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Contents

[2024] 8 S.C.R. 1 : 2024 INSC 566

National Housing Bank
v.
Bherudan Dugar Housing Finance Ltd. & Ors. Etc.

(Criminal Appeal No. 3176-3177 of 2024)

01 August 2024

[Abhay S. Oka* and Augustine George Masih, JJ.]

Issue for Consideration

On a complaint filed u/s. 200 CrPC, wherein the Magistrate took cognizance of the complaint for the offence u/s. 29A (i) read with s. 50 and punishable u/s. 49 (2A) of the 1987 Act against the first respondent-company, second accused-Managing director and other five accused as directors, whether the High Court was justified in quashing the complaint in its entirety, holding that the requirements of sub-Section (1) of s. 50 of the 1987 Act are similar to the requirements incorporated in s. 141 of the Negotiable Instruments Act, 1881, which were not complied with by the complainant.

Headnotes†

National Housing Bank Act, 1987 – ss. 29A rw s. 50 – Offence by companies – Vicarious liability of the Directors – Averment in the complaint, if essential requirement – Magistrate taking cognizance of the complaint for the offence u/s. 29A (i) rw s. 50 and punishable u/s. 49 (2A) against the first accused-company, second accused-Managing director and other five accused as directors – High Court quashed the complaint in its entirety – Justification:

Held: Unless assertions, as required by sub-section (1) of s. 50, are made, vicarious liability of the Directors of the first accused company not attracted – No assertions made that the second to seventh accused, at the time of the commission of the offence, were in charge of, and responsible to the first accused company for the conduct of its business – In the absence of the averments, the trial court could not have taken cognizance of the offence against the third to seventh accused, who are allegedly the directors of the first accused company – However, the second accused being the Managing Director, would be in charge of the company and responsible to the company for its business, thus, no justification

* Author

for quashing the complaint against the second accused – First respondent is a company – No reasons have been assigned to quash the complaint against the first accused – Impugned order is modified – Complaint quashed as against the third to seventh accused, however, the complaint to proceed against the first and second accused. [Paras 6, 8, 9]

Case Law Cited

S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr. [2005] Suppl. 3 SCR 371 **: (2005) 8 SCC 89 – referred to.**

List of Acts

Code of Criminal Procedure, 1973; National Housing Bank Act, 1987; Negotiable Instruments Act, 1881.

List of Keywords

Offence by companies; Vicarious liability of the Directors; Averment in the complaint; Quashing of the complaint.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 3176-3177 of 2024

From the Judgment and Order dated 12.07.2017 of the High Court of Judicature at Madras in CROP Nos. 1593 and 10570 of 2011

Appearances for Parties

Navin Prakash, Adv. for the Appellant.

Dr. Joseph Aristotle S, Sr. Adv., Ms. Priya Aristotle, Ms. Nikita Patra, Ashish Yadav, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

FACTS

1. The appellant filed a complaint under Section 200 of the Code of Criminal Procedure, 1973, alleging the commission of an offence of violating the provisions in Section 29A of the National Housing Bank

Act, 1987 (for short, the '1987 Act'). The learned Magistrate took cognizance of the complaint for the offence under Section 29A (i) read with Section 50 and punishable under Section 49(2A) of the 1987 Act. Section 49(2A) provides for a minimum sentence of one year, which may extend to five years. For convenience, we will refer to the parties as per their status before the Trial Court. The first accused is a company. The second accused was described in the complaint as the Managing Director of the first accused company, and the other five accused were described as the Directors. By the impugned judgment, the High Court has proceeded to quash the complaint in its entirety. The High Court held that the requirements of sub-Section (1) of Section 50 of the 1987 Act are similar to the requirements incorporated in Section 141 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act'), which were not complied with by the complainant.

SUBMISSIONS

2. The learned counsel appearing for the appellant has taken us through the averments made in the complaint and the provisions of the said Act of 1987. He submitted that on a plain reading of the complaint, a violation of the provisions in Section 29A (i) of the 1987 Act was made out. Therefore, there was no reason to quash the complaint. Inviting our attention to the complaint, he pointed out that the second accused was described as the Managing Director of the first respondent and, therefore, he was in charge of and was responsible to the first respondent company for the conduct of the company's business. He submitted that there were sufficient averments for implicating the other accused.

3. The learned counsel appearing for the accused supported the impugned judgment and submitted that averments as required by sub-Section (1) of Section 50 of the 1987 Act have not been incorporated in the complaint.

REASONS

4. Section 50 of the 1987 Act reads thus:

> "50. Offences by Companies.—(1) **Where an offence has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well**

as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(*a*) "company" means any body corporate and includes a firm or other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm.**"**

(emphasis added)

There is no dispute that sub-Section (1) of Section 50 is *pari materia* with Section 141 of the NI Act.

5. Paragraph 9 of the complaint contains relevant averments on which reliance was placed by the learned counsel for the complainant. Paragraph 9 reads thus:

"The complainant submits that the Accused No. 1 herein is a Limited Company, having its registered Office at Nos. 73/1A, Jermiah Road, Vepery, Chennai-600007. It was incorporated on 17-12-1996 as a Limited Company under the Companies Act, 1956 and obtained Certificate for commencement of Business on 22.01.1997 from the Additional registrar of Companies, Tamilnadu. The Xerox

> Copy of the Memorandum and Articles of Association of the Accused Company is filed herewith. Accused No. 2 is the Managing Director and the Accused 3 to 7 are the Directors of the First Accused Company and they are conducting the business of the company and are associated with the common aspect of their said business and are also responsible for the Management of the First Accused Company. They are also looking after the day today affairs of the First Accused Company and they are jointly and severally responsible for the conduct or for omission regarding the conduct of the business of the First Accused Company."

6. Hence, there were no assertions made that the second to seventh accused, at the time of the commission of the offence, were in charge of, and responsible to the first accused company for the conduct of its business. Unless assertions, as required by sub-Section (1) of Section 50, are made, vicarious liability of the Directors of the first accused company is not attracted.

7. A Bench of three Hon'ble Judges of this Court had an occasion to interpret Section 141 of NI Act in the case of ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr.***[1] In Paragraph 1, the points for determination were framed which read thus:

> "This matter arises from a reference made by a two-Judge Bench of this Court for determination of the following questions by a larger Bench:
>
> "(*a*) Whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfil the requirements of the said section and it is not necessary to specifically state in the complaint that the person accused was in charge of, or responsible for, the conduct of the business of the company.
>
> (*b*) Whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore,

1 [2005] Supp. 3 SCR 371 : (2005) 8 SCC 89

deemed to be guilty of the offence unless he proves to the contrary.

(*c*) Even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the managing directors or joint managing director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against.**"**

The conclusions are in paragraph 19, which reads thus:

"19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) **It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.**

(b) The answer to the question posed in sub-para (*b*) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) **The answer to Question (*c*) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of**

> **its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."**
>
> (emphasis added)

8. Hence, in the absence of the averments as contemplated by sub-section (1) of Section 50 of the 1984 Act in the complaint, the Trial Court could not have taken cognizance of the offence against the third to seventh accused, who are allegedly the directors of the first accused company. However, the second accused being the Managing Director, would be in charge of the company and responsible to the company for its business. Therefore, there was no justification for quashing the complaint against the second accused. The first respondent is a company. No reasons have been assigned to quash the complaint against the first accused.

9. Hence, the appeals partly succeed, and we pass the following order:

(a) The impugned order is modified, and it is directed that complaint C.C. No. 4331 of 2010 filed in the Court of the Judicial Magistrate, Egmore at Chennai shall stand quashed as against the third to seventh accused shown therein. However, the complaint shall proceed according to the law against the first and second accused.

(b) The Appeals are partly allowed on the above terms.

Result of the case: Appeals partly allowed.

[†]*Headnotes prepared by:* Nidhi Jain

[2024] 8 S.C.R. 8 : 2024 INSC 563

Union of India & Ors. Etc.
v.
Prohlad Guha Etc.

(Civil Appeal Nos. 4434-4437 of 2014)

01 August 2024

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

Issue for Consideration

Respondent-employees were appointed on compassionate ground. The authority found that their appointments were based on forged/ fabricated and bogus documents and their services were terminated. The issue which arises for consideration is whether the dismissal from service handed down to the respondent-employees is legally sustainable or not.

Headnotes†

Service Law – Appointment on compassionate ground – Allegation that appointments of respondent-employees were based on forged/fabricated and bogus documents – Employees were terminated from services – Original Applications filed before CAT against the termination order – CAT dismissed the applications holding that applicants have not stated about the service particulars of their fathers viz where their father working or whom they retired etc. – However, the High Court held that the order of the Tribunal was untenable – Correctness:

Held: The principle of compassionate appointment has been put in place to ameliorate suffering that is cast upon members of a family upon the sudden death of the earning member – An equally well-recognized principle is that compassionate appointment cannot be claimed as a matter of right – It is therefore clear that a person, claiming an appointment on such ground, has to demonstrate his relationship to the deceased person and eligibility for appointment – The same cannot be done without placing all relevant documents before the competent authority – The Tribunal as also the authority has recorded a categorical finding that the respondent-employees had not submitted any document to establish their claim and submitted forged and bogus documents – It was incumbent upon them to produce all documents, on the basis of which they could have said that their dismissal from service on the part of the appellant-employer was incorrect and unjust in law – However,

* Author

the respondent-employees did not furnish any document – On the aspect of non-compliance of the principles of natural justice, this Court finds that the authority had issued show-cause notices to the respondent-employees, to which they responded – The respondent-employees have, at every stage, actively participated in the adjudication process of their alleged improper and illegal appointments – Thus, the impugned judgment is liable to be set aside – The respondent-employees were rightly dismissed from service by the appellant-employer – The order passed by the Tribunal dismissing the respondent-employees' original applications is restored. [Paras 7, 8, 9, 13, 15]

Words and Phrases – Fraud – Meaning of – Discussed.

Service Law – Compassionate appointment – Fraud – Protection under Constitution:

Held: Fraud vitiates all proceedings – Compassionate appointment is granted to those persons whose families are left deeply troubled or destitute by the primary breadwinner either having been incapacitated or having passed away – So when persons seeking appointment on such ground attempt to falsely establish their eligibility, as has been done in this case, such positions cannot be allowed to be retained – The respondent-employees in the present case, having obtained their position by fraud, would not be considered to be holding a post for the purpose of the protections under the Constitution. [Para 14]

Case Law Cited

Biecco Lawrie Ltd. v. State of W.B. [2009] 11 SCR 972 **: (2009) 10 SCC 32;** *Central Coalfields Ltd. v. Parden Oraon* **(2021) 16 SCC 384;** *SAIL v. Madhusudan Das* [2008] 14 SCR 824 **: (2008) 15 SCC 560;** *Dalip Singh v. State of U.P.* [2009] 16 SCR 111 **: (2010) 2 SCC 114;** *Shrisht Dhawan (Smt.) v. M/s. Shaw Brothers* [1991] Supp. 3 SCR 446 **: (1992) 1 SCC 534;** *Devendra Kumar v. State of Uttaranchal* [2013] 8 SCR 471 **: (2013) 9 SCC 363 – relied on.**

M. Paul Anthony v. Bharat Gold Mines Ltd. [1999] 2 SCR 257 **: (1999) 3 SCC 679;** *State Bank of India & Ors. v. P. Zadenga* [2023] 12 SCR 740 **: (2023) 10 SCC 675;** *Ram Preeti Yadav v. U.P. Board of High School of Intermediate Education* [2003] Supp. 3 SCR 352 **: (2003) 8 SCC 311;** *R. Vishwanatha Pillai v. State of Kerala & Ors.* [2004] 1 SCR 360 **: (2004) 2 SCC 105 – referred to.**

Lazarus Estates Ltd. v. Beasley **(1956) 1 QB 702;** *Derry v. Peek* **(1889) 14 AC 337 – referred to.**

List of Acts

Railway Servants (Discipline & Appeal) Rules, 1968; Constitution of India.

List of Keywords

Service Law; Compassionate appointment; Forged/fabricated and bogus documents; False claims; Termination from service; Protection under Constitution; Article 311 of Constitution; Fraud; Fraud vitiates all proceedings; Principles of natural justice; Production of documents.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.4434-4437 of 2014

From the Judgment and Order dated 02.08.2012 of the High Court of Calcutta in WPCT No.207, 213, 214 and 215 of 2012

With

Civil Appeal No.4445 of 2014

Appearances for Parties

R Balasubramaniam, Sr. Adv., Vikrant Yadav, Sushil Kumar Dubey, Sachin Sharma, Mrs. Sweksha, Jitender Kr. Tripathi, Advs. for the Appellants.

Ranjan Mukherjee, Ms. Aayushi, Anindo Mukherjee, Rameshwar Prasad Goyal, Bankey Bihari Sharma, Rajinder Kumar, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol, J.

CIVIL APPEAL NOS. 4434-4437 OF 2014 :

1. The extant appeals filed by the Union of India[1] take exception to a common judgment and order dated 2nd August 2012[2] passed in WPCT Nos. 207, 213, 214, and 215 of 2012, by the High Court of

1 Appellant-Employer

2 Impugned Judgment

Calcutta whereby the common order passed in Original Application Nos.794, 797, 795, and 796 of 2008, respectively, passed by the Central Administrative Tribunal, Calcutta Bench, was reversed and relief claimed by the respondents were allowed.

2. A brief review of facts giving rise to the present appeals, is necessary.

2.1 Respondent-employees were appointed on compassionate ground with the Engineering Department, Howrah Division, Eastern Railway. The disciplinary authority placed the respondents under suspension due to contemplation/pendency of departmental enquiry.[3]

2.2 On issuing show cause notice,[4] information was sought as to why their appointments on compassionate ground should not be terminated as it was based on forged and fabricated documents with respect to the employment of their respective fathers. After receiving their responses, the authority found that their appointments were based on forged/fabricated and bogus documents, however, terminated their services.

2.3 On filing appeals against the order of termination, they were dismissed by the appellate authority, vide order[5] reproduced as under -

> "…Sri Biswanath Biswas, however, could not able to produce an' documents to establish his initial appointment on compassionate ground against death of his father while in service or any other relevant details regarding his father's identity, proof of working in the Railways, Station and place of posting, relevant documents viz. Identity, Medical Card of his deceased father. There is also whisper about retiral benefits received by the family on account of pre-mature death of his deceased father.
>
> Therefore, the Disciplinary Authority has arrive at a conclusion that grounds exposed in the show cause notice have been proyed and accordingly decided to terminate him from Railway Service.

3 Suspension order dated 29th August 2005 in respect of Sri Biswanath Biswas

4 Show Cause notice dated 11th November, 2005 in respect of Sri Biswanath Biswas

5 Order of Appellate Authority dated 31st March 2008 in respect of Sri Biswanath Biswas

Sri Biswanath Biswas, cannot claim any protection under the Discipline & Appeals Rule since his initial appointment was itself by fraudulent means."

2.4 On filing original applications before the Central Administrative Tribunal against the termination order and the Appellate Authority's order, the Tribunal dismissed the applications by a common order dated 21st September, 2010, observing thus:-

"9. In the OA also the applicants have not stated about the service particulars of their fathers viz where their father working or whom they retired etc as referred to in the appellate order. It is the settled position of law that a person who has not come up with clean hands cannot get equity from a court of law. The only point the applicant have raised is that no protection under 311 of the Constitution was given and no enquiry was held. We are not inclined accept these contention because job obtained fraudulently is void ab initio and such a person cannot get protection under the constitution. Moreover FIR was also lodge against them and the matter is pending before appropriate Court of Law."

3. The respondent-employees preferred writ petitions wherein the High Court held that the order of the Tribunal was untenable. It was observed that the Railway Servants (Discipline & Appeal) Rules, 1968[6] have been misinterpreted because as per circular of the Railway Board, Rule 14 thereof only provides for dismissal of government servants upon the charges levelled against them being proved when they are temporary employees. The Rule, however, does not indicate that when a person is in regular service the dismissal can take place *sans* any disciplinary inquiry. The appellant-employers were directed to reinstate the respondent-employees with the liberty to place them under suspension if they choose to hold a departmental inquiry in accordance with the Discipline Rules. Further, it was directed that during the period of such suspension, subsistence allowance would have to be paid.

6 Hereinafter 'Discipline Rules'

4. Having perused the record, the question that arises for our consideration is that whether the dismissal from service handed down to the respondent- employees is legally sustainable or not.

5. The undisputed position is that ever since the suspension orders were issued *qua* the respondent-employees, they have not rendered any service to the appellant-employer. It is further not in dispute that the original order of termination was not stayed either by the High Court or this Court. The impugned judgment was stayed by this Court vide order dated 29th July 2013 which has been extended at regular intervals.

6. Prior to delving into analysis, certain well-established principles may be recalled putting the controversy in question, in context -

   6.1 The principles of natural justice, the violation of which is alleged, have been noticed as essential, in ***Biecco Lawrie Ltd. v. State of W.B.***[7] in the following terms:-

   > **"24.** It is fundamental to fair procedure that both sides should be heard—*audi alteram partem* i.e. hear the other side and it is often considered that it is broad enough to include the rule against bias since a fair hearing must be an unbiased hearing. One of the essential ingredients of fair hearing is that a person should be served with a proper notice i.e. a person has a right to notice. Notice should be clear and precise so as to give the other party adequate information of the case he has to meet and make an effective defence. Denial of notice and opportunity to respond result in making the administrative decision as vitiated."

   6.2 The principle of compassionate appointment has been stated by this Court in ***Central Coalfields Ltd. v. Parden Oraon,***[8] as follows-

   > **"8.** The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis which arises due to the death of the sole breadwinner. The mere death of an employee in harness does not entitle his family to such source of livelihood. The authority

7 [2009] 11 SCR 972 : (2009) 10 SCC 32

8 (2021) 16 SCC 384

concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied that but for the provision of employment, the family will not be able to meet the crisis that the job is offered to the eligible member of the family [*Umesh Kumar Nagpal* v. *State of Haryana*, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] . It was further asseverated in the said judgment that compassionate employment cannot be granted after a lapse of reasonable period as the consideration of such employment is not a vested right which can be exercised at any time in the future. It was further held that the object of compassionate appointment is to enable the family to get over the financial crisis that it faces at the time of the death of sole breadwinner, compassionate appointment cannot be claimed or offered after a significant lapse of time and after the crisis is over."

6.3 The relationship of 'compassionate appointment' with constitutional principles has been discussed in ***SAIL v. Madhusudan Das***,[9] wherein it was held that

"**15.** This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right. (See *SBI* v. *Anju Jain* [(2008) 8 SCC 475 : (2008) 2 SCC (L&S) 724], SCC para 33.)"

(Emphasis supplied)

9 [2008] 14 SCR 824 : (2008) 15 SCC 560

6.4 The Tribunal observed that the respondent-employees had not approached the Court 'with clean hands'. About this principle, a Bench of two learned Judges of this Court in ***Dalip Singh v. State of U.P.***,[10] has observed:

> "1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.
>
> x x x x
>
> 3. In Hari Narain v. Badri Das [AIR 1963 SC 1558] this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations: (AIR p. 1558)
>
> "It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading…
>
> x x x x

10 [2009] 16 SCR 111 : (2010) 2 SCC 114

> 7. In Prestige Lights Ltd. v. SBI [(2007) 8 SCC 449] it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in R. v. Kensington Income Tax Commissioners [(1917) 1 KB 486 (CA)] , and observed: (Prestige Lights Ltd. case [(2007) 8 SCC 449] , SCC p. 462, para 35)
>
> In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

7. The principle of compassionate appointment, as we have noticed above, has been put in place to ameliorate suffering that is cast upon members of a family upon the sudden death of the earning member. An equally well-recognized principle is that compassionate appointment cannot be claimed as a matter of right. It is therefore clear that a person, claiming an appointment on such ground, has to demonstrate his relationship to the deceased person and eligibility for appointment. The same cannot be done without placing all relevant documents before the competent authority. The Tribunal as also the authority has recorded a categorical finding that the respondent-employees had not submitted any document to establish their claim and submitted forged and bogus documents.

8. On the aspect of non-compliance of the principles of natural justice, we find that the authority had issued show-cause notices to the respondent-employees, to which they responded. It was subsequent thereto, upon finding the responses to be unsatisfactory, they were removed from the service. On approaching the Tribunal and receiving favorable orders, their appeals against such dismissal were heard and acted upon by the authority, with the dismissal being confirmed. Before the High Court, it was averred that the respondent-employees were not given an opportunity to prove their innocence, nor were any documents, on the basis of which the impugned order of dismissal was passed, provided to them. All of this, it was submitted, flies against the protection envisaged under Article 311 of the Constitution of India.

9. It is difficult to find substance in the averments made. The respondent-employees have, at every stage, actively participated in the adjudication process of their alleged improper and illegal appointments. The Tribunal records that they did not produce any document, as they were asked to, instead they questioned the procedure adopted. This in itself does not absolve them from producing documents as asked for. In the Original Applications filed by the respondent-employees also, the service particulars of their fathers in place of whom such employment was sought, have not been disclosed, as recorded by the Tribunal. So, whereas a respondent-employee may state that onus of proof on the part of the appellant-employer was not discharged properly in respect of the disciplinary proceedings initiated by the latter, as far as the O.As. were concerned, the respondent-employees were the ones pleading their case before a judicial or quasi-judicial authority. Therefore, it was incumbent upon them to produce all documents, on the basis of which they could have said that their dismissal from service on the part of the appellant-employer was incorrect and unjust in law.

10. It is apparent from record that the respondent-employees did not furnish any document as part of the O.As. When the claim made before the Tribunal itself is not clear, unequivocal and supported by relevant material, the same being rejected is not a matter of surprise. The very basis upon which the relief claimed rests is found to be circumspect then the relief, if awarded, suffers from the vice of being improper.

11. Whether or not the Tribunal ought to have heard the matter together or separately is to be decided solely by the adjudicating authority. Comments by the High Court in this regard do not appear to be just. Before parting with the matter, however, in the facts of this case, we express our surprise towards the actions of the appellant-employer who appointed the respondent-employees on the basis of questionable documentation, which was later found to be forged, fabricated and bogus. How could someone be appointed to a government job without proper checking and verification of documents? The Railways are recorded to be one of the largest employers in the country and yet such incidents falling through the cracks, ought to be checked.

