute the power to make regulations to fulfil its functions and duties. For ease of reference, relevant portions of Section 30 read as under:

“30. Power to make regulations

(1) The Council may, by notification in the “Gazette of India”, make regulations for the purpose of carrying out the objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters :–

(a) the standard and conduct of examinations under this Act;

(b) the qualifications for the entry of the name of any person in the Register as a member of the Institute;

(c) the conditions under which any examination or training may be treated as equivalent to the examination and training prescribed for members of the Institute;

(d) the conditions under which any foreign qualification may be recognised;

(e) the manner in which and the conditions subject to which applications for entry in the Register may be made;

(f) the fees payable for membership of the Institute and the annual fees payable by associates and fellows of the Institute in respect of their certificates;

x x x

(k) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;

x x x

(t) any other matter which is required to be or may be prescribed under this Act.

(3) All regulations made by the Council under this Act shall be subject to the condition of previous publication and to the approval of the Central Government.

(4) Notwithstanding anything contained in sub-sections (1) and (2) the Central Government may frame the first regulations for the purposes mentioned in this Section, and such regulations shall be deemed to have been made by the Council, and shall remain in force from the date of the coming into force of this Act, until they are amended, altered or revoked by the Council."

7.11 Section 30B deals with laying procedure before the Parliament and the same is extracted as under:

“30B. Rules, regulations and notifications to be laid before Parliament

Every rule and every regulation made and every notification issued under this Act shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, regulation or notification, or both Houses agree that the rule, regulation or notification should not be made or issued, the rule, regulation or notification, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, regulation or notification.”

7.12 Chapter VIII of the Chartered Accountants Regulations, 1988, framed under the provisions of the 1949 Act, relates to ‘Meetings and Proceedings of the Council’. Regulation 163 provides that the President of the respondent-Institute will assume the Chairmanship of the Council. Regulation 166 prescribes the manner of passing of resolution at a meeting. The aforesaid regulations are reproduced as under:

“163. Chairman of meeting

At a meeting of the Council, the President, or in his absence the Vice-President, shall preside, or in the absence of both, a member elected from among the members who are present, shall preside.

x x x

166. Passing of resolution at a meeting

At a meeting of the Council, a resolution shall be passed by a majority of the members present unless otherwise require by the Act or these Regulations,

and in the case of equality of votes, the Chairman of the meeting shall have a casting vote.”

7.13 The Council of the respondent-Institute, in exercise of its powers conferred by clause (ii) of Part II of the Second Schedule of the 1949 Act, issued a Notification bearing No.1/CA(7)/3/88 dated 13.01.1989 specifying that a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he accepts in a financial year, more than specified number of tax audit assignments under Section 44AB of the IT Act, 1961, the specified number being thirty (now sixty) in a financial year, whether in respect of corporate or non-corporate assesses.

7.14 As for relevant provisions of the IT Act, 1961 is concerned, Section 44AB of the IT Act, 1961 was inserted in the statute book by the Finance Act, 1984 and the same came into force with effect from 01.04.1985. Presently, Section 44AB provides that every person carrying on business, whose total sale, turnover or gross receipts exceed Rs.10 crore, and every person carrying on a profession, if his gross receipts exceed Rs.50 lakhs, in any previous year, is required to get his accounts of such previous year audited by a Chartered Accountant, and obtain before the specified date, a report of the audit in the prescribed form duly signed and verified by such Chartered Accountant. The said provision is popularly called “compulsory tax audits”. The object and purpose of Section 44AB is to prevent evasion of taxes, plug loopholes enabling tax avoidance and also facilitate tax administration, which would ensure that the economic system does not result in concentration of wealth to the common detriment. For immediate reference, Section 44AB of the IT Act, 1961 as it stands presently is extracted as under:

> **“44AB. Audit of accounts of certain persons carrying on business or profession.**—Every person,—
>
> (a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year;

Provided that in the case of a person whose-

(a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment,

this clause shall have effect as if for the words “one crore rupees”, the words ten crore rupees had been substituted; or

Provided further that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash.

(b) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or

(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

(d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount

which is not chargeable to income-tax in any previous year; or

(e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:

Provided that this section shall not apply to a person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD or sub-section (1) of Section 44ADA:

Provided further that this section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BBA, on and from the 1st day of April, 1985, or, as the case may be, the date on which the relevant section came into force, whichever is later:

Provided also that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.

Explanation.—For the purposes of this section,—

(i) "accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288;

(ii) "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means date one month prior to the due date for furnishing the return of income under sub-section (1) of section 139."

Discussion:

8. We have heard the matter at length and perused the compilations submitted by learned senior counsel and learned counsel and perused the material on record.

9. During the course of submissions, we observed that the catalyst for filing these writ petitions was the issuance of the communications/notices to the petitioners herein pursuant to the Guideline dated 08.08.2008, violation of which is a misconduct. Although by an amendment made to the said Guidelines, a new type of misconduct was envisaged, since the respondent-Institute had initially not taken any steps *vis-à-vis* the said misconduct, there was no challenge as such to the Guideline as well as amendment thereto in question by any of the petitioners herein. Admittedly, the writ petitioners have undertaken audits under Section 44AB of the IT Act, 1961 over and above the number of tax audits specified as per the Guidelines dated 08.08.2008. Thereby, it is in the guise of challenging the disciplinary proceedings initiated by the respondent-Institute against the petitioners herein for conducting the audits over and above the specified number of tax audits that has led to the constitutional challenge to the Guidelines as well as to the disciplinary proceedings.

10. This challenge is on three grounds: first, the manner in which the Guideline was brought about was not in accordance with law; second, that the Guideline is violative of Article 19(1)(g) of the Constitution of India and not protected by Article 19(6) thereof and third, the Guideline which constitutes a misconduct within Clause (c) of Part II of the Second Schedule to the 1949 Act has not at all been enforced until very recently and it has been enforced only selectively, and therefore, there is non-compliance of the equality clause envisaged under Article 14 of the Constitution of India.

11. During the course of submissions, learned senior counsel Sri Datar submitted that although a little over ten thousand Chartered Accountants had violated the Guideline in question, notices for

initiation of disciplinary proceedings were at first issued only in respect of a few of them, including writ petitioners herein and those who had undertaken more than two hundred tax audits. In regard to others, who had exceeded the specified number of tax audits, no disciplinary proceedings have been initiated as yet.

12. At the outset, we consider it useful to examine the privilege conferred under the 1949 Act to practise the profession of a Chartered Accountant. Reference to the observation of this Court in ***All-India Federation of Tax Practitioners vs. Union of India*, (2007) 7 SCC 527, ("All-India Federation of Tax Practitioners"),** is helpful in this regard. In answering the question of whether the Parliament was competent to levy service tax on services rendered by Chartered Accountants, this Court observed at para 34 that a Chartered Accountant or a Cost Accountant obtains a license or a privilege from the competent body to practise. We find ourselves in agreement with this observation. Reading along with Section 2(1)(b) of the 1949 Act which defines a Chartered Accountant as a person who is a member of the respondent-Institute, we find it right to infer that a member of the respondent-Institute is conferred with the privilege of being able to practise as a Chartered Accountant.

12.1 As held by this Court in ***Kerala Ayurveda Paramparya Vaidya Forum vs. State of Kerala*, (2018) 6 SCC 648, ("Kerala Ayurveda Paramparya Vaidya Forum")** a right to practice a profession is indeed an acknowledged fundamental right, but not unrestricted and is subject to any law imposing regulatory measures aiming to ensure standards of the profession and nature of public interest involved in the practice of the profession.

Re: Point No.1: Whether the Council of the respondent-Institute, under the 1949 Act, was competent to impose, by way of Guidelines, a numerical restriction on the maximum number of tax audits that could be accepted by a Chartered Accountant, under Section 44AB of the IT Act, 1961, in a Financial Year by way of a Guideline?

13. We have perused the impugned Guideline dated 08.08.2008 which is extracted above. The same has to be read in the context of the respondent-Institute functioning under the overall control, guidance and supervision of the Council which means the Council of the Institute has to carry out the duties so as to achieve the objects of

the Act as delineated in its various provisions of the 1949 Act, *vide* Section 15. The power vested in the Council is general insofar as the carrying out the provision of the Act is concerned and in particular and without prejudice to the generality of the aforesaid powers, certain duties have been specifically delineated. This is evident on a reading of sub-sections (1) and (2) of Section 15 of the 1949 Act. One of the objects of the 1949 Act is to ensure that the profession of the Chartered Accountant in the country maintains high professional ethics and renders quality service inasmuch as Chartered Accountants are absolutely necessary for the efficient tax administration in the country. That on account of their services, the onerous duties cast on the assessing officer as well as the ITD is reduced. This would however depend upon the quality of service that is rendered by the Chartered Accountant as a professional for which regulation of the profession is necessary and the respondent-Institute has been established for, *inter alia*, such regulation of the profession.

13.1 In this context, Chapter V of the 1949 Act assumes importance. The said Chapter deals with misconduct. Section 22 of the Act defines "professional or other misconduct" to deem to include any act or omission provided in any of the Schedules. However, nothing in Section 22 shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances. The two prongs of Section 22 are expansive and wide inasmuch as there is no limitation in any way on the power conferred or duty cast on the Director (Discipline) under Sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under circumstances other than what is stated in the Schedules. Also, professional or other misconduct is defined by a deeming provision which implies that the Schedules which have enumerated various kinds of misconducts are not exhaustive or static. With the passage of decades and with the emerging varieties of misdemeanour, omissions or commissions of Chartered Accountants which are not in consonance with professional ethics and would amount to misconduct can be defined under the Schedules so as to ensure quality service being rendered by the Chartered Accountants as professionals. Therefore, the deeming provision

would imply that with the passage of time, there could be newer misconducts which could be included in the Schedules in the form of regulations or Guidelines. The Schedules are a part of the 1949 Act which has been passed by the Parliament. But bearing in mind the fact that in future, it may not always be possible for the Parliament to go on amending the Schedules to the Act so as to incorporate newer professional misconducts particularly with emerging technology and its applicability to the profession of Chartered Accountancy in India, Part II of Second Schedule by way of a foresight has delegated the power to the Council to make any regulation or Guideline, the breach of which would amount to a misconduct. This delegation to define and enumerate a misconduct by way of a regulation or a Guideline is a legislative device adopted by the Parliament so as to leave it to the discretion of the Council of the respondent-Institute to incorporate, define and insert a Guideline or a regulation, the breach of which would result in a misconduct committed by a Chartered Accountant.

13.2 The delegation of this power under Part II of the Second Schedule of the 1949 Act made by Parliament in favour of the Council of the respondent-Institute cannot be faulted with. This is on account of the fact that the 1949 Act itself defines certain types of misconduct *vis-à-vis* a Chartered Accountant. But in the year 1949, the Parliament could not have envisaged every possible variety or type of commission or omission which could be a misconduct by a Chartered Accountant. Therefore, the delegation has been made by the Parliament to the Council of the respondent-Institute to make regulations or Guidelines, the breach of which would result in a professional misconduct. The aforesaid delegation of the Parliament to the Council of the respondent-Institute is clearly to define possible types of misdemeanours in the Second Schedule in the form of a regulation or a Guideline, the breach of which would result in a misconduct *in futuro*. This is in order to avoid the Parliament itself amending the Schedules to the 1949 Act every time a different type of misconduct is to be inserted to the Schedules by way of an amendment to the Act. Therefore, the regulation or Guideline issued by the Council, the breach of which would result in a professional misconduct, being a part of clause 1 of

Part II of the Second Schedule have to be read as part and parcel of the 1949 Act itself. The delegation of powers to add newer types of misconducts by way of a regulation or a Guideline is neither excessive nor *ultra vires* under Section 22 of the 1949 Act which deems any breach of a regulation or Guideline as a misconduct as per Clause 1 of part II of Schedule II to the 1949 Act.

13.3 In the circumstances, we hold that the Council of the respondent-Institute had the legal competence to frame the impugned Guideline restricting the number of tax audits that a Chartered Accountant could carry out which was initially thirty and later raised to forty-five and thereafter to sixty in an assessment year. Therefore, the Council of the respondent-Institute having the legal competence to frame the Guidelines, the breach of which would result in professional misconduct, in terms of clause 1 of Part II of the Second Schedule of the 1949 Act cannot be held to be vitiated on account of there being lack of competency or powers to frame the impugned Guideline by the Council of the respondent-Institute. The argument advanced by the petitioners regarding the issuance of the Guidelines dated 08.08.2008 by the respondent-Institute is hit by the vice of excessive delegation, is hence without substance. Accordingly, we answered the point No.1.

Re: Point No. 2: Whether the restrictions imposed are unreasonable and therefore, violative of the right guaranteed to Chartered Accountants under Article 19(1)(g) of the Constitution?

And,

Re: Point No.3: Whether the restrictions imposed are arbitrary and illegal and therefore, impermissible under Article 14 of the Constitution?

14. Before answering these points for ready reference and convenience, Article 19(1)(g) and (6) are reproduced as under:

> "**19. Protection of certain rights regarding freedom of speech, etc.—**
>
> (1) All citizens shall have the right—
>
> x x x

> (g) to practise any profession, or to carry on any occupation, trade or business.
>
> x x x
>
> 6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular,
>
> nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—
>
> (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
>
> (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

15. Firstly, Article 19(6) of the Constitution empowers the State to impose reasonable restrictions upon the freedom of trade, business, occupation or profession in the interest of the general public, which freedom is recognised under Article 19(1)(g). Secondly, it empowers the State to prescribe professional and technical qualifications necessary for practising any profession or carrying on any occupation, trade or business. Thirdly, pursuant to the enactment of the Constitution (First) Amendment Act, 1951 — it enables the State to carry on any trade or business, either by itself or through a corporation owned or controlled by the State, to the exclusion of private citizens wholly or in part. It is trite law that restrictions imposed by the State upon the freedom guaranteed by Article 19(1)(g) cannot be justified on any ground outside Article 19(6) *vide* ***Nagar Rice and Flour Mills vs. N. Teekappa Gowda and Bros., (1970) 1 SCC 575, ("Nagar Rice Milling").***

16. The ambit of reasonable restrictions on the exercise of rights under Article 19(1)(g) in the interest of the general public under Article

19(6) was further explained in ***Hathising Manufacturing Co. Ltd. vs. Union of India, (1960) 3 SCR 528 ("Hathising Manufacturing Co. Ltd.")***, which concerned the challenge to the validity of Section 25FFF(1) of the Industrial Disputes Act, 1947, which required the industries to pay compensation on closure of their undertakings:

> "10. …Whether an impugned provision imposing a fetter on the exercise of the fundamental right guaranteed by Article 19(1)(g) amounts to a reasonable restriction imposed in the interest of the general public must be adjudged not in the background of any theoretical standards or predeterminate patterns, but in the light of the nature and incidents of the right the interest of the general public sought to be secured by imposing the restriction and the reasonableness of the quality and extent of the fetter upon the right."

17. On the scope of restrictions that may be imposed on fundamental rights, it is apposite to refer to Justice Holmes in ***Stephen Otis & Joseph F. Gassman vs. E. A. Parker, 187 U.S. 606 (1903); 1903 SCC OnLine US SC 22, ("Stephen Otis & Joseph F. Gassman"),*** wherein it was held that if the State thinks that an admitted evil cannot be prevented except by prohibiting a calling or transaction not in itself necessarily objectionable, the courts cannot interfere, unless in looking at the substance of the matter they can see that it 'is a clear, unmistakeable infringement of rights secured by the fundamental law.'

18. The respondent-Institute has placed reliance on the letter of CBDT and the CAG Report No. 32/2014 in order to satisfy us of the overwhelming need and appropriateness of the decision to place a ceiling limit as the best conceivable and practical measure at rectifying the targeted mischief. A perusal of the material on record reflects that the respondent-Institute's assertion that there is a probable link between the number of tax audits undertaken and the quality thereof is supported by concerns and suggestions shared by experts and practitioners over a span of time extending over thirty years. In fact, the preceding sentiment is evidenced by both CBDT's letter dated 19.01.1988 seeking views of the respondent-Institute on the imposition of a limit and the CAG's Report presented to the Parliament on 19.12.2014 discussed above.

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19. Following the dicta of the Constitution Bench of this Court in ***Saghir Ahmad vs. State of U.P., (1954) 2 SCC 399 ("Saghir Ahmad"),*** the burden to establish that the instantiation of the specified number of tax audit assignments was within the purview of the exception laid down in Article 19(6) is on the respondent-Institute. We find that the respondent-Institute has placed ample material before this Court to establish that the legislation comes within the permissible limits of clause (6). But the factual matrix herein is dissimilar to ***Saghir Ahmad,*** wherein this Court had 'absolutely no materials' before it to say in which way the establishment of State monopoly in road transport service would be conducive to the general welfare of the public.

20. In this regard, we place reliance upon ***Sakhawant Ali vs. State of Orissa, (1954) 2 SCC 758 ("Sakhawant Ali"),*** wherein this Court was seized of a challenge to a disqualification from electoral candidature of legal practitioners who were employed on payment, on behalf of the municipality or to act against the municipality. This Court emphasised upon the salutary object of the disqualification, i.e., the purity of public life, which would invariably be thwarted if there arose a situation where there was a conflict between interest and duty. This Court took note of the possibility of a conflict of interest and duty of a municipal councillor employed as a paid legal practitioner and was alive to the possibility that such a councillor may misuse his position to obtain municipal briefs, get unreasonable fees sanctioned or compromise the interests of the municipality while acting on behalf of private parties. What is of pertinence here is that this Court was alive to the fact that cases of misuse may be an exception because lawyers would be loathe to stoop to such tactics, yet, it upheld the restriction because it sought to prevent a possible abhorrent misconduct and malpractice that would be corrosive to public life. The reasoning in ***Sakhawant Ali*** was to the effect that disqualification of a legal practitioner from contesting elections did not prevent him from practising his profession of law and as such, the right to practice the profession of law under Article 19(1)(g) did not imply the existence of a fundamental right in any person to stand as a candidate for election to the municipality.

21. Therefore, the present petitioners' assertion that the undertaking of more than a specified number of tax audit assignments would not imperil the integrity and quality of the tax audit does not persuade us because a reasonable possibility of the fall in quality owing to the surfeit of tax audit assignments exists. Therefore, we find it proper to

trust the wisdom of the respondent-Institute as it has acted on *bona fide* and genuine recommendations of the CAG and the CBDT. We find no fault in the endeavour of the respondent-Institute to eliminate the possibility of the conduct of tax audits in an insincere, unethical or unprofessional manner.

22. Keeping the aforesaid in mind, there is no difficulty in concluding that by virtue of being a licensee, a privilege is conferred on Chartered Accountants. An elaborate and extensive process of recommendations and policy-making preceded the insertion of Section 44AB in order to achieve the public interest of prevention of tax leakages and more efficient tax administration. It is in pursuance of this primary goal of public interest that a further privilege under Section 44AB was extended to Chartered Accountants to conduct quality tax audits, so as to enable the interest of the public exchequer.

23. The present discussion would be enriched by a comparative discourse on State regulation of licensed professions as under:

    (i) Justice Powell, in ***Ohralik vs. Ohio State Bar Association, 436 U.S. 447 (1978), ("Ohralik"),*** held that the State's interests implicated in the case of regulatory restriction on the practice of a licensed profession are particularly strong. The case pertained to the conviction of an attorney for misconduct on the basis of his in-person solicitation from accident victims. Repelling the attorney's claims regarding the violation of the right to freedom, Justice Powell laid stress on the need for prophylactic regulation to safeguard the interests of the lay public. This is for the reason that the State bears a special responsibility for maintaining standards amongst members of the licensed professions. This view is strengthened by the reasoning in ***Williamson vs. Lee Optical Co., 348 U.S. 483 (1955), ("Williamson")*** and ***Semler vs. Oregon State Board of Dental Examiners, 294 U.S. 608 (1935), ("Semler").***

    (ii) On this point, the dicta from ***Goldfarb vs. Virginia State Bar, 421 U.S. 773, 792, (1975), ("Goldfarb")*** is also instructive and the relevant portion of the judgment reads as follows:

    > "....The interest of the States in regulating lawyers is especially great, since lawyers are essential to the primary governmental function

> of administering justice, and have historically been 'officers of the courts.'"

24. We now look at how this Court has understood public interest in matters pertaining to abridgment of Article 19(1)(g).

(i) A Constitution Bench of this Court, through JC Shah J, in ***Mohd. Faruk vs. State of M.P., (1969) 1 SCC 853,*** held that the Notification issued by the State Government prohibiting the slaughter of bulls and bullocks in premises maintained by a local authority infringed upon the right to freedom of profession under Article 19(1)(g) of the Constitution. This Court had emphasized that even though such a Notification may be issued under the authority of law that was enacted by a competent legislature, it would nevertheless be liable for directly infringing the fundamental right of the petitioner guaranteed by Article 19(1)(g) unless it is established that it seeks to impose reasonable restrictions in the interest of the general public and a less drastic restriction will not ensure the interest of the general public. It was reasoned that the judicial determination of the validity of the law imposing a prohibition on the carrying on of a business or profession should be informed by:

a. an evaluation of the direct and immediate impact of the prohibition upon the fundamental rights of the citizens affected thereby;

b. the larger public interest sought to be ensured in the light of the object sought to be achieved;

c. the necessity to restrict the citizen's freedom;

d. the inherently pernicious nature of the act prohibited or its capacity or tendency to be harmful to the general public;

e. the possibility of achieving the object by imposing a less drastic restraint; and

f. in the absence of exceptional exigent situations like the prevalence of a state of emergency national or local, the existence of a machinery to satisfy the administrative authority that no case for imposing the restriction is made out or that a less drastic restriction may ensure the object intended to be achieved.

(ii) A reasonable restriction, within the meaning of Article 19(6) must also be 'in the interests of the general public.' Our Constitution, by establishing a welfare State, emphasises a fine balance between the public interest of the community and the liberties of the individual. Indeed, this is not to say that individual rights and liberties are not a matter of vital public interest but any policy or law may not be struck down at the instance of an individual alone. In other words, there is a basic unity between fundamental rights and the public interest. The public interest inherent in the said individual's exercise of a fundamental right under Part III would need to be delicately balanced with the imminent constitutional imperative of the 'ordered progress of society towards a welfare state,' *vide* ***K. K. Kochuni vs. States of Madras and Kerala*, 1958 SCC OnLine SC 12, Pr. 33**.

(iii) In ***Krishnan Kakkanth vs. Govt. of Kerala*, (1997) 9 SCC 495, ("Krishnan Kakkanth"),** this Court held as under:

> "**27.** The reasonableness of restriction is to be determined in an objective manner and **from the standpoint of the interests of general public and not from the standpoint of the interests of the persons upon whom the restrictions are imposed or upon abstract consideration.** A restriction cannot be said to be unreasonable merely because in a given case, **it operates harshly** and even if the persons affected be petty traders (*Mohd. Hanif* v. *State of Bihar* [AIR 1958 SC 731]). In determining the infringement of the right guaranteed under Article 19(1), **the nature of right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied** thereby, the disproportion of the imposition, the **prevailing conditions at the time**, enter into judicial verdict (*Laxmi Khandsari* v. *State of U.P.* [(1981) 2 SCC 600 : AIR 1981 SC 873] ; *D.K. Trivedi and Sons* v. *State of Gujarat* [1986 Supp SCC 20] and *Harakchand Ratanchand Banthia* v. *Union of India* [(1969) 2 SCC 166 : AIR 1970 SC 1453]).

> **28.** Under clause (1)(*g*) of Article 19, every citizen has a freedom and right to choose his own employment or take up any trade or calling subject only to the limits as may be **imposed by the State in the interests of public welfare and the other grounds mentioned in clause (6) of Article 19.** But it may be emphasised that the Constitution does not recognise franchise or rights to business which are dependent on grants by the State or business affected by public interest (*Saghir Ahmad* v. *State of U.P.* [(1955) 1 SCR 707 : AIR 1954 SC 728])."
>
> **(emphasis by us)**

Therefore, it follows that this Court must consider the public interest involved not only from the perspective of the Chartered Accountants but rather from the perspective of the general public. In the present cases, it has been contended that public interest manifests as a benefit to the public exchequer in terms of appropriate quality of tax audit reports under Section 44AB.

25. At this juncture, it is useful to reiterate the thread of public interest visible in the 1949 Act since its inception. The Statement of Objects and Reasons of the 1949 Act makes it clear that the Act was brought in to ensure that accountants all over the country, **in discharge of their public duties,** are governed by a central body that is not transitional. Our words should not be mistakenly understood to suggest that the profession of Chartered Accountants is not a private enterprise and is concerned solely with rendering of public duties. We rather only highlight that it is a profession – licensed by the State – that also discharges public duties crucial in public interest.

26. In our opinion, a perusal of the Wanchoo Committee Report, Finance Bill, 1984 and the accompanying Memorandum makes it explicitly clear that the intent of insertion of Section 44AB of the IT Act, 1961, was to facilitate the process of tax administration to the benefit of the public exchequer. The genesis of the opportunity to conduct tax audits was not regulation of a practice essential to the Chartered Accountant profession *per se* but rather to take assistance of auditors, in discharge of their public duties, for plugging tax leakage and thereby saving the time of the Assessment Officers on presentation of quality tax audit reports in a prescribed format. Therefore, it is for

these intents and purposes, the privilege of conducting tax audits was extended to Chartered Accountants by creating a privilege to conduct such audits subject to reasonable restrictions.

27. We must be careful in our delineation between a right and a privilege. As discussed above, the idea of compulsory tax audits was neither an inherent part of the practice of a Chartered Accountant nor an essential function which could be claimed as a fundamental right under Article 19(1)(g). Furthermore, an examination of the nature of the supposed right that was being enjoyed by Chartered Accountants reflects that in practice, an assessee, seeking to comply with the requirements of Section 44AB, would approach a Chartered Accountant to obtain a certificate of audit. We have already observed and noted that Section 44AB, IT Act, 1961 was inserted to assist the Revenue Department in public. Thereby, it is only through the extension of statutory privilege by the presence of Section 44AB, IT Act, 1961, that a Chartered Accountant gets the opportunity to undertake tax audits under the said section. If the Parliament, in its wisdom, at a certain future date, due to technological developments or any other reason, finds that expeditious and accurate assessments can be ensured without imposing on assessees the burden of additional requirement of tax audit report and thereby deletes Section 44AB from the IT Act, 1961, it could not be possibly argued that the right under Article 19(1)(g) has been abridged. What follows is that when a privilege is being granted, as a privilege by statute, which could be effaced completely, a reasonable restriction could also be imposed, the latter being a restriction of a lesser degree than a complete ban on an activity.