12. Upon it being discovered that the respondent-employees had secured appointments on the basis of forged and fabricated documents, an FIR bearing No.29/05 dated 17th December 2005 stood registered against them under Sections 467, 468, 471, 419, 420 and 120-B Indian Penal Code, 1860. There is no bar, as has been held in ***M. Paul Anthony v. Bharat Gold Mines Ltd.***[11] and as recently reiterated in ***State Bank of India & Ors. v. P. Zadenga***[12] for departmental and criminal proceedings to continue simultaneously. As such, the criminal proceedings initiated as a result of alleged fraud committed by the respondent-employees are independent of the proceedings initiated by the appellant-employer. It has been held that in certain cases it would be ideal if the criminal proceedings were stayed in the pendency of the departmental proceedings, however, no such prayer having been made, is on record.

13. The impugned judgment is liable to be set aside on a further ground, since the requisite to establish eligibility for compassionate appointment was not properly fulfilled, they were appointed on the basis of false claims and fabricated documents. It then becomes imperative to discuss what constitutes fraud and what is its impact on an act afflicted by such vice. R.M. Sahai, J. writing in ***Shrisht Dhawan (Smt.) v. M/s. Shaw Brothers***[13] observed -

> **"20.** Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence.

11 [1999] 2 SCR 257 : (1999) 3 SCC 679

12 [2023] 12 SCR 740 : (2023) 10 SCC 675

13 [1991] Supp. 3 SCR 446 : (1992) 1 SCC 534

It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In *Webster's Third New International Dictionary* fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In *Black's Legal Dictionary*, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In *Concise Oxford Dictionary*, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to *Halsbury's Laws of England*, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. …From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of a fact with knowledge that it was false.

…..The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which power can be exercised."

13.1 The words of Denning L.J. in ***Lazarus Estates Ltd. v. Beasley***[14] are of importance *qua* the impact of fraud. He wrote –

> "…..I cannot accede to this argument for a moment. No Court in this land will allow a person to keep an advantage he has obtained by fraud. No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgment, contract and all transactions whatsoever…."

13.2 'Fraud' is conduct expressed by letter or by word, inducing the other party to take a definite stand as a response to the conduct of the doer of such fraud. [See; ***Derry v. Peek;***[15] ***Ram Preeti Yadav v. U.P. Board of High School of Intermediate Education***[16]]

13.3 In ***R. Vishwanatha Pillai v. State of Kerala & Ors.,***[17] a Bench of three learned Judges observed that a person who held a post which he had obtained by fraud, could not be said to be holding a post within the meaning of Article 311 of the Constitution of India. In this case, a person who was not a member of Scheduled Castes, obtained a false certificate of belonging to such category and, as a result thereof, was appointed to a position in the Indian Police Service reserved for applicants from such category.

14. The above discussion reiterates that fraud vitiates all proceedings. Compassionate appointment is granted to those persons whose families are left deeply troubled or destitute by the primary breadwinner either having been incapacitated or having passed away. So when persons seeking appointment on such ground attempt to falsely establish their eligibility, as has been done in this case, such positions cannot be allowed to be retained. So far as the submission of non-compliance of the Rules is concerned, the judgment in ***Vishwanatha Pillai*** (supra) answers the question. The

14 (1956) 1 QB 702

15 (1889) 14 AC 337

16 [2003] Supp. 3 SCR 352 : (2003) 8 SCC 311

17 [2004] 1 SCR 360 : (2004) 2 SCC 105

respondent-employees in the present case, having obtained their position by fraud, would not be considered to be holding a post for the purpose of the protections under the Constitution. We are supported in this conclusion by the observations made in ***Devendra Kumar v. State of Uttaranchal***.[18] In paragraph 25 thereof it was observed –

> **"25.** More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. *Sublato fundamento cadit opus* — a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case the legal maxim *nullus commodum capere potest de injuria sua propria* applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide *Union of India* v. *Major General Madan Lal Yadav* [(1996) 4 SCC 127 : 1996 SCC (Cri) 592 : AIR 1996 SC 1340] and *Lily Thomas* v. *Union of India* [(2000) 6 SCC 224 : 2000 SCC (Cri) 1056] .) Nor can a person claim any right arising out of his own wrongdoing (*jus ex injuria non oritur*).
>
> (Emphasis supplied)

15. The impugned judgment passed by the High Court, in view of the above discussion, is set aside and the order passed by the Tribunal dismissing the respondent-employees' Original Applications is restored. The respondent-employees were rightly dismissed from service by the appellant-employer. It is clarified that the observations made herein are only with respect to the dismissal from service, of the respondent-employees and shall have no bearing on the criminal proceedings pending in the concerned Court. The said case(s) is to be decided on its merits uninfluenced by the observations made hereinabove.

16. As such, the appeals are allowed. Pending application(s), if any, shall stand disposed of with costs made easy.

18 [2013] 8 SCR 471 : (2013) 9 SCC 363

CIVIL APPEAL NO. 4445 OF 2014 :

17. In view of the foregoing discussion made in Civil Appeal Nos.4434-4437 of 2014, this appeal is also, on similar facts, allowed accordingly. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Ankit Gyan

[2024] 8 S.C.R. 23 : 2024 INSC 570

City Montessori School
v.
State of U.P. & Ors.

(Civil Appeal No. 8355 of 2024)

02 August 2024

[Abhay S. Oka* and Augustine George Masih, JJ.]

Issue for Consideration

The issue pertains to rights of the parties to a lease of a Plot vested with the State Government and the manner in which the said rights can be transferred.

Headnotes†

State Largesse – Grant of – Method to be adopted:

Held: Rights of the State as the owner and lessor of a Plot can be transferred only by adopting a fair and transparent process by which the State fetches the best possible price – Rights of the State as the lessor can only be sold by a public auction or by any other transparent method by which, apart from the lessee, others too, get a right to submit their offer – Selling the plot at a nominal price will not be a fair and transparent method and shall be arbitrary and violative of Article 14 of the Constitution of India. [Para 9]

Lease – Transfer of Property Act, 1882 – Section 109 – Rights of Lessee – Sale of Plot by the Lessor – Consequence of:

Held: In case of the sale of a leasehold plot by the lessor, the rights of the lawful lessees do not get affected, as their tenancy will be attorned to the purchaser in view of Section 109 of the Transfer of Property Act,1882. [Para 9]

Case Law Cited

Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh and Others **[2011] 5 SCR 77 : (2011) 5 SCC 29 – relied on.**

List of Acts

Constitution of India, 1950; Transfer of Property Act, 1882.

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* Author

List of Keywords

State Largesse; Leasehold land; Auction; Free hold rights; Section 109 of Transfer of Property Act, 1882.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8355 of 2024

From the Judgment and Order dated 25.09.2014 of the High Court of Judicature at Allahabad, Lucknow Bench in CWP No. 2101 of 1996

With

Civil Appeal No. 8356 of 2024

Appearances for Parties

Ravindra Raizada, Sr. Adv./A.A.G., Jayant Bhushan, Vinay Navare, Sr. Advs., Ashim Vachher, Shantanu Kumar, Pritish Kumar, Vaibhav Dabas, R. P. Gupta, Shaurya Sahay, Aditiya Kumar, Abhishek Chaudhary, Honey Jain, Ashish Batra, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

1. Leave granted.

FACTUAL ASPECTS

2. These appeals take an exception to the same judgment of a Division Bench of Allahabad High Court. The dispute is essentially between the City Montessori School (for short, 'the school') and one Shri M.M. Batra regarding plot no.90-A/A-754, measuring 2238.5 sq. ft. situated at Maha Nagar, Lucknow (for short, 'the plot'). It is not in dispute that the plot vests in the State Government. By a lease dated 4th January 1961, the Hon'ble Governor of Uttar Pradesh, through Nazul Officer, Lucknow, granted the lease of the plot to one Gursharan Lal Srivastava which was described as a 'garden lease.' A separate lease was granted on the same day in respect of the building on the plot. By a registered sale deed dated 26th June 1962, Gursharan Lal Srivastava sold his leasehold interest in the plot to Shri M.M. Batra (the alleged lessee). Rajat Batra and Raman

Batra are the sons of the alleged lessee. It appears that the plot is a Nazul property. Several Government Orders (G.Os.) have been issued, either providing for the conversion of leasehold lands into freehold or auction thereof.

3. The alleged lessee filed a Civil Suit in the year 1994 in the Civil Court. The suit was filed to protect possession. Later on, by amendment, he sought the benefit of G.O. of 17th February 1996 and 1st December 1998, which permitted the conversion of Nazul properties given on lease into freehold properties. On 13th March 1995, an auction notice was published for the auction of various Nazul lands, including the plot. The school and the sons of the alleged lessee submitted their bids. The school was found to be the highest bidder and therefore, the bid offered by the school was accepted. As provided in the auction notice/tender notice, the tender document had to be purchased by 23rd March 1995 since 24th March 1995 was a holiday, and the auction was fixed for 25th March 1995. It was alleged that the school purchased the tender document on 25th March 1995. The acceptance of the school's bid was cancelled. However, the authorities again called upon the school to deposit the bid amount. Ultimately, on 20th June 1996, the State Government cancelled the bid offered by the school on the ground of the failure to purchase the tender form within the outer limit provided in the tender notice. While cancelling the school's bid, the State Government decided to accept the bid offered by the sons of the alleged lessee.

4. Aggrieved by the action of the rejection of the bid, the school filed a Writ Petition under Article 226 of the Constitution of India before the Allahabad High Court. The impugned judgment is the final judgment in the said Writ Petition. By an interim order dated 18th July 1996, Allahabad High Court directed the status quo to be maintained with respect to the plot. Also, it directed that the Lucknow Development Authority (for short, 'the authority') shall not execute the sale deed in favour of the sons of the alleged lessee. The school applied for impleadment in the suit filed by the alleged lessee. The said application was rejected. However, on 3rd February 2011, the school impleaded the alleged lessee as a party to the Writ Petition. The alleged lessee's suit was dismissed by the Civil Court by judgment dated 24th July 2000. The alleged lessee preferred an appeal against the decree of dismissal of the suit before the High Court. By recording statements of the counsel representing the alleged lessee and the authority, a

Division Bench of the High Court, by order dated 6th December 2000, disposed of the appeal by directing the authority to expeditiously consider the application of the alleged lessee for conversion of his leasehold rights into freehold in accordance with law. The High Court also directed that the alleged lessee can be dispossessed only in accordance with the law. However, the High Court did not interfere with the findings recorded by the Trial Court on merits.

5. Based on the application made by the alleged lessee on 26th November 2001, the Special Nazul Officer of the authority converted the plot into freehold subject to the alleged lessee depositing a total amount of Rs.67,022.21. On the basis of the said order, on 29th January 2002, a deed of freehold was executed on behalf of the Governor of the State in respect of the said plot in favour of the alleged lessee. After becoming aware of the deed and conversion of the plot during the pendency of the Writ Petition, the school applied for amendment of the Writ Petition seeking to incorporate the additional prayers for challenging the order dated 20th June 1996 of cancellation of the highest bid of the school, for challenging the order of conversion in favour of the alleged lessee and consequently, the deed dated 29th January 2002. There is some controversy about whether the amendment was allowed. By the impugned judgment, the High Court held that the order of conversion from leasehold to freehold was illegal as even the market value of the plot was not ordered to be paid by the alleged lessee. Therefore, the High Court held that the deed executed in favour of the alleged lessee was a nullity. However, the High Court kept open the question of whether the plot could be subjected to a fresh auction. Both the school and the alleged lessee have filed these two appeals.

SUBMISSIONS

6. Shri Vinay Navare, the learned senior counsel appearing for the school, has taken us through the relevant documents. He also pointed out that the plot is a garden plot, which is adjacent to the land held by the school. He pointed out that the High Court has not accepted that the bid offered by the school could have been cancelled on the ground that the school purchased the tender document on the last date. The learned counsel submitted that the order dated 6th December 2000 passed by the Allahabad High Court in the appeal filed by the alleged lessee against dismissal of his suit is a collusive order. He submitted that the Trial Court decided all issues framed

against the alleged lessee except the issue of his possession. The learned counsel urged that the lease claimed by the alleged lessee is not in subsistence. He pointed out that the alleged lessee is a defaulter who has not paid rent for a long time. He submitted that, in any case, the original lessee could not have transferred the leasehold rights regarding the plot to the alleged lessee. The learned senior counsel, therefore, submitted that, firstly, the order of cancellation of the highest bid offered by the school was bad in law. Secondly, during the pendency of the Writ Petition, the authority had no right to consider the prayer made by the alleged lessee for conversion. He submitted that the conversion order and consequent deed executed in favour of the alleged lessee are entirely illegal. He would, therefore, submit that the order of acceptance of the bid offered by the school be passed.

7. Shri Jayant Bhushan, the learned counsel representing the alleged lessee and his sons, submitted that the order of conversion was passed in favour of the alleged lessee in terms of the prevailing policy of the State Government and there is nothing illegal about the same. He submitted that the deed executed based on the order of conversion is legal and valid. He submitted that the school belatedly made the application for amendment of the Writ Petition for challenging the conversion and for the sale deed, which was never allowed. Therefore, the High Court committed gross illegality by setting aside the order of conversion and the sale deed executed by the authority in favour of the alleged lessee. He submitted that there was a delay on the part of the school in purchasing the tender document, and as the same was purchased after the expiry of the outer limit provided in the tender notice, the school's bid could not have been accepted. He urged that, as the alleged lessee has been in possession for decades, the conversion order cannot be faulted. Shri Ravindra Raizada, learned senior counsel representing the State Government, stated that the present legal position is that such leasehold plots cannot be converted to freehold and cannot be auctioned.

CONSIDERATION OF SUBMISSIONS

GRANT OF STATE LARGESSE

8. Before we consider the rival contentions, the legal position regarding the State largesse succinctly laid down by this Court in the case of ***Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh***

and Others[1] needs to be reiterated. In paragraphs 65 to 67 of the said decision, this Court held thus:

> "65. What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. **Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner** and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.
>
> 66**.** We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions dehors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. **Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.**

1 [2011] 5 SCR 77 **:** (2011) 5 SCC 29

> 67. This, however, does not mean that the State can never allot land to the institutions/organisations engaged in educational, cultural, social or philanthropic activities or are rendering service to the society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/organisations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution."
>
> (emphasis added)

9. In the facts of the case, there is no dispute that the plot vests in the State. Even assuming that the alleged lessee has leasehold rights concerning the plot, the rights of the State as the owner and lessor can be transferred only by adopting a fair and transparent process by which the State fetches the best possible price. In case of the sale of a leasehold plot by the lessor, the rights of the lawful lessees do not get affected, as their tenancy will be attorned to the purchaser in view of Section 109 of the Transfer of Property Act, 1882. Therefore, the rights of the State as the lessor can only be sold by a public auction or by any other transparent method by which, apart from the lessee, others too get a right to submit their offer. Selling the plot to its alleged lessee at a nominal price will not be a fair and transparent method at all. It will be arbitrary and violative of Article 14 of the Constitution of India.

ISSUE OF AMENDMENT OF THE WRIT PETITION

10. There is a controversy raised by the alleged lessee about whether the application to amend the Writ Petition made by the school to incorporate the challenge to the conversion and the deed was allowed. However, on page 12 of the impugned judgment, the High Court recorded the submission of the learned counsel for the alleged

lessee that there was a delay on the part of the school in challenging the order of conversion. The submissions recorded in the impugned judgment show that the parties proceeded on the footing that there was a challenge to the conversion order. The counter filed by the alleged lessee before the High Court shows that it refers to the amended Writ Petition and paragraph 45 of the counter raises a contention of the delay in challenging the conversion deed. Therefore, the argument that the amendment was not allowed need not detain us.

ON MERITS

11. Coming back to the facts of the case, the plot was put to auction in 1995. The Special Nazul Officer accepted the highest bid offered by the school of Rs. 8,51,043.15, out of which a sum of Rs. 85,105 was paid along with the tender. We have already stated the facts leading to the cancellation of the highest bid of the school and acceptance of the second-highest bid of the sons of the alleged lessee. It is important to note that the Special Nazul officer passed an order on 26th November 2001, by which the consideration for converting leasehold rights into freehold rights was fixed at Rs.67,022.21. This amount was less than 10% of the bid offered by the school about 16 years before the order dated 26th November 2001. On the face of it, this cannot be a fair and transparent process of transferring the State's ownership rights.

12. We have perused the judgment of the Civil Court dated 24th July 2000 which dismissed the suit filed by the alleged lessee. The Trial Court held that the alleged lessee was not entitled to the benefits of G.Os. dated 17th February 1996 and 1st December 1998. In the suit, the alleged lessee sought conversion from leasehold to freehold based on these two G.Os. All findings were recorded against the alleged lessee except the finding that he was in possession of the plot. Being aggrieved by the decree of dismissal of the suit, the alleged lessee preferred First Appeal No.81 of 2000. The appeal was disposed of by the order dated 6th December 2000. The said order makes an interesting reading. The High Court heard the counsel for the alleged lessee, the authority, and the State Government. The first paragraph refers to the appearances of the learned counsel. The second paragraph gives the facts in brief. The same paragraph also notes that the alleged lessee sought the relief of mandatory injunction for the grant of conversion in terms of the G.Os. dated

17th February 1996 and 1st December 1998 and that the Trial Court declined to grant the said relief. The further paragraphs of the said order, which are relevant, read thus:

> "……
>
> During the course of hearing learned Counsel for the Parties agreed that in case the Plaintiff makes an application to the Vice Chairman of the Lucknow Development Authority, Respondent No. 3, in terms of the Government Orders dated 17.2.1996 and 1.12.1998, the same shall be considered by the Vice-Chairman, Lucknow Development Authority in accordance with law expeditiously. It was further stated on behalf of the Respondents that they shall not evict the Plaintiff from the property in question except in accordance with law.
>
> **In this view of the matter, although we do not consider it expedient to interfere in the findings recorded in the Trial Court, yet in view of the statements made at Bar, the Vice-Chairman, Lucknow Development Authority has to consideration application of the Plaintiff for conversion of leasehold into Freehold rights in respect of the Garden Lease in question and pass appropriate order expeditiously** and it goes without saying that the Respondents entitled to evict the Plaintiff-Appellant, as stated by them only in accordance with law.
>
> Subject to these observations, the Appeal is dismissed. No order as to costs."
>
> (emphasis added)

13. Thus, only the statements of the parties were recorded, and it was observed that the authority would have to consider the application made by the alleged lessee for the conversion of leasehold rights into freehold rights and to pass appropriate orders expeditiously. It is important to note that the High Court specifically recorded that it did not interfere with the findings recorded by the Trial Court. Subject to the direction to consider the application made by the alleged lessee to the authority for conversion in accordance with the law, the appeal preferred by the alleged lessee was dismissed. There was no binding order passed by the High Court giving a mandate

to the authority or to the State Government to grant the application which the alleged lessee may make for conversion. On the contrary, the High Court upheld the decree passed by the Trial Court, which held that the alleged lessee was disentitled to the benefit of G.Os. issued in 1996 and 1998.

14. The order dated 26th November 2001 does not refer to any G.O. under which conversion was permitted. The conversion was allowed against payment of the consideration, which was less than 10% of the price offered in a public auction, 16 years back. Therefore, we agree with the High Court that the order was illegal. There is another aspect of the matter. When the aforesaid order and the order of conversion were passed, the Writ Petition filed by the school was pending. The alleged lessee's sons were parties to the Writ Petition. After hearing all the parties, on 18th July 1996, an interim order was passed in the Writ Petition directing maintenance of the status quo and restraining the State Government and the authority from executing a sale deed in favour of the alleged lessee's sons. It was the duty of the State Government and the authority who were parties to the appeal preferred by the alleged lessee to point out to the Court that a Writ Petition filed by the school arising out of the auction of the plot was pending. The said fact was suppressed from the High Court by all the parties to the appeal. When the Writ Petition was pending, the propriety demanded that before directing conversion in favour of the alleged lessee, the State Government should have applied to the High Court, to seek permission to do so, in the pending Writ Petition. That was not done. The alleged lessee cannot plead ignorance about the knowledge of the Writ Petition as the interim orders were passed in the Writ Petition after hearing his sons. The alleged lessee and his sons were together, and the same counsel represented them even before this Court. The order passed by the State Government of conversion is a covert method of defeating the High Court's interim order of 18th July 1996.

15. Now, we come to the school's argument to restore the earlier order of 1995 accepting the bid offered by it. We must note that more than 20 years have passed since the auction. During this period, the property prices in Lucknow must have been substantially increased. Even assuming that the learned senior counsel appearing for the school is right in contending that illegality has been committed by

setting aside the highest bid of the school, now it will be unjust to restore the order of acceptance of the bid passed in favour of the school, about 20 years back. If, at this stage, the school is allowed to purchase the plot at the price offered by the school 20 years back, the sale will not be fair, as it is a property of the State.

16. Therefore, in our view, the impugned judgment of the High Court, by which the order of conversion and the deed of conversion in favour of the alleged lessee were set aside, calls for no interference.

17. We, therefore, dismiss both the appeals. Whether the lease claimed by the alleged lessee is valid and subsisting and whether the plot can be put to auction are the questions left open which can be agitated by the parties in appropriate proceedings. However, the alleged lessee shall not be dispossessed without due process of law. It is for the State Government to decide, whether it is permissible to put the plot to fresh auction in the light of the current policies/laws prevailing. It will be open to the school to apply for a refund of the money paid towards the bid amount. It will also be open to the alleged lessee to apply for a refund of the amount paid for converting the plot from leasehold to freehold. The State Government/authority will issue the necessary refund within six weeks of making such applications.

18. There will be no order as to costs.

Result of the case: Appeals dismissed.

[†]*Headnotes prepared by:* Prastut Mahesh Dalvi, Hony. Associate Editor
(*Verified by:* Abhinav Mukerji, Sr. Adv.)

[2024] 8 S.C.R. 34 : 2024 INSC 572

The State of Gujarat
v.
M/s Ambuja Cement Ltd.

(Civil Appeal No. 7874 of 2024)

02 August 2024

[Abhay S. Oka and Augustine George Masih,* JJ.]

Issue for Consideration

Definition of Purchase Price under sub-Section (18) of Section 2 of the Gujarat Value Added Tax Act, 2003. High Court whether justified in upholding the order passed by the Gujarat Value Added Tax Tribunal wherein it held that the tax and value purchases on which no tax was claimed nor was granted in the assessment could not be included in the aggregate of taxable turnover of purchases within the State of Gujarat for the purpose of reduction of tax credit.

Headnotes†

Gujarat Value Added Tax Act, 2003 – ss.2(18), (32), 11(3 (b) – Purchase Price – Turnover of purchases – Tax liability u/s.11(3 (b) – Entitlement to tax credit – Respondent-dealer excluded the amount representing Value Added Tax and value of purchases of which no credit was claimed, while calculating the taxable turnover of its purchases within the State of Gujarat and reduced the taxable turnover by four per cent on the quantity of goods involved in the manufacturing of goods dispatched by way of branch transfer – Correctness:

Held: The calculation of taxable turnover of the purchases and reduction value of purchases on which no tax credit was claimed nor granted, and component of value added tax already paid on purchases, was rightly excluded from the total turnover of the Respondent-dealer while computing his tax liability u/s. 11(3 (b) – Cogent reading of s.2(18), s.2(32) and s.11 lead to only one conclusion that purchase price would not include purchases on which no value added tax was claimed nor granted and the component of value added tax stood already paid on purchases – Thus, the taxable turnover of purchases would have to be calculated after deducting both the components – Definition of Purchase Price u/s.2(18) is enumerative and exhaustive – The use of the word "means" denote the intention of the legislature to restrict the

* Author

scope of the "purchase price" to the categories enumerated in the definition itself – Therefore, the purchase price would be the amount of valuable consideration paid or payable for any purchase which would include amount of duties, levied or leviable under the two Acts (Central Excise Tariff Act, 1985 and the Customs Act, 1962) provided for in this Section apart from the other charges as expounded therein – The scope has been limited to the two Acts mentioned in the Section itself – The same could not be expanded – Thus, the intention of the legislature was to exclude Value Added Tax from the ambit of purchase price as the same is not found mentioned in the categories of tax/duties enumerated thereunder – Order passed by the Tribunal and upheld by the High Court not interfered with. [Paras 18, 17, 15, 19]

Interpretation of Statutes – Taxation statutes – Strict interpretation – Duty of the Court:

Held: The Courts ought to read the statute as it is and if the words therein are clear and unambiguous then only one meaning can be inferred – Courts are bound to give effect to the said meaning irrespective of the consequences so far as the taxation statutes are concerned – Article 265 of the Constitution of India prohibits the State from extracting tax from the citizens without the authority of law – The tax statutes have to be interpreted strictly – Legislature mandates taxing certain persons in certain circumstances which cannot be expanded or interpreted to include those who were not intended or comprehended – The assessee is not to be taxed without clear words and, for that purpose, the same must be according to the natural construction of the words which have been used in that statute – These words have to be read as it is and thus, cannot be added or substituted which may give a meaning other than what is expressed in the provision. [Para 12]

Case Law Cited

Commissioner of Wealth Tax, Gujarat-III, Ahmedabad v. Ellis Bridge Gymkhana [1997] Supp. 4 SCR 626 **: 1998 (1) SCC 384;** *P. Kasilingam and Others v. P.S.G. College of Technology and Others* [1995] 2 SCR 1061 **: (1995) Supp 2 SCC 348 – relied on.**

List of Acts

Gujarat Value Added Tax Act, 2003; Central Excise Tariff Act, 1985; Customs Act, 1962; Constitution of India.

List of Keywords

Purchase Price; Value added tax; VAT; Gujarat Value Added Tax; GVAT; Value of purchases; Taxable turnover of purchases; Aggregate of taxable turnover of purchases; Entitlement to tax credit; Unclaimed tax credit; Value Added Tax excluded from the ambit of purchase price; Taxation statutes; Strict interpretation; Branch transfer; Taxable turnover reduced.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7874 of 2024

From the Judgment and Order dated 28.04.2016 of the High Court of Gujarat at Ahmedabad in TA No. 353 of 2016

With

Civil Appeal Nos. 7875, 7877 and 7876 of 2024, T.C.(C) Nos. 12-13, 14, 15 and 9-11 of 2019

Appearances for Parties

Ms. Archana Pathak Dave, S Ganesh, Sr. Advs., Ms. Deepanwita Priyanka, Hrishikesh Baruah, Rudraksh Kaushal, Anurag Mishra, Purvish Jitendra Malkan, Alok Kumar, Kush Goel, Ryan Singh, Suraj Pandey, Santosh Krishnan, Uchit Sheth, Ms. Sonam Anand, Ms. Deepshikha Sansanwal, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

Augustine George Masih, J.

1. The Appellant herein is the State of Gujarat which has challenged the judgment passed by the High Court of Gujarat dated 28.04.2016 in an appeal preferred by it which was dismissed affirming the order dated 08.06.2015 of the Gujarat Value Added Tax Tribunal Ahmedabad (hereinafter referred to as 'the Tribunal'), allowing the appeal of Respondent M/s Ambuja Cement, Ltd.

2. The plea taken by the Appellant while challenging the judgments of the High Court and the Tribunal is that the Courts below have erred in holding that Value Added Tax and value of purchases on which no tax credit was claimed nor granted in the assessment, cannot be

included in the aggregate of taxable turnover of purchases within the State for the purpose of reduction of tax credit under Section 11(3)(b) of the Gujarat Value Added Tax Act, 2003 (hereinafter referred to as 'the GVAT Act').

3. Two substantial questions of law being framed by the High Court were as follows: -

> *[1] Whether the Hon'ble Tribunal has erred in law and in facts in holding that value added tax paid on purchases is required to be excluded for computing "taxable turnover of purchases" under section 11(3)(b) of the Act?*
>
> *[2] Whether the Hon'ble Tribunal has erred in law and in facts by holding that purchases on which value added tax is neither claimed nor granted are required to be excluded for computing "taxable turnover of purchases" under section 11(3)(b) of the Act?*

4. The learned senior advocate appearing for the Appellant has asserted that the Respondent dealer essentially calculated the taxable turnover of its purchases under the GVAT Act by excluding the Value Added Tax and value of purchases on which no tax credit was claimed and reduced the taxable turnover of purchases by four per cent on the quantity of goods involved in the manufacture of goods dispatched by way of branch transfer as has been provided in Section 11(3)(b) of the GVAT Act. It is asserted that the Courts below have failed to appreciate that the assessing officer had rightly included the amount of Value Added Tax and unclaimed tax credit in the turnover of purchases as defined in Section 2(32) of the GVAT Act.

5. It was further submitted that the legislative intent has been wrongly interpreted to say that it did not intend to include Value Added Tax within the definition of the purchase price as defined under Section 2(18) of the Gujarat Value Added Tax. Section 2(18) which defines the purchase price is not exhaustive and the Value Added Tax should be included in the purchase price for the purpose of calculation of taxable turnover of purchases. Based on these submissions, it is asserted by the learned senior advocate for the Appellant that the judgments passed by the High Court as well as the Tribunal cannot

be sustained and deserve to be set aside by restoring the orders passed by the assessment authorities being in accordance with the law.

6. On the other hand, learned counsel for the Respondent has asserted that the judgment as passed by the Tribunal which has been approved by the High Court has laid down the correct interpretation of the statutory provisions. Supporting the said judgment, the learned counsel submitted that the purchase price as defined aforesaid does not include the Value Added Tax component, and whatever duties and levies are required to be included in the meaning of purchase price are specifically provided for in the form of two Acts i.e., Central Excise Tariff Act, 1985 and the Customs Act, 1962. Apart from these two taxes which have been specifically referred to and provided for in Section 2(18) of the GVAT Act, no other tax is to be included. Had the legislature intended to include the VAT component in the purchase price, the same could have been expressly provided for in the statute.

7. It is further contended by the learned counsel that the scope of Section (11)(3)(b) of the GVAT Act while computing the taxable turnover of purchases cannot be expanded beyond the provision as provided for under the GVAT Act, supporting the said judgment, therefore, it was prayed for the dismissal of the present appeals.

8. We have considered the submissions made by the learned counsel for the parties and have gone through the provisions, as well as the pleadings.

9. In brief, the facts of the case are that the Respondent dealer as mentioned calculated the taxable turnover of its purchases within the State of Gujarat by excluding the amount representing Value Added Tax and value of purchases of which no credit was claimed. This was asserted to have been done under the provisions of Section 11(3)(b) of the GVAT Act. Accordingly, the taxable turnover was calculated and proportionately reduced by four per cent on the quantity of goods involved in the manufacturing of goods dispatched by way of branch transfer.

10. The Deputy Commissioner during the process of audit assessment determined the taxable turnover of purchases within the State by including the tax amount i.e., Value Added Tax Amount and Value of

Purchases on which no tax credit was claimed by the Respondent dealer nor proposed to be granted in the assessment. On the basis of this assessment, the Respondent being aggrieved preferred an appeal before the Joint Commissioner which was dismissed leading to the filing of a second appeal before the Gujarat Value Added Tax Tribunal at Ahmedabad wherein the same was partly allowed by holding that the tax and value purchases on which no tax was claimed nor was granted in the assessment could not be included in the aggregate of taxable turnover of purchases within the State for the purpose of reduction of tax credit. The State of Gujarat carried an appeal before the High Court challenging the order passed by the Tribunal which has been dismissed affirming the order of the Tribunal.

11. The issue involved in the present matters revolves around the definition of Purchase Price as provided for under sub-Section (18) of Section 2 of the GVAT Act, which reads as follows: -

> **2.** In this Act, unless the context otherwise requires, -
>
> [* * * * *]
>
> 18. "purchase price" means the amount of valuable consideration paid or payable by a person for any purchase made including the amount of duties levied or leviable under the Central Excise Tariff Act, 1983 or the Customs Act, 1962 and any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation, when such cost is separately charged and includes, -
>
> (a) in relation to –
>
> (i) the transfer, otherwise than in pursuance of a contract of property in any goods,
>
> (ii) the supply of goods by any unincorporated association or body of persons to a member thereof,
>
> (iii) the supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink

(whether or not intoxicating), the amount of cash, deferred payment or other valuable consideration paid or payable therefor,

(b) in relation to the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, such amount as is arrived at by deducting from the amount of valuable consideration paid or payable by a person for the execution of such works contract, the amount representing labour charges for such execution,

(c) in relation to the delivery of goods on hire purchase or any system of payment by installments, the amount of valuable consideration payable by a person for such delivery.

12. On going through the above definition as has been provided for, it would indicate that the same is not only exclusive but exhaustive as well, it can rather be said to be enumerative. The first and foremost duty of the Court is to read the statute as it is and if the words therein are clear and unambiguous then only one meaning can be inferred. The Courts are bound to give effect to the said meaning irrespective of the consequences so far as the taxation statutes are concerned. Article 265 of the Constitution of India, 1950 prohibits the State from extracting tax from the citizens without the authority of law. The tax statutes have to be interpreted strictly which means that the legislature mandates taxing certain persons in certain circumstances which cannot be expanded or interpreted to include those who were not intended or comprehended. The assessee is not to be taxed without clear words and, for that purpose, the same must be according to the natural construction of the words which have been used in that statute. These words have to be read as it is and thus cannot be added or substituted which may give a meaning other than what is expressed in the provision.

13. In the case of ***Commissioner of Wealth Tax, Gujarat-III, Ahmedabad v. Ellis Bridge Gymkhana***[1] this Court held as follows: -

1 [1997] Supp. 4 SCR 626 : 1998 (1) SCC 384.

> "**5.** The rule of construction of a charging section is that before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section. No one can be taxed by implication. A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.
>
> **6.** *** what has been specifically left out by the legislature cannot be brought back within the ambit of the charging section by implication or by ascribing an extended meaning to the word "individual" so as to include whatever has been left out."

14. In the case of ***P. Kasilingam and Others v. P.S.G. College of Technology and Others***[2] this Court while interpreting the use of expressions in the statute observed as follows:

> "19…. The use of the word 'means' indicates that "definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition". (See : *Gough* v. *Gough* [(1891) 2 QB 665 : 60 LJ QB 726]; *Punjab Land Development and Reclamation Corpn. Ltd.* v. *Presiding Officer, Labour Court* [(1990) 3 SCC 682, 717 : 1991 SCC (L&S) 71] .) The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions". (See : *Dilworth* v. *Commissioner of Stamps* [1899 AC 99, 105-106 : (1895-9) All ER Rep Ext 1576] (Lord Watson); *Mahalakshmi Oil Mills* v. *State of A.P.* [(1989) 1 SCC 164, 169 : 1989 SCC (Tax) 56] The use of the words "means and includes" in Rule 2(*b*) would, therefore, suggest that the definition of 'college' is intended to be exhaustive and not extensive and would cover

2 [1995] 2 SCR 1061 : 1995 Supp (2) SCC 348.

only the educational institutions falling in the categories specified in Rule 2(*b*) and other educational institutions are not comprehended. Insofar as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time."

15. In the light of the above reproduced definition as provided for under Section 2(18) of the GVAT Act, it becomes obvious that the definition is enumerative and exhaustive. The use of the word "means" denote the intention of the legislature to restrict the scope of the "purchase price" to the categories enumerated in the definition itself. The purchase price, therefore, would be the amount of valuable consideration paid or payable for any purchase which would include amount of duties, levied or leviable under the two acts as has been provided for in this Section apart from the other charges as expounded therein. The scope has been limited to the two Acts mentioned in the Section itself. The same could not be expanded and therefore it can be safely said that the intention of the legislature was to exclude Value Added Tax from the ambit of purchase price as the same is not found mentioned in the categories of tax/duties enumerated thereunder. Sub-Section (32) of Section 2 of the GVAT Act defines turnover of purchases which reads as follows: -

"**2**. In this Act, unless the context otherwise requires, -

[* * * * * *]

32. "turnover of purchases" means the aggregate of the amounts of purchase price paid or payable by a dealer in respect of any purchase of goods made by him during a given period after deducting the amount of purchase price, if any, refunded to the dealer by the seller in respect of any goods purchased from the seller and returned to him within the prescribed period."

16. The above provision makes it amply clear that the purchase price would be the determinative factor for calculating the turnover of

purchases, as stated above, the purchase price would be restrictive within the domain of Section 2(18). Section 11 of the Gujarat Value Added Tax Act deals with the tax credit. The relevant portion thereof reads as follows:

> 11.(1)(a) A registered dealer who has purchased the taxable goods (hereinafter referred to as the "purchasing dealer") shall be entitled to claim tax credit equal to the amount of,-
>
> (i) tax collected from the purchasing dealer by a registered dealer from whom he has purchased such goods or the tax payable by the purchasing dealer to a registered dealer who has sold such goods to him during the tax period, or];
>
> [* * * * * * * * * * * * * * *]
>
> (b)The tax credit to be so claimed under this sub-section shall be subject to the provisions of sub-sections (2) to (12); and the tax credit shall be calculated in such manner as may be prescribed.
>
> [* * * * * * * * * * * * * * *]
>
> 11.(3)(b) Notwithstanding anything contained in this section, the amount of tax credit in respect of a dealer shall be reduced by the amount of tax calculated at the rate of four per cent. on the turnover of purchases-
>
> (i) of taxable goods consigned or dispatched for branch transfer or to his agent outside the State, or
>
> (ii) of goods taxable which are used as raw materials in the manufacture, or in the packing of goods which are dispatched outside the State in the course of branch transfer or consignment or to his agent outside the State,
>
> (iii) of fuel used for the manufacture of goods.:]
>
> [Provided that where the rate of tax of the taxable goods consigned or dispatched by a dealer for branch transfer or to his agent outside the State is less than four per cent., then the amount of tax credit in respect of such dealer shall be reduced by the amount of tax calculated at the rate of tax set out in the Schedule on such goods on the 34[taxable turnover of purchases with in the State.]

17. The cogent reading of sub-Section (18) of Section 2 which defines 'purchase price', sub-Section 32 of Section 2 which defines 'turnover of purchases', and Section 11 of the GVAT Act which deals with entitlement to the tax credit, would lead to only one conclusion, that the purchase price would not include purchases on which no value added tax was claimed nor granted and the component of value added tax stood already paid on purchases. Accordingly, the taxable turnover of purchases would have to be calculated after deducting both the components as has been detailed aforesaid.

18. Therefore, the calculation of taxable turnover of the purchases and reduction value of purchases on which no tax credit was claimed nor granted, and component of value added tax already paid on purchases, was rightly excluded from the total turnover of the Respondent dealer while computing his tax liability under Section 11(3)(b) of the GVAT Act.

19. The order passed by the Tribunal as has been upheld vide the impugned judgment of the High Court being in accordance with law calls for no interference and therefore, the appeals deserve dismissal.

20. The appeals, accordingly, stand dismissed.

21. As regards the Transfer Cases which were directed to be heard along with the present Appeals, are allowed in the light of the above Judgment passed in the Appeals.

Result of the case: Appeals dismissed, Transfer Cases allowed.

†*Headnotes prepared by:* Divya Pandey

[2024] 8 S.C.R. 45 : 2024 INSC 568

Vanshika Yadav
v.
Union of India & Ors.

(Writ Petition (Civil) No. 335 of 2024)

02 August 2024

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

Issue for Consideration

Whether the sanctity of the National Eligibility-cum-Entrance Test (NEET) (UG) was compromised in the year 2024 and whether the process should be scrapped and a fresh test should be convened.

Headnotes†

Education – Medical Education – MBBS Admission – Examination – Entrance Test – National Eligibility-cum-Entrance Test (NEET) (UG) 2024 – Leakage of the question paper – Systemic deficiencies – Separation of tainted and untainted candidates:

Held: It is settled law that the cancellation of an examination, either for the purposes of gaining admission into professional and other courses or for the purpose of recruitment to a government post, is justified only in cases where the sanctity of the exam is found to be compromised at a systemic level – Courts may direct the cancellation of an examination or approve such cancellation by the competent authority only if it is not possible to separate the tainted candidates from the untainted ones – In the instant case, that the question paper was leaked and some students indulged in malpractice is beyond cavil – No party before the Court including NTA disputes this – Certain centres found themselves in the midst of the controversy in this case – It was averred that malpractice was widespread in Hazaribagh, Jharkhand, Patna, Bihar, and Godhra, Gujarat – From the figures provided by NTA, it becomes clear that there are no abnormalities in the results for 2024 when compared with the results for the past two years – The report of the Director of IIT, Madras also supports the conclusion of this Court – The report stated that there were no "abnormal indications" in the results for this year, when compared to previous

* Author

years – Hence, an analysis of the results does not lend support to the case of the petitioners who seek the cancellation of the exam – The leak of the paper does not appear to be widespread or systemic – It appears to be restricted to isolated incidents in some cities, which have been identified by the police or are in the process of being identified by the CBI – The material on record does not, at present, substantiate the allegation that there has been a widespread malpractice which compromised the integrity of the exam – To the contrary, an assessment of the data indicates that there are no deviations which indicate that systemic cheating has taken place – The information at this stage does not show that the question paper was disseminated widely using social media or the internet, or that the answers were being communicated to students using sophisticated electronic means which may prove difficult to trace – The students who were beneficiaries of the leak at Hazaribagh and Patna are capable of being identified – The CBI investigation reveals the number of students who are the beneficiaries of the malpractice at Hazaribagh and Patna at this stage – This leads to conclude that it is possible to separate the beneficiaries of malpractice or fraud from the honest students – This being the case, the Court cannot direct a re-exam. [Paras 61, 74, 77, 84]

Education – Examination – National Eligibility-cum-Entrance Test (NEET) (UG) 2024 – Conduct of NTA, a cause of concern:

Held: The paper was leaked in Patna and Hazaribagh – In one of the centres, the rear door of the strongroom was opened and unauthorised persons were permitted to access the question papers – This indicates that there is a serious lapse in security and that security measures which are stringent and effective must be implemented by NTA – Further, it came to light that the question papers were sometimes transported in e-rickshaws and that the services of private courier companies were availed – NTA did not specify a time by which the OMR sheets were required to be sealed after the conclusion of the exam – Another point of concern is that NTA relies on persons over whom it does not exercise direct oversight to be the invigilators for the exam – There are various methods which may be adopted to ensure appropriate oversight over invigilators and decrease the likelihood of the use of unfair means – In at least twelve centres, the question paper stored in Canara Bank was wrongly distributed to candidates – The question paper which should have been distributed was the one stored in

SBI – In many centres, aspirants completed the incorrect question paper and were ultimately evaluated while in others, the relevant authorities realised the mistake and then distributed the correct question paper – NTA must consider the various possibilities and plan the protocol to be followed after careful consideration – The use of mobile applications to communicate with the relevant parties would permit real-time communication and allow NTA to inform the banks even a few minutes before the time at which the city coordinator was authorised to collect the papers – When the results were released, it appeared that sixty-seven aspirants had scored a perfect score of 720 / 720 – After the removal of the compensatory marks and the conduct of the re-test for 1563 candidates and also resolving a question in controversy in the paper by an earlier judgment dated 23.07.2024, the number of scorers with 720/720 marks then dropped to seventeen – Same is a matter of serious concern that this number fell from sixty-seven to seventeen during the course of the hearing – The intervention of the Court, reports by the media, and representations by candidates ensured that these changes were made in the interests of fairness and justice – However, the system adopted by NTA should be such that just outcomes are reached even when these external catalysts are not present – Therefore, the NTA is directed to ensure that all the concerns highlighted by the Court in this judgment are addressed. [Paras 96, 97, 98, 99, 102]

Education – Examination – National Eligibility-cum-Entrance Test (NEET) (UG) 2024 – Committee constituted by the Union Government:

Held: The formation of a committee is essential to thoroughly investigate and address the structural issues – A dedicated committee with suitably qualified experts can ensure a comprehensive review of the security measures, candidate verification processes, and the overall management of the examination – By identifying and rectifying vulnerabilities, such a committee will help restore trust in the examination system and implement robust safeguards to prevent future malpractice – The Union Government has constituted a seven-member expert committee – The remit of the Committee, in addition to the tasks that it has been entrusted with by the Union government and the NTA, shall encompass the following: (a) Examination Security and Administration; (b) Data Security and Technological Enhancements; (c) Policy and Stakeholder Engagement; (d) Collaboration and International Cooperation; (e) Support and Training.