28. On the scope of restrictions imposed to maintain quality of service where a privilege had been extended by the Government to medical officers, this Court, in ***Sukumar Mukherjee vs. State of W.B.*****, (1993) 3 SCC 723, ("Sukumar Mukherjee"),** held that the restriction was reasonable where the State of West Bengal had, *vide* Section 9 of the West Bengal State Health Service Act, 1990, prohibited private practice by members of W.B. Medical Education Service who were also teaching in medical institutions. It was held that where the State Government had concluded that the regime of permitting private practice of those teaching in medical institutions led to a considerable decline in quality of teaching, such restriction was reasonable and in the interest of general public as the ban on private-practice would

make available to the teachers-doctors the time required for reading and research which was absolutely essential for maintaining quality in their main profession as teachers in medicine. Furthermore, where for a brief period, in the facts of that case, private practice by teaching post-holders was also permitted and then withdrawn, this Court held that such an extension was only a privilege extended on people who were regulated by the relevant Act and rules made thereunder and therefore, the revocation of that privilege was not the violation of any right.

29. Where public interest was the genesis of a privilege being extended to Chartered Accountants and not a right, it is reasonable that the respondent-Institute, an expert body, would have the authority to regulate the privilege extended to Chartered Accountants in a reasonable manner deemed appropriate to serve public interest. That the public interest involved in the present petitions being pervasive is evidenced through CAG's recommendation to the Government to insert a provision in the statute book putting a cap on the number of tax audits permissible. According to the CAG, in the matter of revenue, the IT Act, 1961 should have provision to prescribe for quality of tax audit assignments rather than relying on respondent-Institute.

30. It would be apposite at this juncture to refer to the judgment in ***P.V. Sivarajan vs. Union of India**, AIR 1959 SC 556, ("P.V. Sivarajan")*, delivered by a Constitution Bench of this Court. Petitioner therein was aggrieved by the rejection of his application as a registered exporter of coir products, on the ground that he had not already exported the minimum specified quantity of 500 Cwts. It was observed by this Court that Parliament had enacted the Coir Industry Act, 1953, finding it expedient in public interest that the Union should take under its control the coir industry as several malpractices had crept in the export trade such as non-fulfilment of contracts, supplying goods of inferior quality in an industry crucial to the repute of India's products and national economy. With the intent of limiting these losses due to qualitative underperformance, the Central Government, under powers conferred by the statute, framed Rules in 1958. The Rules were assailed by the petitioner therein, contending that they erroneously prescribed a quantitative test for registration of established exporters, when in fact, a qualitative test would be more suitable. This argument was rejected, holding that once it is accepted that regulation of coir industry is in public interest, then it would be erroneous to assert that

regulation must be introduced only on the basis of a qualitative test. This Court was mindful of the potential difficulties in introducing and effectively enforcing a qualitative test and thereby held that it would be for the rule-making authority to decide as to which test would meet the requirements of public interest and what method would be most expedient in controlling the industry for national good. This Court noted as under:

> "7. If it is conceded that the regulation of the coir industry is in the public interest, then it would be difficult to entertain the argument that the regulation or control must be introduced only on the basis of a qualitative test. **It may well be that there are several difficulties in introducing and effectively enforcing the qualitative test.** It is well known that granting permits or licences to export or import dealers on the basis of a quantitative test is not unknown in regard to export and import of essential commodities. It would obviously be for the rule-making authority to decide which **test would meet the requirements of public interest and what method would be most expedient in controlling the industry for the national good**. Besides, even the adoption of a qualitative test may tend to extinguish the trade of those who do not satisfy the said test; but such a result cannot obviously be treated as contravening the fundamental rights under Article 19. **Control and regulation of any trade, though reasonable within the meaning of Article 19, sub-Article (6), may in some cases lead to hardship to some persons carrying on the said trade or business if they are unable to satisfy the requirements of the regulatory rules or provisions validly introduced; but once it is conceded that regulation of the trade and its control are justified in the public interest, it would not be open to a person who fails to satisfy the rules or regulations to invoke his fundamental right under Article 19(*g*) and challenge the validity of the regulation or rule in question.** In our opinion, therefore, the challenge to the validity of the rules on the ground of Article 19 must fail.
>
> 8. The challenge to the validity of the said rules on the ground of Article 14 must also fail, because the classification

of traders made by Rules 18 and 19 is clearly rational and is founded on an intelligible differentia distinguishing persons falling under one class from those falling under the other. It is also clear that the differentia has a rational relation to the object sought to be achieved by the Act. **As we have already pointed out, the export trade in coir commodities disclosed the existence of many malpractices which not only affected the volume of trade but also the reputation of Indian traders;** and one of the main reasons which led to this unfortunate result was that exporters sometimes accepted orders far beyond their capacity and that inevitably led to non-fulfilment of contracts or to supply of inferior commodities. In order to remedy this position the trade had to be regulated and so the intending exporter was required to satisfy the test of the prescribed minimum capacity and to establish the prescribed minimum status before his application for registration is granted. In this connection it may also be relevant to point out that the rules seem to contemplate the granting of exemption from the operation of some of the relevant tests to cooperative societies; and that shows that the intention of the legislature is to encourage small traders to form co-operative societies and carry on export trade on behalf of such societies; and so it would not be possible to accept the argument that the impugned rules would lead to a monopoly in the trade. **It is thus clear that the main object which the rules propose to achieve is to improve the anomalies and malpractices prevailing in the export trade of coir commodities and to put the said trade on a firm and enduring basis in the interest of national economy.** We are, therefore, satisfied that the challenge to the impugned rules on the ground of infringement of Article 14 of the Constitution must also fail."

(emphasis supplied)

31. The further contention that a quantitative test discriminates between persons carrying on business on a large scale and those who carry on business on a small scale as even the prescription of a qualitative test would also lead to hardship on those who cannot satisfy the test was rejected.

32. We must also now consider further arguments advanced by learned senior counsel and counsel for the petitioners. Heavy reliance placed on ***Institute of Chartered Financial Analysts of India**,* in our considered opinion, is misplaced. This case concerned whether acquisition of an additional qualification of Chartered Financial Analyst ("CFA") by a Chartered Accountant could be termed as professional misconduct under Section 22 of the 1949 Act. Holding in the negative, this Court found that enhancement of knowledge, training and ability should be encouraged in an emerging economy and to term the same as professional misconduct would be violative of Articles 14 and 19(1)(g). That case is clearly distinguishable. Neither did this Court find that the restriction placed was in public interest, nor that the acquisition of an additional qualification hurt the quality of statutory responsibilities attributed to a Chartered Accountant.

33. The argument advanced by learned counsel for the petitioners is that as a direct consequence and effect of the ceiling limit, an anomalous situation of discrimination between qualified professionals practicing in metropolitan cities as against those in *mofussil* areas, or those catering to small assessees as against those catering to bigger assessees, must be categorically rejected. The potential effect of the concerned restriction is that practitioners dealing in m*ofussil* areas or catering to small assessees will face a reduction in their income which is violative of their right to freely engage in their profession. We find ourselves unable to agree with this contention. There is no material to suggest that this partial limitation on the practise of the profession would lead to a significant reduction in income. In any case, it is trite law that reduction of income cannot be a ground for holding a reasonable restriction unreasonable *vide* ***Minerva Talkies*** which we shall discuss later. Where the devolution of a privilege is justifiably restricted in public interest and such restriction has a rational nexus with the objects sought to be achieved, the restriction cannot be held unreasonable due to hardship faced by a certain section of professionals.

34. The following judgments of this Court are also apposite:

    (a) In ***B.P. Sharma***, clause 17 of the instructions issued in 1979 by the Ministry of Tourism and Civil Aviation, Department of Tourism, Government of India prohibiting the renewal of identity cards to guides who were carrying on the job of conducting tourists

to historical monuments and other places of interest and to explain the background and importance of such places as well as acquaint the tourists with the historical facts relating to the monuments and landmarks of the area after they attained the age of sixty years, was assailed. Clause 17 stated that *"when a guide attains the age of 60 years the identity card issued to him or her will not be renewed further".* This was unsuccessfully challenged by way of a writ petition under Article 226 of the Constitution before the Allahabad High Court. But, this Court observed that the freedom guaranteed under Article 19(1)(g) of the Constitution is valuable and cannot be violated on grounds which are not established to be in public interest or just on the basis that it is permissible to do so. For placing a complete prohibition on any professional activity, there must exist some strong reason for the same with a view to attain some legitimate object and non-imposition of such prohibition might result in jeopardizing or seriously affecting the interest of the people in general. Otherwise, it would not be a reasonable restriction. We do not have any contrary opinion to what has been observed by this Court in the aforesaid judgment but the facts of each case would ultimately decide whether, a complete prohibition, ban or restriction is a reasonable one or not depending upon the public interest it would seek to achieve. In the aforesaid case clause 17 of the instructions was held to be *ultra vires* Article 19(1)(g) and hence, quashed by this Court.

(b) In ***Minerva Talkies***, Rule 41-A of Karnataka Cinemas (Regulations) Rules, 1971 made under Section 19 of the Karnataka Cinemas (Regulation) Act, 1964 limiting the cinema shows to four per day was held to be neither *ultra vires* the said Act nor violative of Article 19(1)(g) of the Constitution. It was observed that no licensee can claim to have an unrestricted right to exhibit cinematograph films for all the twenty-four hours of the day. Such a claim would obviously be against public interest. The right to exhibit cinematograph films is regulated by the provisions of the Act in the interest of the general public. The restriction to limit the number of shows to four in a day placed by Rule 41-A is regulatory in nature which clearly carries out the purposes of the Act. In the context of Article 19(1)(g), it was observed that the law placing restrictions on the citizens' right

to do business must satisfy two conditions set out in clause (6) of Article 19: firstly, the restrictions imposed by the law must be reasonable, and secondly, the restrictions must be in the interests of the general public. If these two tests are satisfied, the law placing restriction on the citizens' right guaranteed under Article 19(1)(g) must be upheld. While considering the validity of Rule 41-A which had limited the number of films to be exhibit in a day to four shows, it was noted that holding of continuous five shows from 10 am in the morning caused great inconvenience to the incoming and outgoing cine-goers and endangered public safety. A short interval of fifteen minutes between two shows is too little time for cleaning the cinema halls and there was also rush by the cine-goers to occupy the seats. Moreover, licensees would start exhibiting approved films and slides before the cine-goers could occupy their seats, with the result they would not have the benefit of the same. The absence of interval between the shows resulted in denial of fresh air, ventilation and cleanliness in the cinema halls. In order to remove these maladies, the restriction on the number of shows to four per day was introduced. After analysing the inconvenience that would be caused to the cine-goers and also the fact that if the five shows were exhibited from 10 am to 1 am the next day, there would be great inconvenience caused to the public, the State Government had promulgated the restriction to only four shows in a day. Consequently, the said Rule was upheld by this Court by observing that it was *intra vires* the Act as it carried out the purposes of the Act and it did not place any unreasonable restriction in violation of Article 19(1)(g) of the Constitution. Consequently, this Court dismissed the appeals as well as the writ petitions.

(c) In ***T. Velayudhan Achari***, Section 45-S (1) as introduced by Banking Laws (Amendment) Act, 1983 limiting the number of depositors that can be accepted by individual, firm or unincorporated association, was held to be not violative of Article 19(1)(g) of the Constitution as the said limitation protected larger interest of depositors. It was observed that a ceiling for acceptance of deposits and to require maintenance of certain liquidity of funds as well as not to exceed borrowings beyond a particular percentage of the net-owned funds had been provided

in the corporate sector. But for these safeguards, the depositors would be left high and dry without any remedy. It was held that the restrictions were reasonable and were in the public interest.

(d) In ***B.K. Kamath***, Kurian Joseph J. (as a Judge of the Kerala High Court), observed that the Chartered Accountants Act was enacted for regulating the profession and in the process regulating and maintaining the status of the Chartered Accountants. Therefore, the measures taken, intended to maintain and improve the quality of work and ensure equitable distribution of work among the Chartered Accountants could not be held to be an unreasonable restriction since such restrictions are necessary for maintaining the status of the Chartered Accountants and also for ensuring the quality of the work by them. Comparing the said restriction to Section 224 of the Companies Act, 1956 wherein a Chartered Accountant is permitted to audit only twenty companies in a financial year since the introduction of the said provision in the year 1974, it was observed that such regulatory measures are provided in view of the onerous and time-consuming nature of the work of the Chartered Accountant requiring accuracy and perfection. The Income Tax Act attributes much importance to the certificate of audit by the Chartered Accountant and therefore, it is in public interest also to introduce certain restrictions on the volume of work lest it would affect professional standards apart from affecting the professional status. We are in complete agreement with the aforesaid observations. In our view, the comparison made between Chartered Accountants and Advocates by the petitioners is also inappropriate.

35. It is also noted that under Section 224 of the Companies Act, 1956 which deals with appointment and remuneration of auditors, there is a bar with regard to appointment or reappointment of any person as an auditor of a company, if such person or firm of auditors is, at the date of such appointment or reappointment, holding appointment as auditor of specified number of companies or more than the specified number of companies. Explanation (1) to Section 224 defines specified number to mean (a) in the case of a person or firm holding appointment as auditor of a number of companies each of which has paid-up share capital of less than rupees twenty-five lakh, twenty such companies; and (b) in any other case, twenty companies, out of which not more than ten shall be companies each of which has paid-up

share capital of rupees twenty-five lakh or more. Explanation-II states that in computing the specified number, the number of companies in respect of which or any part of which any person or firm has been appointed as an auditor, whether singly or in combination with any other person or firm, shall be taken into account.

36. The restriction placed under Section 224 of the Companies Act, 1956 with regard to the number of companies which could be audited by an auditor or firm of auditors is also an instance of regulation of the profession of Chartered Accountants intended by the Parliament so as to ensure that standard and quality in the audit of accounts of companies as defined under Section 3 of the Companies Act, 1956 are maintained. This is to protect the rights and interest of the shareholders as well as the investors in the companies. Any omission or inadvertence in the auditing of such company accounts would inevitably have an adverse impact not only on the balance-sheets of the companies but also on the potential investments and growth of the companies. There has not been any challenge to the said regulation which is in the form of a restriction. Any breach of the restriction placed on the Chartered Accountants under Section 224 may lead to misconduct under the provision of 1949 Act.

37. It is for the foregoing reasons that we find that questions (i), (ii) and (iii) ought to be held in favour of the respondent-Institute.

Re: Point No.4: Whether exceeding such specified number of tax audits can be deemed to be 'professional misconduct'?

38. During the course of submissions, an alternative plea raised by learned senior counsel and learned counsel for the petitioners was that the respondent-Institute initiated disciplinary proceedings only against a few Chartered Accountants, including petitioners herein, while a majority of the Chartered Accountants who had breached the Guideline are not facing any disciplinary proceeding and have not been proceeded against. Secondly, it was contended that it was only recently that notices have been issued to the writ petitioners herein to respond to the same and for conducting disciplinary proceedings. That there cannot be a discrimination, so to say, by the respondent-Institute in the matter. That, the impugned Guideline dated 08.08.2008 has been on the statute book, the disciplinary proceedings have been initiated only recently. The impugned Guideline has not been effectively given effect to. Therefore, the disciplinary proceeding

may be quashed for the aforesaid reasons. In this regard, it was contended that when the respondent-Institute has remained silent and not acted upon the Guideline, since it was issued on 08.08.2008, all of a sudden there could not have been initiation of disciplinary proceedings only against the petitioners herein and possibly others who may not have approached any court of law, whereas many other Chartered Accountants have not been proceeded against and are virtually scot-free. Therefore, there is discrimination and violation of Article 14 of the Constitution of India herein in the implementation of the Guideline *vide* Notification dated 08.08.2008. Therefore, pending full and effective implementation of the Guideline impugned herein of the impugned proceedings against the petitioners herein for the alleged misconduct on their part for violating the Guideline may be dropped.

39. It is observed that there has been an uncertainty in law due to a similar Guideline being successfully assailed and during the pendency of the matter before this Court the impugned Guideline being enforced and selective implementation of the same by the respondent-Institute. Relying on the dictum of this Court in ***Chamundi Mopeds,*** the petitioners contended that a stay on the judgment of Madras High Court was only on the operation of the judgment and not a declaration that the judgment was bad in law. As the special leave petition impugning the judgment of Madras High Court was dismissed as infructuous and any action taken by the respondent-Institute on the superseding Guideline dated 08.08.2008 was taken only belatedly, we find force in the submission that there was uncertainty in law only in the context of the pendency of the matter before this Court on there being quashing of the Guideline by the Madras High Court and an interim stay of the said judgment by this Court.

40. In this regard, we may refer to Halsbury Laws of England, [5th Edn. Volume 96 (2018)] dealing with the principle against doubtful penalisation:

> "*774. Principle Against Doubtful Penalisation*
>
> *"It is a principle of legal policy that a person* ***should not be penalised except under clear law,*** *…"*

41. Francis Bennion on Statutory Interpretation (8th Edn, 2020 at Section 26.4) deals with principle against doubtful penalisation in the following words:

> *"It is a principle of legal policy that a person* ***should not be penalised except under clear law****. This principle forms part of the context against which legislation is enacted and, when interpreting legislation, a court should take it into account."*

42. It was borne out during the course of arguments and through the submissions made in the Counter Affidavit that the tax audit monitoring mechanism was firstly, self-regulatory, wherein the disciplinary mechanism would kick in only on a complaint made/information received and not otherwise. Furthermore, the Tax Audit Monitoring Cell was created only after the CAG Report No. 32/2014, and even after that, initially notices were sent only selectively to Chartered Accountants who had completed more than two hundred audits not to all who had breached the impugned Guideline.

43. As a rule of statutory interpretation, we find that the aforesaid principles, in an equitable legal system, should be applicable to the present circumstances. Thereby, for the limited period of uncertainty, the rule against doubtful penalization as a principle could, in the interest of justice and equity, be made applicable and the benefit of uncertainty be given to those subjected to misconduct proceedings in the instant writ petitions and to also those Chartered Accountants who may have received notices from the respondent-Institute and who may not have approached any court of law or to other similarly situated Chartered Accountants who may not have been proceeded against.

44. Reference may also be made to judgment of this Court in ***Jindal Paper & Plastics vs. Union of India, (1997) 10 SCC 536, ("Jindal Paper & Plastics")*** wherein the question on merits was settled by a judgment of this Court in ***Kasinka Trading vs. Union of India, (1995) 1 SCC 274, ("Kasinka Trading"),*** delivered on 18.10.1994 and a larger bench on 20.12.1996 concluded that the judgment dated 18.10.1994 was good law. This Court allowed the petitioner's prayer therein that for the period of uncertainty in law, i.e., until the law, on merits, was settled by this Court on 18.10.1994, a lesser interest rate of 12% be charged instead of 17.5%, as ordered by the High Court. In these circumstances, this Court held as follows:

> **"4. We are of the view that there was uncertainty about the law until the decision in the case of *Kasinka***

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> ***Trading [(1995) 1 SCC 274 : JT (1994) 7 SC 362]*** was rendered on 18-10-1994, and that, therefore, interest from the date it became payable until 18-10-1994, should be payable at the rate of 12% per annum. Interest for the further period should be at the rate of 17.5% per annum, as ordered by the High Court. Calculations shall be made accordingly and the balance and interest as aforesaid due by the appellants shall be paid to the respondents within 8 weeks."
>
> ***(emphasis supplied)***

45. We, therefore, find much force in the alternative plea made by the petitioners herein. In these circumstances, due to the uncertainty in law owing to quashing of the earlier Guideline and the pendency of the Special Leave Petition filed by the respondent-Institute before this Court and the enforcement of a fresh Guideline, we quash the disciplinary proceedings initiated against the petitioners herein. This is for the simple reason that only the writ petitioners have been proceeded against, while even according to the respondent-Institute, there were around twelve thousand Chartered Accountants who had breached the Guideline and had undertaken tax audits over and above the specified number but no action whatsoever was initiated against of them.

46. In conclusion, we must also note the dictum in ***Malpe Vishwanath Acharya vs. State of Maharashtra, (1998) 2 SCC 1, ("Malpe Vishwanath Acharya")***, wherein this Court, relying on ***Motor General Traders vs. State of A.P., (1984) 1 SCC 222, ("Motor General Traders"),*** reiterated that a provision which was/is reasonable may with the passage of time become unreasonable. In the context of restriction on the specified audits under Section 44AB of IT Act, 1961, Minutes of the Council of the respondent-Institute reflect that with the passage of time, the number of tax audits to be permitted have been repeatedly deliberated, re-evaluated and increased, subject to final decision taken by the Council. However, it also becomes apparent that decisions of the Council on whether to increase or maintain the *status quo* have been *ad-hoc,* influenced by several factors such as technological development, number of practicing Chartered Accountants, etc. Since the last revision to sixty tax audits was made a decade ago, we direct the Council to consider if the

time is ripe to enhance the specified number of tax audits and to delineate the factors that it may consider in taking such a decision

47. In that view of the matter, the respondent-Institute is at liberty to enhance the specified number of tax audits that could be undertaken by practicing Chartered Accountants under Section 44AB of the IT Act, 1961. For that purpose, liberty is reserved to the practising Chartered Accountants to make their suggestions to the respondent.

48. We wish to make certain observations before parting with these writ petitions. The Institute of Chartered Accountants of India over a period of time, has received recognition as a premier accounting body, domestically and globally, for maintaining highest standards in technical, ethical areas and for sustaining stringent examination and educational standards. Since its inception in the year 1949, the profession of Chartered Accountancy and accounting has grown leaps and bounds in terms of the number of members, which now stands at over 3.5 lakhs. The respondent-Institute has also played a significant role in ensuring the dynamism of the Chartered Accountancy course curriculum and the credibility of the examinations. The financial skills of the aspirants are fairly consolidated, at the time of joining the profession itself- this is owing to the robust examination pattern. We commend that the respondent-Institute must be committed towards convergence of accounting, auditing and ethical standards with international practices and for its endeavour towards securing the highest standards of corporate governance. The true test however, lies in application and enforcement of these standards in the Indian context.

49. The power to control and impose taxes is a cornerstone of State sovereignty. Welfare States impose taxes to generate revenue that enables investment in human capital, infrastructure and services for citizens and businesses. The Tax Law landscape in India has been one of the most dynamic areas of law and has witnessed several changes over the last few decades. The Taxation Systems in India have been periodically assessed and several changes have been brought about from time to time. Such changes have been introduced with a view to either widen the tax base; to simplify and rationalise laws and procedures; to bring about modernization through computerization of tax returns; to enhance efficiency of the tax administration; or to maintain progressivity at such levels as would not induce evasion.

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49.1 In relation to direct taxation, we believe that the taxation system must be one that not only incorporates the normative and prescriptive considerations of neutrality, fairness, certainty, efficiency etc. but one that also promotes the virtuous circle of increased trust between tax payers and the tax administration. We call this a "virtuous circle" because it seeks to achieve a dual purpose: it reinforces voluntary compliance while at the same time promoting good governance. Good governance is achieved in an attempt to secure the confidence of the taxpayer. Once a taxpayer is certain that tax revenue is being channelled in an efficient manner, consistent with the objectives of a welfare state, enhanced tax compliance is likely to follow. It is in this context that we stress on the significance of the role played by Chartered Accountants. They can serve as effective catalysts in securing this circle of trust between the taxpayer and the tax administration. This is because a large proportion of the tax payers in India seek advice of Chartered Accountants to understand the rules of the road. The integrity and standards of Chartered Accountants determine the efficiency in the functioning of the nation's taxation system.

49.2 There are many concepts and processes in the present taxation regime that rest, almost completely, on the vigilance of Chartered Accountants and auditors. The very concept of self-assessment carries with it the requirement of good faith practices. The most recent tax reforms seek to achieve transparent taxation by "Honouring the Honest taxpayer." The success of such initiatives depends, to a very large extent, on the vigilance demonstrated by Chartered Accountants.

49.3 Transparency in accounting is imperative to the economy in many ways. For instance, in the absence of accurate financial reporting, it would become difficult for banks to make informed decisions about credit allocation. It is the quality, reliability and objectivity of this information which stakeholders rely upon to make informed judgments and allocate resources efficiently. The role of transparent accounting is critical in lending credibility to the financial market transactions. Market participants, investors and shareholders look towards this community for accurate information, which ensures market discipline and fosters confidence of various stakeholders. The onus is on

Chartered Accountants to ensure that our Nation's businesses do indeed conform to high corporate governance standards. Further, while the quality of information has immediate and far-reaching implications for a particular enterprise, it eventually permeates to the market and the economy as a whole. It is therefore not surprising to find that the accounting profession is being constantly challenged to meet the demands for quality information. As key providers and verifiers of information, the bottom-line is simple: the higher the quality and integrity maintained by the profession, the stronger and more resilient will our markets be. By providing the foundation for compilation of credible financial statements, the accounting profession facilitates market discipline, engenders confidence among various stakeholders and reduces the possibility of misleading information that can disrupt stability of financial systems. Therefore, the need for quality assessments particularly under Section 44AB of the IT Act, 1961.

49.4 In the public discourse on governance, we find that the corporate governance agenda garners attention only during times when the Country is faced with the most notorious corporate scams. Shareholder democracy has come to stay and Chartered Accountants are the gatekeepers of this new corporate world which poses challenges as well as unprecedented opportunities. Thus, the importance of integrity of auditing functions for maintaining financial stability is now well-recognised.

49.5 More importantly, Chartered Accountants must themselves comply with the relevant laws and regulations and avoid any conduct that discredits the profession. Needless to specify that Chartered Accountants must refuse to represent clients who insist on resorting to unfair means. Chartered accountants are relevant not only in securing corporate governance, but governance in broader contexts too.

49.6 Chartered Accountants face many different responsibilities: to the profession; to the tax administration; to the client and to the economy at large. In that context, we stress on the importance of preserving their independence of view and integrity; to separate their client-advisory role from their role as public citizens seeking to improve the functioning of the tax machinery of the Nation.

Integrity, objectivity, professional competence and due care and confidentiality must be the doctrines guiding their work ethic.

Conclusion:

50. In the circumstances, we dispose of the writ petitions in the following manner:

a) Clause 6.0, Chapter VI of the Guidelines dated 08.08.2008 and its subsequent amendment is valid and is not violative of Article 19(1)(g) of the Constitution as it is a reasonable restriction on the right to practise the profession by a Chartered Accountant and is protected or justifiable under Article 19(6) of the Constitution.

b) However, the said clause 6.0, Chapter VI of the Guidelines dated 08.08.2008 and its subsequent amendment is deemed not to be given effect to till 01.04.2024.

c) Consequently, all proceedings initiated pursuant to the impugned Guideline in respect of the writ petitioners and other similarly situated Chartered Accountants stand quashed.

d) Liberty is reserved to the respondent-Institute to enhance the specified number of audits that a Chartered Accountant can undertake under Section 44AB of the IT Act, 1961, if it deems fit.

e) Liberty is also reserved to the writ petitioners or any other member of the respondent-Institute to make a representation in the above context which may be taken into consideration in the event respondent-Institute intends to amend the Guideline as per point No.(d) above.

f) The writ petitions as well as all the transferred cases are disposed of in the aforesaid terms.

g) The Registry to intimate the concerned High Courts regarding disposal of the transferred cases accordingly.

h) No costs.

Headnotes prepared by: Nidhi Jain

Result of the case:
Writ petitions and transferred cases disposed of.

[2024] 6 S.C.R. 864 : 2024 INSC 434

Tarsem Lal
v.
Directorate of Enforcement Jalandhar Zonal Office

(Criminal Appeal No. 2608 of 2024)

16 May 2024

[Abhay S. Oka* and Ujjal Bhuyan, JJ.]

Issue for Consideration

(a) Whether the complaint filed u/s.44(1)(b) of Prevention of Money Laundering Act, 2002 will be governed by sections 200 to 205 of the CrPC; (b) If the accused was not arrested by the ED till the filing of the complaint, while taking cognizance on complaint u/s.44(1)(b), whether the Court should issue a summons to the accused or warrant; (c) After a summons are issued u/s. 204 of the CrPC on taking cognizance of the offence punishable u/s. 4 of the PMLA on a complaint, if accused appears before the Special Court, would he be treated as in custody and is it necessary for him to apply for bail; (d) In a case where the accused appears pursuant to a summons before the Special Court, whether the Special Court can grant exemption from personal appearance; (e) If the accused does not appear after summons are served or does not appear on a subsequent date, whether the Special Court can issue warrant within its power; (f) Whether the order accepting bonds u/s. 88 of the CrPC amounts to grant of bail; (g) In a case where the accused has furnished bonds u/s. 88 of the CrPC, if he fails to appear on subsequent dates, whether the Special Court has power to issue warrant directing that the accused shall be arrested and produced before the Special Court and if such a warrant is issued, will it be open for the accused to apply for cancellation of the warrant by giving an undertaking to appear on all dates fixed; (h) When a warrant of arrest has been issued on account of non-appearance or proceedings u/s. 82 and/or s.83 of the CrPC, whether the accused can be let off by taking bond u/s.88 of the CrPC; (i) Whether ED and its officers have power u/s.19 to arrest a person shown as a accused in the complaint after cognizance is taken of the offence punishable u/s. 4 of the PMLA based on complaint u/s. 44(1)(b); (j) What if the ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence.

* Author

Tarsem Lal v. Directorate of Enforcement Jalandhar Zonal Office

Headnotes

Prevention of Money Laundering Act, 2002 – s.44(1)(b) – Code of Criminal Procedure, 1973 – s. 200 to s.205 – Whether the complaint filed u/s.44(1)(b) of Prevention of Money Laundering Act, 2002 will be governed by sections 200 to 205 of the CrPC:

Held: Once a complaint under Section 44 (1)(b) of the PMLA is filed, it will be governed by Sections 200 to 205 of the CrPC as none of the said provisions are inconsistent with any of the provisions of the PMLA. [Para 23(a)]

Prevention of Money Laundering Act, 2002 – s.44(1)(b) – If the accused was not arrested by the ED till the filing of the complaint, while taking cognizance on complaint u/s.44(1)(b), whether the Court should issue a summons to the accused or warrant:

Held: If the accused was not arrested by the ED till filing of the complaint, while taking cognizance on a complaint under Section 44(1)(b), as a normal rule, the Court should issue a summons to the accused and not a warrant – Even in a case where the accused is on bail, a summons must be issued. [Para 21(b)]

Prevention of Money Laundering Act, 2002 – s.4 – Code of Criminal Procedure, 1973 – s. 204 – After a summons are issued u/s. 204 of the CrPC on taking cognizance of the offence punishable u/s. 4 of the PMLA on a complaint, if accused appears before the Special Court, would he be treated as in custody and is it necessary for him to apply for bail:

Held: After a summons is issued under Section 204 of the CrPC on taking cognizance of the offence punishable under Section 4 of the PMLA on a complaint, if the accused appears before the Special Court pursuant to the summons, he shall not be treated as if he is in custody – Therefore, it is not necessary for him to apply for bail – However, the Special Court can direct the accused to furnish bond in terms of Section 88 of the CrPC. [Para 21(c)]

Prevention of Money Laundering Act, 2002 – Code of Criminal Procedure, 1973 – s. 205 – In a case where the accused appears pursuant to a summons before the Special Court, whether the Special Court can grant exemption from personal appearance:

Held: In a case where the accused appears pursuant to a summons before the Special Court, on a sufficient cause being

shown, the Special Court can grant exemption from personal appearance to the accused by exercising power under Section 205 of the CrPC. [Para 21(d)]

Prevention of Money Laundering Act, 2002 – Code of Criminal Procedure, 1973 – s.70 – If the accused does not appear after summons are served or does not appear on a subsequent date, whether the Special Court can issue warrant within its power:

Held: If the accused does not appear after a summons is served or does not appear on a subsequent date, the Special Court will be well within its powers to issue a warrant in terms of Section 70 of the CrPC – Initially, the Special Court should issue a bailable warrant – If it is not possible to effect service of the bailable warrant, then the recourse can be taken to issue a non-bailable warrant. [Para 21(e)]

Prevention of Money Laundering Act, 2002 – Code of Criminal Procedure, 1973 – s.88 – Whether the order accepting bonds u/s. 88 of the CrPC amounts to grant of bail:

Held: A bond furnished according to Section 88 is only an undertaking by an accused who is not in custody to appear before the Court on the date fixed – Thus, an order accepting bonds under Section 88 from the accused does not amount to a grant of bail. [Para 21(f)]

Prevention of Money Laundering Act, 2002 – Code of Criminal Procedure, 1973 – s.89 r/w. s.70 – In a case where the accused has furnished bonds u/s. 88 of the CrPC, if he fails to appear on subsequent dates, whether the Special Court has power to issue warrant directing that the accused shall be arrested and produced before the Special Court and if such a warrant is issued, will it be open for the accused to apply for cancellation of the warrant by giving an undertaking to appear on all dates fixed:

Held: In a case where the accused has furnished bonds under Section 88 of the CrPC, if he fails to appear on subsequent dates, the Special Court has the powers under Section 89 read with Sections 70 of the CrPC to issue a warrant directing that the accused shall be arrested and produced before the Special Court; If such a warrant is issued, it will always be open for the accused to apply for cancellation of the warrant by giving an undertaking to the Special Court to appear before the said Court on all the dates fixed

by it – While cancelling the warrant, the Court can always take an undertaking from the accused to appear before the Court on every date unless appearance is specifically exempted – When the ED has not taken the custody of the accused during the investigation, usually, the Special Court will exercise the power of cancellation of the warrant without insisting on taking the accused in custody provided an undertaking is furnished by the accused to appear regularly before the Court – When the Special Court deals with an application for cancellation of a warrant, the Special Court is not dealing with an application for bail – Hence, Section 45(1) of PMLA will have no application to such an application. [Para 21(g)]

Prevention of Money Laundering Act, 2002 – Code of Criminal Procedure, 1973 – s.82, s.83 and s.88 –When a warrant of arrest has been issued on account of non-appearance or proceedings u/s. 82 and/or s.83 of the CrPC, whether the accused can be let off by taking bond u/s.88 of the CrPC:

Held: When an accused appears pursuant to a summons, the Special Court is empowered to take bonds under Section 88 of the CrPC in a given case – However, it is not mandatory in every case to direct furnishing of bonds – However, if a warrant of arrest has been issued on account of non-appearance or proceedings under Section 82 and/or Section 83 of the CrPC have been issued against an accused, he cannot be let off by taking a bond under Section 88 of the CrPC, and the accused will have to apply for cancellation of the warrant. [Para 21(h)]

Prevention of Money Laundering Act, 2002 – s.19 and s.44(1)(b) – Code of Criminal Procedure, 1973 – Whether ED and its officers have power u/s.19 to arrest a person shown as a accused in the complaint after cognizance is taken of the offence punishable u/s. 4 of the PMLA based on complaint u/s. 44(1)(b):

Held: After cognizance is taken of the offence punishable under Section 4 of the PMLA based on a complaint under Section 44 (1)(b), the ED and its officers are powerless to exercise power under Section 19 to arrest a person shown as an accused in the complaint. [Para 21(i)]

Prevention of Money Laundering Act, 2002 – s.19 – What if the ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence:

Held: If the ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, the ED will have to seek custody of the accused by applying to the Special Court – After hearing the accused, the Special Court must pass an order on the application by recording brief reasons – While hearing such an application, the Court may permit custody only if it is satisfied that custodial interrogation at that stage is required, even though the accused was never arrested under Section 19 – However, when the ED wants to conduct a further investigation concerning the same offence, it may arrest a person not shown as an accused in the complaint already filed under Section 44(1)(b), provided the requirements of Section 19 are fulfilled. [Para 21(j)]

Prevention of Money Laundering Act, 2002 – s.44(1)(b) – Code of Criminal Procedure, 1973 – s.88 and s. 205 – Appellants were accused in complaints u/s.44(1)(b) of the PMLA – The Special Court took cognizance under PMLA – In the instant case, the appellants did not appear before the Special Court after summons were served to them – The Special Court issued warrants for procuring their presence – Appellants were denied anticipatory bail by the Special Court:

Held: In the instant case, the warrants were issued to the appellants as they did not appear before the Special Court after the service of summons – The appellants could have applied for cancellation of warrants issued against them as the warrants were issued only to secure their presence before the Special Court – Instead of applying for cancellation of warrants, the appellants applied for anticipatory bail – All of them were not arrested till the filing of the complaint and have co-operated in the investigation – Therefore, it is proposed to direct that the warrants issued against the appellants shall stand cancelled subject to the condition of the appellants giving undertakings to the respective Special Courts to regularly and punctually attend the Special Court on all dates fixed unless specifically exempted by the exercise of powers under Section 205 of the CrPC – The second condition will be furnishing bonds to the Special Court in terms of Section 88 of the CrPC. [Para 22]

Case Law Cited

Yash Tuteja & Anr. v. Union of India & Ors. [2024] 4 SCR 591 **: 2024 INSC 301;** *Inder Mohan Goswami & Anr. v. State of Uttaranchal & Ors.* [2007] 10 SCR 847 **: (2007) 12 SCC 1;**

Tarsem Lal v. Directorate of Enforcement Jalandhar Zonal Office

Pankaj Jain v. Union of India and Anr. [2018] 9 SCR 248 **: (2018) 5 SCC 743 – relied on.**

Ashok Munilal Jain & Anr. v. Assistant Director, Directorate of Enforcement **(2018) 16 SCC 158;** *Satender Kumar Antil v. Central Bureau of Investigation & Anr.* **(2021) 10 SCC 773;** *Satender Kumar Antil v. Central Bureau of Investigation and Anr.* [2022] 10 SCR 351 **: (2022) 10 SCC 51;** *Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.* [2022] 6 SCR 382 **: (2022) SCC OnLine SC 929 – referred to.**

List of Acts

Prevention of Money Laundering Act, 2002; Code of Criminal Procedure, 1973.

List of Keywords

Section 44(1)(b) of Prevention of Money Laundering Act, 2002; Section 4 of Prevention of Money Laundering Act, 2002; Section 19 of Prevention of Money Laundering Act, 2002; Section 200 to 2005 of Code of Criminal Procedure, 1973; Section 88 of Code of Criminal Procedure, 1973; Section 89 of Code of Criminal Procedure, 1973; Cancellation of warrants; Furnishing bonds; Regular appearance in Special Court; Power to take bond for appearance; Arrest on breach of bond for appearance; Exemption from appearance.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2608 of 2024

From the Judgment and Order dated 19.12.2023 of the High Court of Punjab & Haryana at Chandigarh in CRLM No. 47406 of 2023

With

Criminal Appeal Nos. 2609, 2610, 2611, 2612, 2613, 2614 and 2615 of 2024

Appearances for Parties

Sidharth Luthra, Sr. Adv., Akbar Siddique, Sheezan Hashmi, Mihir Joshi, Aakash Dubey, Rahul Khare, Rajneesh Chuni, Parv K. Garg, Parwez Akhtar, Harsh Kumar Singh, Animesh Mishra, Javed

Muzaffar, Malik Javed Ansari, Dr. Smriti Raturi Sharma, Siddharth R. Gupta, Sanjay Singh, Shantanu Sharma, Ms. Garvita Jain, Sankalp Kochhar, Siddhant Kochhar, Ms. Sakshi Banga, Ms. Amisha Devi, Mrigank Prabhakar, Ms. Sakshi Kakkar, Shakti Singh, Kartikey Dang, Rudraditya Khare, Sahir Seth, Harsh Tyagi, Harshit Sethi, Nikhil Jain, Rahil Mahajan, Ms. Mansi Tripathi, Manmeet Singh, Nikilesh Ramachandran, Lovekesh Aggarwal, Advs. for the Appellant.

S.V. Raju, A.S.G., Mukesh Kumar Maroria, Zoheb Hussain, Annam Venkatesh, Arkaj Kumar, Mrs. Rajeshwari Shankar, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

1. Leave granted.

FACTUAL ASPECTS

2. Since the issues involved are common and very little turns on facts, we broadly refer to the factual aspects. The appellants are the accused in complaints under Section 44 (1)(b) of the Prevention of Money Laundering Act, 2002 (for short, 'the PMLA'). The appellants have been denied the benefit of anticipatory bail by the impugned orders. We are dealing with the cases of the accused who were not arrested after registration of the Enforcement Case Information Report (ECIR) till the Special Court took cognizance under the PMLA of an offence punishable under Section 4 of the PMLA. The cognizance was taken on the complaints filed under Section 44 (1)(b). These are the cases where the appellants did not appear before the Special Court after summons were served to them. The Special Court issued warrants for procuring their presence. After the warrants were issued, the appellants applied for anticipatory bail before the Special Court. The applications were rejected. Unsuccessful accused have preferred these appeals since the High Court has turned down their prayers. This Court, by interim orders, has protected the appellants from arrest.

SUBMISSIONS

3. The learned senior counsel, Mr Sidharth Luthra, appearing for the appellants in Criminal Appeal @ Special Leave Petition (Crl.) No.121 of 2024 and the learned counsel representing other appellants have

made detailed submissions. We are summarising their submissions as follows:

(a) The power to arrest vesting in the officers of the Directorate of Enforcement (for short, 'the ED') under Section 19 of the PMLA cannot be exercised after the Special Court takes cognizance of the offence punishable under Section 4 of the PMLA;

(b) If an accused appears pursuant to the summons issued by the Special Court, there is no reason to issue a warrant of arrest against him or to take him into custody;

(c) There is nothing inconsistent between Section 88 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') and the provisions of the PMLA. On a conjoint reading of Sections 4 and 5 of the CrPC with Section 65 of the PMLA, it is apparent that all the provisions of the CrPC would apply to proceedings before the Special Court from the stage of filing a complaint under Section 44 (1)(b). Only those provisions of the CrPC that are inconsistent with the specific provisions of the PMLA will not apply. Reliance was placed upon the decision of this Court in the case of ***Ashok Munilal Jain & Anr. v. Assistant Director, Directorate of Enforcement***[1]. As there is no inconsistency between Section 88 of the CrPC and the provisions of the PMLA if, after service of summons, the accused offers to furnish bonds for appearance in terms of Section 88 of the CrPC, the Special Court should normally accept the bonds. After furnishing the bonds, if the accused fails to appear before the Special Court, recourse can always be taken by the Special Court to Section 89 by issuing a warrant for procuring the presence of the accused before the Special Court;

(d) Once cognizance is taken based on a complaint, the Special Court cannot exercise the power of remand under Section 167 (2) of the CrPC. After cognizance is taken, the power can be exercised at the highest under Section 309 (2) of the CrPC;

(e) In view of this Court's decision in ***Satender Kumar Antil v. Central Bureau of Investigation & Anr.***[2], as clarified

1 (2018) 16 SCC 158

2 (2021) 10 SCC 773

in the subsequent decision in ***Satender Kumar Antil v. Central Bureau of Investigation and Anr.***[3], when during the investigation, the prosecution does not seek the custody of the accused, after the Court takes cognizance, there is no need to arrest the accused;

(f) When the accused is not arrested during the investigation, after he appears before the Special Court pursuant to a summons, it is not necessary for him to apply for bail. The Special Court can always take recourse to Section 88 of the CrPC. In such a situation, if the ED is seeking remand by taking recourse under Section 309(2) of the CrPC, it will be incumbent upon the Special Court to give an opportunity of being heard to the accused and pass an order recording reasons in brief;

(g) As held in the second case of ***Satender Kumar Antil***[3], Section 170 of the CrPC is merely a procedural compliance. It is submitted that in case of an offence punishable under the PMLA, a complaint under Section 44 (1)(b) partakes the character of a report/chargesheet under Section 173 of the CrPC. Once cognizance is taken based on the complaint, the authorities cannot invoke Section 19 of the PMLA and arrest an accused who has not been arrested till the date of the Special Court taking cognizance. If they require custody of the accused for further investigation to enable them to file a supplementary complaint, the officers of the ED will have to apply to the Special Court for a grant of custody; and

(h) When an accused is not arrested until the filing of the complaint and when an accused appears pursuant to summons before the Special Court, Section 437 of the CrPC will not apply, and it is not necessary for the accused to seek bail.

4. The learned Additional Solicitor General Mr S V Raju submitted that:

(a) Once an accused appears before the Special Court, he is deemed to be in its custody. Though Section 437 of the CrPC may not apply, the accused must apply for bail under Section 439 of the CrPC;

3 [2022] 10 SCR 351 : (2022) 10 SCC 51

(b) A Special Court takes cognizance of an offence under Section 4 of the PMLA based on a complaint only if a prima facie case of commission of the offence is made out. When the accused applies for bail under Section 439 of the CrPC, after cognizance is taken, the conditions incorporated in Section 45 (1) of the PMLA will apply to the bail application;

(c) An application made by the accused for furnishing bonds in terms of Section 88 is an application for grant of bail; therefore, Section 45 (1) of the PMLA will apply even to such application;

(d) The guidelines issued in the case of ***Satender Kumar Antil***[3]***,*** do not apply to special acts like the PMLA;

(e) After cognizance is taken on a complaint under Section 44 (1) (b), the ED has the right to make further investigation and file a supplementary complaint. For that purpose, the ED can always exercise its power under Section 19 of the PMLA to arrest the accused against whom the complaint is filed;

(f) Though an accused against whom an allegation of commission of an offence punishable under Section 4 of the PMLA is made can apply for grant of anticipatory bail, such application shall also be governed by the conditions in Section 45 (1). Relying upon the decision of this Court in the case of ***Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.***[4], it is submitted that money laundering is an offence against the nation. Therefore, taking into consideration the gravity and severity of the offence under the PMLA, mandatory compliance with the requirements of Section 45 (1) must always be ensured;

(g) In view of Section 65, read with Section 71 of the PMLA, the provisions of the PMLA will have an overriding effect over the provisions of the CrPC; and

(h) In none of these cases, the conditions incorporated under Section 45 (1) of the PMLA have been fulfilled; therefore, the appellants are disentitled to grant of anticipatory bail.

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4 [2022] 6 SCR 382 : 2022 SCC OnLine SC 929

CONSIDERATION OF SUBMISSIONS

5. While dealing with the complaints under Section 44 (1)(b), this Court, in its judgment dated 8th April 2024 in the case of ***Yash Tuteja & Anr. v Union of India & Ors.***[5] dealt with the issue of the applicability of provisions of the CrPC to a complaint under Section 44 (1)(b) of the PMLA. While dealing with the said issue in paragraph 6, this Court held thus:

> "**6.** The only mode by which the cognizance of the offence under Section 3, punishable under Section 4 of the PMLA, can be taken by the Special Court is upon a complaint filed by the Authority authorized on this behalf. Section 46 of PMLA provides that the provisions of the Cr.PC (including the provisions as to bails or bonds) shall apply to proceedings before a Special Court and for the purposes of the Cr.PC provisions, the Special Court shall be deemed to be a Court of Sessions. However, sub-section (1) of Section 46 starts with the words "save as otherwise provided in this Act." Considering the provisions of Section 46(1) of the PMLA, save as otherwise provided in the PMLA, the provisions of the Code of Criminal Procedure, 1973 (for short, Cr. PC) shall apply to the proceedings before a Special Court. **Therefore, once a complaint is filed before the Special Court, the provisions of Sections 200 to 204 of the Cr.PC will apply to the Complaint. There is no provision in the PMLA which overrides the provisions of Sections 200 to Sections 204 of Cr.PC.** Hence, the Special Court will have to apply its mind to the question of whether a prima facie case of a commission of an offence under Section 3 of the PMLA is made out in a complaint under Section 44(1)(b) of the PMLA. If the Special Court is of the view that no prima facie case of an offence under Section 3 of the PMLA is made out, it must exercise the power under Section 203 of the Cr.PC to dismiss the complaint. If a prima facie case is made

5 [2024] 4 SCR 591 : 2024 INSC 301

out, the Special Court can take recourse to Section 204 of the Cr. PC."

(emphasis added)

6. If the Special Court concludes that *a prima facie* case of commission of an offence under the PMLA is made out in the complaint, it can order the issue of process in accordance with Section 204 (1) of the CrPC. Section 204 of the CrPC reads thus:

> "**204. Issue of process**.—(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—
>
> (*a*) a summons-case, he shall issue his summons for the attendance of the accused, or
>
> (*b*) **a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.**
>
> (2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.
>
> (3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.
>
> (4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.
>
> (5) Nothing in this section shall be deemed to affect the provisions of Section 87."

(emphasis added)

7. As the punishment for an offence punishable under Section 4 of the PMLA is of imprisonment for more than three years, in view of clause (x) of Section 2 of the CrPC, the complaint will be treated as a warrant

case. Under Section 204(1)(b), the Court can issue either a warrant or summons in a warrant case. Therefore, while taking cognizance, the Special Court has the discretion to issue either a summons or warrant. Regarding the discretion under Section 204 (1)(b), this Court has laid down the law in the case of ***Inder Mohan Goswami & Anr. v. State of Uttaranchal & Ors***[6]. This Court held that as a general rule, unless an accused is charged with an offence of heinous crime and it is feared that he is likely to tamper with or destroy the evidence or evade the process of law, the issue of summons is the rule. This Court held that in a complaint case, at the first instance, the Court should direct serving of summons along with the copy of complaint. If service is avoided by the accused, initially, a bailable warrant should be issued. If that is not effective, a non-bailable warrant should be issued. Paragraphs 55 and 56 of the said decision read thus:

> **"55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint.** If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. **Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.**
>
> **56.** The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. **There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided."**
>
> (emphasis added)

6 [2007] 10 SCR 847 : (2007) 12 SCC 1

As noted earlier, a complaint under Section 44(1)(b) of the PMLA will be governed by Sections 200 to 204 of the CrPC. Hence, the law laid down by this Court in the above decision will apply to a complaint under Section 44(1)(b).

8. While taking cognizance on a complaint under Section 44 (1)(b), if the Court finds that till the filing of the complaint, the accused was not arrested, generally at the first instance, as a rule, the Court must issue a summons on the complaint. If the accused was not arrested till the filing of the complaint but has not cooperated with the investigation by defying summons issued under Section 50 of the PMLA, the Special Court may issue a bailable warrant at the first instance while issuing the process. But even in such a case, it is not mandatory to issue a warrant while issuing process; instead issuance of a summons would suffice. When an accused is on bail, while issuing the process, the Special Court will have to issue only a summons. When the accused is granted bail in the same case, it is not necessary to arrest him after taking cognizance. If such an accused does not remain present after service of summons without seeking an exemption, the Special Court can always issue a warrant to secure his presence.

9. Section 61 of the CrPC provides for the form of summons. Form No. 1 in the 2nd Schedule is the prescribed form of summons under Section 61 of the CrPC. For the sake of convenience, we are reproducing Form No. 1:

FORM 1

[*See* Section 61]

Summons to an accused person

To (name of accused) of (address).

Whereas your attendance is necessary to answer to a charge of (*state shortly the offence charged*), you are hereby required to appear in person (or by pleader, *as the case may be*) before the (*Magistrate*) of __________, on the _____day of _______Herein fail not.

Dated, this day of , 20

(*Seal of the Court*) (*Signature*)

Looking at the form of the summons, it is apparent that it is issued only to secure the presence of the accused before the Court to answer the charge. If the accused appears before the Court, there is sufficient compliance with the summons. Hence, the question of taking him into custody on his appearance before the Court pursuant to the summons does not arise at all.

10. We fail to understand the basis of the submission of the learned ASG that after an accused appears before a Special Court in compliance with the summons, he shall be deemed to be in custody. The object of issuing a summons is to secure the accused's presence before the Court. It is not issued for taking an accused in custody. An argument is made that once an accused appears before the Special Court, as provided under sub-Section (1) of Section 437, he has to apply for bail. For ready reference, we are reproducing sub-Section (1) of Section 437, which reads thus:

> **"437. When bail may be taken in case of non-bailable offence.—** (1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station **or appears or is brought before a Court other than the High Court or Court of session**, he may be released on bail, but—
>
> (i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;
>
> (ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years:
>
> Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

> Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:
>
> Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:
>
> Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor."
>
> (emphasis added)

On its plain reading, sub-Section (1) of Section 437 does not apply when an accused appears or is brought before a High Court or Sessions Court. A Special Court is appointed under sub-Section (1) of Section 43 of the PMLA, which reads thus:

> "**43. Special Courts**.—(1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under Section 4, by notification, designate, one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.
>
> *Explanation*.—In this sub-section, "High Court" means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.
>
> (2)……………………………………………………"

Section 44 (1)(d) provides that while trying a scheduled offence or offence under the PMLA, a Special Court shall hold the trial in accordance with the provisions of the CrPC as they apply to trial

before a Court of Session. A Special Court is a Court of Session. Therefore, Section 437 will not apply when an accused appears before the Special Court after a summons is issued on a complaint under Section 44 (1)(b) of the PMLA.