Education – Examination – National Eligibility-cum-Entrance Test (NEET) (UG) 2024 – The remit of the Committee, in addition to the tasks shall encompass the Examination Security and Administration:

Held: (i) Evaluate and recommend reforms in the mechanism of administration of the exam; (ii) Formulate standard operating procedures which set out the timelines for registration, changes to preferred cities, the sealing of OMR sheets once candidates submit them to the invigilator, and other processes related to the conduct of the exam; (iii) Review the process by which exam centres are currently allotted to candidates and recommend any changes which may be required in the interests of fairness and transparency; (iv) Recommend stricter procedures for verifying candidate identities, if required, with a view to preventing impersonation and ensuring that only registered and authorized candidates are allowed to take the exams; (v) Consider the viability of comprehensive CCTV surveillance systems at all examination centers, including real- time monitoring and recording of all activities; (vi) Review and suggest enhancements for the processes for the setting, printing, transportation, storage, and handling of question papers – This may include tamper-evident packaging and using secure logistics providers to prevent unauthorized access and leaks during critical phases; (vii) Consider the viability of conducting regular audits and surprise inspections of examination centres; (viii) Recommend the development of a robust grievance redressal mechanism – This should allow candidates to report any irregularities or issues promptly. [Para 106(a)]

Education – Examination – National Eligibility-cum-Entrance Test (NEET) (UG) 2024 – The remit of the Committee, in addition to the tasks shall encompass the Data Security and Technological Enhancements:

Held: (i) Research and suggest advanced data security protocols, including encryption and secure data transmission methods; (ii) Recommend systems to monitor and track digital footprints related to the examination materials; (iii) Consider how regularly cybersecurity audits and vulnerability assessments must be conducted to identify and address potential weaknesses in the electronic dissemination and storage systems; (iv) Explore technological innovations to enhance examination security and efficiency. [Para 106(b)]

Education – Examination – National Eligibility-cum-Entrance Test (NEET) (UG) 2024 – The remit of the Committee, in addition to the tasks shall encompass the Policy and Stakeholder Engagement:

Held: (i) Review and recommend updates to the policies and SOPs of NTA to align with best practices, ensuring that the agency is equipped to handle evolving challenges in examination security; (ii) Establish a transparent communication strategy to keep all stakeholders, including candidates, educational institutions, and the public, informed about the measures being taken to ensure the integrity and fairness of the examination process as well as of the response of NTA to any malpractice which is identified; (iii) Recommend the implementation of a comprehensive communication strategy to keep all stakeholders involved in the process — including banks, examination centres, and logistical partners — well-informed – This strategy should detail the protocols for secure transportation, storage, and handling of examination materials, and ensure regular updates on any issues or changes; (iv) Recommend measures to address and mitigate any socioeconomic disparities that may affect candidates' ability to participate in or benefit from the examination process. [Para 106(c)]

Education – Examination – National Eligibility-cum-Entrance Test (NEET) (UG) 2024 – The remit of the Committee, in addition to the tasks shall encompass the Collaboration and International cooperation:

Held: (i) Consider the viability of NTA engaging in international cooperation with examination bodies and educational authorities from other countries to share best practices, security measures, and innovative solutions; and (ii) Suggest the creation of a management framework to identify, assess, and mitigate potential risks related to examination security – This framework should include protocols for assessing risks, contingency plans, and strategies for dealing with unforeseen challenges that may arise during the examination process. [Para 106(d)]

Education – Examination – National Eligibility-cum-Entrance Test (NEET) (UG) 2024 – The remit of the Committee, in addition to the tasks shall encompass the Support and training:

Held: (i) Recommend plans or strategies for the development and implementation of mental health support programs for students,

including counselling services and stress management workshops – These programs should address the psychological impact of exams and also ensure the well-being of all candidates throughout the examination process – Qualified experts from relevant fields must be consulted for this purpose; and (ii) Consider the viability of NTA conducting comprehensive training programs for all staff involved in the examination process (including but not limited to question paper setters, invigilators, and administrative personnel) – These programs should cover security protocols, ethical standards, and the latest technology to ensure everyone involved is well-equipped to maintain the integrity of the examination. [Para 106(e)]

Case Law Cited

Sachin Kumar v. Delhi Subordinate Service Selection Board [2021] 2 SCR 1073 **: (2021) 4 SCC 631;** *Union of India v. Rajesh P.U.* [2003] Supp. 1 SCR 883 **: (2003) 7 SCC 285 – relied on.**

Kanpur University v. Samir Gupta [1984] 1 SCR 73 **: (1983) 4 SCC 309;** *Anamica Mishra v. U.P. Public Service Commission* [1989] Supp. 2 SCR 124 **: (1990) Supp SCC 692;** *Bihar School Examination Board v. Subhas Chandra Sinha* [1970] 3 SCR 963 **: (1970) 1 SCC 648;** *Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasar Samiti* **(1998) 9 SCC 236;** *Tanvi Sarwal v. CBSE* [2015] 7 SCR 780 **: (2015) 6 SCC 573 – referred to.**

List of Keywords

Education; Examination; National Eligibility-cum-Entrance Test (NEET) (UG) 2024; National Testing Agency (NTA); Leakage of the question paper; Systemic deficiencies; Integrity of the exam; Tainted candidates and untainted candidates; Cancellation of an examination; Re-exam; Examination Security and administration; Data Security and Technological Enhancements; Policy and Stakeholder Engagement; Collaboration and International cooperation; Support and training.

Case Arising From

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No.335 of 2024

(Under Article 32 of The Constitution of India)

With

W.P. (C) Nos. 362, 369, 368, 431, 379, 377, 376, 375, 425, 401, 415, 407, 412, 383, 419, 406, 403, 414, 423, 427, 441, 420, 430, 446 and 410 of 2024, T.P. (C) No.1602 of 2024, W.P. (C) Nos. 382, 394, 384, 389, 417, 393, 435, 449 and 392 of 2024

Appearances for Parties

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Petitioner-in-Person.

Judgment / Order of the Supreme Court

Judgment

Dr Dhananjaya Y Chandrachud, CJI

Table of Contents*

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

1. This batch of matters concerns the validity of the National Eligibility cum Entrance Test[1] for undergraduate students. The petitions were disposed of in terms of the directions issued by this Court by its judgment dated 23 July 2024. Detailed reasons were to follow the order. They are recorded in this judgment.

A. Background

2. The National Testing Agency[2] conducts the NEET every year for admission into medical colleges. A total of 1,08,000 seats are available for the MBSS course. Of the seats available for the MBBS course, approximately 56,000 seats are in government hospitals and about 52,000 are in private colleges. Admissions to undergraduate courses in Dentistry, Ayurveda, Unani, and Siddha also utilise the results of the NEET for admission.

1 "NEET"

2 "NTA"

3. The NEET is divided into four segments comprising Physics, Chemistry, Botany, and Zoology. Each section contains forty-five questions. The test comprises a total of one hundred and eighty questions. Four marks are awarded for every question which is attempted correctly and one mark is subtracted for each incorrect answer. Questions which are not attempted attract neither positive nor negative marks. Hence, the test carries a maximum of 720 marks in total. The total duration of the test was three hours and twenty minutes.

4. This year, NTA opened the online portal for registration for the NEET on 9 February 2024. NEET was conducted on 5 May 2024 for over 23 lakh candidates at 4750 centres in 571 cities. The exam was also conducted in fourteen cities overseas. Soon after the exam, it became known that the question paper was leaked or illegally circulated amongst some students prior to the conduct of the exam at Hazaribagh in Jharkhand and in Patna. First Information Reports[3] were registered in multiple states including Bihar, Maharashtra, Gujarat, Rajasthan and Jharkhand. The Bihar Police appears to have issued a press release[4] stating that its Economic Offences Unit had arrested thirteen persons in Patna in connection with the leak. The Additional Director General of Police, Economic Offences Unit appears to have issued a communication stating that the Economic Offences Unit has not released an official press statement.

5. When the results were declared by NTA on 4 June 2024, it emerged that compensatory or grace marks were awarded to 1563 candidates at certain centres who did not have the opportunity to utilize the entire duration of the exam (i.e., 3 hours 20 minutes). The compensatory marks were awarded upon the recommendation of the Grievance Redressal Committee constituted by NTA. Following the grant of grace marks, these candidates scored in the range of -20 to 720 marks.

6. The investigation into the leak of the paper and the adoption of other unfair means by candidates was transferred from the Bihar State police to the Economic Offences Unit in Bihar. The investigation was later transferred to the Central Bureau of Investigation.[5]

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3 "FIR"

4 Dated 10 May 2024

5 "CBI"

7. Various writ petitions were instituted *inter alia* for cancellation of the exam and conduct of a fresh exam. The petitions variously sought the issuance of the following directions:

   a. Direct NTA to conduct a fresh examination;

   b. Stay the counselling process scheduled to begin from 6 July 2024;

   c. Direct all states to constitute Special Investigation Teams to investigate paper leaks in their jurisdictions and to submit status reports on the same;

   d. Constitute an expert committee to:

      i. Enquire into the examination process and results; and

      ii. Make recommendations on how to improve the process of conducting the examination;

   e. Set aside the portion of the NTA Information Bulletin that discriminates between wrong questions and questions having two wrong answers;

   f. Issue guidelines to prevent papers from leaking in the future;

   g. Direct NTA to correct and republish the results, ranks, and percentiles based on the revised marks;

   h. Declare the award of grace marks to candidates unequally as arbitrary and illegal; and

   i. Stay the declaration of results.

B. Previous orders of the Court

8. Some candidates who had appeared for the NEET objected to the award of compensatory marks to 1563 candidates on various grounds. By its order dated 13 June 2024, this Court noted that NTA constituted another committee to reconsider the issue. The second committee met on 10, 11 and 12 June 2024 to discuss the grievances raised. It recommended that the grace marks be revoked, and the affected candidates be given the option to take a fresh test.

9. The 1563 affected candidates were given two options – they could either choose to attempt the re-test, in which case they would be ranked based solely on their scores in the re-test, or they could

retain their scores from the first test without the compensatory marks. This Court found this course of action to be fair, reasonable and justified. It also recorded the submission of NTA that the re-test would be conducted on 23 June 2024 and the results would be declared before 30 June 2024. The re-test was conducted and the results were declared.

10. By its order dated 8 July 2024, this Court noted the central submissions urged on behalf of the petitioners. It observed that the question of whether the paper leak was confined only to Patna or extended across cities was a matter which must be reserved for more detailed consideration. It also noted that the litmus test for whether a re-test ought to be directed was based on the following aspects:

    a. Whether the alleged breach took place at a systemic level;

    b. Whether the breach was of a nature which affected the integrity of the entire examination process; and

    c. Whether it was possible to segregate the beneficiaries of the fraud from the untainted students.

11. The Court also made certain observations on the competing considerations in a case such as the present one:

> "12. In a situation where the breach in the sanctity of an examination affects the entirety of the process and it is not possible to segregate those who are the beneficiaries of wrongdoing from others, a re-test is likely to be the most appropriate course of action. On the contrary, where the breach is confined to specific areas or centres and it is possible to identify those who are the beneficiaries of wrongdoing, it may not be appropriate to order a re-test particularly in an examination which has been conducted on such a massive scale and which involves over 23 lakh students. The Court cannot also be unmindful of the social consequences involving such a large body of students who have studied for the examination, undertaken costs and expenses and would have to undergo the rigours of a fresh examination if one were to be ordered by the Court. Balancing these considerations requires a careful

assessment of the extent and impact of the breach on the integrity of the examination process, ensuring fairness to all stakeholders."

12. Noting that a final decision in the matter would depend on a more detailed set of facts which must be placed on record, it issued five directions requiring the Union of India, NTA, and the Central Bureau of Investigation to each make certain disclosures. First, NTA was required to clarify the following aspects on the basis of all the material which was in its possession as of that date:

> "14. … (i) When and how NTA first became aware of the paper leak, including any internal notifications or external reports;
>
> (ii) The cities or towns and the centres at which a leak has been noticed or in which candidates have complained of a leak;
>
> (iii) The manner in which the question papers leaked were disseminated to candidates or other persons who would, in turn, distribute them to candidates. In other words, information about the medium through which the leak took place and whether it was electronic (including social media or mobile applications) or physical shall be placed on record;
>
> (iv) The duration of time between the occurrence of the leak or the suspected occurrence of the leak and the actual conduct of the examination which took place between 2 pm and 5:20 pm on 5 May 2024;
>
> (v) The chain of custody of the question paper from the time of its preparation to the time of its dissemination to candidates on the day of the examination; and
>
> (vi) Whether the entirety of the question paper was leaked or whether certain sections or questions were leaked."

13. Second, the Court directed the Investigating Officer of the CBI to file a status report indicating the status of the investigation and the material which had been gathered until date. The Investigating Officer was directed to specify the modalities by which the leaked question paper was made available to students. Additionally, both

NTA and the CBI were directed make a disclosure in regard to the steps which had been taken to identify the beneficiaries of the leak. They were required to detail the following:

> "16. … (i) The steps which were taken by NTA to identify the centres/cities at which the leak took place;
>
> (ii) The modalities followed for identifying the beneficiaries of the leak; and
>
> (iii) The number of students who have so far been identified to be the beneficiaries of the leaked question papers and the centres at which they appeared for the examination."

14. Third, the Union of India and NTA were directed to inform the Court as to whether it was feasible to use data analytics to identify suspicious cases. If such an approach was found to be feasible, the parameters used for flagging such cases (such as abnormal score patterns) were required to be placed on record.

15. Fourth, NTA was required to make submissions on the decision to be taken on the status of counselling, in view of the potential exercise to be conducted by NTA or the Union Government to identify further beneficiaries of the leak of the question paper.

16. Finally, the government was required to apprise the Court of the steps which were being taken to ensure that the sanctity of the NEET was not compromised in future iterations and issues similar to the ones which arose in 2024 are not repeated in the future. The Court was of the opinion that this was essential because the students who appeared for the examination and whose careers hung in the balance must have confidence in the process. The Court observed that the government must consider constituting a multi-disciplinary committee with experts which could recommend measures to obviate breaches of the NEET as well as other exams conducted by NTA. If such a committee had already been constituted, the Court was to be apprised of its composition to enable it to consider whether the composition ought to be strengthened.

17. The Union of India as well as NTA filed affidavits complying with the above directions. The Ministry of Education requested IIT Madras to undertake comprehensive data analytics on the NEET results of 2024. The report submitted by IIT Madras was also tendered to the Court.

18. On 18 July 2024, this Court heard detailed arguments from Mr. Narendra Hooda, senior counsel for the petitioners, on the various issues arising for consideration in this matter. The Solicitor General appearing for the Union of India and Mr. Naresh Kaushik, senior counsel for NTA, also addressed the Court on certain aspects of the case. Other counsel on behalf of the petitioners and intervenors were heard.

19. The Court was of the opinion that it would subserve the principle of transparency if the results were published by NTA and made available to the public at large. Accordingly, it directed NTA to publish the city-wise and centre-wise results of candidates on its website after anonymising them, by 12 noon on 20 July 2024. Further, the Bihar Police was directed to apprise the Court of the material collected by it before the investigation was transferred to CBI. These directions were complied with.

20. On 22 July 2024, counsel for one of the petitioners advanced submissions *inter alia* on whether the approach adopted by NTA towards one of the questions in the examination was proper. The contours of this issue are delineated in detail in subsequent segments of this judgment. As one of the sub-issues concerned the correct answer to the question, the Court sought an expert opinion from the Indian Institute of Technology,[6] Delhi. The Director of IIT, Delhi was requested to constitute a team of three experts to determine the correct answer to the question and communicate its opinion to the Court by 12 noon on the following day. The opinion of the expert committee was then communicated to the Court, as requested.

21. On 23 July 2024, the arguments in the case were concluded and the conclusions were pronounced in court after the hearings concluded. The Court held that the standard prescribed by decisions of this court for the cancellation of the test had not been met and that a re-test was not warranted. The conclusion of the Court rested on the absence of sufficient material, as on that date, indicative of a widespread or systemic leak or other malpractice. The conclusions of the Court are reproduced below:

6 "IIT"

"11. … (i) The fact that a leak of the NEET (UG) 2024 paper took place at Hazaribagh in the State of Jharkhand and at Patna in the State of Bihar is not in dispute;

(ii) Following the transfer of the investigation to it, the CBI has filed its status reports dated 10 July 2024, 17 July 2024 and 21 July 2024. The disclosures by the CBI indicate that the investigation is continuing. The CBI has indicated that at the present stage, the material which has emerged during the course of the investigation would indicate that about 155 students drawn from the examination centres at Hazaribagh and Patna appear to be the beneficiaries of the fraud;

(iii) Since the investigation by the CBI has not attained finality at the present WPC 335/2024 7 point of time, this Court had in its previous order required the Union Government to indicate whether trends in regard to the existence of abnormalities can be deduced through data analytics on the basis of the results emanating from 4,750 centres situated in 571 cities. Pursuant to the directions of the Court, the Union Government has produced a report of Indian Institute of Technology,[6] Madras. The objection of the petitioners to the report of IIT, Madras on the grounds of alleged bias would be considered in the course of the reasoned judgment which will follow. At this stage, in order to obviate any controversy, the Court has independently scrutinized the data which has been placed on the record by the NTA;

(iv) At the present stage, there is an absence of material on the record to lead to the conclusion that the entire result of the examination stands vitiated or that there was a systemic breach in the sanctity of the examination;

(v) Added to the absence of conclusive material on the record at the present stage, the data which has been produced on the record city-wise and centre-wise and the comparison of data for the years 2022, 2023 and 2024 are not indicative of a systemic leak of the question paper impacting the sanctity of the examination;

> (vi) In arriving at the ultimate conclusion, the Court is guided by the well-settled 6 "IIT" WPC 335/2024 8 test of whether it is possible to segregate tainted students from those whose candidature does not suffer from any taint. If the investigation reveals the involvement of an increased number of beneficiaries over and above those who are suspects at the present stage, action shall be pursued against every student found to be involved in wrong doing at any stage, notwithstanding the completion of the counselling process. No student who is revealed to have engaged in acts of fraud or to have been the beneficiary of malpractice would be entitled to claim a vested right or interest in the continuation of the admission in the future by virtue of the findings in this judgment; and
>
> (vii) Directing a fresh NEET (UG) to be conducted for the present year would be replete with serious consequences for over two million students who have appeared in the examination. Adopting such a course of action would, in particular, (i) lead to a disruption of the admission schedule for the commencement of medical courses, setting back the entire process by several months; (ii) lead to cascading effects on the course of medical education; (iii) impact the availability of qualified medical professionals in the future; and (iv) cause a serious element of disadvantage to students belonging to marginalized communities and weaker sections for whom reservation has been made in the allocation of seats."

22. The Court also accepted the report of IIT, Delhi on the correct answer to a particular question which was the subject of controversy. Consequently, NTA was directed to revise the marks of all candidates and update their ranks on the basis of the revised results. The Court also clarified that candidates could agitate any individual grievances, not bearing upon the issues resolved in that judgment, before the High Courts in accordance with law. Lastly, the Court noticed the constitution of the seven-member committee by the Union government to address any issues with the procedures adopted in the conduct of the exam and passed the following direction:

> "23. The Committee will abide by such further directions as may be issued by this Court in its final judgment and

order in regard to the areas which should be enquired into by it so as to ensure that (i) the process of conducting the NEET (UG) and other examinations falling within the remit of the NTA is duly strengthened; and (ii) the instances which came to light during the course of the present year are not repeated in the future."

C. Submissions

23. The petitioners, represented by Mr Narender Hooda, Mr Sanjay R. Hegde, senior counsel and others, have broadly submitted that:

a. There was a widespread leak of the question paper prior to the conduct of the exam, leading to the integrity of the exam being vitiated on a systemic level;

b. The scores and ranks of candidates are highly inflated in 2024 as compared to previous years;

c. NTA's explanation for the score and rank inflation is that they are due to a 25% reduction in the syllabus. This explanation is misleading as the syllabus also included new topics;

d. The significant score inflation in NEET in 2024 has disadvantaged deserving candidates, making it difficult for them to secure admission to government medical colleges and pushing them towards private institutions, which many middle-class families cannot afford. This inflation has disrupted rankings and affected admission opportunities;

e. Concerns have been raised about the handling and transportation of examination materials. Reports indicate a six-day delay in transporting question papers to Hazaribagh, which raises issues of possible tampering. These concerns are compounded by reports that contradict NTA's claims of secure transportation and live CCTV monitoring;

f. The OMR sheets remain at the exam centre for some time after the exam, with persons who may tamper with them if they choose to;

g. NTA has not adopted a fair marking system for one of the questions. Although only one option is the correct answer, it has treated two options as being correct and has awarded marks for both answers. This is unfair and disadvantages many candidates;

h. The question paper was leaked via 'Telegram' (an instant messaging platform);

i. There are discrepancies in the data provided in 'Table 8' of NTA's press release dated 4 June 2024 compared to the results announced on 20 July 2024;

j. The report of the Director, IIT Madras overlooks critical issues such as: (i) the unusually high number of candidates scoring the perfect score i.e., 720/720; (ii) a sharp increase in students scoring above 700 marks; (iii) significant rank inflation in the 600-720 range; and (iv) the concentration of top scorers in a limited number of cities;

k. The report of the Director, IIT Madras is not reliable because there is a conflict of interest with this case. This is due to the Director being a member of the General Body of NTA;

l. The selective awarding of compensatory marks to 1563 aspirants without transparent criteria as to how they were selected suggests manipulation to benefit certain candidates;

m. Independent analyses suggest that anomalies in the data remain undetected, pointing to systemic issues rather than isolated incidents of cheating. This highlights the need for thorough scrutiny of the examination process;

n. Systematic failures, including widespread paper leaks, tampering with OMR sheets, and misuse of compensatory marks, suggest a broader security lapse within NTA;

o. NTA's lack of transparency is evident from its initial denial of leaks and inconsistent statements about the extent of paper leaks and compensatory marks;

p. The re-examination process was discriminatory. It did not provide all affected candidates an opportunity to participate. Furthermore, NTA did not include details about compensatory marks in its official press release;

q. NTA appoints private parties to be invigilators. No adequate system of oversight is present to ensure that these private parties do not enable malpractice or are not corrupt; and

r. The scandal has undermined public trust in the examination system and the medical profession, leading to mental health issues among students. Immediate reforms are necessary to restore public confidence and ensure fairness in the examination process.