11. There are provisions in the CrPC which show that an accused who appears before the Court under a summons issued on a complaint cannot be treated as if he is in a deemed custody. One such provision is Section 205 of the CrPC, which reads thus:

> "**205. Magistrate may dispense with personal attendance of accused.**—(1) **Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.**
>
> (2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided."
>
> (emphasis added)

We will examine whether Section 205 of the CrPC will apply to a complaint under Section 44(1)(b) of the PMLA. Sections 65 and 71 of the PMLA read thus:

> "**65. Code of Criminal Procedure, 1973 to apply**.—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act."
>
> "**71. Act to have overriding effect.**—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

After carefully perusing the provisions of the PMLA, we find that there is no provision therein which is in any manner inconsistent with Section 205 of the CrPC. Hence, it will apply to a complaint under the PMLA. A summons is issued on a complaint to ensure

attendance of the accused before the Criminal Court. If an accused is in custody, no occasion arises for a Court to dispense with the personal attendance of the accused. We may note here that Section 205 empowers the Court to grant exemption only when a summons is issued. Sub-section (2) of Section 205 provides for enforcing the attendance of the accused before the Court at the time of the trial. If the accused who appears pursuant to the summons issued on a complaint were deemed to be in custody, the lawmakers would not have provided for Section 205. Hence, we reject the argument of the learned ASG that once an accused appears before the Special Court on a summons being served to him, he shall be deemed to be in custody.

12. Now, we come to Section 88 of the CrPC. Section 88 reads thus:

> "**88. Power to take bond for appearance**.—When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial."

If a summons on a complaint is issued and the accused appears on the returnable date, it is not necessary in every case to direct the accused to furnish bonds as required by Section 88. It is an enabling provision that permits the Court to direct the accused to furnish bonds considering the facts of each case. Based on the submissions made across the Bar, there are three issues concerning Section 88, which are as under:

(i) Whether Section 88 applies to an accused who has been served with a summons or applies to an accused who appears before the Court before the summons is issued or served?

(ii) Will Section 88 apply to a complaint under the PMLA?

(iii) Whether an order issued by a Criminal Court to the accused to furnish bonds in accordance with Section 88 amounts to a grant of bail?

13. Firstly, after examining the provisions of the PMLA, it is apparent that Section 88 is in no manner inconsistent with the provisions of the PMLA. Therefore, Section 88 will apply after filing of a complaint

under Section 44(1)(b) of the PMLA. If Section 88 is to apply even before a summons is issued or served upon a complaint, there is no reason why it should not apply after the service of summons. A discretionary power has been conferred by Section 88 on the Court to call upon the accused to furnish bonds for his appearance before the Court. It does not depend on the willingness of the accused. The object of Section 88 is to ensure that the accused regularly appears before the Court. Section 88 is a part of Chapter VI of the CrPC under the heading "Processes to Compel Appearance". Section 61, which deals with the form of summons and mode of service of summons, is a part of the same Chapter. When a summons is issued after taking cognizance of a complaint to an accused, he is obliged to appear before the Criminal Court on the date fixed in the case unless his presence is exempted by an express order passed in the exercise of powers under Section 205 of the CrPC. Therefore, when an accused appears pursuant to a summons issued on the complaint, the Court will be well within its powers to take bonds under Section 88 from the accused to ensure his appearance before the Court. Therefore, when an accused appears before the Special Court under a summons issued on the complaint, if he offers to submit bonds in terms of Section 88, there is no reason for the Special Court to refuse or decline to accept the bonds. Executing a bond will aid the Special Court in procuring the accused's presence during the trial.

14. A decision of this Court in the case of ***Pankaj Jain v. Union of India and Anr.***[7] had an occasion to deal with the issue. The occasion to consider the provision of Section 88 was the word "may" used in the Section. We may conveniently reproduce paragraphs 21 and 22 of the said decision, which reads thus:

> "**21.** This Court in *State of Kerala* v. *Kandath Distilleries* [*State of Kerala* v. *Kandath Distilleries*, (2013) 6 SCC 573] came to consider the use of expression "may" in the Kerala Abkari Act, 1902. The Court held that the expression conferred discretionary power on the Commissioner and power is not coupled with duty. Following observation has been made in para 29: (SCC p. 584)

7 [2018] 9 SCR 248 : (2018) 5 SCC 743

> "*29*. Section 14 uses the expression "*Commissioner may*", "with the approval of the Government" so also Rule 4 uses the expressions "*Commissioner may*", "*if he is satisfied*" after making such enquiries as *he may consider necessary "licence may be issued*". All those expressions used in Section 14 and Rule 4 confer discretionary powers on the Commissioner as well as the State Government, not a discretionary power coupled with duty."
>
> (emphasis in original)
>
> **22. Section 88 of the CrPC does not confer any right on any person, who is present in a court. Discretionary power given to the court is for the purpose and object of ensuring appearance of such person in that court or to any other court into which the case may be transferred for trial. Discretion given under Section 88 to the court does not confer any right on a person, who is present in the court rather it is the power given to the court to facilitate his appearance, which clearly indicates that use of the word "may" is discretionary and it is for the court to exercise its discretion when situation so demands. It is further relevant to note that the word used in Section 88 "any person" has to be given wide meaning, which may include persons, who are not even accused in a case and appeared as witnesses."**
>
> (emphasis added)

This Court, in the aforesaid decision, dealt with a case where Section 437 of the CrPC was applicable. We have already held that in case of a complaint under Section 44(1)(b) of the PMLA, Section 437 will have no application. Thereafter, this Court discussed the issue as to in what manner discretion should be exercised. Paragraphs 27 to 29 deal with this issue which read thus:

> **"27.** Another judgment relied upon by the appellant is the judgment of the Punjab & Haryana High Court in *Arun Sharma* v. *Union of India* [*Arun Sharma* v. *Union of India*, 2016 SCC OnLine P&H 5954 : (2016) 3 RCR (Cri) 883]. In the above case, the Punjab & Haryana High Court was considering Section 88 CrPC read with Section 65

of the Prevention of Money-Laundering Act. In the above context, following has been observed in para 11: (SCC OnLine P&H)

"*11*. On the same principles, in absence of anything inconsistent in PMLA with Section 88 CrPC, when a person voluntarily appears before the Special Court for PMLA pursuant to issuance of process vide summons or warrant, and offers submission of bonds for further appearances before the court, any consideration of his application for furnishing such bond, would be necessarily governed by Section 88 CrPC read with Section 65 of PMLA. Section 88 CrPC reads as follows:

'**88.** ***Power to take bond for appearance***.—When any person for whose appearance or arrest the officer presiding in any court is empowered to issue a summons or warrant, is present in such court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such court, or any other court to which the case may be transferred for trial.'

This Section 88 (corresponding to Section 91 CrPC, 1898) would not apply qua a person whose appearance is not on his volition, but is brought in custody by the authorities as held by the Constitution Bench of the Hon'ble Supreme Court in *Madhu Limaye* v. *Ved Murti* [*Madhu Limaye* v. *Ved Murti*, (1970) 3 SCC 739] , wherein it was observed that: (SCC p. 745, para 17)

'*17*. … In fact Section 91 applies to a person who is present in court and is free because it speaks of his being bound over, to appear on another day before the court. That shows that the person must be a free agent whether to appear or not. If the person is already under arrest and in custody, as were the petitioners, their appearance depended not on their own volition but on the volition of the person who had their custody.'

Thus, in a situation like this where the accused were not arrested under Section 19 of PMLA during investigations and were not produced in custody for taking cognizance, Section 88 CrPC shall apply upon appearance of the

> accused person on his own volition before the trial court to furnish bonds for further appearances."
>
> **28. The present is not a case where accused was a free agent whether to appear or not. He was already issued non-bailable warrant of arrest as well as proceeding of Sections 82 and 83 CrPC had been initiated. In this view of the matter, he was not entitled to the benefit of Section 88.**
>
> **29.** In the Punjab & Haryana case, the High Court has relied on judgment of this Court in *Madhu Limaye* v. *Ved Murti* [*Madhu Limaye* v. *Ved Murti*, (1970) 3 SCC 739] and held that Section 88 shall be applicable since accused were not arrested under Section 19 of PMLA during investigation and were not taken into custody for taking cognizance. What the Punjab & Haryana High Court missed, is that this Court in the same paragraph had observed "*that shows that the person must be a free agent whether to appear or not*". **When the accused was issued warrant of arrest to appear in the court and proceeding under Sections 82 and 83 CrPC has been initiated, he cannot be held to be a free agent to appear or not to appear in the court. We thus are of the view that the Punjab & Haryana High Court has not correctly applied Section 88 in the aforesaid case**."
>
> (emphasis added)

Therefore, if a warrant of arrest has been issued and proceedings under Section 82 and/or 83 of the CrPC have been issued against an accused, he cannot be let off by taking a bond under Section 88. Section 88 is indeed discretionary. But this proposition will not apply to a case where an accused in a case under the PMLA is not arrested by the ED till the filing of the complaint. The reason is that, in such cases, as a rule, a summons must be issued while taking cognizance of a complaint. In such a case, the Special Court may direct the accused to furnish bonds in accordance with Section 88 of the CrPC.

15. Now, we come to the issue of whether an order of the Court accepting bonds under Section 88 amounts to grant of bail. If an accused appears pursuant to a summons issued on the complaint,

he is not in custody. Therefore, there is no question of granting him bail. Moreover, even if the accused who appears before the Court does not offer to submit bonds under Section 88 of the CrPC, the Court can always direct him to do so. A bond furnished according to Section 88 is an undertaking to appear before the Court on the date fixed. The question of filing bail bonds arises only when the Court grants bail. When an accused furnishes a bond in accordance with Section 88 of the CrPC for appearance before a Criminal Court, he agrees and undertakes to appear before the Criminal Court regularly and punctually and on his default, he agrees to pay the amount mentioned in the bond. Section 441 of the CrPC deals with a bond to be furnished by an accused when released on bail. Therefore, in our considered view, an order accepting bonds under Section 88 from the accused does not amount to a grant of bail.

16. Now, we deal with a contingency where after service of summons issued on a complaint under the PMLA, the accused does not appear. One category of such cases can be where the accused appears on the returnable date of the summons and subsequently does not appear, notwithstanding the furnishing of bonds under Section 88. The other category of cases is where, after the service of summons is made on the complaint, the accused does not appear. This category will also include a case where the accused appears on returnable date, but on a subsequent date fails to appear. In the first contingency, where the accused does not appear in breach of the bond furnished under Section 88, Section 89 of the CrPC confers sufficient powers on the Court to take care of the situation. Section 89 reads thus:

> "**89. Arrest on breach of bond for appearance.**—When any person who is bound by any bond taken under this Code to appear before a Court, does not appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him."

The warrant contemplated by Section 89 can be a bailable or non-bailable warrant.

17. Even if a bond is not furnished under Section 88 by an accused and if the accused remains absent after that, the Court can always issue a warrant under Section 70 (1) of the CrPC for procuring the

presence of the accused before the Court. In both contingencies, when the Court issues a warrant, it is only for securing the accused's presence before the Court. When a warrant is issued in such a contingency, it is not necessary for the accused to apply for bail. Section 70, which confers power on the Court to issue a warrant, indicates that the Court which issues the warrant has the power to cancel it. Section 70 reads thus:

> "**70. Form of warrant of arrest and duration**.—(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.
>
> (2) **Every such warrant shall remain in force until it is cancelled by the Court which issued it,** or until it is executed."
>
> (emphasis added)

Thus, sub-section (2) of Section 70 confers power on the Court to cancel the warrant. When a bailable warrant is issued to an accused on the grounds of his non-appearance, he is entitled to be enlarged on bail as a matter of right when he appears before the Court. Therefore, he need not apply for cancellation of the warrant.

18. When a warrant is issued in the cases mentioned in paragraph 16 above, the Special Court can always entertain an application for cancellation of the warrant and can cancel the warrant depending upon the conduct of the accused. While cancelling the warrant, the Court can always take an undertaking from the accused to appear before the Court on every date unless appearance is specifically exempted. When the ED has not taken the custody of the accused during the investigation, usually, the Special Court will exercise the power of cancellation of the warrant without insisting on taking the accused in custody provided an undertaking is furnished by the accused to appear regularly before the Court. When the Special Court deals with an application for cancellation of a warrant, the Special Court is not dealing with an application for bail. Hence, Section 45(1) will have no application to such an application.

19. At this stage, we may refer to a decision of this Court in the case of ***Satender Kumar Antil***[3]***.*** While dealing with Sections 88, 170, 204, and 209 of the CrPC, in paragraphs 100.5, this Court held thus:

> "**100.5.** There need not be any insistence of a bail application while considering the application under Sections 88, 170, 204 and 209 of the Code."

At this stage, we may note here that from paragraphs 86 to 89 of the same decision, this Court dealt with category of special acts. In paragraph 89, this Court held thus:

> "**89.** We may clarify on one aspect which is on the interpretation of Section 170 of the Code. Our discussion made for the other offences would apply to these cases also. To clarify this position, we may hold that if an accused is already under incarceration, then the same would continue, and therefore, it is needless to say that the provision of the Special Act would get applied thereafter. **It is only in a case where the accused is either not arrested consciously by the prosecution or arrested and enlarged on bail, there is no need for further arrest at the instance of the court.** Similarly, we would also add that the existence of a pari materia or a similar provision like Section 167(2) of the Code available under the Special Act would have the same effect entitling the accused for a default bail. Even here the court will have to consider the satisfaction under Section 440 of the Code."
>
> (emphasis added)

20. Once cognizance is taken of the offence punishable under Section 4 of the PMLA, the Special Court is seized of the matter. After the cognizance is taken, the ED and other authorities named in Section 19 cannot exercise the power of arrest of the accused shown in the complaint. The reason is that the accused shown in the Complaint are under the jurisdiction of the Special Court dealing with the complaint. Therefore, after cognizance of the complaint under 44(1)(b) of the PMLA is taken by the Court, the ED and other authorities named in Section 19 are powerless to arrest an accused named in the complaint. Hence, in such a case, an apprehension that the ED will arrest such an accused by exercising powers under Section 19 can never exist.

21. We are informed across the Bar by the learned counsel of the appellants that some of the Special Courts under the PMLA are

following the practice of taking the accused into custody after they appear pursuant to the summons issued on the complaint. Therefore, the accused are compelled to apply for bail or for anticipatory bail apprehending arrest upon issuance of summons. We cannot countenance a situation where, before the filing of the complaint, the accused is not arrested; after the filing of the complaint, after he appears in compliance with the summons, he is taken into custody and forced to apply for bail. Hence, such a practice, if followed by some Special Courts, is completely illegal. Such a practice may offend the right to liberty guaranteed by Article 21 of the Constitution of India. If the ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, the ED will have to seek custody of the accused by applying to the Special Court. After hearing the accused, the Special Court must pass an order on the application by recording brief reasons. While hearing such an application, the Court may permit custody only if it is satisfied that custodial interrogation at that stage is required, even though the accused was never arrested under Section 19. However, when the ED wants to conduct a further investigation concerning the same offence, it may arrest a person not shown as an accused in the complaint already filed under Section 44(1)(b), provided the requirements of Section 19 are fulfilled.

ON FACTUAL ASPECTS OF THE APPEALS

22. Coming back to the facts of the cases before us, warrants were issued to the appellants as they did not appear before the Special Court after the service of summons. As held earlier, the appellants could have applied for cancellation of warrants issued against them as the warrants were issued only to secure their presence before the Special Court. Instead of applying for cancellation of warrants, the appellants applied for anticipatory bail. All of them were not arrested till the filing of the complaint and have co-operated in the investigation. Therefore, we propose to direct that the warrants issued against the appellants shall stand cancelled subject to the condition of the appellants giving undertakings to the respective Special Courts to regularly and punctually attend the Special Court on all dates fixed unless specifically exempted by the exercise of powers under Section 205 of the CrPC. The second condition will be furnishing bonds to the Special Court in terms of Section 88 of the CrPC.

OPERATIVE CONCLUSIONS

23. Now, we summarise our conclusions as under:

a) Once a complaint under Section 44 (1)(b) of the PMLA is filed, it will be governed by Sections 200 to 205 of the CrPC as none of the said provisions are inconsistent with any of the provisions of the PMLA;

b) If the accused was not arrested by the ED till filing of the complaint, while taking cognizance on a complaint under Section 44(1)(b), as a normal rule, the Court should issue a summons to the accused and not a warrant. Even in a case where the accused is on bail, a summons must be issued;

c) After a summons is issued under Section 204 of the CrPC on taking cognizance of the offence punishable under Section 4 of the PMLA on a complaint, if the accused appears before the Special Court pursuant to the summons, he shall not be treated as if he is in custody. Therefore, it is not necessary for him to apply for bail. However, the Special Court can direct the accused to furnish bond in terms of Section 88 of the CrPC;

d) In a case where the accused appears pursuant to a summons before the Special Court, on a sufficient cause being shown, the Special Court can grant exemption from personal appearance to the accused by exercising power under Section 205 of the CrPC;

e) If the accused does not appear after a summons is served or does not appear on a subsequent date, the Special Court will be well within its powers to issue a warrant in terms of Section 70 of the CrPC. Initially, the Special Court should issue a bailable warrant. If it is not possible to effect service of the bailable warrant, then the recourse can be taken to issue a non-bailable warrant;

f) A bond furnished according to Section 88 is only an undertaking by an accused who is not in custody to appear before the Court on the date fixed. Thus, an order accepting bonds under Section 88 from the accused does not amount to a grant of bail;

g) In a case where the accused has furnished bonds under Section 88 of the CrPC, if he fails to appear on subsequent dates,

the Special Court has the powers under Section 89 read with Sections 70 of the CrPC to issue a warrant directing that the accused shall be arrested and produced before the Special Court; If such a warrant is issued, it will always be open for the accused to apply for cancellation of the warrant by giving an undertaking to the Special Court to appear before the said Court on all the dates fixed by it. While cancelling the warrant, the Court can always take an undertaking from the accused to appear before the Court on every date unless appearance is specifically exempted. When the ED has not taken the custody of the accused during the investigation, usually, the Special Court will exercise the power of cancellation of the warrant without insisting on taking the accused in custody provided an undertaking is furnished by the accused to appear regularly before the Court. When the Special Court deals with an application for cancellation of a warrant, the Special Court is not dealing with an application for bail. Hence, Section 45(1) will have no application to such an application;

h) When an accused appears pursuant to a summons, the Special Court is empowered to take bonds under Section 88 of the CrPC in a given case. However, it is not mandatory in every case to direct furnishing of bonds. However, if a warrant of arrest has been issued on account of non-appearance or proceedings under Section 82 and/or Section 83 of the CrPC have been issued against an accused, he cannot be let off by taking a bond under Section 88 of the CrPC, and the accused will have to apply for cancellation of the warrant;

i) After cognizance is taken of the offence punishable under Section 4 of the PMLA based on a complaint under Section 44 (1)(b), the ED and its officers are powerless to exercise power under Section 19 to arrest a person shown as an accused in the complaint; and

j) If the ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, the ED will have to seek custody of the accused by applying to the Special Court. After hearing the accused, the Special Court must pass an order on the application by recording brief reasons. While hearing such an application, the

Court may permit custody only if it is satisfied that custodial interrogation at that stage is required, even though the accused was never arrested under Section 19. However, when the ED wants to conduct a further investigation concerning the same offence, it may arrest a person not shown as an accused in the complaint already filed under Section 44(1)(b), provided the requirements of Section 19 are fulfilled.

24. We are making it clear that we are dealing with a fact situation where the accused shown in the complaint under Section 44(1)(b) of the PMLA was not arrested by the ED by the exercise of power under Section 19 of the PMLA till the complaint was filed.

25. Hence, the appeals succeed, and we pass the following order:

a) We set aside the impugned orders declining to grant anticipatory bail;

b) We direct that warrants issued by the Special Courts against the appellants shall stand cancelled subject to the following conditions:

i. The appellants shall appear before the concerned Special Court within one month from today and shall file an undertaking before the Special Court that they shall regularly and punctually appear before the Special Court on the dates fixed unless their appearance is specifically exempted by the exercise of powers under Section 205 of the CrPC; and

ii. The appellants shall furnish bonds in accordance with Section 88 of the CrPC to the satisfaction of the Special Court within one month from today.

c) It is necessary to clarify that the warrants issued against the appellants shall be cancelled only if they make compliance as aforesaid within one month from today. To enable them to do so, the warrants shall not be executed against them for a period of one month from today;

d) On the failure of the appellants to appear before the Special Court and to file undertakings and bonds within one month from today, it will be open for the Special Courts to issue warrants against the appellants; and

e) After the warrants issued against the appellants are cancelled, the apprehension that they may be arrested will not survive. Hence, in view of what we have held in this judgment, it is unnecessary to consider the prayer for the grant of anticipatory bail.

26. The appeals are allowed on the above terms.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeals allowed.

[2024] 6 S.C.R. 894 : 2024 INSC 424

Karnail Singh
v.
State of Haryana & Ors.

Review Petition (Civil) No.526 of 2023
In
(Civil Appeal No. 6990 of 2014)

16 May 2024

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

Issue for Consideration

Judgment and order under review ignored the law laid down by the Constitution Bench in Bhagat Ram & others vs. State of Punjab & others which had a direct bearing on the issue in question and took a view totally contrary thereto and held that the vesting in the Panchayat is complete on mere assignment under Section 18(c) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. It was also held that the unutilized land was not available for redistribution amongst the proprietors and the land reserved for common purposes cannot be re-partitioned amongst the proprietors only because at a particular given time, the land so reserved was not put to common use and; once the land has been reserved for common purposes, it cannot be reverted to the proprietors for redistribution. Ignoring the law laid down by the Constitution Bench in Bhagat Ram and taking a contrary view, if would amount to a material error, manifest on the face of the order. Also, non-consideration of the reasoning given by the Full Bench of the High Court in Jai Singh II relying on the judgment of the Constitution Bench in Bhagat Ram, if would also amount to an error, apparent on the face of the record.

Headnotes

Haryana Village Common Lands (Regulation) Act, 1961 – Sub-clause (6) to s.2(g) and its explanation, as inserted by Haryana Act No.9 of 1992 – East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 – ss.18(c), 23-A, 24 – Judgment under review (JUR), ignoring the law laid down by the Constitution Bench in Bhagat Ram & others vs. State of Punjab & others, took a view contrary thereto, if the same would amount to a material error manifest on the face of the order and needs to be recalled:

* Author

Karnail Singh v. State of Haryana & Ors.

Held: Though this Court in the JUR referred to the Constitution Bench judgments in Ranjit Singh and Ajit Singh, there is not even a whisper about the Constitution Bench judgment in Bhagat Ram, except in paragraph 11, though it had a direct bearing on the issue in question – Constitution Bench judgment of this Court in Bhagat Ram in unequivocal terms held that the management and control does not vest in the Panchayat u/s.23-A of the Consolidation Act till possession has changed u/s.24 of the said Act – It further held that, the rights of the holders are not modified or extinguished till persons have changed possession and entered into the possession of the holdings allotted to them under the scheme – The specific contention raised by the State that the requirements as contemplated u/ss.23, 24 and 21(2) of the Consolidation Act were already complete and as such, the acquisition had already taken place before the Constitution (Seventeenth Amendment) Act, 1964, was rejected – All these steps are subsequent to the assignment u/s.18(c) of the Consolidation Act – In the light of these findings of the Constitution Bench in Bhagat Ram, the finding of this Court in the JUR that the vesting in the Panchayat is complete on mere assignment u/s.18(c) of the Consolidation Act is totally contrary to the findings recorded in the Constitution Bench judgment in Bhagat Ram – It was also held in Bhagat Ram that since the Panchayat would fall within the definition of the word "State" under Article 12 of the Constitution, if the acquisition is for the purposes of providing income to the Panchayat, it would defeat the whole object of the second proviso and the Consolidation Officer could easily defeat the object of the second proviso to Article 31-A by reserving for the income of the Panchayat a major portion of the land belonging to a person holding land within the ceiling limit – Except the cursory reference in the JUR, this Court did not even refer to the ratio laid down by the Constitution Bench of this Court in Bhagat Ram – A judgment of the Constitution Bench would be binding on the Benches of a lesser strength – A bench strength of two Judges could not have ignored the law laid down by the Constitution Bench in Bhagat Ram – Ignoring the law laid down by the Constitution Bench in Bhagat Ram and taking a view totally contrary to it would amount to a material error, manifest on the face of the order and would undermine its soundness – Further, the non-consideration of the reasoning given by the Full Bench of the High Court in Jai Singh II, which findings were given by relying on the judgment of the Constitution Bench of this Court

in Bhagat Ram, and not showing as to how the findings therein were erroneous in law, would also amount to an error, apparent on the face of the record – Furthermore, the non-consideration of the reasoning given by the Full Bench of the High Court in Jai Singh II, that on account of more than 100 decisions rendered by various Benches of the High Court, the doctrine of stare decisis is applicable, would also be an error apparent on the face of the record – Judgment and order of this Court dated 07.04.2022 in Civil Appeal No. 6990 of 2014 is recalled and the appeal is restored to file. [Paras 54-58, 46, 65, 67, 69]

Review Jurisdiction – Scope:

Held: Scope of review by this Court is very limited – Review would be permissible only if there is a mistake or error apparent on the face of the record or any other sufficient reason is made out – Review proceedings cannot be equated with the original hearing of the case – The review of the judgment would be permissible only if a material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice – Such an error should be an error apparent on the face of the record and should not be an error which has to be fished out and searched. [Paras 12, 13]

Case Law Cited

Bhagat Ram & others v. State of Punjab & others **[1967] 2 SCR 165 : AIR 1967 SC 927 – followed.**

Ranjit Singh and others v. State of Punjab and others **[1965] 1 SCR 82 : AIR 1965 SC 632 – held inapplicable.**

Ajit Singh v. State of Punjab & another **[1967] 2 SCR 143 : AIR 1967 SC 856;** *Jai Singh & others v. State of Haryana* **(2003) SCC OnLine P&H 409;** *State of Punjab v. Gurjant Singh and others* **(2001) SCC OnLine SC 1488;** *Sow Chandra Kante and another v. Sheikh Habib* **[1975] 3 SCR 933 : (1975) 1 SCC 674;** *Parsion Devi and others v. Sumitri Devi and others* **[1997] Supp. 4 SCR 470 : (1997) 8 SCC 715;** *Kerala State Electricity Board v. Hitech Electrothermics & Hydropower Ltd. and others* **[2005] Supp. 2 SCR 517 : (2005) 6 SCC 651;** *Kamlesh Verma v. Mayawati and others* **[2013] 11 SCR 25 : (2013) 8 SCC 320;** *Union of India v. Sandur Manganese and Iron Ores Limited and others* **[2013] 2 SCR 1045 : (2013) 8 SCC 337;** *Shanti Conductors Private Limited v. Assam*

State Electricity Board and others [2019] 16 SCR 252 **: (2020) 2 SCC 677;** *Shri Ram Sahu (Dead) through legal representatives and others v. Vinod Kumar Rawat and others* [2020] 11 SCR 865 **: (2021) 13 SCC 1 – referred to.**

List of Acts

Haryana Village Common Lands (Regulation) Act, 1961; East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948; Constitution (Seventeenth Amendment) Act, 1964; Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949.

List of Keywords

Review; Scope of review jurisdiction; Material error apparent/ manifest on the face of the order/record; Miscarriage of justice; Constitution Bench judgment ignored; View contrary to Constitution Bench judgment; Common pool of land; "shamilat deh"; Unutilized land not available for redistribution amongst the proprietors; Common purposes; Land reserved for common purposes cannot be re-partitioned amongst the proprietors; Reserved Land not put to common use; Vesting in the Panchayat; Land reserved but not earmarked for any common purpose under the Consolidation Scheme; Proprietary body; Title of land vests in the proprietary body; Management of the lands done on behalf of the proprietary body; Bachat lands; Gram Panchayat; Lands within the ceiling limit or not; Reservation of land for income of the Panchayat; "acquisition by the State"; "modification or extinguishment of rights"; Doctrine of stare decisis.

Case Arising From

INHERENT JURISDICTION: Review Petition (Civil) No. 526 of 2023

In

Civil Appeal No. 6990 of 2014

From the Judgment and Order dated 07.04.2022 of the Supreme Court of India in C.A. No. 6990 of 2014

Appearances for Parties

B.K. Satija, A.A.G., Narender Hooda, Rameshwar Singh Malik, Pradeep Kant, Sr. Advs., Dr. Surender Singh Hooda, Rahul Rathore, Akshay Kjindal, Shiv Bhatnagar, Shaurya Lamba, Gautam Sharma, Dr. Monika Gusain, Jitesh Malik, Chander Kiran, Rahul Govil, Varun

Shobit, Raj Singh, Ashok Kumar, Ms. Beena, Satish Kumar, Ms. Anubha Agrawal, Pardeep Gupta, Parinav Gupta, Mrs. Mansi Gupta, Rakshit Rathi, Mrs. Shashi Verma, Dr. Mrs. Vipin Gupta, Sanjay Rathi, Sanchya Bhardwaj, Mukesh Sansanwal, Rajiv, Ms. Megha Gaur, Vibhav Mishra, Parmanand Gaur, Daya Krishan Sharma, D K Sharma, Yashdeep, Mrs. Sunita Sharma, Rohit Vats, Piyush Goel, Ankit Bhanot, Shubham Rana, Pushkar Vats, Ms. Simranjeet Singh Rekhi, Shubham Kumar, Harsh Saxena, Ravindra Bana, Rajesh Kumar, Ranbir Singh Yadav, Prateek Yadav, Puran Mal Saini, Ms. Akansha Singh Yadav, Yogesh Yadav, Ms. Shivika Nehra, Chander Shekhar Ashri, Ashok Kumar Singh, Shantwanu Singh, Rahul Dubey, Raj Kishor Sinha, Ms. Pragya Singh, Sunny Singh, Akshay Singh, Ajay Pal, Karan Kapoor, Manik Kapoor, Ms. Srishti Singla, Shrey Kapoor, A. Venayagam Balan, Ankit Swarup, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

B.R. Gavai, J.

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I. FACTUAL BACKGROUND

1. The present review petition has been filed by the original respondent No.28 in the Appeal, seeking review of the judgment of this Court passed on 7th April 2022, thereby allowing the Civil Appeal No. 6990 of 2014 filed by the State of Haryana against the judgement and order passed by the Full Bench of the High Court of Punjab and Haryana at Chandigarh (hereinafter referred to as "Full Bench of the High Court") in Civil Writ Petition No. 5877 of 1992 dated 13th March 2003

2. The bare necessary facts giving rise to the present review petition are thus:

2.1 The State of Haryana, by way of Government Gazette Notification dated 11th February 1992 (hereinafter referred to as "Haryana Act No. 9 of 1992") inserted sub-clause (6) to Section 2(g) of the Haryana[1] Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the 1961 Act") along with an explanation to the said sub-clause which received the assent of the President on 14th January 1992. The sub-clause (6) to Section 2(g) of the 1961 Act reads thus:

> "2. In this Act, unless the context otherwise requires –
>
> xxx xxx xxx
>
> (g) "shamilat deh" includes-
>
> xxx xxx xxx
>
> (6) lands reserved for the common purposes of a village under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act,

1 For the word "Punjab" deemed to have been substituted w.e.f. 01.11.1966 vide Haryana Act No.15 of 2021, the Haryana Short Titles Amendment Act 2021 dated 05.04.2021.

> 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the Gram Panchayat under section 23-A of the aforesaid Act.
>
> Explanation – Lands entered in the column of ownership of record of rights as "Jumla Malkan Wa Digar Haqdaran Arazi Hassab Rasad", "Jumla Malkan" or "Mushtarka Malkan" shall be shamilat deh within the meaning of this section."

2.2 Being aggrieved by the said amendment, the present review petitioner along with similarly situated landowners, holding land in villages, who contribute a share of their holdings to form a common pool of land called 'shamilat deh', meant exclusively for the common purposes of the village inhabitants filed a batch of Writ Petitions before the High Court. Considering the matter to be involving important questions of law, likely to arise in a large number of cases and involving a large chunk of land; the Hon'ble Division Bench, then seized of the matter vide Orders dated 01st June, 1993 directed the papers of the case to be placed before the Hon'ble Chief Justice for constituting a Full Bench of the High Court for determination of the vires of the Haryana Act No. 9 of 1992 and the explanation thereof. The Full Bench of the High Court vide judgement dated 18th January 1995 allowed the batch of Writ Petitions, wherein the judgement came to be recorded in CWP No. 5877 of 1992.

2.3 The State of Haryana challenged the decision of the Full Bench of the High Court before this Court vide Civil Appeal No. 5480 of 1995; wherein this Court held that certain essentials of Article 31-A of the Constitution of India were overlooked and remanded the matter back to the High Court for re-consideration of the issues in light of Article 31A of the Constitution of India.

2.4 Accordingly, the Full Bench of the High Court vide judgement and order dated 13th March 2003, partly allowed the petition in terms of the following:

> "In view of the discussion made above, we hold that:
>
> (i) The sub-section (6) of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 and the explanation appended thereto, is only an

elucidation of the existing provisions of the said Act read with provisions contained in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948.

(ii) the un-amended provisions of the Act of 1961 and, in particular, Section 2(g)(1) read with Sections 18 and 23-A of the Act of 1948 and Rule 16(ii) of the Rules of 1949 cover all such lands which have been specifically earmarked in a consolidation scheme prepared under Section 14 read with Rules 5 and 7 and confirmed under Section 20, which has been implemented under the provisions of Section 24 and no other lands;

(iii) the lands which have been contributed by the proprietors on the basis of pro-rata cut on their holdings imposed during the consolidation proceedings and which have not been earmarked for any common purpose in the consolidation scheme prepared under Section 14 read with Rules 5 and 7 and entered in the column of ownership as Jumla Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat and in the column of possession with the Gram Panchayat or the State Government, as the case may be, on the dint of sub-section (6) of Section 2(g) and the explanation appended thereto or any other provisions of the Act of 1961 or the Act of 1948;

(iv) all such lands, which have been, as per the consolidation scheme, reserved for common purposes, whether utilized or not, shall vest with the State Government or the Gram Panchayat, as the case may be, even though in the column of ownership the entries may be Jumla Mustarka Malkans Wa Digar Haqdaran Hasab Rasad Arazi Khewat etc."

2.5 The Full Bench of the High Court also issued certain consequential directions with regard to certain mutation entries made by the Revenue Authorities.

2.6 Being aggrieved thus, the State of Haryana filed a Civil Appeal No. 6990 before this Court, which came to be allowed by judgement and order under review dated 07th April 2022 (hereinafter referred to as "**JUR**"); and the Writ Petition of the Original Writ Petitioners was consequently dismissed.

2.7 Seeking review, the present Review Petition has been filed by the review petitioner. This Court on 31st January. 2023 passed the following order in the present Review Petitions:

> "List this review petition for hearing in open Court."

2.8 Subsequently, this Court on 10th April, 2023 passed the following order:

> "1. Permission to file review petition(s) is granted.
>
> 2. Delay Condoned.
>
> 3. Issue Notice on the I.A. (Diary) Nos. 69003 and 69005 of 2023 in Diary No. 14941 of 2022, M.A. (Diary) No. 13972 of 2023 and on the review petition(s), returnable on 24.04.2023.
>
> 4. In addition to normal mode of service, liberty is granted to serve the Standing Counsel for the State."

3. Accordingly, we have heard Shri Narender Hooda, learned Senior Counsel and Shri Pradeep Gupta, learned counsel appearing on behalf of the review petitioner, Shri Pradeep Kant, learned Senior Counsel and Shri B.K. Satija, learned Additional Advocate General appearing for the respondent-State of Haryana.

II. SUBMISSIONS OF THE PARTIES

4. Shri Narender Hooda submits that the **JUR** is totally contrary to the law laid down by the Constitution Bench of this Court in the case of ***Bhagat Ram & others vs. State of Punjab & others***[2] (hereinafter referred to as "***Bhagat Ram***"*)*. It is submitted that the **JUR** also does not correctly consider the law laid down by the Constitution Bench of this Court in the case of ***Ranjit Singh and others vs. State of Punjab and others***[3] (hereinafter referred to as "***Ranjit Singh***") so

2 [1967] 2 SCR 165 : AIR 1967 SC 927

3 [1965] 1 SCR 82 : AIR 1965 SC 632

also another Constitution Bench judgment of this Court in the case of ***Ajit Singh vs. State of Punjab & another***[4] (hereinafter referred to as "***Ajit Singh***").

5. Shri Hooda submits that after considering the provisions of Section 23-A and Section 24 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as "the Consolidation Act"), this Court in ***Bhagat Ram*** has clearly held that, till possession has changed under Section 24, the management and control does not vest in the Panchayat under Section 23-A. It has also been held that the rights of the holders are not modified or extinguished till persons have changed possession and entered into the possession of the holdings allotted to them under the scheme. He therefore submits that the Full Bench of the High Court in the case of ***Jai Singh & others vs. State of Haryana***[5] (hereinafter referred to as "***Jai Singh II***") has correctly relying on ***Bhagat Ram*** held that the land which is reserved, but not earmarked for any common purpose, would not come under the purview of Section 2(g)(6) of the 1961 Act, as inserted by Haryana Act No.9 of 1992.

6. Shri Hooda submits that the Constitution Bench of this Court in ***Ajit Singh*** was dealing with the lands which were reserved for common purposes such as khals, paths, khurrahs, panchayat ghars and schools etc. It was held that in view of Rule 16(ii) of the Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (hereinafter referred to as "the Consolidation Rules"), the title still vests in the proprietary body, and the management of the said lands is done on behalf of the proprietary body. It was further held that the land was used for the common needs and benefits of the estate or estates concerned. This Court held that a fraction of each proprietor's land was taken and formed into a common pool so that the whole may be used for the common needs and benefits of the estate as mentioned above. It has been held that the proprietors naturally would also be entitled to a share in the benefits along with others. In the facts of the said case, this Court held that all such lands, which had been specifically earmarked in the Consolidation Scheme for the purposes mentioned therein and were used for the

4 [1967] 2 SCR 143: AIR 1967 SC 856

5 2003 SCC OnLine P&H 409

purposes therein for the benefit of the proprietors among others, would not amount to acquisition, but a 'modification' of the rights. It was held that, by such 'modification', the beneficiary was not the State and as such, would not be hit by the second proviso to Article 31-A of the Constitution of India.

7. Shri Hooda further submits that even in ***Ranjit Singh***, the Consolidation Scheme earmarked lands reserved under Section 18(c) of the Consolidation Act for various common purposes. The Constitution Bench of this Court held that the provisions for the assignment of lands to village Panchayat for the use of the general community, or for hospitals, schools, manure pits, tanning grounds etc. enures for the benefit of rural population and it must be considered to be an essential part of the redistribution of holdings and open lands.

8. Shri Hooda further submitted that in a catena of judgments, this Court has held that the lands, though reserved but not earmarked and put for any common purpose under the Consolidation Scheme prepared under Section 14 of the Consolidation Act read with Rules 5 and 7 of the Consolidation Rules and entered in the column of ownership as 'Jumla Mustarka Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat' and in the column of possession with the proprietors, also known as Bachat lands, would not vest in the Gram Panchayat or the State Government. Shri Hooda submits that based on such judgments, thousands of transactions have been entered into between the parties. It is submitted that, though invoking the doctrine of *stare decisis* was not necessary, this Court in the **JUR** has not even touched that aspect of the matter. All the judgments which have been holding the field for decades and thousands of transactions which have been entered into between the parties, have been set at naught at the stroke of a pen by the **JUR**.

9. Shri Hooda further submits that in view of the **JUR**, the rights of the parties which were crystalized by the judgments of the High Court and which was affirmed by this Court by judgment dated 27th August, 2001[6] have also been adversely affected without such parties having been heard. He therefore submits that the **JUR** needs to be recalled and the appeals filed by the State deserve to be dismissed.

6 2001 SCC OnLine SC 1488 [State of Punjab vs. Gurjant Singh and others (CA Nos.5709-5714 of 2001 @ SLP(C) Nos.16173-16178 of 2000)

10. Per contra, Shri Pradeep Kant, learned Senior Counsel appearing on behalf of the respondent-State of Haryana submits that the present review petition itself is not maintainable. It is submitted that the review applicant was a party respondent to the appeal and the **JUR** has been delivered after hearing the learned counsel for the parties. It is submitted that the scope of review is very limited. It is also submitted that under the guise of a review, a party cannot be permitted to reagitate and reargue the questions which have already been addressed and decided. He placed reliance on the following judgments of this Court in support of his submissions:

(i) ***Sow Chandra Kante and another vs. Sheikh Habib***[7]

(ii) ***Parsion Devi and others vs. Sumitri Devi and others***[8]

(iii) ***Kerala State Electricity Board vs. Hitech Electrothermics & Hydropower Ltd. and others***[9]

(iv) ***Kamlesh Verma vs. Mayawati and others***[10]

(v) ***Union of India vs. Sandur Manganese and Iron Ores Limited and others***[11]

(vi) ***Shanti Conductors Private Limited vs. Assam State Electricity Board and others***[12]

(vii) ***Shri Ram Sahu (Dead) through legal representatives and others vs. Vinod Kumar Rawat and others***[13]

11. With the assistance of the learned counsel for the parties, we have scrutinized the material on record.

III. CONSIDERATION ON THE SCOPE OF REVIEW JURISDICTION

12. At the outset, we must reiterate that the scope of review by this Court is very limited. The scope of review jurisdiction has been delineated by this Court in a catena of judgments. We would not like

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7 [1975] 3 SCR 933 : (1975) 1 SCC 674

8 [1997] Supp. 4 SCR 470 : (1997) 8 SCC 715

9 [2005] Supp. 2 SCR 517 : (2005) 6 SCC 651

10 [2013] 11 SCR 25 : (2013) 8 SCC 320

11 [2013] 2 SCR 1045 : (2013) 8 SCC 337

12 [2019] 16 SCR 252 : (2020) 2 SCC 677

13 [2020] 11 SCR 865 : (2021) 13 SCC 1

to burden the present judgment by reproducing all those judgments. This Court in the case of ***Kamlesh Verma vs. Mayawati and others (supra)***, after surveying the earlier law laid down by this Court has summarized the principles thus:

> ***"Summary of the principles***
>
> **20.** Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:
>
> **20.1.** When the review will be maintainable:
>
> *(i)* Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
>
> *(ii)* Mistake or error apparent on the face of the record;
>
> *(iii)* Any other sufficient reason.
>
> The words "any other sufficient reason" have been interpreted in *Chhajju Ram* v. *Neki* [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos* v. *Most Rev. Mar Poulose Athanasius* [AIR 1954 SC 526 : (1955) 1 SCR 520] to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India* v. *Sandur Manganese & Iron Ores Ltd.* [(2013) 8 SCC 337 : JT (2013) 8 SC 275]
>
> **20.2.** When the review will not be maintainable:
>
> *(i)* A repetition of old and overruled argument is not enough to reopen concluded adjudications.
>
> *(ii)* Minor mistakes of inconsequential import.
>
> *(iii)* Review proceedings cannot be equated with the original hearing of the case.
>
> *(iv)* Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

13. It is thus settled that the review would be permissible only if there is a mistake or error apparent on the face of the record or any other sufficient reason is made out. We are also equally aware of the fact that the review proceedings cannot be equated with the original hearing of the case. The review of the judgment would be permissible only if a material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. We are also aware that such an error should be an error apparent on the face of the record and should not be an error which has to be fished out and searched.

14. In the light of the aforesaid principles, we will have to examine the present case.

IV. CONSIDERATION OF THE JUDGMENT OF THE FULL BENCH OF THE HIGH COURT IN JAI SINGH II

15. The background in which ***Jai Singh II*** has been decided has already been stated by us in the beginning. In the first round of litigation, the High Court had held the provisions of Section 2(g)(6) of the 1961 Act to be unconstitutional being violative of second proviso to Article 31-A of the Constitution of India. This Court in the first round has set aside the judgment of the Full Bench of the High Court and remanded the matter for deciding the factual aspect as to whether the lands in question were within the ceiling limit or not.

16. As such, the scope of the dispute in the second round was very limited. The Full Bench of the High Court, after coming to a finding of fact that the lands in question were within the ceiling limit, partly allowed the petition. The operative part of the judgment of the Full Bench of the High Court has already been reproduced by us hereinabove in paragraph 2.4.

17. The State was not aggrieved with the findings on issue nos. (i), (ii) and (iv).

By clause (i), the Full Bench of the High Court held that sub-section (6) of Section 2(g) of the 1961 Act and the explanation appended thereto is only an elucidation of the existing provisions of the said Act read with the provisions contained in the Consolidation Act.

By clause (ii), it held that the unamended provisions of the 1961 Act and, in particular, Section 2(g)(1) read with Sections 17 and 23-A of the Consolidation Act and Rule 16(ii) of the Consolidation Rules cover all such lands which have been specifically earmarked in a consolidation scheme prepared under Section 14 read with Rules 5 and 7 and confirmed under Section 20, which has been implemented under the provisions of Section 24 and no other lands.

By clause (iv), the Full Bench of the High Court held that, all such lands in the consolidation scheme which were reserved for common purposes, whether utilized or not, shall vest with the State Government or the Gram Panchayat, as the case may be; even though in the column of ownership the entries may be 'Jumla Mustarka Malkans Wa Digar Haqdaran Hasab Rasad Arazi Khewat' etc.

18. The grievance of the State was only with regard to clause (iii), wherein it has been held that the lands which had been contributed by the proprietors on the basis of pro-rata cut on their holdings imposed during the consolidation proceedings and which have not been earmarked for any common purpose in the consolidation scheme prepared under Section 14 read with Rules 5 and 7 and have been entered in the column of ownership as 'Jumla Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat', and in the column of possession with the Gram Panchayat or the State Government, would not vest in the Gram Panchayat or the State Government but continue to vest with the proprietors.

19. This Court in the **JUR** has held that conclusion no.(iii) arrived at by the High Court was erroneous and not sustainable and accordingly set it aside. It has been held that the unutilized land was not available for redistribution amongst the proprietors. This Court further held that the findings recorded by the different benches of the High Court were clearly erroneous and not sustainable. This Court held that the land reserved for common purposes cannot be re-partitioned amongst the proprietors only because at a particular given time, the land so reserved has not been put to common use. This Court held that the 'common purpose' is a dynamic expression as it keeps changing due to the change in requirement of the society and the passing times and therefore, once the land has been reserved for common purposes, it cannot be reverted to the proprietors for redistribution.

20. The limited enquiry that would be permissible for us in these proceedings is as to whether the said finding is a material error, manifest on the face of the order, undermines its soundness or results in the miscarriage of justice or not.

21. At the cost of repetition, we reiterate that it will not be permissible for us to hear the matter as if it was an appeal arising from the **JUR**.

V. CONSIDERATION OF THE CONSTITUTION BENCH JUDGMENTS OF THIS COURT IN RANJIT SINGH, AJIT SINGH AND BHAGAT RAM

22. For considering the controversy, a reference to three Constitution Bench Judgments of this Court would be necessary.

23. The first one is in the case of ***Ranjit Singh***. In the said case, the Constitution Bench of this Court was concerned with the consolidation proceedings in which portions of land from those commonly owned by the appellants therein as proprietors, had been reserved for the village Panchayat and handed over to it for diverse purposes; whereas, other portions had been reserved either for non-proprietors or for the common purposes of the villages. In the said case, in the village Virk Kalan, 270 kanals and 13 marlas had been given to the village Panchayat for management and realization of income, even though the ownership was still shown in village papers as Shamilat Deh in the names of the proprietors; 10 kanals and 3 marlas had been reserved for abadi to be distributed among persons entitled

thereto, and 3 kanals and 7 marlas had been reserved for manure pits. Similarly, in village Sewana, certain lands were set apart for the village Panchayat for extension of the abadi and to enable grants of certain land to be made to each family of non-proprietors and certain lands had been reserved for a primary school and some more for a *phirni*. Similarly, in village Mehnd, land had been reserved for the village Panchayat, a school, tanning ground, hospital, cremation ground and for non-proprietors. The proprietors were not paid compensation for the lands and as such, taking away and allotment of the lands was the subject matter of challenge in those appeals in the said case.

24. The appeals before this Court were heard and closed for judgment on 27th April 1964. The judgment had to be postponed till after the vacation. However, before the Court could reassemble after the vacation on 20th July 1964, the Constitution (Seventeenth Amendment) Act, 1964 received the assent of the President i.e. on 20th June, 1964. Vide the said Amendment, a new sub-clause (a) in clause (2) of Article 31-A was substituted retrospectively and added a proviso to clause (1). The appeals were set down to be mentioned on July 20/23, 1964, and counsel were asked if, in view of the amendment, they wished to say anything. However, neither of parties wished to argue. The appeals were thus decided on the old arguments, though it was clear to the Court that the amendment of Article 31-A, which had a far-reaching effect, must have affected one or other of the parties. The Constitution Bench upheld the judgment of the High Court which had held that the transfer of *shamilat deh* owned by the proprietors to the village Panchayat for the purposes of management and the conferral of proprietary rights on non-proprietors in respect of lands in *abadi deh* was not ultra vires Article 31 inasmuch as, no compensation was payable.

25. It must be noted that the judgment of the High Court was rendered by interpreting Article 31-A as it existed prior to the Constitution (Seventeenth Amendment) Act, 1964. This Court though called upon the parties to address the Court on the effect of the Constitution (Seventeenth Amendment) Act, 1964, no arguments were advanced. As such, in ***Ranjit Singh**,* this Court did not have the occasion to consider the effect of the Constitution (Seventeenth Amendment) Act, 1964 by which the second proviso was added to Article 31-A of the Constitution of India. In that view of the matter, the judgment

of the Constitution Bench of this Court in **Ranjit Singh** will not have a bearing on the present matter.

26. In the case of ***Ajit Singh*** (supra), again the challenge was to the scheme made under the provisions of the Consolidation Act. One of the grounds raised before the High Court as well as this Court was that the compensation must be paid to the appellant for the land reserved in the scheme for various purposes in accordance with the second proviso to Article 31-A(1) inserted by the Constitution (Seventeenth Amendment) Act, 1964.

27. It will be relevant to refer to the following paragraphs in ***Ajit Singh***:

> "**6.** Coming now to the third point raised by Mr Iyenger, we may first mention that it was held by this Court in *Ranjit Singh* v. *State of Punjab* [(1965) 1 SCR 82] that the Act was protected from challenge by Article 31-A. It is necessary to set out the relevant constitutional provisions. The relevant portion of Article 31-A reads as under:
>
> > "31-A. (1) Notwithstanding anything contained in Article 13, no law providing for—
> >
> > > (*a*) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights……….
> > >
> > > shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31:
> > >
> > > Provided that * * *
> > >
> > > Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land,

building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

(2)(*b*) the expression 'rights' in relation to an estate shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, *raiyat, under-raiyat* or other intermediary and any rights or privileges in respect of land revenue."

Relevant portions of Articles 19 and 31 may also be set out because the learned counsel have laid stress on the language employed therein.

"19. (1) All citizens shall have the right—

(*f*) to acquire, hold and dispose of property.

31. (1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2-A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property."

7. It would be noticed that Article 31-A(1)(*a*) mentions four categories; first acquisition by the State of an estate;

second, acquisition by the State of rights in an estate; third, the extinguishment of rights in an estate, and, fourthly, the modification of rights in an estate. These four categories are mentioned separately and are different. In the first two categories the State "acquires" either an estate or rights in an estate. In other words, there is a transference of an estate or the rights in an estate to the State. When there is a transference of an estate to the State, it could be said that all the rights of the holder of the estate have been extinguished. But if the result in the case of the extinguishment is the transference of all the rights in an estate to the State, it would properly fall within the expression "acquisition by the State of an estate". Similarly, in the case of an acquisition by the State of a right in an estate it could also be said that the rights of the owner have been modified since one of the rights of the owner has been acquired.

8. It seems to us that there is this essential difference between "acquisition by the State" on the one hand and "modification or extinguishment of rights" on the other that in the first case the beneficiary is the State while in the latter case the beneficiary of the modification or the extinguishment is not the State. For example, suppose the State is the landlord of an estate and there is a lease of that property, and a law provides for the extinguishment of leases held in an estate. In one sense it would be an extinguishment of the rights of a lessee, but it would properly fall under the category of acquisition by the State because the beneficiary of the extinguishment would be the State.