24. The Solicitor General for the Union of India and Mr Naresh Kaushik, senior counsel for NTA, advanced the following submissions:

a. No mass malpractice has taken place. There were only isolated incidents of malpractice which have been identified and dealt with. Cancelling the exam and conducting a re-exam is not warranted and is contrary to public interest;

b. In Godhra, the attempt to cheat was foiled by prompt action by the authorities. In Patna, the investigation is underway and the results of some candidates have been withheld. However, the preliminary number of candidates alleged to have cheated is miniscule compared to the total number of candidates;

c. The high number of perfect scores and generally higher marks is because of a reduction in the syllabus by approximately 22-25% compared to last year. Further, the questions were prepared on the basis of universally accessible textbooks to ensure that those from disadvantaged socioeconomic backgrounds do not suffer and to reduce dependency on coaching centres. The top 100 candidates were from 95 different centres in fifty-six different cities in eighteen States or Union Territories;

d. With reference to the question in controversy, the information bulletin released before the exam clearly states that if there are two correct answers, those who marked either one will be awarded marks. Therefore, candidates cannot claim that they did not answer this question because two correct answers were present;

e. The report by the Director of IIT, Madras indicated that there was no evidence of mass malpractice or localized advantages in score distribution. It observed that there was an increase in marks, particularly in the range of 550 to 720, and attributed this to a 25% reduction in syllabus. Candidates achieving high scores were found across multiple cities and centres, suggesting minimal likelihood of malpractice;

f. There was no leak of the question paper via Telegram;

g. The results of candidates suspected of malpractice have been withheld. Show cause notices have been issued to such persons. NTA will respond appropriately to any future cases of malpractice as well;

h. A committee has been constituted to look into improvements to the exam;

i. The reopening of the registration window did not lead to the facilitation of malpractice; and

j. There is no conflict of interest with the Director of IIT, Madras analysing the data in this case because he is only an ex officio member.

D. Issues

25. The following issues arose for consideration in this case:

a. Whether the answer for the question in controversy ought to be revised by NTA;

b. Whether there was a conflict of interest with the Director of IIT, Madras analysing the data in this case; and

c. Whether the sanctity and integrity of the exam were compromised at a systemic level.

E. Analysis

i. Facts which have emerged during the course of the hearing

a. *Chain of custody of question papers as detailed by NTA*

26. In its affidavits as well as during the course of hearing, NTA provided a comprehensive account of the chain of custody for the question papers, detailing their handling of the question paper, from its preparation to its distribution on the day of the exam. The information provided by NTA is detailed in this segment.

27. The process begins with the preparation of the question bank. From August to December 2023, experts were invited to the NTA office to create questions in workshop mode. These sessions took place in a restricted area, with the experts sealing their work daily to maintain the security and confidentiality of the content.

28. The next phase involves the preparation, vetting, solving, and typing of the question papers. From 16 February to 28 February 2024, subject experts developed two independent sets of question papers under continuous CCTV surveillance. These papers underwent a rigorous vetting and solving process from 1 March to 7 March 2024, where feedback was collected, and necessary changes were implemented. The final versions of the question papers were then typed confidentially, with the question papers and answer keys lodged separately to prevent any breaches of security.

29. Following the preparation, the manuscripts were dispatched to two separate printing presses on 31 March 2024, adhering to stringent security protocols. Each press was tasked with producing twenty-four sets of question papers with randomized sequencing, overseen by two officers to ensure compliance with security measures.

30. Simultaneously, OMR sheets were printed at a different location and paired with the corresponding question papers which were then sealed in polythene covers to be accessible only to the candidates. These materials, totalling 72 booklets per batch, were then secured in cloth-lined envelopes, strapped, and placed in GPS-enabled trunks with electronic locks, which were monitored via real-time CCTV throughout the process.

31. The final stage involves the transportation and distribution of the question papers to the examination centres. The question papers for Hazaribagh, Jharkhand, were dispatched on 28 April 2024, via a private logistics company and transported in dedicated closed-body vehicles with electronic locks and GPS tracking.

32. The two different sets of question papers were stored in two separate custodian banks, in all cities: one set was stored in Canara Bank and the other in State Bank of India.[7] Upon arrival at the custodian banks on 3 May 2024, the materials were stored in safety vaults. The papers were then transported from the banks to the examination centres using e-rickshaws.

33. On the day of the examination, city coordinators, appointed and authorized by the Director General of NTA are responsible for collecting the correct set of question papers from the custodian

7 "SBI"

bank. According to the procedure, the city coordinator is required to accompany both the centre superintendent and a neutral observer appointed by NTA. The NTA uses a mobile application to communicate to the city coordinators as to which set of papers should be taken, from either Canara Bank or SBI. The city coordinators collected the materials on 5 May 2024 from SBI, upon being intimated that the question papers from SBI were to be distributed to the students.

34. We were informed that the question paper trunks were stored in CCTV-monitored rooms and opened 45 minutes before the exam (at 1:15 pm), with the process witnessed and certified by two invigilators and two candidates. Each invigilator received an envelope containing 24 booklets, which were distributed according to the seating plan. Candidates were allowed to open the question paper seals at 1:55 pm, just before the commencement of the exam.

b. *Issues in Hazaribagh, Sawai Madhopur, Patna and other places*

35. Counsel for the parties disagreed on when the paper was leaked. During the course of the hearing, the petitioners submitted that the leak occurred before 5 May 2024. They argued that the paper was leaked on 3 May, prior to being deposited in the bank, suggesting that the leak took place at an early stage in the process. The Solicitor General of India stated that the paper leaked on the morning of 5 May 2024, purportedly from the Oasis School, Hazaribagh, Jharkhand.

36. The NTA has reported that the leak of the examination paper occurred between 8:02 am and 9:23 am on 5 May 2024. According to their submission, the accused gained unauthorized access by entering the strongroom at Oasis School through a rear door. Once inside, the individual accessed one of the trunks containing the examination materials. This trunk was part of the secure storage intended to safeguard the question papers before distribution. CCTV footage from the school shows him entering at 8:02 am and leaving at 9:23 am. It was also submitted that the accused opened the trunk from the rear so as not to break the seal, took the papers from the trunk, photographed them, resealed the envelope, and delivered the digital copies to the paper solvers by around 9:30 am.

37. Following the transfer of the investigation to it, the CBI has filed its status reports dated 10 July 2024, 17 July 2024 and 21 July 2024. The reports presently indicate that the Botany and Zoology segments

were solved first, followed by the Physics and Chemistry segments. According to the report, the scanned papers were subsequently sent over WhatsApp to persons in Patna. Furthermore, the reports stated that the solved papers were sent to persons in Hazaribagh. Specifically, two locations in Patna and two in Hazaribagh were identified in the report. The investigation (at this stage) has revealed that the question paper was shared with the candidates only after 10:15 AM, and after 12 noon, they were asked to go to their examination centres.

38. NTA issued a press release on 5 May 2024, acknowledging the issue of incorrect distribution of question papers, which resulted in a significant loss of time for the candidates at Girls Higher Secondary Model School, Mandir, Mantown, Sawai Madhopur, Rajasthan. However, during the course of arguments before us, it emerged that twelve centres initially received question papers from Canara Bank instead of SBI. Of these, four centres replaced the papers originating in Canara Bank with papers lodged in safe custody with SBI upon realizing the mistake. Consequently, in eight centres, candidates attempted the Canara Bank paper in full. As a result, approximately 3,307 candidates were assessed on their performance with respect to the Canara Bank papers instead of the SBI papers. NTA has stated that both sets of papers were prepared by moderators to ensure that the difficulty level was the same.

39. The reports filed by the CBI indicate that the investigation is ongoing. At this stage, the CBI has indicated that the material gathered during the investigation suggests that about 155 students from the examination centres in Hazaribagh and Patna appear to be beneficiaries of the fraud (around 30 in Patna and around 125 in Hazaribagh). No material has been placed before us to demonstrate that the question paper or the solved answers were circulated at random or *en masse* over social media.

40. Separately, it appears that a plan to use unfair means in Godhra was uncovered before it could be executed. The affidavit filed by NTA states that a Deputy Superintendent of Examination had conspired with some students to fill in the answers in the OMR sheet after the conclusion of the test. The affidavit further states that the police became aware of this plan and that they arrested the accused persons before the test began. The candidates suspected to be involved in

this conspiracy were identified. NTA submits that their results were withheld and that show cause notices were issued to them.

41. This situation highlights several administrative and procedural flaws within NTA's management of the exam. Firstly, the fact that question papers from Canara Bank were distributed to students in twelve centres instead of papers from SBI reveals a lapse in coordination and oversight. The fact that four centres managed to rectify the mistake while eight continued with the incorrect papers suggests a lack of effective communication between NTA, the centre-coordinators and the banks involved in the distribution process.

42. Secondly, the use of e-rickshaws for transporting question papers to examination centres raises concerns about the security and reliability of paper-handling procedures. E-rickshaws are relatively unsecured and lack proper monitoring, making them unsuitable for the secure transit of sensitive examination materials. This method might be vulnerable to theft, tampering, and mishandling, posing a serious risk to the integrity of the examination process. Although no lapses on this count have emerged this year, the possibility of such lapses is enough to warrant a change in the mode of transportation.

43. Thirdly, the use of private courier services for transporting examination materials introduces variability in handling standards and may not ensure the same level of security as official channels. Proper protocols and accountability measures need to be in place to ensure that such services maintain the highest standards of security and reliability.

44. Fourthly, CCTV surveillance is essential for monitoring activities and ensuring that all procedures are followed correctly. Any deficiency makes it challenging to prevent, detect, and address any irregularities or breaches that may occur during the examination process.

ii. The marks awarded for one of the questions must be revised because only one of the options is the correct answer.

45. One of the questions in the NEET (UG) 2024 exam was as follows:

> "Given below are two statements:
>
> Statement I: Atoms are electrically neutral as they contain an equal number of positive and negative charges.

> Statement II: Atoms of each element are stable and emit their characteristic spectrum.
>
> In light of the above statements, choose the most appropriate answer from the options given below:
>
> (1) Statement I is incorrect but Statement II is correct.
>
> (2) Both Statement I and Statement II are correct.
>
> (3) Both Statement I and Statement II are incorrect.
>
> (4) Statement I is correct but Statement II is incorrect."

46. We have not specified the question number, as both the question and the options may vary across different series of the question paper. Initially, the NTA answer key indicated that the fourth option was correct.

47. Subsequently, based on representations submitted to NTA, a decision was taken to treat both option (2) and option (4) as correct answers. The representations highlighted that the second option was based on an older edition of the NCERT textbook. Many candidates had relied on the outdated textbook and accordingly, sought the award of four marks if they had marked option (2) as the correct answer. They also relied on the NTA Information Bulletin 2024. This bulletin states that if a question is found to be incorrect or dropped after key verification, all candidates will be awarded four marks, regardless of whether they attempted the question.[8] The relevant portion is as follows:

> "(vi) If none of the options is found correct or a Question is found to be wrong or a Question is dropped then all candidates who have appeared will be given four marks (+4) irrespective of the fact whether the question has been attempted or not attempted by the candidate."

In response to the representations from aspirants, NTA amended its answer key and awarded marks to all students who had selected either option (2) or option (4).

8 NTA Information Bulletin 2024, Chapter 3: Examination Scheme, Clause 3.2 - Pattern of the Test.

48. Some petitioners argue that this change in marking led to unfair advantages for some students while disadvantaging others, thereby impacting the overall merit list and the rankings. This discrepancy could have altered admission outcomes for many students who narrowly missed the cut-off marks or ranks due to the inclusion of the second option as correct. As held in **Kanpur University** v. **Samir Gupta**,[9] if *prima facie* a question is considered ambiguous, such a question should be deleted. This precedent emphasizes the need for clarity and precision in competitive examinations to maintain fairness and transparency.

49. On 22 July 2024, this Court requested the Director of IIT, Delhi to constitute a three-member committee to determine the correct answer. The Director and Professor from the Department of Energy Science & Engineering, reported on 23 July 2024, that a committee had been formed. This committee consisted of Professors Pradipta Ghosh, Aditya Narain Agnihotri, and Sankalpa Ghosh from the Department of Physics.

50. The expert team constituted has opined that option (4) is the correct answer. This answer reads as follows:

> "(4) Statement I is correct but Statement II is incorrect."

51. The committee formed at IIT, Delhi has unequivocally clarified the correct answer, confirming that option (4) is indeed accurate. This option was initially identified by the NTA as the correct answer. Moreover, options (2) and (4) are mutually exclusive, meaning they cannot both be correct simultaneously.

52. The team of experts from IIT Delhi has unequivocally opined that the fourth option (noted above) is the one and only correct answer to the question. NTA did not dispute this during the hearing. We accept the report of IIT, Delhi. The contention based on the NTA Information Bulletin is fallacious. The question itself was not incorrect. Nor was it the case that none of the options were correct. Further, this is not a case where there were two correct answers. Only one of the answers was correct. The issue arose due to the discrepancy in an outdated version of the textbook, not due to an inherent flaw in the

9 [1984] 1 SCR 73 : 1983 4 SCC 309.

question or the absence of correct options. NTA's decision to award marks for both options was not justified. The validity of the question is upheld, and NTA must treat only option (4) as the correct answer.

53. This is crucial to ensure the integrity and fairness of the examination process. The recalibration of ranks is necessary to reflect the true merit of the candidates, correcting any distortions caused by the earlier inclusion of an incorrect answer. This action will restore confidence in the examination system, ensuring that all candidates are evaluated on an equal and just basis. It also addresses the grievances of those who may have been unfairly disadvantaged, thus upholding the principles of equity and transparency in competitive examinations.

iii. There is no conflict of interest with the Director of IIT, Madras analysing the data in this case

54. In response to the query of this Court as to whether it was possible to use data analytics to identify suspicious cases or suspicious trends in the results of the NEET, the Union of India filed an affidavit answering the question. Pursuant to the order of the Court, the Department of Higher Education, Ministry of Education made a request to the Director, IIT Madras to undertake comprehensive data analytics of the results of all candidates who appeared in the exam this year. A set of parameters was also requested to be devised.

55. IIT, Madras then analysed the data. The affidavit states that this was done with the help of Python for data processing, PostgreSQL for data storage and Metabase for analysis after receiving the relevant data and information from NTA. The executive summary of the report prepared by IIT Madras is as follows:

> "Executive Summary
>
> a. The marks distribution follows the bell-shaped curve that is witnessed in any large-scale examination indicating no abnormality.
>
> b. City wise and center wise analysis was done for two years (2023 and 2024) to find out if there are any abnormal indications. The Analysis is carried out for the Top 1.4 lakh ranks given that the total number of seats across the country is around 1.1 lakhs.

> c. This Analysis is granular enough to indicate any abnormality, had a large number of students gotten into high ranks (top 5%), due to malpractice or if students from a particular exam-centre or city were benefitted.
>
> d. The analysis shows that there is neither any indication of mass malpractice nor a localized set of candidate being benefitted leading to abnormal scores.
>
> e. There is an overall increase in the marks obtained by students, specifically in the range of 550 to 720. This increase is seen across the cities and centres. This is attributed to 25% reduction in syllabus. In addition, candidates obtaining such high marks are spread across multiple cities and multiple centers, indicating very less likelihood of malpractice."

56. Counsel for the petitioners expressed concerns about the independence and impartiality of the Director of IIT, Madras who signed the report analysing the data. The concern stemmed from the position held by the Director in the General Body of NTA.

57. By a notification dated 6 March 2019, the Ministry of Human Resource Development (which is now the Ministry of Education) constituted the General Body of NTA. The relevant part of the notification is extracted below:

> "(iii) Three Directors of IITs in their ex officio capacity as the present, preceding and succeeding chairpersons of JEE (Advanced) – Member"

58. Since JEE (Advanced) was conducted by IIT Madras this year, the Director of the institution was the ex-officio member of the General Body by virtue of the notification referred to above. The bye-laws of NTA define the role of the General Body *inter alia* as providing overall policy guidance and direction, considering and approving the balance sheet and annual audited accounts presented by the Member Secretary along with the remarks of the Managing Committee, considering and approving the annual report, recommending the annual action plan and budget for the each year, nominating members of the General Body in terms of the relevant rules, delegating any

of its powers to the Managing Committee or the Member Secretary, creating or abolishing posts in NTA, determining the procedure for appointment of persons to various posts, appointing committees or sub-committees for any purpose, demanding and receiving fees of the exams and tests conducted by NTA, and acquiring properties and investing surplus funds.

59. The functions of the Managing Committee are also set out in the bye-laws. They include taking all operational decisions, managing the resources of NTA, handling its activities, monitoring the financial position to ensure smooth income flow, provide comments or inputs on the annual statements, annual reports, and other reports placed before the General Body. The general superintendence, direction and control of NTA and its income and property is also entrusted to the Managing Committee. Significantly, the bye-laws stipulate that all duties, powers and functions related to carrying on the objectives of NTA shall only be exercised or performed by the Managing Committee. The deliberations of the Managing Committee are required to be reported to the General Body from time to time and the former is required to work in terms of the policy laid down by the latter.

60. From a comparison of the functions of the Managing Committee with those of the General Body, it is evident that the General Body is responsible for supervising the administration of NTA and exercising general oversight of its functioning while the Managing Committee is in charge of its day-to-day administration. Members of the General Body would not, it appears, have a hand in formulating the detailed protocol for the conduct of every examination or in responding to concerns that arise in real-time. Further, the current Director of IIT Madras, Prof. V Kamakoti nominated Prof. A Gopalakrishna to attend the most recently held meeting of the General Body, on 29 September 2023. The last meeting Prof. Kamakoti attended was on 29 December 2022. A combination of all these factors (including the fact that he is merely an ex officio member of the General Body) lead us to the conclusion that the report of the Director of IIT Madras cannot be faulted on the ground of bias. In any event, in the interests of justice and fairness, the Court has independently considered the data placed on record before reaching a decision on whether the petitions in this case ought to be allowed.

iv. There is no evidence to indicate a systemic leak as on date

a. Position of law

61. The facts of this case and the resultant issue before this Court do not call for the development of new legal principles. It is settled law that the cancellation of an examination, either for the purposes of gaining admission into professional and other courses or for the purpose of recruitment to a government post, is justified only in cases where the sanctity of the exam is found to be compromised at a systemic level. Courts may direct the cancellation of an examination or approve such cancellation by the competent authority only if it is not possible to separate the tainted candidates from the untainted ones.

62. In **Anamica Mishra** v. **U.P. Public Service Commission**,[10] the recruitment process concerning appointment to various educational services posts in Uttar Pradesh was cancelled. The process consisted of two stages – a preliminary written examination and an interview. Only those candidates who scored high marks in the former were invited to participate in the latter. In that case, mistakes in data entry resulted in some candidates who scored high marks being left out of the interview process even as other candidates who scored low marks were interviewed and even selected. Upon realising this error, the State Public Service Commission cancelled the entire recruitment process. The High Court of Allahabad upheld this decision. The appeal against the decision of the High Court was allowed by this Court. This Court found that there was no justification for cancelling the written examination, considering that the errors were confined to the interview process. It found that a more appropriate course of action would have been to set aside the selection of candidates and conduct a fresh set of interviews on the basis of the written exam which had already taken place. Hence, in that case, the Court was of the opinion that it was not a suitable course of action to cancel an examination when no systemic issues persisted. Although not expressly stated by the Court, a proper appreciation of the decision leads to the conclusion that it considered whether a fresh examination was proportionate to the nature of grievance and the extent to which the integrity of the exam was vitiated.

10 [1989] Supp. 2 SCR 124 : (1990) Supp SCC 692

63. From the observations of this Court in **Bihar School Examination Board** v. **Subhas Chandra Sinha**,[11] it can be seen that the number or proportion of students who can be believed to have indulged in malpractice is a relevant factor in deciding cases such as the present one. The relevant observations are extracted below:

> "13. This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging any one individually with unfair means but to condemn the examination as ineffective for the purpose it was held …"

64. In **Madhyamic Shiksha Mandal, M.P.** v. **Abhilash Shiksha Prasar Samiti**,[12] the Board concerned with the exam in that case cancelled the exam upon receiving a report from a Naib Tehsildar who had visited the exam centre. He found that the students were copying even before the question paper was distributed and that they were permitted to enter the exam hall with their books and other material. The report also stated that the invigilators and supervisors did nothing to prevent the students from copying. This Court found that the Board was left with no alternative but to cancel the exam and that it was exceedingly difficult to identify the students who were committing malpractice and those who were not.

65. In **Sachin Kumar** v. **Delhi Subordinate Service Selection Board**,[13] the Court analysed multiple judgments related to the issue before us and made the following pertinent observations on the scope of judicial review in such proceedings:

> "56. The decisions in Railway Recruitment Board [All India Railway Recruitment Board v. K. Shyam Kumar, (2010) 6 SCC 614 : (2010) 2 SCC (L&S) 293] , Gohil [Gohil Vishvaraj Hanubhai v. State of Gujarat, (2017) 13 SCC 621 : (2018) 1 SCC (L&S) 80] and Kalaimani [State of T.N. v. A Kalaimani, (2021) 16 SCC 217 : 2019 SCC OnLine SC 1002] all go to emphasise that a recruiting authority is entitled to take

11 [1970] 3 SCR 963 : (1970) 1 SCC 648

12 (1998) 9 SCC 236

13 [2021] 2 SCR 1073 : (2021) 4 SCC 631

> a bona fide view, based on the material before it, that the entire process stands vitiated as a result of which a fresh selection process should be initiated. The integrity of the selection process cannot be lightly disregarded by the High Court substituting its own subjective opinion on the sufficiency of the material which has been taken into account by the decision making authority. Undoubtedly, fairness to candidates who participate in the process is an important consideration. **There may be situations where candidates who have indulged in irregularities can be identified and it is then possible for the authority to segregate the tainted from the untainted candidates. On the other hand, there may be situations where the nature of the irregularities may be manifold and the number of candidates involved is of such a magnitude that it is impossible to precisely delineate or segregate the tainted from the untainted.** A considered decision of the authority based on the material before it taken bona fide should not lightly be interfered in the exercise of the powers of judicial review unless it stands vitiated on grounds of unreasonableness or proportionality."