9. Coming now to the second proviso to Article 31-A, it would be noticed that only one category is mentioned in the proviso, the category being "acquisition by the State of an estate". It means that the law must make a provision for the acquisition by the State of an estate. But what is the true meaning of the expression "acquisition by the State of an estate". In the context of Article 31-A, the expression "acquisition by the State of an estate" in the second proviso to Article 31-A(1) must have the same meaning as it has

in clause (1)(*a*) to Article 31-A. It is urged on behalf of the respondents before us that the expression "acquisition by the State of any estate" in Article 31-A(1)(*a*) has the same meaning as it has in Article 31(2-A). In other words, it is urged that the expression "acquisition by the State of any estate" means transfer of the ownership or right to possession of an estate to the State. Mr. Iyengar on the other hand urges that the expression "acquisition by the State" has a very wide meaning and it would bear the same meaning as was given by this Court in *State of West Bengal* v. *Subodh Gopal Bose* [(1964) SCR 587] , *Dwarkadas Shrinivas of Bombay* v. *Sholapur Spinning & Weaving Co. Ltd.* [(1953) 2 SCC 791 : (1954) SCR 674] *Saghir Ahmad* v. *State of U.P.* [(1955) 1 SCR 707] and *Bombay Dyeing and Manufacturing Co. Ltd.* v. *State of Bombay* [(1958) SCR 1122] . In these cases this Court had given a wide meaning to the word "acquisition". In *Dwarkadas Shrinivas of Bombay* v. *Sholapur Spinning & Weaving Co. Ltd.* [(1953) 2 SCC 791 : (1954) SCR 674] Mahajan, J., observed at p. 704 as follows:

> "The word 'acquisition' has quite a wide concept, meaning the procuring of property or the taking of it permanently or temporarily. It does not necessarily imply the acquisition of legal title by the State in the property taken possession of."

He further observed at p. 705:

> "I prefer to follow the view of the majority of the Court, because it seems to me that it is more in consonance with juridical principle that possession after all is nine-tenths of ownership, and once possession is taken away, practically everything is taken away, and that in construing the Constitution it is the substance and the practical result of the act of the State that should be considered rather than its purely legal aspect."

Bose, J., observed at p. 734 as follows:

> "In my opinion, the possession and acquisition referred to in clause (2) mean the sort of 'possession' and 'acquisition' that amounts to 'deprivation' within

> the meaning of clause (1). No hard and fast rule can be laid down. Each case must depend on its own facts. But if there is substantial deprivation, then clause (2) is, in my judgment, attracted. By substantial deprivation I mean the sort of deprivation that substantially robs a man of those attributes of enjoyment which normally accompany rights to, or an interest in, property. The form is unessential. It is the substance that we must seek."

10. Let us now see whether the other part of the second proviso throws any light on this question. It would be noticed that it refers to ceiling limits. It is well known that under various laws dealing with land reforms, no person apart from certain exceptions can hold land beyond a ceiling fixed under the law. Secondly, the proviso says that not only the land exempted from acquisition should be within the ceiling limit but it also must be under personal cultivation. The underlying idea of this proviso seems to be that a person who is cultivating land personally, which is his source of livelihood, should not be deprived of that land under any law protected by Article 31-A unless at least compensation at the market rate is given. In various States most of the persons have already been deprived of land beyond the ceiling limit on compensation which was less than the market value. It seems to us that in the light of all the considerations mentioned above the words "acquisition by the State" in the second proviso do not have a technical meaning, as contended by the learned counsel for the respondent. If the State has in substance acquired all the rights in the land for its own purposes, even if the title remains with the owner, it cannot be said that it is not acquisition within the second proviso to Article 31-A.

11. But the question still remains whether even if a wider meaning is given to the word "acquisition" what has been done by the scheme and the Act is acquisition or not within the meaning of the second proviso. In other words, does the scheme only modify rights or does it amount to acquisition of land? The scheme is not part of the record,

> but it appears that 89B-18B-11B (Pukhta) of land was owned by the Gram Panchayat prior to consolidation, which was used for common purposes. Some further area was reserved for common purposes as khals, paths, khurrahs, panchayat ghars and schools etc. after applying cut upon the rightholders on pro-rata basis. It does not appear that any land, apart from what was already owned by the Panchayat, was reserved for providing income to the Panchayat. Therefore, in this case we are not concerned with the validity of acquisition for such a purpose."

28. A perusal of the aforesaid paragraphs would reveal that in paragraph 6, this Court reproduced the provisions of Article 31-A, as amended.

29. In paragraph 7, this Court carved out 4 categories covered by Article 31-A as under:

(i) acquisition by the State of an estate;

(ii) acquisition by the State of rights in an estate;

(iii) the extinguishment of rights in an estate; and

(iv) the modification of rights in an estate.

30. Analyzing the said provision, the Constitution Bench held that, in the first two categories, the State "acquires" either an estate or rights in an estate i.e., there is a transference of an estate or the rights in an estate to the State. The Constitution Bench held that when there is a transference of an estate to the State, it could be said that all the rights of the holder of the estate have been extinguished. It further held that, if the result in the case of the extinguishment is the transference of all the rights in an estate to the State, it would properly fall within the expression "acquisition by the State of an estate". It further held that, in the case of an acquisition by the State of a right in an estate it could also be said that the rights of the owner have been modified since one of the rights of the owner has been acquired.

31. In paragraph 8, the Constitution Bench carved out the difference between "acquisition by the State" on the one hand and "modification or extinguishment of rights" on the other. It held that in the first case, the beneficiary is the State while in the latter case the beneficiary of the modification or the extinguishment is not the State.

32. In paragraph 9, this Court recorded that in the second proviso to Article 31-A, only one category is mentioned i.e., "acquisition by the State of an estate". It observed that the law must make a provision for the acquisition by the State of an estate. It went on to analyze the true meaning of the expression "acquisition by the State of an estate". It was sought to be urged before this Court, that the expression "acquisition by the State" has a very wide meaning and it would bear the same meaning as was given by this Court in a catena of judgments.

33. In paragraph 10, this Court recorded that the second proviso to Article 31-A refers to ceiling limits. It was further observed that the proviso provides that, not only the land exempted from acquisition should be within the ceiling limit but it also must be under personal cultivation. The Court held that the underlying idea of this proviso was that a person who is cultivating land personally, which is his source of livelihood, should not be deprived of that land under any law protected by Article 31-A unless at least compensation at the market rate is given. The Court held that the words "acquisition by the State" in the second proviso cannot be given a technical meaning, as was contended on behalf of the State. It held that, if the State has in substance acquired all the rights in the land for its own purposes, even if the title remains with the owner, it cannot be said that it is not acquisition within the second proviso to Article 31-A.

34. In paragraph 11, this Court recorded the facts in the said case. It recorded that some of the lands were owned by the Gram Panchayat prior to consolidation, which was used for common purposes. Some further area was reserved for common purposes as khals, paths, khurrahs, panchayat ghars and schools etc. after applying a cut upon the rightholders on pro-rata basis. It observed that apart from what was already owned by the Panchayat, no other land was reserved for providing income to the Panchayat. As such, the Court was not concerned with the validity of acquisition for such a purpose.

35. It will also be relevant to refer to the following paragraphs of the said judgment in **Ajit Singh**:

> "**12.** Rule 16 (*ii*) of the Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, provides:
>
> > "In an estate or estates where during consolidation proceedings there is no *shamlat Deh* land or such

> land is considered inadequate, land shall be reserved for the Village panchayat and for other common purposes, under Section 18(*c*) of the Act, out of the common pool of the village at a scale prescribed by the Government from time to time. Proprietary rights in respect of land so reserved (except the area reserved for the extension of *abadi* of proprietors and non-proprietors) shall vest in the proprietary body of estate or estates concerned and it shall be entered in the column of ownership of record of rights as (*Jumla Malkan wa Digar Haqdaran Arazi Hasab Rasad Raqba*). The management of such land shall be done by the Panchayat of the estate or estates concerned on behalf of the village proprietary body and the panchayat shall have the right to utilise the income derived from the land so reserved for the common needs and benefits of the estate or estates concerned."

It will be noticed that the title still vests in the property body, the management of the land is done on behalf of the proprietary body, and the land is used for the common needs and benefits of the estate or estates concerned. In other words a fraction of each proprietor's land is taken and formed into a common pool so that the whole may be used for the common needs and benefits of the estate, mentioned above. The proprietors naturally would also share in the benefits along with others.

13. In *Attar Singh* v. *State of U.P.* [(1959) Supp 1 SCR 928 at p 938] Wanchoo J., speaking for the Court, said this of the similar proviso in a similar Act, namely, the U.P. Consolidation of Holdings Act (U.P. Act 5 of 1954) as amended by the U.P. Act 16 of 1957:

> "Thus the land which is taken over is a small bit, which sold by itself would hardly fetch anything. These small bits of land are collected from various tenureholders and consolidated in one place and added to the land which might be lying vacant so that it may be used for the purposes of Section 14(1)

> (*ee*). A compact area is thus created and it is used for the purposes of the tenure-holders themselves and other villagers. Form CH-21 framed under Rule 41(*a*) shows the purposes to which this land would be applied, namely, (*1*) plantation of trees, (*2*) pasture land, (*3*) manure pits, (*4*) threshing floor, (*5*) cremation ground, (*6*) graveyards, (*7*) primary or other school, (*8*) playground, (*9*) Panchayatghar, and (*10*) such other objects. These small bits of land thus acquired from tenure-holders are consolidated and used for these purposes, which are directly for the benefit of the tenure-holders. They are deprived of a small bit and in place of it they are given advantages in a much larger area of land made up of these small bits and also of vacant land."

In other words, a proprietor gets advantages which he could never have got apart from the scheme. For example, if he wanted a threshing floor, a manure pit, land for pasture, khal etc. he would not have been able to have them on the fraction of his land reserved for common purposes.

14. Does such taking away of property then amount to acquisition by the State of any land? Who is the real beneficiary? Is it the Panchayat? It is clear that the title remains in the proprietary body and in the revenue records the land would be shown as belonging to "all the owners and other right holders in proportion to their areas". The Panchayat will manage it on behalf of the proprietors and use it for common purposes; it cannot use it for any other purpose. The proprietors enjoy the benefits derived from the use of land for common purposes. It is true that the non-proprietors also derive benefit but their satisfaction and advancement enures in the end to the advantage of the proprietors in the form of a more efficient agricultural community. The Panchayat as such does not enjoy any benefit. On the facts of this case it seems to us that the beneficiary of the modification of rights is not the State, and therefore there is no acquisition by the State within the second proviso.

> **15.** In the context of the 2nd proviso, which is trying to preserve the rights of a person holding land under his personal cultivation, it is impossible to conceive that such adjustment of the rights of persons holding land under their personal cultivation in the interest of village economy was regarded as something to be compensated for in cash."

36. In paragraph 12, after reproducing Rule 16(ii) of the Consolidation Rules, this Court observed that the title still vests in the proprietary body. However, the management of the land is done on behalf of the proprietary body, and the land is used for the common needs and benefits of the estate or estates concerned. It further held that a fraction of each proprietor's land is taken and formed into a common pool so that the whole area may be used for the common needs and benefits of the estate, mentioned above. It further held that the proprietors naturally would also share in the benefits along with others.

37. In paragraph 14, this Court held that it was clear that the title remains in the proprietary body and in the revenue records the land would be shown as belonging to "all the owners and other right holders in proportion to their areas". This Court held that the Panchayat would manage it on behalf of the proprietors and use it for common purposes and that it cannot use it for any other purpose. This Court held that the proprietors also enjoy the benefits derived from the use of land for common purposes. It observed that the non-proprietors also derive benefit but their satisfaction and advancement enures in the end to the advantage of the proprietors in the form of a more efficient agricultural community. The Panchayat as such does not enjoy any benefit. This Court held, in light of the facts of the said case, that the beneficiary of the modification of rights was not the State, and therefore there was no acquisition by the State within the meaning of the second proviso.

38. In paragraph 15, this Court, referring to second proviso, held that it is impossible to conceive that such adjustment of the rights of persons holding land under their personal cultivation in the interest of village economy was regarded as something to be compensated for in cash.

39. It can thus be seen that in ***Ajit Singh***, this Court was considering the portion of lands which was taken from the proprietors; formed into a common pool and used for common needs and benefits of the estate or estates concerned. It was held that the said land could

not be used for any other purpose. It has further affirmed that the proprietors also enjoy the benefits derived from the use of land for common purposes.

40. It is further pertinent to note that in ***Ajit Singh***, this Court held that the words "acquisition by the State" in the second proviso cannot be given a technical meaning. It has been held that if the State has in substance acquired all the rights in the land for its own purposes, even if the title remains with the owner, it cannot be said that it is not acquisition within the ambit of the second proviso to Article 31-A.

41. Justice M. Hidayatullah (as his Lordship then was) in his minority judgment disagreed with the majority view. He held that when the State acquires almost the entire bundle of rights, it is acquisition within the meaning of the second proviso and compensation at market rates must be given.

42. The third judgment of the Constitution Bench of this Court is in the case of ***Bhagat Ram**,* which would be the most relevant for the present purpose.

43. It will be relevant to note that judgments in both ***Ajit Singh*** and ***Bhagat Ram*** were delivered on the very same day.

44. In the said case (i.e. ***Bhagat Ram***), the Court was considering the question, as to whether the reservation of land for income of the Panchayat is acquisition of land by the State within the ambit of the second proviso to Article 31-A?

45. It will be relevant to refer to the following observations of the Constitution Bench of this Court in ***Bhagat Ram*** in the judgment delivered by Hon. S.M. Sikri, J (as his Lordship then was):

> "**2.** The first question that arises is whether the scheme insofar as it makes reservations of land for income of the Panchayat is hit by the second proviso to Article 31-A. The scheme reserves lands for phirni, paths, agricultural paths, manure pits, cremation grounds, etc., and also reserves an area of 100 kanals 2 marlas (standard kanals) for income of the Panchayat. We have already held in *Ajit Singh case* [(1967) 2 SCR 143] that acquisition for the common purposes such as phirnis, paths, etc., is not acquisition by the State within the second proviso to Article 31-A. But this does not dispose of the question whether the reservation

of land for income of the Panchayat is acquisition of land by the state within the second proviso to Article 31-A. We held in that case that there was this essential difference between "acquisition by the State" on the one hand and "modification or extinguishment of rights" on the other that in the first case the beneficiary is the State while in the latter case the beneficiary of the modification or the extinguishment is not the State. Here it seems to us that the beneficiary is the Panchayat which falls within the definition of the word "State" under Article 12 of the Constitution. The income derived by the Panchayat is in no way different from its any other income. It is true that Section 2(*bb*) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, defines "common purpose" to include the following purposes:

> "… providing income for the Panchayat of the village concerned for the benefit of the village community."

Therefore, the income can only be used for the benefit of the village community. But so is any other income of the Panchayat of a village to be used. The income is the income of the Panchayat and it would defeat the whole object of the second proviso if we were to give any other construction. The Consolidation Officer could easily defeat the object of the second proviso to Article 31-A by reserving for the income of the Panchayat a major portion of the land belonging to a person holding land within the ceiling limit. Therefore, in our opinion, the reservation of 100 kanals 2 marlas for the income of the Panchayat in the scheme is contrary to the second proviso and the scheme must be modified by the competent authority accordingly."

46. It can thus be seen that, this Court held that there was an essential difference between "acquisition by the State" on the one hand and "modification or extinguishment of rights" on the other hand. It was held that in the first case, the beneficiary was the State while in the latter case, the beneficiary of the modification or the extinguishment was not the State. This Court held that since the Panchayat would fall within the definition of the word "State" under Article 12 of the Constitution, if the acquisition is for the purposes of providing income

to the Panchayat, it would defeat the whole object of the second proviso. This Court held that the Consolidation Officer could easily defeat the object of the second proviso to Article 31-A by reserving for the income of the Panchayat a major portion of the land belonging to a person holding land within the ceiling limit.

47. The second argument which was advanced before this Court in ***Bhagat Ram*** was that acquisition had already taken place before the Constitution (Seventeenth Amendment) Act, 1964 came into force and therefore the scheme was not hit by the second proviso to Article 31-A. It was sought to be argued that the requirements as contemplated under Sections 23, 24 and 21(2) of the Consolidation Act were already complete and as such, the acquisition had already taken place before the Constitution (Seventeenth Amendment) Act, 1964.

48. It will be relevant to refer to the following observations of this Court in the majority judgment in ***Bhagat Ram*** while rejecting the aforesaid submissions*:*

> "**4.** It is clear from this affidavit that possession has not been transferred in pursuance of the repartition. The learned Counsel for the petitioners relies on this fact and says that in view of Section 23-A and Section 24 the "acquisition" does not take place till all the persons entitled to possession of holdings under the Act have entered into possession of the holdings. Sections 23-A and 24 read as follows:
>
> > "23-A. As soon as a scheme comes into force, the management and control of all lands assigned or reserved for common purposes of the village under Section 18, shall vest in the Panchayat of that village which shall also be entitled to appropriate the income accruing therefrom for the benefit of the village community, and the rights and interest of the owners of such lands shall stand modified and extinguished accordingly.
> >
> > 24. (1) As soon as the persons entitled to possession of holdings under this Act have entered into possession of the holdings respectively allotted to them, the scheme shall be deemed to have come into

> force and the possession of the allottees affected by the scheme of consolidation, or, as the case may be, by repartition, shall remain undisturbed until a fresh scheme is brought into force or a change is ordered in pursuance of provisions of sub-section (2), (3) and (4) of Section 21 or an order passed under Section 36 or 42 of this Act.
>
> (2) A Consolidation Officer shall be competent to exercise all or any of the powers of a Revenue Officer under the Punjab Land Revenue Act, 1887 (Act 17 of 1887), for purposes of compliance with the provisions of sub-section (1)."

5. It seems to us clear from these provisions that till possession has changed under Section 24, the management and control does not vest in the Panchayat under Section 23-A. Not only does the management and control not vest but the rights of the holders are not modified or extinguished till persons have changed possession and entered into the possession of the holdings allotted to them under the scheme. Mr Gossain, the learned Counsel for the State, tried to meet this point by urging that by virtue of repartition under Section 21, the rights to possession of the new holdings were finalised and could be enforced. This may be so; but this cannot be equivalent to "acquisition" within the second proviso to Article 31-A.

6. In the result we hold that the scheme is hit by the second proviso to Article 31 A insofar as it reserves 100 kanals 2 marlas for the income of the Panchayat. We direct the State to modify the scheme to bring it into accord with the second proviso as interpreted by us, proceed according to law. There would be an order as to costs."

49. It can thus clearly be seen that the Constitution Bench of this Court in ***Bhagat Ram*** held that, upon reading of Sections 23-A and 24 of the Consolidation Act it was clear that, till possession has changed under Section 24, the management and control does not vest in the Panchayat under Section 23-A of the Consolidation Act. It further held that not only does the management and control not vest but the rights of the holders are not modified or extinguished till persons

have changed possession and entered into the possession of the holdings allotted to them under the scheme. Though the counsel for the State tried to urge that, by virtue of repartition under Section 21, the rights to possession of the new holdings were finalized and could be enforced, this Court held that this cannot be equivalent to "acquisition" within the second proviso to Article 31-A of the Constitution of India.

50. The Full Bench of the High Court in the case of ***Jai Singh II*** has drawn a fine distinction between the land reserved for common purposes under Section 18(c) of the Consolidation Act which might become part and parcel of a scheme framed under Section 14, for the areas reserved for common purposes, though they have actually not been put to any common use and may be put to common use in a later point of time on one hand **and** the lands which might have been contributed by the proprietors on pro-rata basis but have not been reserved or earmarked for common purposes in the scheme. It will be relevant to refer to the following observations of the Full Bench of the High Court:

> "The land reserved for common purposes under Section 18(c), which might become part and parcel of a scheme framed under Section 14, for the areas reserved for common purposes, vests with the Government or Gram Panchayat, as the case may be, and the proprietors are left with no right or interest in such lands meant for common purposes under the scheme. There is nothing at all mentioned either in the Act or the rules or the scheme, that came to be framed, that the proprietors will lose right only with regard to land which was actually put to any use and not the land which may be put to common use later in point of time. In none of the sections or Rules, which have been referred to by us in the earlier part of scheme envisages only such lands which have been utilized. That apart, in all the relevant sections and the rules, words mentioned are 'reserved or assigned'. Reference in this connection may be made to sub-section (3) of Section 18 and Section 23-A. The provisions of the statute, as referred to above, would, thus, further fortify that reference is to land reserved or assigned for common use, whether utilized or not.

*** *** ***

The lands which, however, might have been contributed by the proprietors on pro-rata basis, but have not been reserved or earmarked for common purposes in a scheme, known as Bachat land, it is equally true, would not vest either with the State or the Gram Panchayat and instead continue to be owned by the proprietors of the village in the same proportion in which they contribute the land owned by them. The Bachat land, which is not used for common purposes under the scheme, in view of provisions contained in Section 22 of the Act of 1948, is recorded as Jumla Mustarka Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat but the significant differences is that in the column of ownership proprietors are shown in possession in contrast to the land which vests with the Gram Panchayat which is shown as being used for some or the other common purposes as per the scheme.

We might have gone into this issue in all its details but in as much as the point in issue is not res-integra and in fact stands clinched by string of judicial pronouncements of this Court as well as Hon'ble Supreme Court, there is no necessity at all to interpret the provisions of the Act and the rules any further on this issue.

The Hon'ble Supreme Court in Bhagat Ram and ors. Vs. State of Punjab and ors. AIR 1967 Supreme Court 927, dealt with reservation of certain area in the consolidation scheme for income of the Panchayat. Brief facts of the case aforesaid would reveal that a scheme made in respect of consolidation of village Dolike Sunderpur was questioned on the ground that in as much as it makes reservation of land for income of the Gram Panchayat, it is hit by second proviso to Article 31-A of the Constitution of India. The scheme in question reserved lands for phirni, paths, agricultural paths, manure pits, cremation grounds etc. and also reserved an area of 100 kanals 2 marlas (standard kanals) for income of the Panchayat. It was held as under:

"The income derived by the Panchayat is in no way different from its any other income. It is true that Section 2(*bb*) of the East Punjab Holdings (Consolidation and Prevention

of Fragmentation) Act, 1948, defines "common purpose" to include the following purposes:

> "… providing income for the Panchayat of the village concerned for the benefit of the village community."

Therefore, the income can only be used for the benefit of the village community. But so is any other income of the Panchayat of a village to be used. The income is the income of the Panchayat and it would defeat the whole object of the second proviso if we were to give any other construction. The Consolidation Officer could easily defeat the object of the second proviso to Article 31-A by reserving for the income of the Panchayat a major portion of the land belonging to a person holding land within the ceiling limit. Therefore, in our opinion, the reservation of 100 kanals 2 marlas for the income of the Panchayat in the scheme is contrary to the second proviso and the scheme must be modified by the competent authority accordingly."

The ratio of the judgment aforesaid would clearly suggest that it is the land reserved for common purposes under the scheme which would be saved, which, otherwise, would be hit by second proviso to Article 31-A of the Constitution of India. Surely, if the land, which has not been reserved for common purposes under the scheme and is Bachat or surplus land, i.e., the one which is still left out after providing the land in scheme for common purposes, if it is to vest with the State or Gram Panchayat, the same would be nothing but compulsory acquisition within the ceiling limit of an individual without payment of compensation and would offend second proviso to Article 31-A of the Constitution of India."

51. As has been observed earlier, the Constitution Bench of this Court in ***Bhagat Ram***, in no uncertain terms, held that till possession has changed under Section 24 of the Consolidation Act, the management and control does not vest in the Panchayat under Section 23-A of the said Act. It further held that not only does the management and control not vest but the rights of the holders are not modified or extinguished till persons have changed possession and entered into the possession of the holdings allotted to them under the scheme.

Construing this, the Full Bench of the High Court in ***Jai Singh II*** held that, if the land which has not been reserved for common purposes under the scheme and is Bachat or surplus land, i.e., the land which is still left out after providing the land under the scheme for common purposes; if it is to vest with the State or Gram Panchayat, the same would be nothing but compulsory acquisition of land within the ceiling limit of an individual without payment of compensation and would offend the second proviso to Article 31-A of the Constitution of India.

52. It can thus be seen that the judgment of the Full Bench of the High Court in ***Jai Singh II*** is based basically on the Constitution Bench judgment of this Court in the case of ***Bhagat Ram***, which clearly held that, until possession has changed under Section 24, the management and control does not vest in the Panchayat under Section 23-A of the Consolidation Act. It further held that, not only does the management and control not vest but the rights of the holders are not modified or extinguished till persons have changed possession and entered into the possession of the holdings allotted to them under the scheme.

53. In the **JUR**, except a cursory reference to ***Bhagat Ram*** in paragraph 11, this Court held that there was no dispute about the said proposition in the present appeals.

54. With great respect, we may state that when the judgment of the Full Bench of the High Court rested on the law laid down by the Constitution Bench of this Court in ***Bhagat Ram***, the least that was expected of this Court in the **JUR** was to explain as to why the Full Bench of the High Court was wrong in relying on ***Bhagat Ram***. However, leave aside the cursory reference in the **JUR** in paragraph 11, there is no reference in the entire judgment to ***Bhagat Ram***. Though this Court in the **JUR** has referred to the Constitution Bench judgments in ***Ranjit Singh*** and ***Ajit Singh***, there is not even a whisper about the Constitution Bench judgment in ***Bhagat Ram***, except in paragraph 11, though it had a direct bearing on the issue in question.

55. The Constitution Bench judgment of this Court in ***Bhagat Ram*** in unequivocal terms held that the management and control does not vest in the Panchayat under Section 23-A of the Consolidation Act till possession has changed under Section 24 of the said Act. It further held that, the rights of the holders are not modified or extinguished till persons have changed possession and entered into the possession of the holdings allotted to them under the scheme. In the said case,

the specific contention raised by the State that the requirements as contemplated under Sections 23, 24 and 21(2) of the Consolidation Act were already complete and as such, the acquisition had already taken place before the Constitution (Seventeenth Amendment) Act, 1964, was specifically rejected by this Court. Needless to state that, all these steps are subsequent to the assignment under Section 18(c) of the Consolidation Act.

56. In the light of these findings of the Constitution Bench of this Court in ***Bhagat Ram***, the finding of this Court in the **JUR** that the vesting in the Panchayat is complete on mere assignment under Section 18(c) of the Consolidation Act is totally contrary to the findings recorded in paragraph 5 of the Constitution Bench judgment in ***Bhagat Ram***.

57. As already discussed herein above, except the cursory reference in paragraph 11 in the **JUR**, this Court has not even referred to the ratio laid down by the Constitution Bench of this Court in paragraph 5 in ***Bhagat Ram***. No law is required to state that a judgment of the Constitution Bench would be binding on the Benches of a lesser strength. ***Bhagat Ram*** has been decided by a strength of Five Learned Judges, this Court having a bench strength of two Learned Judges could not have ignored the law laid down by the Constitution Bench in paragraph 5 in ***Bhagat Ram.***

58. We find that ignoring the law laid down by the Constitution Bench of this Court in ***Bhagat Ram*** and taking a view totally contrary to the same itself would amount to a material error, manifest on the face of the order. Ignoring the judgment of the Constitution Bench, in our view, would undermine its soundness. The review could have been allowed on this short ground alone. However, the matter does not rest at that.

VI. CONSIDERATION OF THE JUDGMENT OF THE FULL BENCH OF THE HIGH COURT IN JAI SINGH II REFERRING ITS EARLIER JUDGMENT IN GURJANT SINGH AND SEVERAL OTHER JUDGMENTS

59. It will be relevant to refer to the following observations of the Full Bench of the High Court in ***Jai Singh II***:

> "Division Bench of this Court, in which one of us (V.K. Bali, J.) was a member, after referring to case law on the subject from 1967 to 1997 in Bhagat Ram vs. State of Punjab, (1967) 69, PLR, 287, Des Raj vs. Gram sabha

of Village Ladhot, 1981 PLJ, 300, Chhajju Ram vs. The Joint Director, Panchayats, (1986-1) 89, PLR, 586, Gram Panchayat, Gunia Majri vs. Director Consolidation of Holdings, (1991-1) 99 PLR, 342, Gram Panchayat Sahara (formerly Dhuma) vs. Baldev Singh, 1977 PLJ, 276, Baj Singh vs. State of Punjab (1992-1) 101 RLR, 10, Kala Singh vs. Commissioner, Hisar Division, 1984 PLJ, 169, Joginder Singh vs. The Director Consolidation of Holdings (1997-2) 116 PLR 116, Bhagwan Singh vs. The Director Consolidation of Holdings, Punjab, (1997-2) 116 PLR, 472 and Gram Panchayat, Village Bhedpura vs. The Additional Director, Consolidation, (1997-1) 115 PLR, 391, held that the Bachat land, i.e., land which remains unutilized after utilizing the land for the common purposes so provided under the consolidation scheme vests with the proprietors and not with the Gram Panchayat". It was further held that "the unutilized land after utilizing the land earmarked for the common purposes, has to be redistributed amongst the proprietors according to the share in which they had contributed the land belonging to them for common purposes". There is no need to give facts of the judicial precedents relied upon in Gurjant Singh's case (supra) as the same stand mentioned already therein and reiteration thereof would necessarily burden this judgment.

The decision of Division Bench of this Court in Gurjant Singh's case (supra) was tested, at the instance of the State of Punjab, in Civil Appeal No. 5709-5714 of 2001. Only, the general directions given in the judgment recorded in Gurjant Singh's case (supra) for distribution of land to the proprietors were set aside and that too on the concession of learned counsel, who represented the Respondents in the case aforesaid. Order passed by the Hon'ble Supreme Court on August 27, 2001, reads thus:-

> "Leave granted.
>
> Mr. Harsh N. Salve, learned Solicitor General, submitted that the State of Punjab takes objection only in regard to the following observations made in the impugned judgment:-

> "This exercise, it appears, has not been done throughout the State of Punjab and Haryana and villages forming part of Union Territory, Chandigarh, even though there is a specific provision for doing that.
>
> This exercise be done as expeditiously as possible and preferably within six months proceedings for repartition must commence. Liberty to apply in the event of non-compliance of directions referred to above."

Learned counsel for the Respondent submits that they had no objection in deleting the aforesaid portions from the impugned judgment. We allow these appeals to be extent of deleting of the above said passage from the impugned judgment.

These appeals are disposed of accordingly."

60. It is thus clear that the Full Bench of the High Court has referred to the judgment of the Division Bench of the said Court in the case of ***Gurjant Singh***.

61. It is pertinent to note that in the case of ***Gurjant Singh,*** the Division Bench of the High Court had noted a series of judgments delivered by the said High Court relying on the law laid down by the Constitution Bench of this Court in ***Bhagat Ram***. All these decisions had held that the land which remains unutilized after utilizing the land for the common purposes so provided under the consolidation scheme vests with the proprietors and not with the Gram Panchayat. It was further held that the unutilized land i.e., the Bachat land, left after utilizing the land earmarked for the common purposes, has to be redistributed amongst the proprietors according to the share in which they had contributed the land belonging to them for common purposes.

62. It is to be noted that the **JUR** referred to the judgment in the case of ***Gurjant Singh*** and the order passed by this Court in Civil Appeal Nos.5709-5714 of 2001, wherein the State had objected only with regard to the observations wherein the time limit was provided for effecting redistribution of the Bachat land amongst the proprietors according to their share.

63. It is thus clear that the State itself did not press the appeals with regard to the directions for redistribution of the Bachat land amongst the proprietors according to their share. Its only grievance was with regard to the directions to do it within a specified period of time. However, this Court in the **JUR** held that the doctrine of merger would not be applicable. However, we do not wish to go into the correctness of that finding since we are sitting in review jurisdiction.

64. The **JUR** referred to various judgments of the Punjab & Haryana High Court which took the view that the Bachat lands are entitled for redistribution. The **JUR** cursorily observed in paragraph 84 that the findings recorded by the different Benches of the High Court are clearly erroneous and not sustainable. When a catena of judgments were delivered by the various Benches of the High court relying on the judgment of the Constitution Bench of this Court in ***Bhagat Ram***, the least that was expected in the **JUR** was a reasoning as to how the findings of the various Benches of the High Court including in ***Gurjant Singh***, relying on the judgment of the Constitution Bench of this Court in ***Bhagat Ram***, are erroneous.

65. In our considered view, the non-consideration of the reasoning given by the Full Bench of the High Court in ***Jai Singh II,*** which findings were given by relying on the judgment of the Constitution Bench of this Court in ***Bhagat Ram,*** and not showing as to how the findings therein were erroneous in law, would also amount to an error, apparent on the face of the record.

VII. CONSIDERATION OF THE JUDGMENT OF THE FULL BENCH OF THE HIGH COURT IN JAI SINGH II WITH REGARD TO DOCTRINE OF *STARE DECISIS*

66. Thirdly, the Full Bench of the High Court in ***Jai Singh II*** in the alternative held that, a consistent view has been taken in more than 100 judgments by the Punjab & Haryana High Court and applying the doctrine of *stare decisis*, such a view cannot be upset. While holding so, the Full Bench of the High Court has relied on various judgments of this Court as well as the various High Courts. However, in the **JUR**, there is not even a reference to the reasoning given by the Full Bench of the High Court with regard to the applicability of the doctrine of *stare decisis.* There are catena of judgments of this Court explaining the doctrine of *stare decisis* and its application. However, we do not propose to go into them since the scope in

review jurisdiction is limited. We do not wish to go into the question as to whether the doctrine of *stare decisis* would be applicable in the facts of the present case or not. However, the least that the **JUR** was expected was to consider the reasoning given by the Full Bench of the High Court and to consider as to how the said reasoning was not sustainable in law. However, the **JUR** does not even refer to the said discussion in its judgment.

67. In our considered view, the non-consideration of the reasoning given by the Full Bench of the High Court in ***Jai Singh II**,* that on account of more than 100 decisions rendered by various Benches of the High Court, the doctrine of *stare decisis* is applicable, would also be an error apparent on the face of the record.

VIII. CONCLUSION

68. In that view of the matter, we are of the considered view that the **JUR** needs to be recalled on the aforesaid grounds mentioned by us.

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

(i) The Review Petition is allowed.

(ii) The judgment and order of this Court dated 7th April 2022 in Civil Appeal No. 6990 of 2014 is recalled and the appeal is restored to file.

(iii) The appeal is directed to be listed for hearing peremptorily on 7th August 2024 at Serial No.1.

Headnotes prepared by: Divya Pandey

Result of the case: Review Petition allowed.

[2024] 6 S.C.R. 934 : 2024 INSC 425

Mr. R.S. Madireddy and Anr. etc.
v.
Union of India & Ors. etc.

(Civil Appeal No(s). 6473-6476 of 2024)

16 May 2024

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

Issue for Consideration

(i) Whether respondent No.3(AIL) after having been taken over by a private corporate entity could have been subjected to writ jurisdiction of the High Court; (ii) Whether the appellants herein could have been non-suited on account of the fact that during pendency of their writ petitions, the nature of the employer changed from a Government entity to a private entity; (iii) Whether the delay in disposal of the writ petition could be treated a valid ground to sustain the claim of the appellants even against the private entity.

Headnotes

Constitution of India – Art.226 – Whether respondent No.3(AIL) after having been taken over by a private corporate entity could have been subjected to writ jurisdiction of the High Court:

Held: In the instant case, there is no dispute that the Government of India having transferred its 100% share to a private limited company-T, ceased to have any administrative control or deep pervasive control over the private entity and hence, the company after its disinvestment could not have been treated to be a State anymore after having taken over by the private company – Thus, unquestionably, the respondent No.3(AIL) after its disinvestment ceased to be a State or its instrumentality within the meaning of Article 12 of the Constitution of India – Once the respondent No.3(AIL) ceased to be covered by the definition of State within the meaning of Article 12 of the Constitution of India, it could not have been subjected to writ jurisdiction under Article 226 of the Constitution of India – The respondent No.3(AIL), the erstwhile Government run airline having been taken over by the private company-T, unquestionably, is not performing any public duty inasmuch as it has taken over the Government company Air India Limited for the purpose of commercial operations, plain and

* Author

simple, and thus no writ petition is maintainable against respondent No.3(AIL). [Paras 32, 33 and 37]

Constitution of India – Art.226 – Whether the appellants herein could have been non-suited on account of the fact that during pendency of their writ petitions, the nature of the employer changed from a Government entity to a private entity:

Held: The respondent No.3(AIL)-employer was a government entity on the date of filing of the writ petitions, which came to be decided after a significant delay by which time, the company had been disinvested and taken over by a private player – Since, respondent No.3 employer had been disinvested and had assumed the character of a private entity not performing any public function, the High Court could not have exercised the extra ordinary writ jurisdiction to issue a writ to such private entity – The Division Bench of the High Court has taken care to protect the rights of the appellants to seek remedy and thus, it cannot be said that the appellants have been non-suited in the case – It is only that the appellants would have to approach another forum for seeking their remedy – Thus, the question is decided against the appellants. [Para 38]

Constitution of India – Art.226 – Whether the delay in disposal of the writ petition could be treated a valid ground to sustain the claim of the appellants even against the private entity:

Held: The delay in disposal of the writ petitions could not have been a ground to continue with and maintain the writ petitions – Because the forum that is the High Court where the writ petitions were instituted could not have issued a writ to the private respondent which had changed hands in the intervening period – Hence, the question is also decided against the appellants. [Para 39]

Case Law Cited

Pradeep Kumar Biswas v. Indian Institute of Chemical Biology [2002] 3 SCR 100 **: (2002) 5 SCC 111;** *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Ors. v. V.R. Rudani & Ors.* [1989] 2 SCR 697 **: (1989) 2 SCC 691;** *Federal Bank Ltd. v. Sagar Thomas* [2003] Supp. 4 SCR 121 **: (2003) 10 SCC 733 – relied on.**

Kalpana Yogesh Dhagat through Legal Heirs v. Reliance Industries Ltd., **2016 SCC OnLine Guj 10186;** *Asulal Loya v. Union of India and Ors.,* **ILR (2009) I Delhi 450;** *Tarun Kumar Banerjee v.*

Bharat Aluminium Co. Ltd. and Another, **2008 SCC OnLine Bom 1899 – approved.**

Pasupuleti Venkateswarlu v. Motor & General Traders [1975] 3 SCR 958 **: (1975) 1 SCC 770;** *Beg Raj Singh v. State of U.P. and Ors.* [2002] Supp. 5 SCR 530 **: (2003) 1 SCC 726;** *Rajesh D. Darbar and Others v. Narasingrao Krishnaji Kulkarni and Others* [2003] Supp. 2 SCR 273 **: (2003) 7 SCC 219;** *Kaushal Kishor v. State of Uttar Pradesh and Ors.* [2023] 8 SCR 581 **: (2023) 4 SCC 1;** *Binny Ltd. and Anr. v. V. Sadasivan and Ors.* [2005] Supp. 2 SCR 421 **: (2005) 6 SCC 657 – referred to.**

Mahant Pal Singh v. Union of India and Others, **2009 SCC OnLine Bom 2554;** *Padmavathi Subramaniyan and Others v. Ministry of Civil Aviation Government of India rep by its Secretary and Others,* **2022 SCC OnLine Kar 1706;** *Ashok Kumar Gupta & Ors. v. Union of India & Ors.* **(2007) SCC OnLine Cal 264 – referred to.**

Regina (Beer(trading as Hammer Trout Farm)) v. Hampshire Farmers' Markets & Ltd. **[2004] 1 WLR 233 – referred to.**

List of Acts

Constitution of India.

List of Keywords

Public limited company taken over by Private limited company; Company after its disinvestment; Article 12 of the Constitution of India; Instrumentality within the meaning of Article 12 of the Constitution of India after disinvestment of public limited company; Writ jurisdiction under Article 226 of the Constitution of India; Extra ordinary writ jurisdiction to issue a writ; Non-suited; Delay in disposal of writ petition.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 6473-6476 of 2024

From the Judgment and Order dated 20.09.2022 of the High Court of Judicature at Bombay in WP No.1770 of 2011, WP No.1536 of 2013 and WP Nos. 123 and 844 of 2014

With

Civil Appeal Nos. 6477 and 6478 of 2024

Mr. R.S. Madireddy and Anr. etc. v. Union of India & Ors. etc.

Appearances for Parties

Sanjay Singhavi, Sr. Adv., Sandeep Sudhakar Deshmukh, Ms. Rohini Thyagarajan, Ms. Shanvi Punamiya, Nishant Sharma, Akshay Arora, Swapnil Anil Walde, Ms. Nupur Kumar, Karan Nagrath, Ambuj Tiwari, R. Gopalakrishnan, R Sudhinder, Dattatray Vyas, Shashank Dixit, Advs. for the Appellants.

Ms. Aishwarya Bhati, ASG, Dr. Abhishek Manu Singhvi, S. Niranjan Reddy, R Balasuramanian, Sr. Advs., Ms. B.L.N. Shivani, Ms. Manisha Chava, Shashwat Parihar, Amrish Kumar, Avishkar Singhvi, Aishwarya Singhvi, Ms. Rukmini Bobde, Amit Kumar Mishra, Azeem Samuel, Ms. Mitakshara Goyal, Kunal Chatterji, L Nidhiram Sharma, Kaustubh Seth, Akhil Kumar Kulshrestha, Ms. Akhila, Shivam Singhania, Ms. Yashika Nagpal, Vivek Kumar, Naved Ahmed, Amlan Kumar, Santosh Kumar Pandey, Santosh Kumar Vishwakarma, Debashish Mishra, Mohit Singh, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. Leave granted.

2. The present appeals are filed challenging the common impugned judgment and order dated 20th September, 2022 passed by the Division Bench of the High Court of Bombay thereby dismissing four writ petitions instituted by the appellants being the former employees of respondent No.3 i.e. Air India Limited (hereinafter referred to as 'AIL') as members of its cabin crew force. Appellants came to be employed in AIL in the late 1980s and all of them retired between 2016 and 2018.

3. Writ Petition Nos. 123 of 2014[1] and 844 of 2014[2] were filed for alleged stagnation in pay and non-promotion of the employees. Writ Petition No. 844 of 2014 additionally raised issues of anomalies in the fixation of pay arising out of and for implementation of the

1 Filed on 30th August, 2013

2 Filed on 09th October, 2014

report of the Justice Dharmadhikari Committee[3]. Writ Petition Nos. 1770 of 2011[4] and 1536 of 2013[5], pertained to the delay in payment of wage revision arrears and the withdrawal of eight out of the seventeen allowances already paid to the employees retrospectively. In each of the writ petitions, violation of Articles 14, 16, and 21 of the Constitution of India, 1950, was pleaded. The Division Bench of Bombay High Court, vide common judgment and order dated 20th September, 2022 disposed of the above writ petitions denying relief as claimed therein on the ground of non-maintainability of the writ petitions owing to the intervening event of privatisation of respondent No. 3(AIL). Nevertheless, liberty was granted to the employee petitioners to seek their remedies in accordance with law.

Brief Facts: -

4. Air India was a statutory body constituted under the Air Corporations Act, 1953. With the repeal of the Act of 1953 by the Air Corporations(Transfer of Undertakings) Act, 1994, Air India merged with Indian Airlines and upon incorporation, respondent No. 3(AIL) became a wholly Government owned company and, thus, came under the category of 'other authorities' within the meaning of Article 12 of the Constitution of India. This status of Air India continued to subsist on the date when the subject batch of writ petitions *(supra)* under Article 226 of the Constitution of India were filed before the High Court invoking writ jurisdiction, against respondent No.3(AIL).

5. However, on 08th October, 2021, the Government of India announced that it had accepted the bid of Talace India Pvt Ltd. to purchase its 100% shares in respondent No. 3 (AIL). Subsequently, on 27th January, 2022 pursuant to the share purchase agreement signed with Talace India Pvt. Ltd., 100% equity shares of the Government of India in respondent No. 3(AIL) were purchased by the said private company and respondent No. 3(AIL) was privatised and disinvested. Therefore, the writ petitions were maintainable on the date of institution but the question that arose before the High Court was whether they continued to be maintainable as on the date the same were finally heard.

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3 Constituted by the respondent No.1 i.e. Union of India(through its Ministry of Civil Aviation) to harmonize the differential service conditions of AIL and Indian Airlines Ltd, which came to be merged.

4 Filed on 14th June, 2011

5 Filed on 19th March, 2013

6. Learned Judges of the Division Bench of the Bombay High Court, while placing reliance upon the decisions of ***Tarun Kumar Banerjee v. Bharat Aluminium Co. Ltd. and Another*** [6]***; Mahant Pal Singh v. Union of India and Others*** [7]; **Padmavathi Subramaniyan and Others** ***v. Ministry of Civil Aviation Government of India rep by its Secretary and Others*** [8]; and few more decisions of the Delhi High Court and Gujarat High Court concluded that with the privatisation of respondent No. 3(AIL), jurisdiction of the High Court under Article 226 of the Constitution of India to issue a writ to respondent No. 3(AIL), particularly in its role as an employer, did not subsist and disposed of the writ petitions vide common impugned judgment dated 20th September 2022, which is assailed in the present appeals by special leave.

Submissions and contentions on behalf of the appellants: -

7. Shri Sanjay Singhvi, learned senior counsel appearing on behalf of the appellants submitted that the right to seek remedy stands crystallised on the date of institution of proceedings and though subsequent events can be considered, it is a well settled tenet of law that such subsequent events can be looked at only to advance equity rather than to defeat it. Reliance in this regard was placed by learned senior counsel upon ***Pasupuleti Venkateswarlu v. Motor & General Traders*** [9]; ***Beg Raj Singh v. State of U.P. and Ors.*** [10]. He urged that different view is permissible only in exceptional circumstances and in no event can a party be divested of its substantive rights on account of such subsequent event as laid down in ***Rajesh D. Darbar and Others v. Narasingrao Krishnaji Kulkarni and Others*** [11]. The relevant extract of ***Rajesh D. Darbar*** *(supra)* as relied upon by the learned senior counsel for the appellants is extracted hereinbelow: -

> "**4**. The impact of subsequent happenings may now be spelt out. First, its bearing on the right of action, second, on the nature of the relief and third, on its importance to

6 2008 SCC OnLine Bom 1899

7 2009 SCC OnLine Bom 2554

8 2022 SCC OnLine Kar 1706

9 [1975] 3 SCR 958 : (1975) 1 SCC 770

10 [2002] Supp. 5 SCR 530 : (2003) 1 SCC 726

11 [2003] Supp. 2 SCR 273 : (2003) 7 SCC 219

create or destroy substantive rights. Where the nature of the relief, as originally sought, has become obsolete or unserviceable or a new form of relief will be more efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or reshaped in the light of updated facts. Patterson v. State of Alabama [294 US 600 : 79 L Ed 1082 (1934)] (US at p. 607) illustrates this position. It is important that the party claiming the relief or change of relief must have the same right from which either the first or the modified remedy may flow. Subsequent events in the course of the case cannot be constitutive of substantive rights enforceable in that very litigation except in a narrow category (later spelt out) but may influence the equitable jurisdiction to mould reliefs. Conversely, where rights have already vested in a party, they cannot be nullified or negated by subsequent events save where there is a change in the law and it is made applicable at any stage. Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri [1940 FCR 84 : AIR 1941 FC 5] falls in this category. Courts of justice may, when the compelling equities of a case oblige them, shape reliefs — cannot deny rights — to make them justly relevant in the updated circumstances. Where the relief is discretionary, courts may exercise this jurisdiction to avoid injustice. Likewise, where the right to the remedy depends, under the statute itself, on the presence or absence of certain basic facts at the time the relief is to be ultimately granted, the court, even in appeal, can take note of such supervening facts with fundamental impact. This Court's judgment in Pasupuleti Venkateswarlu v. Motor & General Traders [(1975) 1 SCC 770 : AIR 1975 SC 1409] read in its statutory setting, falls in this category. Where a cause of action is deficient but later events have made up the deficiency, the court may, in order to avoid multiplicity of litigation, permit amendment and continue the proceeding, provided no prejudice is caused to the other side. All these are done only in exceptional situations and just cannot be done if the statute, on which the legal proceeding is based, inhibits, by its scheme or otherwise, such change in the cause of action or relief. The primary concern of the

> court is to implement the justice of the legislation. Rights vested by virtue of a statute cannot be divested by this equitable doctrine (see V.P.R.V. Chockalingam Chetty v. Seethai Ache [AIR 1927 PC 252 : 26 All LJ 371])."

8. Reliance was also placed by the learned senior counsel on the judgment of ***Ashok Kumar Gupta & Ors. v. Union of India & Ors.***[12], wherein the Division Bench of Calcutta High Court, after adverting to the extant principles concerning the maintainability of writ proceedings as on the date of the institution, held that an employer which had been privatised during the pendency of a writ appeal filed against the order rejecting the writ petition would continue to be amenable to writ jurisdiction under Article 226 of the Constitution of India. The relevant portion of ***Ashok Kumar Gupta*** (*supra*) relied upon is extracted hereinbelow: -

> "**32**. It is nobody's case that the writ petition was not maintainable when it was filed. The cause of action for filing the writ petition crystallized at a point of time when the respondent authority was, admittedly, subject to the writ jurisdiction. The said cause of action confers a vested right to the writ petitioners to have their grievances adjudicated in a writ proceeding. No one can contend that the writ petitioners have brought the present situation by their conduct. The change of circumstances is not attributable to the petitioners.
>
> **33**. For the aforesaid reasons, we are of the opinion that the instant appeal is very much maintainable, and the preliminary objection raised on behalf of the respondent company cannot be sustained in the eye of law. Therefore, the said preliminary objection regarding maintainability of this appeal as raised by the respondent company is rejected."

9. Learned senior counsel further contended that the scope of issuing a writ, order, or direction under Article 226 of the Constitution of India is much broader than the high prerogative writs issued by the British Courts and this position has been recognised by this Court in the case of ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna***

12 (2007) SCC OnLine Cal 264

Jayanti Mahotsav Smarak Trust and Ors. v. V.R. Rudani & Ors.[13], and following the said decision, Courts in India have consistently issued writs even to private persons performing public duties and this position has further been reiterated by the recent judgment of this Court in the case of ***Kaushal Kishor vs. State of Uttar Pradesh and Ors.***[14]. The relevant portions of ***Andi Mukta*** *(supra)* as relied upon by the learned senior counsel are extracted hereinbelow: -

> "**16.** The law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of Section 3(1)(e) of the Law Commission Act, 1965, requested the Law Commission "to review the existing remedies for the judicial control of administrative acts and omissions with a view to evolving a simpler and more effective procedure". The Law Commission made their report in March 1976 (Law Commission Report No. 73). It was implemented by Rules of Court (Order 53) in 1977 and given statutory force in 1981 by Section 31 of the Supreme Court Act, 1981. It combined all the former remedies into one proceeding called Judicial Review. Lord Denning explains the scope of this "judicial review":
>
> "At one stroke the courts could grant whatever relief was appropriate. Not only certiorari and mandamus, but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a writ. No formal pleadings. The evidence was given by affidavit. As a rule no cross-examination, no discovery, and so forth. But there were important safeguards. In particular, in order to qualify, the applicant had to get the leave of a judge.
>
> The statute is phrased in flexible terms. It gives scope for development. It uses the words "having regard to".

13 [1989] 2 SCR 697 : (1989) 2 SCC 691

14 [2023] 8 SCR 581 : (2023) 4 SCC 1

> Those words are very indefinite. The result is that the courts are not bound hand and foot by the previous law. They are to "have regard to" it. So the previous law as to who are — and who are not — public authorities, is not absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This means that the judges can develop the public law as they think best. That they have done and are doing." [See The Closing Chapter by Rt. Hon. Lord Denning, p. 122]
>
> **17**. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The "public authority" for them means everybody which is created by statute — and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all "public authorities". But there is no such limitation for our High Courts to issue the writ "in the nature of mandamus". Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose."

10. He further submitted that equity should prevail over injustice and since the appellants have diligently pursued their case in the High Court for more than a decade, subsequent events can be accounted for only to support and not undermine equity. It was further contended that a private body that promises the sovereign to fulfill its obligations and liabilities as a public employer towards its employees under Articles 14 & 16, then performs a public duty to the extent of discharging such liabilities. It is not the form, but the nature of the duty imposed that is relevant for adjudging whether a writ petition would lie against a private body. Reliance in support of this contention was placed upon the following extracts from the decision of this Court in ***Binny Ltd. and Anr. v. V. Sadasivan and Ors.***[15]:-

15 [2005] Supp. 2 SCR 421 : (2005) 6 SCC 657

"**23.** The counsel for the respondent in Civil Appeal No. 1976 of 1998 and for the appellant in the civil appeal arising out of SLP (Civil) No. 6016 of 2002 strongly contended that irrespective of the nature of the body, the writ petition under Article 226 is maintainable provided such body is discharging a public function or statutory function and that the decision itself has the flavour of public law element and they relied on the decision of this Court in Shri Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani [(1989) 2 SCC 691]. In this case, the appellant was a Trust running a science college affiliated to the Gujarat University under the Gujarat University Act, 1949. The teachers working in that college were paid in the pay scales recommended by the University Grants Commission and the college was an aided institution. There was some dispute between the University Teachers Association and the University regarding the fixation of their pay scales. Ultimately, the Chancellor passed an award and this award was accepted by the State Government as well as the University and the University directed to pay the teachers as per the award. The appellants refused to implement the award and the respondents filed a writ petition seeking a writ of mandamus and in the writ petition the appellants contended that the college managed by the Trust was not an "authority" coming within the purview of Article 12 of the Constitution and therefore the writ petition was not maintainable. This plea was rejected and this Court held that the writ of mandamus would lie against a private individual and the words "any person or authority" used in Article 226 are not to be confined only to statutory authorities and instrumentalities of the State and they may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied."