66. The purpose of testing whether the integrity of the exam has been compromised at a systemic level is to ensure that the cancellation of the exam which has already taken place and the conduct of a fresh examination is a proportionate response.[14] This is also why courts are required to assess the extent of the use of unfair means and separately, consider whether it is possible to separate tainted and untainted candidates. A holistic view must be taken.

67. In arriving at a conclusion as to whether an examination suffers from widespread issues, courts must ensure that allegations of malpractice are substantiated and that the material on record, including investigative reports, point to that conclusion. There must be at least some evidence to allow the Court to reach that conclusion. This standard need not be unduly strict. To elaborate, it is not necessary for the material on record to point to one and only

14 In this regard, see our analysis of Anamica Mishra (supra) at paragraph 62 of this judgment as well as the observations of the Court in Rajesh PU (supra) at paragraph 69 of this judgment.

conclusion which is that malpractice has taken place at a systemic level. However, there must be a real possibility of systemic malaise as borne out by the material before the Court. In **Bihar School Examination Board** (supra), this Court recognised that "sufficient material" must be present to justify a decision to cancel examinations:

> "14. … If at a centre the whole body of students receive assistance and are managed to secure success in the neighbourhood of 100% when others at other centres are successful only at an average of 50%, it is obvious that the University or the Board must do something in the matter. It cannot hold a detailed quasi-judicial inquiry with a right to its alumni to plead and lead evidence etc., before the results are withheld or the examinations cancelled. If there is sufficient material on which it can be demonstrated that the university was right in its conclusion that the examinations ought to be cancelled then academic standards require that the university's appreciation of the problem must be respected."

68. In **Madhyamic Shiksha Mandal, M.P.** (supra), too, the Court placed great reliance on the report of the Naib Tehsildar, which indicated that the students in question were copying unchecked and that it was not possible to separate them from the ones who were not copying.

69. In **Union of India** v. **Rajesh P.U.**,[15] the Court was concerned with a case where it was possible to separate the beneficiaries of malpractice from the candidates who conducted themselves in an upright manner. It held that there was no justification to cancel the entire selection and emphasized the importance of the information available to the Court as well as that of concrete and relevant material, in the following terms:

> "In the light of the above and in **the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all-pervasive nature**, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed

15 [2003] Supp. 1 SCR 883 : (2003) 7 SCC 285

> out the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or the other reasons. **Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies** and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation."
>
> (emphasis supplied)

b. The present case

70. That the question paper was leaked and some students indulged in malpractice is beyond cavil. No party before the Court including NTA disputes this. The question, however, is whether this leak was systemic and of a nature as to vitiate the sanctity of the exam. There are various aspects in this case which require the consideration of the Court – the inflation of marks and ranks, the leak of the question paper, other forms of malpractice, the reopening of the registration window, the change of city when the form was opened for corrections, and the award of compensatory marks to 1563 students. These are considered in turn.

71. At the outset, it is necessary to understand certain aspects of the NEET. It is well-known that the counselling process or the process by which admission is gained into different medical colleges depends on the rank of the candidate. The concept of 'qualifying marks' is, however, sometimes misunderstood. The qualifying mark is arrived at after the declaration of results each year and corresponds to the 50th percentile. This year, the 50th percentile was identified to be at 164 marks of a total of 720 marks, for the unreserved category. Candidates who score 164 marks or above are eligible for admission to the MBBS course. However, not all those who have qualifying marks will necessarily gain admission to a medical college. The qualifying marks

are necessary but not sufficient for admission. NTA, in its affidavit, states that the purpose of qualifying marks is to ensure that private colleges do not grant admission to totally undeserving candidates. Only a small percentage of those who obtain the qualifying marks will be allotted one of the 1,08,000 available seats. As mentioned above, 56,000 seats of the total figure are in government medical colleges and the remaining 52,000 are in private colleges. Hence, it is appropriate to assess the percentage of success with respect to the 1,08,000 available seats. Rank 1,08,000 corresponds to 577 marks and rank 56,000 corresponds to 622 marks.

72. Data analysis of results has long been an accepted method of discerning the extent to which an examination has been vitiated. In **Bihar School Examination Board** (supra), this Court considered the validity of the decision to cancel a secondary school examination conducted at a particular centre in Bihar due to the adoption of unfair means by the students. At the centre in which malpractice appeared to have taken place, the percentage of successful examinees was about 80%. In stark contrast, the average percentage of successful candidates at other centres was 50%. The Court also considered the percentage of success subject-wise for thirteen subjects. The marks detailed in the judgment indicate that the candidates performed exceedingly well in all subjects, leading the Court to hold that the "*figures speak for themselves*". Despite this conclusion, the Court called for some answer booklets and inspected them. Its conclusion (which was based on the data) that the exam was vitiated was substantiated by the answer booklets, which showed that there was "*remarkable agreement in the answers*". Data analysis is a useful tool in the endeavour to detect malpractice.

73. The data placed before us on the percentage of success from different centres did not account for seats which would be allotted on the basis of reservation for the Scheduled Castes, Scheduled Tribes, Other Backward Castes, and Economically Weaker Sections. Were such seats to be accounted for, the figure of 1,08,000 would almost be halved. Hence, the data analysis errs on the side of caution.

74. Certain centres found themselves in the midst of the controversy in this case. It was averred that malpractice was widespread in Hazaribagh, Jharkhand, Patna, Bihar, and Godhra, Gujarat. The data provided by NTA in relation to Hazaribagh for 2024 is as below:

a. 2733 candidates in total appeared for the exam;

b. 126 candidates are within Rank 1,08,000. This indicates a success rate of 4.6%; and

c. 58 candidates are within Rank 56,000. This indicates a success rate of 2.1%.

Further, the statistics from previous editions of the NEET indicate that the success rate (relative to the total number of available seats) for Hazaribagh was 7.2% in 2022 and 6.0% in 2023. When these figures are compared with the success rate for 2024 which is 4.6%, no abnormality becomes evident. To the contrary, the success rate for this year is lower than for the past two years.

75. Similar data for Patna for 2024 is encapsulated below:

a. 48,643 candidates in total appeared for the exam. The exam was conducted in 70 centres across the city;

b. 2691 candidates are within Rank 1,08,000. This indicates a success rate of 5.5%; and

c. 1482 candidates are within Rank 56,000. This indicates a success rate of 3.0%.

In 2022, the success rate (relative to the total number of available seats) was 8.9% and in 2023, the success rate was 7.7%. In Patna, too, the success rate for this year (5.5%) is lower than for the past two years. Even otherwise, there is no irregularity which comes to light.

76. The numbers for Godhra for 2024 are as follows:

a. 2484 candidates in total appeared for the exam. The exam was conducted in 2 centres;

b. 21 candidates are within Rank 1,08,000. This indicates a success rate of 0.8%; and

c. 13 candidates are within Rank 56,000. This indicates a success rate of 0.05%.

To compare, the success rate (relative to the total number of available seats) in Godhra was 1.5% in 2022 and 2.1% in 2023. Hence, in Godhra, fewer candidates are within the zone in 2024. There are no other deviations in the data which are cause for concern and which meet the standard of indicating a systemic malaise.

77. From the above figures, it becomes clear that there are no abnormalities in the results for 2024 when compared with the results for the past two years. The report of the Director of IIT, Madras also supports the conclusion of this Court. The report stated that there were no "*abnormal indications*" in the results for this year, when compared to previous years. It also stated that "*analysis shows that there is neither any indication of mass malpractice nor a localized set of candidates being benefitted leading to abnormal scores*." Hence, an analysis of the results does not lend support to the case of the petitioners who seek the cancellation of the exam. The leak of the paper does not appear to be widespread or systemic. It appears to be restricted to isolated incidents in some cities, which have been identified by the police or are in the process of being identified by the CBI.

78. We now turn to the issue of the reopening of registration for NEET. The registration window was initially to be open from 9 February 2024 to 9 March 2024. The last date for registration was later extended to 16 March 2024. Thereafter, NTA reopened the registration portal for two days – 9 and 10 April 2024. During the course of the hearing, the Court enquired into the reasons for the reopening as well as the performance of the candidates who registered when the portal was reopened.

79. NTA stated that it received numerous representations from candidates who raised issues related to One Time Passwords, Aadhar authentication, uploading of documents, and payment. Other technical issues were also raised. Further, it appears that the High Courts of Rajasthan and Karnataka directed NTA to permit certain petitioners, who reported such issues during their registration, to register after the last date. NTA states that it reopened the registration portal to permit all similarly situated candidates to submit their forms for the exam.

80. The data submitted to the Court reflects the performance of the candidates who registered for the exam on 9 and 10 April 2024 and thereafter, appeared for the exam. The students who registered on these dates but did not appear for the exam are excluded from this analysis. Of the 8039 candidates who registered on 9 April 2024, it is seen that five candidates were within the top 1,08,000 ranks and two candidates were in the top 56,000 ranks. This indicates a

success rate of 0.06% and 0.02% respectively. Further, of the 14,007 candidates who appeared after having registered on 10 April 2024, forty-four were within the top 1,08,000 ranks and twenty-three were in the top 56,000 ranks. The success rate was 0.31% and 0.14% respectively. This data does not indicate that an abnormal number of candidates who registered on 9 and 10 April 2024 were successful. We do not find that an unusually high number of students who registered on these dates have been successful. Hence, the Court cannot reach the conclusion that the reopening of the registration portal led to or facilitated malpractice. There is no other material on record at the present time which would indicate the same.

81. The next aspect which falls for consideration is that some candidates changed their preferred cities for the exam, which in turn led to the change of their exam centre. The petitioners averred that this was done to enable malpractice. After changing their preferred city, 33 aspirants went to Hazaribagh, 637 went to Patna, and 24 went to Godhra. Out of the 33 who appeared from Hazaribagh, only one candidate's scores placed him in a rank higher than or equal to Rank 56,000. Thus, the success rate is 3%. Out of 637 candidates who changed their centre to Patna, only 35 were in the top 1,08,000 ranks, indicating a success rate of 5.5%. 17 candidates scored more than 622 marks (corresponding to Rank 56,000). The success rate is 2.7%. Out of 24 candidates who went to Godhra, no candidate scored more than 577 marks (corresponding to 1,08,000 rank). Here, too, the data is not abnormal and therefore does not indicate that a systemic breach has taken place. An unusual number of candidates who changed their preferred cities do not appear to have a higher rate of success. This is a facility which is intended to subserve the interests of candidates. Therefore, the fact that some aspirants changed their preferred cities, taken alone, cannot be considered evidence of malpractice or of dishonest intention. The choice to appear for the exam from a different city may be motivated by myriad factors and the option to change the preferred city is made available every year. Some other relevant and concrete material must be present before the Court can infer that this led to mass malpractice.

82. The parties in the hearing also addressed submissions on a video on Telegram (an instant messaging application) purportedly showing the leaked paper. It was alleged that the leak took place on 4 May 2024.

The NTA, in its affidavit, stated that the video shared on Telegram was fabricated and the time-stamp was altered to indicate that the leak took place before the examination date. The investigation by CBI revealed that the images in the video were indeed doctored. The Telegram channel itself was created on 6 May 2024 and the paper was uploaded on 7 May 2024. Hence, there is no merit in this allegation.

83. As for the re-exam conducted for the 1563 candidates who were initially awarded compensatory marks, the order of this Court dated 13 June 2024 found the re-exam to be fair and justified. The issue no longer subsists. NTA was also permitted to act accordingly following the test which was held, by the order of this Court dated 23 July 2024.

84. Hence, sufficient material is not on record at present which indicates a systemic leak or systemic malpractice of other forms. The material on record does not, at present, substantiate the allegation that there has been a widespread malpractice which compromised the integrity of the exam. To the contrary, an assessment of the data indicates that there are no deviations which indicate that systemic cheating has taken place. The information before us at this stage does not show that the question paper was disseminated widely using social media or the internet, or that the answers were being communicated to students using sophisticated electronic means which may prove difficult to trace. The students who were beneficiaries of the leak at Hazaribagh and Patna are capable of being identified. The CBI investigation reveals the number of students who are the beneficiaries of the malpractice at Hazaribagh and Patna at this stage. This leads us to conclude that it is possible to separate the beneficiaries of malpractice or fraud from the honest students. This being the case, the Court cannot direct a re-exam.

85. In the previous section which sets out the position of law on this issue, this Court noticed that the purpose of assessing whether the sanctity of the exam has been vitiated at a systemic level was to facilitate and encourage a proportional response. If it is possible to separate the tainted candidates from the untainted ones, there would be no justification to cancel the exam. This is because honest candidates would be made to suffer without reason due to the actions of some unscrupulous candidates. It is also important for the response to malpractice to be proportionate. Ordering a re-test would disrupt the

academic schedule for the year. The delay in completing admission will impact the availability of resident doctors to attend to patient care in the future. Any such direction will have disproportionate consequences for candidates from marginalised backgrounds. They would be disadvantaged, in the event of a re-exam – neither are desirable outcomes.

86. The petitioners have placed reliance on the judgments of this Court in **Tanvi Sarwal v. CBSE**[16] and **Sachin Kumar** (supra) in support of their contention that a re-test must be directed. It is necessary to briefly advert to the facts and the ruling in these cases to appreciate their applicability to the present case.

87. In **Tanvi Sarwal's case** (supra), the Court adjudicated writ petitions challenging the validity of the All India Pre-Medical and Pre-Dental Entrance Test 2015 on the ground that the integrity of the exam had been compromised by the use of unfair means. After the exam was conducted, news reports revealed that answer keys had been transmitted to many candidates in the course of the examination, using electronic devices. The Court noticed the following from multiple status reports filed by the investigating agency in that case:

a. Some arrested persons stated that they had planned to recover Rs. 20 lakhs from each student who wished to avail of their services to cheat in the exam;

b. One of the arrested persons was a doctor. Several answer keys were found to be stored on his mobile phone. They were also forwarded to two other mobile numbers using WhatsApp;

c. Vests for men and women fitted with micro SIMs were recovered from some persons suspected to be involved in the scam;

d. Bluetooth devices were recovered from a person suspected of facilitating cheating;

e. The question paper had been leaked in Behror, Alwar District, Rajasthan. The arrested persons planned to communicate the answers to the students during the conduct of the examination using the vests fitted with micro SIMs. At least three hundred such vests were used;

16 (2015) 6 SCC 573

f. The persons suspected of being the masterminds of the scam were found to have called several people in Jharkhand, Bihar, Uttar Pradesh, Rajasthan, Delhi, Maharashtra, Odisha and Haryana, using different phone numbers;

g. 358 mobile numbers were used to transmit the answers to the question paper to various beneficiaries across the country;

h. Some candidates admitted to having received the answers during the exam, through electronic devices supplied to them by the alleged offenders;

i. Until that point, forty-four beneficiaries of the leak had been identified;

j. The investigating agency stated that it was beyond doubt that the plan to provide answers during the exam was prepared and executed by an organised gang with a network spreading across the country; and

k. The Inspector General of Police, Haryana admitted that it may not be possible to identify every single beneficiary of the leak.

88. On the basis of the information before it, the Court noted that it could choose one of two alternatives – direct that the results of the forty-four beneficiaries of malpractice be withheld and permit the counselling process to proceed or direct the conduct of a fresh exam. The Court was of the opinion that the *modus operandi* of the leak made it likely that numerous candidates, apart from the forty-four who had been identified at the time, were likely to have been beneficiaries of that system of malpractice. It held that it was not possible to identify all the beneficiaries of the leak. Further, it ruled that the segregation of the forty-four identified beneficiaries of the leak was not a viable solution because there was a possibility that unidentified beneficiaries would stand to gain at the cost of honest candidates. The Court, finding that the sanctity of the exam had been compromised, cancelled the exam and directed the conduct of a fresh exam.

89. **Tanvi Sarwal's case** (supra) is distinguishable from the case before us on many counts. First and foremost, the unscrupulous candidates in that case used sophisticated technology including vests fitted with micro SIMs to cheat. No such technology has come to light at

present, in this case. Second, the question paper was found to have been shared on WhatsApp before the date of the exam. Once shared through social media, it is exceedingly difficult to trace the journey of a post or message or document. Here, the record at present does not indicate that the question paper was shared on social media before the date of the exam. Third, In **Tanvi Sarwal's case** (supra), the assistance of a gang with a nationwide network was stated to have been taken and calls were made by the accused to persons living in numerous states in the country. No such nationwide ring is seen at present in this case. Fourth, the Court found that it was not possible to separate the beneficiaries of the leak from the honest candidates. Here, the Court has concluded that the fraudulent candidates may be identified by the investigating agency. For these reasons, the decision in **Tanvi Sarwal** (supra) does not support the case of the petitioners. The allegations in this case are not substantiated by the material on record.

90. In **Sachin Kumar's case** (supra), the two-Judge Bench of this Court (of which one of us, D Y Chandrachud, J., was a part) was concerned with the recruitment process for the post of Head Clerk. The Government of the National Capital Territory of Delhi cancelled the process on the basis of certain irregularities in the conduct of the examination. The Central Administrative Tribunal annulled this decision of the Government. In proceedings under Article 226 of the Constitution before a Division Bench of the Delhi High Court, the decision of the Central Administrative Tribunal was partly affirmed. The appeals arising from the decision of the High Court resulted in the case before this Court.

91. In that case, a committee was appointed to conduct an enquiry into the complaints regarding malpractice during the exam. In its report, the committee *inter alia* found that a large number of candidates in the zone of selection hailed from a small geographical area within Delhi, a significant proportion of candidates belonged to the same community (as indicated by their surnames), and the failure to randomise the seating plan resulted in candidates from the same family being seated in consecutive seats. In addition, the committee noted that certain persons had masterminded a racket which led to the impersonation of candidates, the leakage of question papers, and the dilution of the processes in place to ensure the fair conduct of the exam, including blurring of videography, faulty jammers, etc.

92. The Government of the National Capital Territory of Delhi then constituted a second committee to scrutinise candidates who were in the zone of consideration with a view to identifying cases of impersonation. This committee found that there were no irregularities with the candidature of those persons who had come forth for assessment. The Deputy Chief Minister of Delhi then cancelled the examination, leading to the eventual challenge of his decision.

93. The question in **Sachin Kumar** (supra) was whether the decision to cancel the recruitment process was justified. The Court held that the credibility of the entire exam stood vitiated by systemic irregularities, as highlighted by the findings of the first committee appointed by the government. It found that the allegations made regarding the sanctity of the exam had been substantiated by the investigation which followed. It therefore upheld the decision of the Deputy Chief Minister to cancel the exam and set aside the judgment of the High Court.

94. That case, too, is distinct from the one before us. In **Sachin Kumar** (supra), the material before the Court was sufficient to lead to the conclusion that there was mass malpractice, which attacked the integrity of the exam at a systemic level. This is indicated by the fact that a large number of candidates in the zone of selection were from the same concentrated geographical region and that candidates from the same family were sitting in consecutive spots during the exam. There was also impersonation and the coordinated dilution of security protocols in that case. There was an abundance of material before the Court in that case. The same cannot be said to be true in the instant case. Hence, the ruling in that case cannot influence the outcome in this case. Moreover, in cases such as these, courts must take a holistic view of the facts before them and reach an independent conclusion. Different courses of action are appropriate in different circumstances.

F. The conduct of NTA: Cause for concern

95. While the various issues discussed until now do not lead to the conclusion that the integrity of the NEET was vitiated at a systemic level, the manner in which NTA has organised the exam this year gives rise to serious concerns. The Court is cognizant of the fact that national-level exams with participation from tens of lakhs of students

require immense resources, coordination, and planning. But that is precisely the reason for the existence of a body such as NTA. It is no excuse to say that the exam is conducted in myriad centres or that a large number of aspirants appear for the exam. NTA has sufficient resources at its disposal. It has adequate funding, time, and opportunities to organise exams such as the NEET without lapses of the kind that occurred this year.

96. Multiple occurrences in the conduct of the exam prompt the Court to make these observations. The paper was leaked in Patna and Hazaribagh. In one of the centres, the rear door of the strongroom was opened and unauthorised persons were permitted to access the question papers. This indicates that there is a serious lapse in security and that security measures which are stringent and effective must be implemented by NTA. Further, it came to light that the question papers were sometimes transported in e-rickshaws and that the services of private courier companies were availed of. Mr. Hooda, learned senior counsel for the petitioners, also rightly pointed out that NTA did not specify a time by which the OMR sheets were required to be sealed after the conclusion of the exam. In the absence of a stipulation in this regard, dishonest persons may tamper with the OMR sheets even after the candidates have submitted them and exited the exam hall. Another point of concern is that NTA relies on persons over whom it does not exercise direct oversight to be the invigilators for the exam. There are various methods which may be adopted to ensure appropriate oversight over invigilators and decrease the likelihood of the use of unfair means. All of these issues indicate that the security protocols must be tightened to decrease the possibility of malpractice and fraud and to lessen access by private persons to the question papers.

97. In at least twelve centres, the question paper stored in Canara Bank was wrongly distributed to candidates. The question paper which should have been distributed was the one stored in SBI. In many centres, aspirants completed the incorrect question paper and were ultimately evaluated while in others, the relevant authorities realised the mistake and then distributed the correct question paper. This either indicates that the city coordinators were irresponsible and not fit for duty or that the information as to which question paper was to be distributed to candidates was not properly communicated to

them. Certainly, neither Canara Bank nor SBI appear to have been notified as to whether the papers in their custody were to be released. As long as the city coordinators furnished proof of authorisation, the papers were released without question. The custodian banks have to be informed as to whether they should release the question papers in their possession. Had the custodian banks been informed whether or not to release the papers in their possession, the city coordinators would have been unable to collect the incorrect set of question papers, even if they made an honest mistake. NTA must consider the various possibilities and plan the protocol to be followed after careful consideration.

98. The use of mobile applications to communicate with the relevant parties would permit real-time communication and allow NTA to inform the banks even a few minutes before the time at which the city coordinator was authorised to collect the papers. This would ensure that no unscrupulous persons from the custodian banks can take advantage of the information made available to them. NTA already uses a mobile application to communicate with the city coordinators and others so it would not be difficult to communicate with the custodian banks. Other modes of communication may be explored and adopted, as long as the custodian banks are informed whether to release the papers they have stored for safekeeping.

99. The highest scoring candidates in a competitive exam usually have the option of gaining admission into the best institutions. It is consequential in more ways than one to be a candidate who obtains a perfect score. When the results were released, it appeared that sixty-seven aspirants had scored a perfect score of 720 / 720. After the removal of the compensatory marks and the conduct of the re-test for 1563 candidates, the number of persons who had a perfect score dropped to sixty-one. Subsequently, in the course of the hearing, we were informed that forty-four of the sixty-one top scorers had marked the incorrect option to the question in controversy. By its judgment dated 23 July 2024, this Court directed NTA to treat only one of the options as the correct answer and recompute the marks and ranks on the basis of this revision to the answer key. The necessary consequence of these directions is that the scores of the same forty-four aspirants will no longer be 720 / 720. The number of scorers with 720/720 marks then drops to seventeen. It is a matter of serious

concern that this number fell from sixty-seven to seventeen during the course of the hearing. The intervention of the Court, reports by the media, and representations by candidates ensured that these changes were made in the interests of fairness and justice. However, the system adopted by NTA should be such that just outcomes are reached even when these external catalysts are not present. The system must be such as to inspire public confidence.

100. Another aspect which is most unfortunate is the lack of responsible decision-making with respect to the 1563 candidates who were initially awarded compensatory marks. As noticed above, a committee constituted by NTA first recommended that the compensatory marks be awarded. However, as the controversy surrounding the award of these marks became more prominent, a second committee was constituted. This committee recommended the cancellation of compensatory marks and the conduct of a re-exam in their place for those students. A body such as NTA which is entrusted with immense responsibility in relation to highly important competitive exams cannot afford to misstep, take an incorrect decision, and amend it at a later stage. All decisions must be well-considered, with due regard to the importance of the decision. Flip-flops are an anathema to fairness.

101. Intense competition amongst the aspirants coupled with the commercialisation of education has led to a few towns or cities becoming hubs for classes which train candidates for competitive exams. While these towns or cities may have a higher rate of success than some others, instances of malpractice at such centres should be treated on par with any other instance. All instances of the use of unfair means must be dealt with firmly.

102. NTA is directed to ensure that all the concerns highlighted by the Court in this judgment are addressed. The committee constituted by the Union Government is also requested to keep these issues in mind while formulating its recommendations.

G. Issues in the conduct of the examination and the remit of the committee constituted by the Union Government

103. During the hearing, the petitioners urged that there were systemic flaws in the conduct of the examination and that a more thorough

procedure needs to be put in place to ensure that malpractice is avoided. Given the crucial role of the examination in shaping the careers of future medical professionals responsible for public health, any compromise in the merit-based selection process jeopardizes the quality of healthcare as well as the careers of aspirants. The fairness and reliability of the examination system cannot be such that public confidence is lost.

104. The formation of a committee is essential to thoroughly investigate and address the structural issues. A dedicated committee with suitably qualified experts can ensure a comprehensive review of the security measures, candidate verification processes, and the overall management of the examination. By identifying and rectifying vulnerabilities, such a committee will help restore trust in the examination system and implement robust safeguards to prevent future malpractice.

105. The Court has been apprised of the fact that the Union Government has constituted a seven-member expert committee, chaired by Dr K Radhakrishnan, former Chairman, ISRO, consisting of the following members:

> "(i) Dr Randeep Guleria, Member
>
> (ii) Prof B J Rao, Member
>
> (iii) Prof Ramamurthy K, Member
>
> (iv) Shri Pankaj Bansal, Member
>
> (v) Prof Aditya Mittal, Member
>
> (vi) Shri Govind Jaiswal, Member Secretary"

106. The remit of the Committee, in addition to the tasks that it has been entrusted with by the Union government and the NTA, shall encompass the following:

a. Examination Security and Administration

i. Evaluate and recommend reforms in the mechanism of administration of the exam. This includes ensuring rigorous checks and balances at every stage, from setting the question papers to declaring the final results;

ii. Formulate standard operating procedures[17] which set out the timelines for registration, changes to preferred cities, the sealing of OMR sheets once candidates submit them to the invigilator, and other processes related to the conduct of the exam. Once adopted by NTA, the SOP must be adhered to, to maintain the integrity of the exam;

iii. Review the process by which exam centres are currently allotted to candidates and recommend any changes which may be required in the interests of fairness and transparency. The preferences of candidates may continue to be accounted for;

iv. Recommend stricter procedures for verifying candidate identities, if required, with a view to preventing impersonation and ensuring that only registered and authorized candidates are allowed to take the exams. Such processes may include, but are not limited to, enhanced identity checks at various stages of the exam (such as registration, entry to the exam centre, and before the commencement of the exam) and technological innovations to prevent impersonation. All procedures should comply with laws on privacy;

v. Consider the viability of comprehensive CCTV surveillance systems at all examination centers, including real-time monitoring and recording of all activities. The aim is to deter and detect any malpractice or unauthorized activities and to provide evidence in case of incidents;

vi. Review and suggest enhancements for the processes for the setting, printing, transportation, storage, and handling of question papers. This may include tamper-evident packaging and using secure logistics providers to prevent unauthorized access and leaks during critical phases. The viability of utilizing closed vehicles with locks and real-time tracking systems rather than e-rickshaws may be considered;

17 "SOP"

vii. Consider the viability of conducting regular audits and surprise inspections of examination centres. This is to ensure compliance with established security protocols, identify and address potential vulnerabilities or lapses in the system, and ensure that all centres adhere to the highest standards of examination security; and

viii. Recommend the development of a robust grievance redressal mechanism. This should allow candidates to report any irregularities or issues promptly;

b. Data Security and Technological Enhancements

i. Research and suggest advanced data security protocols, including encryption and secure data transmission methods. These measures should protect examination materials from unauthorized access and potential leaks, ensuring that all sensitive information remains secure;

ii. Recommend systems to monitor and track digital footprints related to the examination materials. This might include digital watermarking and tracking technologies to trace the origin of leaked documents and identify potential breaches in the electronic dissemination process;

iii. Consider how regularly cybersecurity audits and vulnerability assessments must be conducted to identify and address potential weaknesses in the electronic dissemination and storage systems. These audits should evaluate the effectiveness of current security measures and recommend improvements based on the latest cybersecurity trends; and

iv. Explore technological innovations to enhance examination security and efficiency. This could include advancements in digital authentication, secure online platforms, and other emerging technologies that can safeguard against potential threats;

c. Policy and Stakeholder Engagement

i. Review and recommend updates to the policies and SOPs of NTA to align with best practices, ensuring that the agency is equipped to handle evolving challenges in examination security;

ii. Establish a transparent communication strategy to keep all stakeholders, including candidates, educational institutions, and the public, informed about the measures being taken to ensure the integrity and fairness of the examination process as well as of the response of NTA to any malpractice which is identified;

iii. Recommend the implementation of a comprehensive communication strategy to keep all stakeholders involved in the process — including banks, examination centres, and logistical partners — well-informed. This strategy should detail the protocols for secure transportation, storage, and handling of examination materials, and ensure regular updates on any issues or changes; and

iv. Recommend measures to address and mitigate any socioeconomic disparities that may affect candidates' ability to participate in or benefit from the examination process. This might include providing support and resources to underprivileged candidates to ensure equal opportunities and reduce barriers to entry;

d. Collaboration and International Cooperation

i. Consider the viability of NTA engaging in international cooperation with examination bodies and educational authorities from other countries to share best practices, security measures, and innovative solutions; and

ii. Suggest the creation of a management framework to identify, assess, and mitigate potential risks related to examination security. This framework should include protocols for assessing risks, contingency plans, and strategies for dealing with unforeseen challenges that may arise during the examination process;

e. Support and Training

i. Recommend plans or strategies for the development and implementation of mental health support programs for students, including counselling services and stress management workshops. These programs should address the psychological impact of exams and also ensure the

well-being of all candidates throughout the examination process. Qualified experts from relevant fields must be consulted for this purpose; and

ii. Consider the viability of NTA conducting comprehensive training programs for all staff involved in the examination process (including but not limited to question paper setters, invigilators, and administrative personnel). These programs should cover security protocols, ethical standards, and the latest technology to ensure everyone involved is well-equipped to maintain the integrity of the examination.

107. While carrying out its mandate, the committee must bear in mind the facts and issues highlighted in Section F of this judgment.

108. The Ministry of Education constituted the committee by a notification dated 22 June 2024. The notification stated that the report of the committee shall be submitted within two months from the date of the issue of the notification. This would be 22 August 2024. However, in view of the expanded remit of the committee in terms of this judgment, additional time may be required for a holistic report on various aspects related to the conduct of the NEET. Therefore, the report of the committee shall be submitted to the Ministry of Education by 30 September 2024. The Ministry of Education shall take a decision on the recommendations made by the committee within a period of one month from receiving the report. It shall prepare and begin to implement a plan of action on this basis. The Ministry of Education shall report compliance with these directions within two weeks of taking the decision on the implementation of the recommendations.

H. Parting remarks

109. The principal issue which the Court was concerned with in this case is whether the sanctity of the NEET was compromised this year and whether the process should be scrapped and a fresh test should be convened. Having answered the question in the above terms, it needs to be clarified that if any student, including in the present batch, has an individual grievance not bearing on the issues which have been resolved by this judgment, it would be open to them to pursue their rights and remedies in accordance with law, including by moving the jurisdictional High Courts under Article 226 of the Constitution. However, before moving the High Court for the grant

of relief, the petitioners would have to seek the withdrawal of their petitions before this Court, if any have been filed.

110. The transfer petitions at the instance of the NTA or any other party raising the issue as regards the validity of NEET in 2024 are allowed. The resulting transferred cases shall stand disposed of in terms of the above directions subject to the clarification that individual grievances, if any, that remain, may be addressed before the jurisdictional High Court. The interlocutory applications raising individual grievances are similarly permitted to be withdrawn with liberty reserved in the above terms.

111. Nothing in this judgment shall be construed as a finding of fact in relation to criminal proceedings arising from the leak of the question paper or from other forms of malpractice. However, the ruling of the Court will not be relied on to refrain from prosecuting individuals found to have indulged in malpractice in any centres, irrespective of whether such fraud has already been identified or is identified in the future. Stringent action in accordance with law shall be taken against every candidate who is detected or who may hereafter be detected to have been the beneficiary of any malpractice.

112. List before an appropriate Bench to verify compliance with the directions issued in this judgment.

113. The Petitions shall stand disposed of in the above terms.

Result of the case: Petitions disposed of.

†*Headnotes prepared by:* Ankit Gyan

[2024] 8 S.C.R. 99 : 2024 INSC 582

Peoples Rights and Social Research Centre (Prasar) & Ors.
v.
Union of India & Ors.

(Writ Petition (Civil) No. 110 of 2006)

06 August 2024

[Vikram Nath* and Prasanna Bhalachandra Varale, JJ.]

Issue for Consideration

Matter pertains to the issue of Silicosis among workers in various industries across the country.

Headnotes†

Constitution of India – Art. 32, 21, 39(e), 42, 48A and 43 – "Silicosis" among workers – Need for systemic reforms – Writ petition u/Art. 32 seeking intervention to address the issue of "Silicosis" among workers in various industries such as mining, construction, stone cutting, and sandblasting, where workers exposed to high levels of silica dust causing incurable occupational lung disease – Petitioner's case that 'Silicosis' rampant throughout India due to inadequate detection, monitoring, and remedial measures, thus,urgent need for systemic reforms to protect the health and rights of workers across the country; and that the State's failure to protect workers from hazardous conditions and provide adequate medical care, compensation, and rehabilitation, a direct infringement of the constitutional mandates:

Held: As regards the environmental aspect, to ensure that the industries abide by certain minimal standards to prevent silicosis among their workers, and in the event of non-compliance, these industries to face closure – NGT directed to oversee the impact of silicosis-prone industries and factories across India and ensure that the Central Pollution Control Board and the respective State Pollution Control Board comply with the earlier directions of this Court – NGT to undertake any additional necessary steps to prevent the spread of silicosis by such industries and factories – As regards, the adequate compensation to be received by the

* Author

affected workers or their next of kins as swiftly as possible, the NHRC directed to oversee the compensation process across the respective states – ESIC and the Chief Secretaries of the respective states to adhere to the directions of the NHRC and collaborate with them to ensure that the compensation distribution process is carried out efficiently and without delay – Furthermore, the Registry of this Court to ensure that all the relevant reports and affidavits submitted by the respective State Committees, the CPCB, the NHRC, and the DGMS, are forwarded to the NGT and the NHRC to facilitate the execution of their responsibilities effectively and swiftly. [Paras 7-9]

Case Law Cited

Occupational Health & Safety Association Versus Union of India & Ors. **[W.P.(C) No. 79 of 2005] Order dated 30.01.2008 – referred to.**

List of Acts

Constitution of India; Societies Registration Act, 1860; Protection of Human Rights (Amendment) Act, 2006; Factories Act, 1948; Mines Act, 1952; National Green Tribunal Act, 2010.

List of Keywords

Issue of "Silicosis"; Industries such as mining, construction, stone cutting, and sandblasting; High levels of silica dust; Incurable occupational lung disease; Inadequate detection, monitoring, and remedial measures; Systemic reforms; State's failure to protect workers from hazardous conditions and provide adequate medical care; Compensation; Rehabilitation; Environmental aspect; Compensation distribution process; National Green Tribunal; Central Pollution Control Board; State Pollution Control Board.

Case Arising From

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No.110 of 2006

(Under Article 32 of The Constitution of India)

With

Transferred Case (C) No.8 of 2017

Peoples Rights and Social Research Centre (Prasar) & Ors. v. Union of India & Ors.

Appearances for Parties

Vikramjit Banerjee, ASG, Alok Sangwan, Sr. A.A.G., Shiv Mangal Sharma, Tapesh Kumar Singh, A.A.Gs., Colin Gonsalves, Uday Gupta, Arijit Prasad, Sr. Advs., Ms. Mugdha, Kamran Khwaja, Satya Mitra, Prashant Bhushan, Ms. Shivani Lal, Gaurav Dave, Ms. Sanam Singh, Harish Dasan, Rajiv Ranjan, Rajeev Kumar Gupta, Ms. Yogamaya M.G., Hiren Dasan, Digvijay Dam, Abhishek Kumar, Navanjay Mahapatra, Pranay Ranjan, Siddharath Sinha, Amrish Kumar, Debojit Borkakati, Raj Bahadur Yadav, Mrs. Anil Katiyar, Ms. Ruchi Kohli, Samir Ali Khan, Pranjal Sharma, Kashif Irshad Khan, Milind Kumar, Jasmeet Singh, P. V. Yogeswaran, Ms. Neha Rathi, Kamal Kishore, Ms. Kajal Giri, B. Balaji, Ms. Mukti Chaudhry, Mahfooz Ahsan Nazki, Chanchal Kumar Ganguli, Gopal Singh, P. N. Puri, Ms. Smiriti Puri, Mrs. Reeta Dewan Puri, Ravinder Pratap Singh, Manish Dhingra, C. K. Sasi, Ms. Meena K Poulose, Ms. Anupriya, Rahul Khurana, Samar Vijay Singh, Sumit Kumar Sharma, Rajat Sangwan, Vaibhav Yadav, Ms. Gunjan Singhania, Keshav Mittal, Ms. Sabarni Som, Manish Verma, Vishal Prasad, Fateh Singh, Ms. Aparna Rohtagi Jain, Mahesh Kasana, S. K. Verma, Ms. Swati Ghildiyal, Aravindh S., Saurabh Mishra, Shrimay Mishra, Abhinav Pandey, Rakesh Chander, Nirbhaya S Tewari, Abhimanyu Singh, Ajay Sharma, Sunny Choudhary, Ms. Ankita Sharma, Arjun D Singh, Shantanu Sagar, Prabhat Ranjan Raj, Anil Kumar, Gunjesh Ranjan, Aditya Singh, V. N. Raghupathy, Manendra Pal Gupta, Shreeyas Lalit, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Aditya Krishna, Ms. Preet S. Phanse, Adarsh Dubey, Anando Mukherjee, Ms. Ekta Bharati, Shwetank Singh, Som Raj Choudhury, Ms. Shrutee Aradhana, Prashant Kumar, Raghvendra Kumar, Anand Kumar Dubey, Jainendra Kumar, Nishant Verma, M. Yogesh Kanna, Shuvodeep Roy, Saurabh Tripathi, Sumit Kumar, Ms. Vanshaja Shukla, Ashutosh Sharma, Srisatya Mohanty, Ms. Astha Sharma, Shreyas Awasthi, Ms. Lhizu Shiney Konyak, Santosh Krishnan, Yakesh Anand, Ms. Sonam Anand, Ms. S.L. Soujanya, Mahfooz Ahsan Nazki, Mohit Paul, Rajiv Kumar Choudhry, Kunal Chatterji, Supratik Sarkar, Sravan Kumar Karanam, Ms. Shireesh Tyagi, Ms. Tayade Pranali Gowardhan, Aniket Singh, Ms. Jayashree Pk, Jayesh Gaurav, Ishwar Chandra Roy, Ms. Diksha Ojha, Ranjan Nikhil Dharnidhar, Ms. Richa Kapoor, Kunal Anand, Ms. Shisham Pradhan, Vivek Kumar, Abhishek Gautam, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

WRIT PETITION (CIVIL) NO. 110 OF 2006:

1. This writ petition has been filed under Article 32 of the Constitution of India by the petitioner-People's Rights and Social Research Centre, a Delhi-based non-governmental organization, seeking intervention of this Court in addressing the grave issue of "Silicosis" among workers in various industries across the country. The petitioner organization, registered under the Societies Registration Act since December 20, 1999, has been actively involved in occupational health work, specifically concerning stone crusher workers, stone quarry workers and construction workers.

2. Silicosis is an incurable occupational lung disease caused by prolonged inhalation of silica dust and it has been rampant throughout India due to inadequate detection, monitoring, and remedial measures. It predominantly affects workers engaged in industries such as mining, construction, stone cutting, and sandblasting, where they are exposed to high levels of silica dust. Over time, the inhaled silica particles cause inflammation and scarring of the lung tissue, leading to reduced lung function and severe respiratory distress. The disease manifests in three forms: chronic, accelerated, and acute silicosis, depending on the intensity and duration of exposure. Chronic silicosis, the most common form, develops over 10 to 30 years of low to moderate exposure, while accelerated and acute forms occur over shorter periods with higher exposure levels. The symptoms include shortness of breath, persistent cough, chest pain, and fatigue, often leading to severe disability and premature death. Despite its preventable nature through adequate safety measures, monitoring, and use of protective equipment, the lack of stringent enforcement and awareness has resulted in a significant number of workers contracting this debilitating disease. The petitioner underscores the urgent need for systemic reforms to address the detection, prevention, and treatment of silicosis to protect the health and rights of workers across the country.

3. The petitioner contends that the pervasive and unchecked prevalence of silicosis among workers in various industries constitutes a violation

of the workers' fundamental rights under the Constitution of India. Central to this petition is the assertion that the right to health, safety, and a life of dignity, enshrined under Article 21 of the Constitution, is being grossly neglected. Furthermore, the Petitioner invokes the Directive Principles of State Policy, particularly Articles 39(e) and 42 of the Constitution of India which mandate the State to ensure that the health and strength of workers is not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. The petitioner argues that the State's failure to protect workers from hazardous conditions and provide adequate medical care, compensation, and rehabilitation is a direct infringement of these constitutional mandates. Additionally, the petitioner submits that the Right to a clean and healthy environment, as implicit under Article 48A, is being violated. The petitioner also references Article 43, which directs the State to ensure a living wage, conditions of work ensuring a decent standard of life, and full enjoyment of leisure and social and cultural opportunities for workers.

4. The Petitioner organization highlights the lack of sufficient insurance, treatment, compensation, and rehabilitation for victims and their families. The Petitioner has urged this Court to direct the constitution of a high-level committee to comprehensively address the detection and management of silicosis and other occupational diseases among workers, particularly in the unorganized sector. Furthermore, the Petitioner seeks guidelines for the prevention and treatment of such diseases, the rehabilitation of affected persons and families, compensation for the families of deceased workers, and alternative employment opportunities for the victims' family members.

Summary of Proceedings thus far

5. This Writ Petition was filed in 2006. Since then, various orders have been passed and it would be necessary to go through them to understand the current scenario pertaining to this writ petition. The original Writ Petitioner had the following Respondents:

   - The Union of India
   - Ministry of Law, Justice and Company Affairs.
   - Ministry of Health and Family Welfare
   - The State of Haryana

- The State of Rajasthan
- The State of Gujarat
- The State of Delhi
- The Union of Territory of Puducherry.

5.1 On 27.03.2006, notice was issued to these respondents. Given the human rights aspect of this matter, the National Human Rights Commission[1], a statutory body constituted under Protection of Human Rights (Amendment) Act, 2006, was also made a party to these proceedings constituted to ensure compensation is reached to the families of the victims.

5.2 On 25.07.2008, NHRC was permitted to implead the Central Pollution Control Board[2] as a party.

5.3 On 5.3.2009, pursuant to court's order, the NHRC submitted its preliminary report on a survey on silicosis affecting workers in various industries which showed that the issue is widespread across many states, and further surveys were needed. The Ministry of Health and Ministry of Labour, Union of India, were directed to provide all necessary assistance to the NHRC for further action regarding silicosis. The NHRC was directed to address specific confirmed cases of silicosis, recommending immediate medical relief for sufferers and compensation for families of those who died due to the said disease.