11. Learned senior counsel further contended that when a private employer steps into the shoes of a public employer i.e. to perform the

same functions as had previously been performed to the same end and substantially in the same manner, then its actions are amenable to judicial review. Reliance in support of this contention was placed upon the decision of the United Kingdom Court of Appeal in ***Regina (Beer(trading as Hammer Trout Farm)) v. Hampshire Farmers' Markets & Ltd.***[16].

12. It was further contended that the writ petitions came to be instituted on behalf of the appellants herein way back in the year 2011-2013 and at that point of time unquestionably the employer, i.e. respondent No. 3(AIL) was a 'State' within the ambit and purview of Article 12 of the Constitution of India. The writ petitions were filed with genuine and *bona fide* service-related issues of the appellant employees based on substantive allegations of infringement of fundamental rights guaranteed under Article 14 and Article 16 of the Constitution of India. However, the writ petitions could not be taken up and decided for over a period of almost 10 years and thus, the appellants cannot be non-suited for the non-disposal of their *bona fide lis* in a timely manner. He thus urged that appellants herein are entitled to the relief, as claimed for in the writ petitions because the employer i.e. respondent No. 3(AIL), undisputedly was amenable to writ jurisdiction at the time the writ petitions were instituted and that it continues to discharge public duties even after privatisation.

13. On these grounds, learned senior counsel for the appellants implored the Court to accept the appeals; set aside the impugned judgment and remand the writ petitions to the High Court for adjudication on merits.

Submission and contentions on behalf of respondent No. 3-AIL: -

14. Shri Abhishek Manu Singhvi, learned senior counsel appearing on behalf of respondent No. 3(AIL) contended that a bare reading of Article 226 of the Constitution of India, would clearly show that the 'test of jurisdiction' is to be invoked/applied at the time of issuance of the writ by the High Court. It is at the stage of issuance of a writ that the High Court actually exercises its writ jurisdiction, and therefore, it is at that point of time, the High Court ought to be satisfied that the person to whom it is issuing a writ is amenable to the extraordinary writ jurisdiction.

16 [2004] 1 WLR 233

15. Learned senior counsel placed reliance upon the decision of the High Court of Gujarat in the case of ***Kalpana Yogesh Dhagat through Legal Heirs v. Reliance Industries Ltd.***[17], wherein a writ petition had been filed against Indian Petrochemical Corporation Ltd.("IPCL") in 2002 which came to be decided in the year 2016. In the intervening period, the IPCL was privatized and taken over by Reliance Industries Limited(RIL) in 2007. The pertinent issue that cropped up for consideration was whether the writ petition filed against IPCL was maintainable even after its privatization. Learned Single Judge[18] of the Gujarat High Court held that the writ petition was not maintainable. The relevant portion of ***Kalpana Yogesh Dhagat*** *(supra)* as relied upon is extracted hereinbelow:-

> "**53.** In the case in hand, before the writ application could be taken up for final hearing, the status of I.P.C.L. changed. The I.P.C.L. once a public sector enterprise is no longer in existence, the same has been taken over by the Reliance Industries Limited. At no point of time, the legality and validity of the amalgamation of the I.P.C.L. with the Reliance Industries Limited arose before any Court. In such circumstances, I find it extremely difficult to hold that this writ application is maintainable and that too by applying the provisions of Order 22 Rule 10 of the Code of Civil Procedure. Ultimately, the whole issue boils down as to how a writ can be issued against a private entity."

16. Learned senior counsel further placed reliance upon the decision of the High Court of Delhi in ***Asulal Loya vs. Union of India and Ors.***[19], wherein learned Single Judge[20] arrived at the same conclusion, while dealing with a writ petition filed against the Bharat Aluminium Company Limited(BALCO) in the year 1991 and decided in 2008 i.e., post-privatization of BALCO in 2001. The relevant portions from the said judgment as relied upon are extracted hereinbelow: -

> "**3.** It is fairly well settled that a writ petition is not maintainable against a private limited company or a public limited company in which the State does not exercise all

17 2016 SCC OnLine Guj 10186

18 HMJ J.B. Pardiwala (as his lordship then was)

19 ILR (2009) I Delhi 450

20 HMJ Sanjeev Khanna (as his lordship then was)

> pervasive control. In Binny Limited v. V. Sadasivan, reported in (2005) 6 SCC 657, the Supreme Court has held that a writ petition under Article 226 of the Constitution is normally issued against public authorities and can also be issued against private authorities when they are discharging public functions and the decision which is sought to be corrected or enforced must be in discharge of a public function. In the present case, the issues and questions involved do not relate to public functions.
>
> ***
>
> **10.** In these circumstances, the present writ petition is dismissed without going into the merits of the matter upholding the preliminary objection raised by the respondent company that it is not a State and, therefore, not amenable to writ jurisdiction. It is, however, observed that the petitioner is at liberty to approach any forum for redressal of his grievance, if so advised and the time spent by him in these proceedings shall be taken into consideration for the purpose of limitation. In the facts and circumstances of the case, there will be no order as to costs."

17. Learned senior counsel further submitted that this Court in the case of ***Kaushal Kishor*** *(supra)* has held that a writ cannot be issued against non-state entities that are not performing any 'Public Function'. He further pointed out that it is the conceded case of the appellants that post privatisation, respondent No. 3(AIL) does not perform any 'Public Function' and in any case running a private airline with purely a commercial motive can never be equated to performing a 'Public Duty'.

18. He further submitted that the issue is not that of a 'Right' but of a 'Remedy' i.e. dismissal of a writ petition filed by the appellants on the ground of maintainability would not lead to extinguishment of the rights of the appellants and only the forum for adjudication of their dispute would change. Any alleged violations of Articles 14 or 16 of the Constitution of India are simply grounds for claiming relief which can well be agitated before any other appropriate forum.

19. Learned senior counsel further submitted that appellants' rights, if any, are protected by the specific liberty granted to them by the High Court vide the impugned judgment and if a Court of competent jurisdiction

was to hold in their favour, the same would be enforceable against the employer-respondent No. 3(AIL).

20. He further contended that the appellants employees approached the writ Court after significant delay, since the cause of action arose between 2007 to 2010 and captioned writ petitions came to be filed before the Division Bench of the Bombay High Court between 2011 to 2013 and implored the Court to dismiss the appeals.

21. We have given our thoughtful consideration to the submissions advanced by learned counsel for the parties and have gone through the impugned judgment and the material placed on record.

Questions of law posed for adjudication: -

22. The questions of law presented for adjudication of this Court are:

(i) Whether respondent No.3(AIL) after having been taken over by a private corporate entity could have been subjected to writ jurisdiction of the High Court?

(ii) Whether the appellants herein could have been non-suited on account of the fact that during pendency of their writ petitions, the nature of the employer changed from a Government entity to a private entity?

(iii) Whether the delay in disposal of the writ petition could be treated a valid ground to sustain the claim of the appellants even against the private entity?

Discussion and Conclusion: -

23. The thrust of submissions of learned senior counsel appearing on behalf of the appellants was based on the judgment of the Division Bench of Calcutta High Court in the case of ***Ashok Kumar Gupta*** *(supra)* wherein, it was held in para 32(reproduced *supra*) that the cause of action crystallized at a point of time when the authority was subjected to the writ jurisdiction.

24. ***Ashok Kumar Gupta's*** case *(supra)* was distinguished by the learned Single Judge of the Gujarat High Court in the case of ***Kalpana Yogesh Dhagat*** *(supra)*. The relevant excerpts from the said judgment are reproduced hereinbelow for the sake of ready reference: -

> "**50.** There is no doubt that if the dictum, as explained by the Division Bench of the Calcutta High Court (Ashok

Kumar Gupta vs. Union of India, (2007) SCC OnLine Cal 264) is applied in the case in hand, then probably, the writ application could be said to be maintainable**. However, there are few distinguishing features, which, in my view, are important as they go to the root of the matter. First, in the case before the Calcutta High Court even at the time when the writ application was rejected, the company was a public sector undertaking; Secondly, even when the appeal was filed, the same was a public sector undertaking; and thirdly and most importantly, the issue as regards the propriety and legality of the privatisation was pending before the Larger Bench of the Supreme Court.**"

(emphasis supplied)

25. In the case of ***Kalpana Yogesh Dhagat*** *(supra),* the learned Single Judge of the Gujarat High Court went on to uphold the preliminary objection regarding the maintainability of the writ petition against Reliance Industries Limited (RIL). The relevant excerpts from the said judgment are extracted hereinbelow: -

"**19.** .....However, the scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging public function, the pubic law remedy can be enforced. **The duty cast upon a public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be a public law element in such action. The respondent Reliance Petro Investment Limited has nothing to do with the public as such. It is a company engaged in the business of petroleum products. Neither the Union nor the 'State' has any control over the respondent company. Mere issue of a licence by the Union or State Government for the purpose of running the company by itself will not make it an instrumentality of a "State" or an agency of a "State".**

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21. The language of Article 226 is no doubt very wide. It states that a writ can be issued "to any person or authority"

and "for enforcement of right conferred by Part III and for any other purpose". However, the aforesaid language in Article 226 cannot be interpreted and understood literally. The Court should not apply the literal rule of interpretation while interpreting Article 226. If we take the language of Article 226 literally it will follow that a writ can be issued to any private person or to settle even the private disputes. If we interpret the word "for any other purpose" literally it will mean that a writ can be issued for any purpose whatsoever, e.g. for deciding private disputes, for grant of divorce, succession certificate etc. Similarly, if we interpret the words "to any person" literally it will mean that a writ can even be issued to the private persons. However, this would not be the correct meaning in view of the various decisions of the Supreme Court in which it has been held that a writ will lie only against the State or instrumentality of the State vide Chander Mohan Khanna v. N.C.E.R.T, (1991) 4 SCC 578, Tekraj Vasandhi v. Union of India, (1988) 1 SCC 236 : AIR 1988 SC 469, General Manager, Kisan Sahkari Chini Mills Ltd. v. Satrughan Nishad, (2003) 8 SCC 639, Federal Bank Ltd. v. Sagar Thomas & Co., (2003) 10 SCC 733, Pradeep Kumar Biswas v. Indian Institute of Chemical Biology ((2002) 5 SCC 111) etc. In General Manager, Kisan Sahkari Chini Mills Ltd. v. Satrughan Nishad (supra), **the Supreme Court observed that a writ will lie against a private body only when it performed a public function or discharged a public duty. The 'R.I.L.' is not performing a public function nor discharging a public duty. It is only doing a commercial activity. Hence, no writ lies against it.**

***

58. Even if the aforesaid dictum of the Supreme Court is applied in the case in hand, it is difficult for this Court to take the view that as the writ applicant is not responsible for the change of circumstances and the writ application was maintainable at the time when it was filed, a writ can be issued to a private entity for the purpose of enforcing the fundamental rights of the writ applicant alleged to have been infringed

> **by a company, a public sector undertaking at a point of time and now no longer in existence.** It is also not legally permissible to take the view that since the I.P.C.L. was a Government of India undertaking, a writ could be issued against the Union of India. An employee of a public sector undertaking by itself will not be a civil servant or an employee of the Union of India. At best, he could be termed as an employee of a company owned by the Government. Therefore, even ignoring the I.P.C.L., no liability could be fastened even on the Government of India at this stage.
>
> **59.** I am not impressed by the submission of Mr. Bhatt that the writ applicant has no other alternative remedy, except invoking the writ jurisdiction of this Court. According to Mr. Bhatt, since the original writ applicant i.e. the employee has passed away, it will be legally impermissible for the legal heirs to file a civil suit for declaration for the purpose of challenging the order of dismissal from service. The legal heirs on record can definitely file a civil suit for declaration that the departmental inquiry was not conducted in a fair and transparent manner and the consequential order of dismissal is illegal. Section 14 of the Limitation Act would also save the situation. Section 14 of the Limitation Act itself is meant for the suits."
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> (emphasis supplied)

26. The same controversy was also considered by a learned Single Judge of the Delhi High Court in the case of ***Asulal Loya*** *(supra)* which was a case involving the termination of services of the writ petitioner-employee by the company Bharat Aluminium Company Limited (BALCO) which was previously a Government of India Undertaking and was privatized pursuant to the tripartite share purchase agreement. The employee-writ petitioner filed a writ petition before the Delhi High Court to challenge his termination wherein, a preliminary objection was raised regarding maintainability of the writ petition on the ground that during pendency of the proceedings, the company had changed hands and no longer retained the characteristic of a 'State' or 'Other authority' as defined under Article 12 of the Constitution of India. The assertion of the writ petitioner was that the petition was maintainable against the respondent on the date it was filed. As per the writ petitioner, the rights and obligations of the

parties stood crystallized on the date of commencement of litigation and thus, the reliefs should be decided with reference to the date on which the party entered the portals of the Court. The learned Single Judge in para 10(reproduced *supra*) upheld the preliminary objection raised against the maintainability of the writ petition and relegated the writ petitioner therein to approach the civil Court for ventilating the grievances raised in the writ petition.

27. The Division Bench of the Bombay High Court in the case of ***Tarun Kumar Banerjee*** *(supra)* also took a similar view observing as below: -

> "**1.** Both the petitions were filed against Bharat Aluminium Co. Ltd. when the petitions were filed, it was a Government of India enterprise. **We are told by the Respondent that they had filed an affidavit on 22-3-1996 thereby pointing out that Bharat Aluminium Co. Ltd. has been privatized and share of more than 50% have been transferred to Sterlit Industries India Ltd. and as a consequence Bharat Aluminium Company Ltd. is not a state and is not amenable to writ jurisdiction of this Court.**
>
> **2**. In view of this submission we dispose of both the petitions while granting the petitioner liberty to approach any other forum for redressal of their grievance if so advised. The time spent by the petitioners in prosecuting these proceeding shall be taken into consideration for the purpose of limitation in case the petitioner choose any such remedy where the question of limitation would be relevant."
>
> (emphasis supplied)

28. Further, in the case of ***Beg Raj Singh*** *(supra)*, this Court observed as below: -

> "**7.** …. **A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events, i.e. the events between the commencement of litigation and the date of decision. The relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change in law.** There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents because of the balance tilting against the

> petitioner on weighing inequities pitted against equities on the date of judgment…."
>
> (emphasis supplied)

29. It is thus, seen that various High Courts across the country have taken a consistent view over a period of time on the pertinent question presented for consideration that the subsequent event i.e. the disinvestment of the Government company and its devolution into a private company would make the company immune from being subjected to writ jurisdiction under Article 226 of the Constitution of India, even if the litigant had entered the portals of the Court while the employer was the Government. The only exception is the solitary judgment of the Division Bench of Calcutta High Court in ***Ashok Kumar Gupta*** *(supra)*, which was distinguished by the learned Single Judge of the Gujarat High Court in the case of ***Kalpana Yogesh Dhagat*** *(supra)* and rightly so, in our opinion, we have no hesitation in holding that the view taken in the judgments of ***Kalpana Yogesh Dhagat*** *(supra)* (by the High Court of Gujarat); ***Asulal Loya*** *(supra)* (by the High Court of Delhi) and ***Tarun Kumar Banerjee*** *(supra)* (by the High Court of Bombay) is the correct exposition on this legal issue and we grant full imprimatur to the said proposition of law.

30. We would like to answer the three questions of law enumerated above as follows.

31. In order to be declared as "State" or "other authority" within the meaning of Article 12 of the Constitution of India, it would have to fall within the well-recognised parameters laid down in a number of judgments of this Court. In this regard, we may refer to the case of ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology***[21] wherein this Court after taking into consideration the previous judgments on this point, observed as follows:

> "**27.** *Ramana* [(1979) 3 SCC 489 : AIR 1979 SC 1628] was noted and quoted with approval *in extenso* and the tests propounded for determining as to when a corporation can be said to be an instrumentality or agency of the Government therein were culled out and summarised as follows : (SCC p. 737, para 9)

21 [2002] 3 SCR 100 : (2002) 5 SCC 111

"(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. (SCC p. 508, para 15)

(3) It may also be a relevant factor … whether the corporation enjoys monopoly status which is State-conferred or State-protected. (SCC p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government. (SCC p. 510, para 18)"

40. The picture that ultimately emerges is that the tests formulated in *Ajay Hasia* [*Ajay Hasia* v. *Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be — whether in the light of the cumulative facts as established, the body is financially, functionally and administratively

> **dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.”**
>
> (emphasis supplied)

32. There is no dispute that the Government of India having transferred its 100% share to the company Talace India Pvt Ltd., ceased to have any administrative control or deep pervasive control over the private entity and hence, the company after its disinvestment could not have been treated to be a State anymore after having taken over by the private company. Thus, unquestionably, the respondent No.3(AIL) after its disinvestment ceased to be a State or its instrumentality within the meaning of Article 12 of the Constitution of India.

33. Once the respondent No.3(AIL) ceased to be covered by the definition of State within the meaning of Article 12 of the Constitution of India, it could not have been subjected to writ jurisdiction under Article 226 of the Constitution of India.

34. A plain reading of Article 226 of the Constitution of India would make it clear that the High Court has the power to issue the directions, orders or writs including writs in the nature of *Habeas Corpus, Mandamus, Certiorari, Quo Warranto* and Prohibition to any person or authority, including in appropriate cases, any Government within its territorial jurisdiction for the enforcement of rights conferred by Part-III of the Constitution of India and for any other purpose.

35. This Court has interpreted the term ‘authority’ used in Article 226 in the case of ***Andi Mukta*** *(supra)*, wherein it was held as follows:

> *“17*. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The ‘public authority’ for them means everybody which is created by statute—and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all ‘public authorities’. But there is no such limitation for our High Courts to issue the writ ‘in the nature of mandamus’. Article 226 confers wide powers on

> the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to 'any person or authority'. It can be issued 'for the enforcement of any of the fundamental rights and for any other purpose'.
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> ***
>
> ***20.* The term 'authority' used in Article 226, in the context, must receive a liberal meaning like the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words 'any person or authority' used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied."**
>
> (emphasis supplied)

36. Further, in the case of ***Federal Bank Ltd. v. Sagar Thomas***[22], this Court culled out the categories of body/persons who would be amenable to writ jurisdiction of the High Court which are as follows:

> "***18.*** From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (*i*) the State (Government); (*ii*) an authority; (*iii*) a statutory body; (*iv*) an instrumentality or agency of the State; (*v*) a company which is financed and owned by the State; (*vi*) a private body run substantially on State funding; (*vii*) a

22 [2003] Supp. 4 SCR 121 : (2003) 10 SCC 733

> private body discharging public duty or positive obligation of public nature; and (*viii*) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function."

37. The respondent No.3(AIL), the erstwhile Government run airline having been taken over by the private company Talace India Pvt. Ltd., unquestionably, is not performing any public duty inasmuch as it has taken over the Government company Air India Limited for the purpose of commercial operations, plain and simple, and thus no writ petition is maintainable against respondent No.3(AIL). The question No. 1 is decided in the above manner.

38. The question of issuing a writ would only arise when the writ petition is being decided. Thus, the issue about exercise of extra ordinary writ jurisdiction under Article 226 of the Constitution of India would arise only on the date when the writ petitions were taken up for consideration and decision. The respondent No.3(AIL)- employer was a government entity on the date of filing of the writ petitions, which came to be decided after a significant delay by which time, the company had been disinvested and taken over by a private player. Since, respondent No.3 employer had been disinvested and had assumed the character of a private entity not performing any public function, the High Court could not have exercised the extra ordinary writ jurisdiction to issue a writ to such private entity. The learned Division Bench has taken care to protect the rights of the appellants to seek remedy and thus, it cannot be said that the appellants have been non-suited in the case. It is only that the appellants would have to approach another forum for seeking their remedy. Thus, the question No.2 is decided against the appellants.

39. By no stretch of imagination, the delay in disposal of the writ petitions could have been a ground to continue with and maintain the writ petitions because the forum that is the High Court where the writ petitions were instituted could not have issued a writ to the private respondent which had changed hands in the intervening period. Hence, the question No.3 is also decided against the appellants.

40. Resultantly, the view taken by the Division Bench of the Bombay High Court in denying equitable relief to the appellants herein and relegating them to approach the appropriate forum for ventilating their grievances is the only just and permissible view.

41. We may also note that the appellants raised grievances by way of filing the captioned writ petitions between 2011 and 2013 regarding various service-related issues which cropped up between the appellants and the erstwhile employer between 2007 and 2010. Therefore, it is clear that the writ petitions came to be instituted with substantial delay from the time when the cause of action had accrued to the appellants.

42. It may further be noted that the Division Bench of Bombay High Court, only denied equitable relief under Article 226 of the Constitution of India to the appellants but at the same time, rights of the appellants to claim relief in law before the appropriate forum have been protected.

43. We may further observe that in case the appellants choose to approach the appropriate forum for ventilating their grievances as per law in light of the observations made by the Division Bench of the Bombay High Court, Section 14 of the Limitation Act, 1963 shall come to the rescue insofar as the issue of limitation is concerned.

44. In wake of the discussion made hereinabove, we do not find any reason to take a different view from the one taken by the Division Bench of the Bombay High Court in sustaining the preliminary objection *qua* maintainability of the writ petitions preferred by the appellants and rejecting the same as being not maintainable.

45. With the above observations, the appeals are dismissed. No order as to costs.

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

Headnotes prepared by: Ankit Gyan

Result of the case: Appeals dismissed.

[2024] 6 S.C.R. 959 : 2024 INSC 460

Anish M Rawther @ Anees Mohammed Rawther
v.
Hafeez Ur Rahman & Ors.

(Civil Appeal No. 4120 of 2024)

14 June 2024

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

Issue for Consideration

High Court, if justified in directing the trial court to accept the respondent's memo and pass appropriate order.

Headnotes

Code of Civil Procedure, 1908 – Ord. XXXVII – Summary suits – Suit u/Ord. XXXVII by respondents against the appellants for recovery of money – Respondent filed memo requesting the trial court to decree the suit in terms of Ord. XXXVII r. 3(6)(b) – Trial court rejected the memo – However, the High Court set aside the order directing the trial court to accept the memo submitted by the respondents and pass appropriate orders – Correctness:

Held: High Court did not accept the submission of the appellants that in view of s. 14 of the Insolvency and Bankruptcy Code, 2016, the moratorium became operational, thus, the suit cannot proceed, and directed the trial court to accept the memo and pass appropriate orders – This Court stayed the impugned order, however, much prior to the interim order of this Court, the suit itself was decided finally by passing a decree – It is not brought to the notice that the said decree has been challenged any further by the appellants – Thus, for the present, the suit is not pending, thus, the appeal which arose out of an interim order passed by the trial court during pendency of the suit, is rendered infructuous. [Para 5]

List of Acts

Code of Civil Procedure, 1908; Insolvency and Bankruptcy Code, 2016.

* Author

List of Keywords

Memo; Summary suits; Recovery of money; Decree the suit; Moratorium; Infructuous.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4120 of 2024

From the Judgment and Order dated 21.03.2022 of the High Court of Karnataka at Bengaluru in WP No. 10975 of 2020

Appearances for Parties

U.K. Uniyal, Sr. Adv., Dinesh Kumar Garg, Abhishek Garg, Dhananjay Garg, Ishaan Tiwari, R.P. Bansal, Suresha N., Ms. Ishita Bist, Advs. for the Appellant.

Pai Amit, Ms. Pankhuri Bhardwaj, Nikhil Pahwa, Abhiyudaya Vats, Kushal Dube, Tathagata Dutta, Ms. Vanshika Dubey, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Prashant Kumar Mishra, J.

This appeal has been preferred by the appellant/defendant challenging the Order passed by the High Court of Karnataka on 21st March 2022 in Writ Petition No. 10975 of 2020 (GM-CPC) whereby the High Court allowed the writ petition and set aside the Order dated 07th March 2020 passed by the Trial Court in Com. OS No. 1026 of 2018 and further directed the Trial Court to accept the memo dated 14th November 2019 which was submitted by the respondents/plaintiffs and pass appropriate orders accordingly.

2. The brief facts, necessary for disposal of this Civil Appeal are that the respondents/plaintiffs preferred a suit under Order XXXVII of Code of Civil Procedure, 1908 (henceforth ‘CPC’) against the appellants/defendants for recovery of Rs. 1,04,16,576/- with interest. The appellants/defendants entered appearance and filed application seeking leave to defend which was allowed by the Trial Court on 19th June 2019 with a direction to the appellants/defendants to deposit 50% of the suit claim. The said order was challenged

before the High Court in Writ Petition No. 28349 of 2019 which was dismissed on 08th August 2019 against which an SLP (C) No. 20626 of 2019 was preferred by the appellants/defendants which came to be dismissed on 06th September 2019, by passing the following order:-

> *"We are not inclined to interfere with the impugned order passed by the High Court.*
>
> *The special leave petition, is accordingly, dismissed.*
>
> *However, it is open for the petitioners to approach the High Court within four weeks from today for variation of the order satisfying the High Court that he can provide adequate security in terms of the orders of the High Court."*

3. Despite the above order passed by this Court, the appellants/defendants did not approach the High Court for variation of the order as permitted by this Court.

4. When the matter stood thus, the respondent/plaintiff filed memo dated 14th November 2019, requesting the Trial Court to decree the suit in terms of Order XXXVII Rule 3(6)(b) of the CPC. The Trial Court after considering the material on record, including the objections by the appellant/defendant rejected the memo vide order dated 07th March 2020. This order was assailed by the respondent/plaintiff before the High Court which has been allowed under the impugned order simultaneously directing the Trial Court to accept the memo and pass appropriate orders accordingly.

5. The appellants/defendants have argued that in view of Section 14 of the Insolvency and Bankruptcy Code, 2016 (henceforth 'IBC'), the moratorium has become operational, therefore, the suit cannot proceed. This argument was not accepted by the High Court and under the impugned order, the Trial Court was directed to accept the memo and pass appropriate orders. It is important to notice that this Court has passed an order on 01st December 2023 staying the impugned order, however, much prior to the interim order of this Court, the suit itself was decided finally by passing a decree on 20th April 2023. It is not brought to our notice that the said decree has been challenged any further by the defendants. Thus, for the present, the suit is not pending, therefore, the present appeal which arises

out of an interim order passed by the Trial Court during pendency of the suit, has been rendered infructuous.

6. The Civil Appeal is, accordingly, dismissed as infructuous.

Headnotes prepared by: Nidhi Jain

Result of the case: Appeal dismissed.