5.4 On 01.02.2010, the State of Madhya Pradesh was also added as a respondent in this matter.

5.5 On 12.11.2010, following an order of this court dated 05.03.2009, the NHRC submitted a detailed report highlighting the State of Gujarat's failure to protect workers affected by Silicosis and recommending compensation to them. The report observed that there was failure on the part of the enforcement agencies in Gujarat to ensure protection of the mine workers in Godhra and it recommended an amount of Rs 3,00,000/- as compensation to the next of kins of the 238 workers who had died due to Silicosis. Moreover, the 304 workers which had come from the

1 NHRC

2 CPCB

State of Madhya Pradesh to work in Gujarat as mine workers were directed to be given rehabilitation packages by the relevant authorities of the State of Madhya Pradesh.

5.6 On 18.2.2014, given the prevalence of the issue in this matter, the Court impleaded the remaining States as Respondents in this matter.

5.7 On 4.5.2016, the Court observed that the directions issued in the report submitted by the NHRC on 12.11.2010 were not followed by the State of Gujarat. The Employees State Insurance Corporation[3] was impleaded as a party-respondent through its Director General. The State of Gujarat was directed to comply with NHRC's recommendation by paying ₹1 lakh to the kins of each of the 238 deceased workers and depositing remaining ₹2 lakhs in their names in fixed deposits within one month. The Chief Secretary of Gujarat was directed to transfer ₹3 lakhs per deceased worker to the District Collectors of Jhabua and Alirajpur for distribution. The distribution was to be handled by the District Collectors, and assistance from ESIC could be sought if needed. The State of Madhya Pradesh was directed to file an affidavit detailing the rehabilitation steps for the 304 affected individuals identified by NHRC. The CPCB was also ordered to file an affidavit on actions taken based on the Committee's report on silicosis and pneumoconiosis in Godhra, Gujarat.

5.8 On 23.8.2016, the Court reviewed the affidavit filed by the District Collectors of the affected regions in the State of Gujarat and acknowledged their efforts in ensuring the compensation was received by the next of kins of the victims. The Court also reviewed the Additional Affidavit filed by the CPCB and observed that 16 out of 30 operational quartz grinding units in Gujarat were non-compliant with statutory mandates. The CPCB also made recommendations for the State Pollution Control Board[4] to address deficiencies. The Court directed the SPCB to file an affidavit within four weeks on actions taken based on these recommendations and on closing down 14 non-operational units. It was further stated that if non-compliant units intend to restart,

3 ESIC

4 SPCB

they must meet mandatory requirements. SPCB must ensure compliance with mandatory pollution prevention measures and take steps to close non-compliant units. The CPCB also conducted an inspection of the quartz grinding units in the State of Gujarat and had made the following recommendations:

> *"i. Adequate provision of dust extraction systems shall be made at potential sources such as jaw crusher hoppers, transfer points of materials from conveyor belts, disintegrators, transfer points of materials from bucket elevators to other plant equipment, rotary screens, magnetic separators, vibratory screens, etc. The dust extraction systems of such potential sources shall be routed through an Air Pollution Control Device (APCD). Stacks attached to APCDs are to be equipped with adequate monitoring facilities as per CPCB Emission Regulation, Part-III.*
>
> *ii. The height of the stack shall be maintained at a minimum of 2 meters above the roof level as prescribed by the Board.*
>
> *iii. Sheds provided for plant process machineries shall be closed properly, and provision of Closed Circuit Television (CCTV) cameras shall be made rather than keeping small openings in the shed for frequent observations.*
>
> *iv. The internal roads shall be made of bitumen/concrete to reduce fugitive emissions by vehicular movement, with proper cleaning and wetting mechanisms.*
>
> *v. Provision of a green belt shall be made along the periphery of the individual units.*
>
> *vi. Provision shall be made for systematic water sprinkling at places of dust generation to reduce fugitive emissions, and records of water utilization shall be maintained.*
>
> *vii. A telescopic chute or any other system shall be adopted to reduce fugitive emissions while loading the products into trucks or fine dust in bags.*

viii. Provision of Personal Protective Equipment (dust masks, helmets, safety shoes, goggles, earplugs) and utilization by all workers during the operation of the plant shall be ensured.

ix. The units shall ensure environmental monitoring and submission of reports to GPCB at regular intervals.

x. The housekeeping shall be improved.

xi. The units shall submit a time-bound action plan to comply with the above measures within 30 days."

5.9 Hence, pursuant to the recommendation of the CPCB, the Court directed the SPCB Chairmen of Haryana, Rajasthan, Madhya Pradesh, Puducherry, Jharkhand, and Delhi to inspect quartz grinding units and report deficiencies within three weeks. SPCB Chairmen were directed to personally visit units' post-compliance period and take steps to close non-compliant units.

5.10 The State of Madhya Pradesh had identified 334 silicosis-affected individuals who claimed rehabilitation actions. The District Legal Services Authorities of Jhabua, Alirajpur, and Dhar were directed to verify actual distribution of benefits and submit a report within eight weeks. They were to ensure that no silicosis-affected individual was deprived of benefits. In case of deceased victims, compensation was to be processed as per policy.

5.11 The Court made further observation on the general problems of silicosis in India and observed that the severity of the problems is mainly in the States of Delhi, Haryana, Rajasthan, Madhya Pradesh, Gujarat, Jharkhand, and Puducherry. The NHRC had conducted a detailed survey on this issue and submitted a report to the duty holders concerned. But the court noted that no meaningful action has been taken either in any of the prevention and rehabilitation areas. The Court made further observations that vide order dated 30th January 2008 in W.P.(C) No. 79 of 2005 titled 'Occupational Health & Safety Association Versus Union of India & Ors.' this Court had considered certain aspects on the reduction of occupational hazards of the employees of the Thermal Power Stations in the country and had also issued the following directions:

"i. Comprehensive medical check-up of all workers in all coal-fired thermal power stations by doctors appointed in consultation with the trade unions. The first medical check-up is to be completed within six months.

ii. Free and comprehensive medical treatment to be provided to all workmen found to be suffering from an occupational disease, ailment, or accident until cured or until death.

iii. *Services of the workmen not to be terminated during illness and to be treated as if on duty.*

iv. *Compensation to be paid to workmen suffering from any occupational disease, ailment, or accident in accordance with the provisions of the Workmen's Compensation Act 1923.*

v. *Modern protective equipment to be provided to workmen as recommended by an expert body in consultation with the trade unions.*

vi. *Strict control measures to be immediately adopted for the control of dust, heat, noise, vibration, and radiation to be recommended by the National Institute of Occupational Health (NIOH), Ahmedabad, Gujarat.*

vii. *All employers to abide by the Code of Practice on Occupational Safety and Health Audit as developed by the Bureau of Indian Standards.*

viii. *Safe methods to be followed for the handling, collection, and disposal of hazardous waste to be recommended by NIOH.*

ix. *Appointment of a Committee of experts by NIOH including representatives from trade unions and Health and Safety NGOs to look into the issue of Health and Safety of workers and make recommendations."*

5.12 The Court noted that these directions would be applicable to silica units as well. There was a direction to the Chief Secretary

of the respective States to file an affidavit, after convening a meeting of the duty holders regarding the implementation of the various reports, and to file an affidavit as to the action taken in the respective states. The Court made it clear that it was not concerned with any policy framework of the State. The report was on the benefits which have actually been made available to the victims. The Court also directed the Chief Secretary of the States concerned to submit a detailed report as above within a period of two months from today, failing which they will be present before this Court at their own expense on the next date of hearing. The court assigned various specialists across the State of India to constitute an enquiry and report to the court with regard to the medical facilities available to the patients affected by silicosis and whether any compensation was made available to them, etc. The required expenditure was to be borne by the State concerned where the enquiry is being conducted. On the legal framework, the learned senior counsel appearing for the petitioners had brought to the notice that the duty holders were the Director General of Mines Safety (DGMS), Ministry of Labour & Employment, Government of India, and the Director General, Factory Advice Service and Labour Institutes (DG-FASLI), Government of India. The court directed the above duty holders to submit a report on the following aspects:

i. *"The geographical location and the industries/ mines state-wise where workers at risk of silicosis are to be found.*

ii. *The number of workers working at these sites and the estimates of the number of workers suffering from silicosis/ pneumoconiosis in the country, state-wise, and industry/mine-wise.*

iii. *The details of the number of workers suffering from silicosis/pneumoconiosis, their medical treatment, and compensation paid.*

iv. *Details of the number of workers who died due to silicosis during the last 10 years and the compensation, if any, paid."*

5.13 Thereafter, the Court also directed the Director General of Mines Safety[5] and the Director General, Factory Advice Service and Labour Institutes (DG-FASLI) to carry out a health and safety survey of silicosis-affected workers under section 91A of the Factories Act and section 9A of the Mines Act, by actively involving, apart from government officials, non-government organizations working in silicosis-affected areas, and submit a comprehensive report to the Court as to the facilities available in the field of treatment, actual payment of compensation made available to the victims, and other rehabilitation steps for the affected workers and their family members. The Court directed the Chief Secretary of each State to make all arrangements for facilitating the survey and preparation of the reports by the doctors concerned in each State.

5.14 On 10.2.2017, the Court allowed the impleadment application of Silicosis *Peedit Sangh*.

5.15 On 1.5.2017, the Court reiterated the order dated 23.8.2016 regarding compensation for those affected by and deceased from silicosis to be implemented by all States. The NHRC was permitted to file its recommendations. The CPCB was directed to file an affidavit detailing whether the recommendations in its report were being followed by quartz and other silica dust-producing industries.

5.16 On 05.03.2019, the Court reviewed the report submitted by CPCB filed on 24.7.2017 after the inspection of polluting units which had been functioning in the respondent-State. According to them, a grim picture of large-scale environmental law violations was taking place which led to serious health problems and deaths in affected areas.

5.17 Mr. Prashant Bhushan, counsel for the Petitioner, suggested further steps needed to be taken to ensure the closure of these polluting units. The Respondent counsel indicated that many units have been ordered to be closed, and further action is being taken for the closure of non-functional and still-operating units. It was submitted that the respondents-States who allowed such

5 DGMS

units to operate should be made to pay adequate compensation to the victims. The Union of India be also directed to submit their response to the Reports submitted by the NHRC.

6. Having perused the various reports submitted by the respective State Committees, the NHRC, the CPCB, and the DGMS, the instant writ petition raises two primary aspects for consideration. For both these aspects, there are statutory bodies duly constituted. They would be in a better position to monitor and oversee that the mandate of law and the earlier directions issued by this Court are not only duly implemented but further necessary steps are also undertaken.

7. Firstly, the environmental aspect of the matter pertains to ensuring that industries abide by certain minimal standards to prevent silicosis among their workers. In the event of non-compliance, these industries should face closure. In our considered opinion, the National Green Tribunal[6] is the appropriate authority to oversee this aspect of the matter. The NGT, established under the National Green Tribunal Act in 2010, is tasked with the expeditious disposal of cases related to environmental protection and the speedy implementation of decisions. Given that this writ petition was filed in 2006, prior to the establishment of the NGT, these matters could not have been presented before the Tribunal initially. However, we now direct the NGT to oversee the impact of silicosis-prone industries and factories across India and ensure that the CPCB and the respective SPCBs comply with the earlier directions of this Court. Furthermore, we direct the NGT to undertake any additional necessary steps to prevent the spread of silicosis by such industries and factories.

8. The second aspect concerns ensuring that adequate compensation is received by the affected workers or their next of kins as swiftly as possible. In this regard, we direct the NHRC to oversee the compensation process across the respective states. We also direct the ESIC and the Chief Secretaries of the respective states to adhere to the directions of the NHRC and collaborate with them to ensure that the compensation distribution process is carried out efficiently and without delay.

6 NGT

9. We further direct the Registry of this Court to ensure that all the relevant reports and affidavits pertaining to this matter, as submitted by the respective State Committees, the CPCB, the NHRC, and the DGMS, are forwarded to the NGT and the NHRC to facilitate the execution of their responsibilities effectively and swiftly. Petitioners would also be at liberty to approach the NGT and NHRC and extend all cooperation in implementation of the directions.

10. The Writ Petition is accordingly disposed of.

Transferred Case (C) No.8 of 2017

11. The Transferred Case (C) No.8 of 2017 is also disposed of in the same terms as above.

Result of the case: Writ petition and Transfer case disposed of.

†*Headnotes prepared by:* Nidhi Jain

[2024] 8 S.C.R. 113 : 2024 INSC 587

M/s D. Khosla and Company
v.
The Union of India

(Special Leave Petition (Civil) No. 812 of 2014)

07 August 2024

[Pamidighantam Sri Narasimha and Pankaj Mithal,* JJ.]

Issue for Consideration

Arbitrator passed award granting interest for two periods-(i) Pre-award period, from the date of completion of the work up to the date of the award @ 12% per annum (simple interest); and (ii) Post-award, from the date of the award till the date of its payment or the date of the court decree @ 15% per annum. Whether interest was payable on interest or whether 15% interest per annum awarded would be on the principal sum award plus 12% per annum interest on it for the pre-award period.

Headnotes†

Arbitration Act, 1940 – ss.29, 17 – Interest Act, 1978 – s.3 – Code of Civil Procedure, 1908 – s.34 – Court/Arbitrator if can award compound interest or interest upon interest unless specifically provided under the statute or the terms and conditions of the contract:

Held: No – Though, there is no dispute as to the power of the courts to award interest on interest or compound interest in a given case subject to the power conferred under the statutes or under the terms and conditions of the contract but, where no such power is conferred ordinarily, the courts do not award interest on interest – Neither the Act specifically empowers the Arbitrator or the Court to award interest upon interest or compound interest nor there is any other provision which provides for grant of compound interest or interest upon interest – s.34, CPC is also silent in this regard whereas s.3(3) of the Interest Act specifically prohibits the same – In the present case, the award and the decree nowhere awarded 15% interest per annum on the amount awarded including the interest component i.e. the pre-award interest – This could not have been done even otherwise as there is no provision to that effect under the relevant statutes or the contract – The interest awarded under the award in the first part, was simple interest @ 12% per annum

* Author

on the 'amount awarded' whereas in the second part, interest @ 15% per annum was awarded referring to the 'amount awarded' – The amount awarded in both the situations referred to the principal amount of compensation awarded i.e. Rs.21,56,745/- and was same and cannot be two distinct amounts – Concurrent judgments of the courts below not interfered with. [Paras 23, 24, 27, 28]

Case Law Cited

Oil and Natural Gas Commission v. M.C. Clelland Engineers S.A. [1999] 2 SCR 830 **: (1999) 4 SCC 327;** *State of Haryana and Others v. S.L. Arora and Company* [2010] 2 SCR 297 **: (2010) 3 SCC 690;** *Hyder Consulting (UK) Limited v. Governor, State of Orissa* [2014] 14 SCR 1029 **: (2015) 2 SCC 189;** *UHL Power Company Limited v. State of Himachal Pradesh* [2022] 1 SCR 1 **: (2022) 4 SCC 116 – referred to.**

List of Acts

Arbitration Act, 1940; Interest Act, 1978; Code of Civil Procedure, 1908.

List of Keywords

Award of interest; Interest upon interest; Compound interest; Interest on the amount awarded; Interest awarded in two parts; Pre-award interest and post-award interest on the principal amount; Simple interest; Simple interest on the amount awarded; Amount awarded; Principal amount; Principal amount awarded; Principal amount of compensation awarded; Principal sum.

Case Arising From

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No.812 of 2014

From the Judgment and Order dated 06.09.2013 of the High Court of Gujarat at Ahmedabad in SCA No.3036 of 2009

Appearances for Parties

Ms. Jyoti Mendiratta, Sourabh Malhotra, Ms. Ananya Basudha, Advs. for the Petitioners.

Ms. Aishwarya Bhati, A.S.G., Ms. Sthavi Asthana, Akshaja Singh, Nitesh Shrivastav, Dr. N. Visakamurthy, Chitrangada Rastravara, Mukul Singh, Amit Sharma LI, Kartikeya Asthana, Mukesh Kumar Maroria, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Pankaj Mithal, J.

1. Heard Smt. Jyoti Mendiratta, learned counsel for the petitioner and Smt. Aishwarya Bhati, learned A.S.G. for the Union of India.

2. In connection with a contract of 1984-85 between the petitioner and the respondent, an award came to be passed by the Arbitrator on 17.09.1997 under the Indian Arbitration Act, 1940.[1] It was made the rule of the court under Section 14 read with Section 17 of the Act and a decree was accordingly drawn.

3. The award *vide* its paragraph 12 provided for the interest on the amount awarded. The interest was awarded for two periods *viz.* (i) from the date of completion of the work up to the date of the award @ 12% per annum (simple interest); and (ii) @ 15% per annum from the date of the award till the date of its payment or the date of the court decree, whichever is earlier.

4. The portion of the award which is relevant for our purpose concerning interest is reproduced hereinbelow:

> "**12.** Interest:- The Union of India shall pay to M/s D Khosla & Company simple interest @ 12% per annum on the amount awarded from the date of completion of work upto the date of award and 15% from the date of award to the date of its payment or date of court decree whichever is earlier."
>
> (emphasis supplied)

5. The decree of the court that was drawn according to the award reads as under:

> "**02)** Decree for Rs.21,56,745 (Rupees Twenty One Lac Fifty Six thousands seven hundred and forty five) in terms of Arbitration Award to be drawn on payment of the Court Fees by the Opponent no.1. Opponent no.2- Union of India is hereby ordered to pay interest @ 12% p.a. on the awarded amount up to the date of the award and interest

1 hereinafter referred to as 'the Act'

> @ 15% p.a. from the date of award till the realization of the decreetal amount as per the terms of award."
>
> (emphasis supplied)

6. A simple reading of the aforesaid decree reveals that interest has been awarded in two parts on the amount of Rs.21,56,745/- i.e. (i) 12% per annum on the awarded amount up to the date of award; and (ii) 15% per annum from the date of award till the realization of the decretal amount.

7. It appears that the petitioner was paid the principal amount of compensation awarded and interest of 12% and 15% for the two periods i.e. pre-award and post-award on the principal amount awarded. However, petitioner was not satisfied and he moved execution for the realization of certain amount as shortfall of the interest. The petitioner contended that insofar as 15% interest is concerned, it is payable on the principal amount of compensation awarded plus 12% simple interest on the said amount. In other words, petitioner sought to include 12% interest in the principal amount of compensation awarded for the purposes of claiming 15% simple interest for the post-award period.

8. The Principal Senior Civil Judge, Khambhalia, in Execution Petition No.9 of 2006 preferred by the petitioner, refused to accept the contention of the petitioner so as to award 15% interest on the principal amount of compensation awarded plus 12% simple interest thereof. In a way, he declined to grant interest upon interest for the reason that the Arbitrator has not awarded it in so many words.

9. In the petition preferred by the petitioner before the High Court, the same view was adopted by the High Court vide its judgment and order dated 06.09.2013. It held that as the Arbitrator had used word 'simple interest' and had not specifically awarded compound interest, therefore, the petitioner is only entitled to simple interest @ 12% per annum on the amount awarded as compensation for the pre-award period and simple interest @ 15% per annum for the post-award period only on the amount of compensation awarded.

10. Aggrieved by the judgment and order of the High Court dated 06.09.2013 and that of the Principal Senior Civil Judge, Khambhalia, dated 29.08.2008, the petitioner has preferred this Special Leave Petition.

11. Ms. Mendiratta, learned counsel for the petitioner argued that 12% interest per annum awarded for the pre-award period is part of the principal sum and it has lost its character as separate interest. Therefore, 15% interest per annum awarded for the post-award period is both on the principal sum and the 12% interest inclusive.

12. In contrast, Ms. Aishwarya Bhati, learned Additional Solicitor General appearing on behalf of the respondent, has argued that though there is no controversy with regard to the power of the arbitrator to award interest on interest or compound interest in a given case. However, it cannot be paid to the claimant until and unless it is specifically granted by the award or the order of court.

13. In the instant case, the arbitrator had granted interest for two separate periods on the principal sum adjudged only and there is no direction that the interest for the subsequent period would be payable on the principal sum adjudged including interest for the first period.

14. The sole simple issue herein for our opinion is whether interest is payable on interest or whether 15% interest per annum awarded would be on the principal sum award plus 12% per annum interest on it for the pre-award period.

15. Section 29 of the Act provides that the court may in the decree order interest at the rate deemed reasonable to be paid on the principal sum as adjudged by the award meaning thereby in drawing the decree, the court may order for payment of interest on the principal sum as adjudged by the award. In other words, the court cannot order for payment of interest on interest but only on the principal sum adjudged.

16. Since the award under the Act is in the nature of a decree in terms of Section 17 of the aforesaid Act, it attracts the provisions of the Code of Civil Procedure[2] also to a limited extent namely insofar as award of interest is concerned and for the execution of the decree drawn pursuant to the award.

17. Section 34 of the CPC provides that where the decree is for payment of money, the court may order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged. Again,

2 hereinafter referred to as "CPC"

the reading of the aforesaid Sub-Section (1) of Section 34 CPC would reveal that the interest is payable on the principal sum adjudged and not on interest part of the award.

18. The Interest Act, 1978 vide Sub-Section (3) of Section 3 specifically lays down that nothing in Section 3 which permits the court to award interest shall empower the court to award interest upon interest. It means that ordinarily the courts are not entitled to award interest upon interest unless specifically provided either under any statute or under the terms and conditions of the contract.

19. In **Oil and Natural Gas Commission vs. M.C. Clelland Engineers S.A.**[3] which was also a case under the Act, this Court observed that there cannot be any doubt that the Arbitrators have power to grant interest akin to Section 34 CPC and it is clear that interest is not permissible upon interest awarded but only upon the claim made. In the aforesaid case, the claim made was in two parts, and in the second part, interest on delayed payment was also claimed. In that situation, the court held that the interest awarded would form part of the damages or compensation for delayed payment and would become part of the principal amount and thus, in that circumstances, Arbitrator has the power to grant interest on interest which partakes the compensation awarded.

20. In **State of Haryana and Others vs. S.L. Arora and Company**,[4] it was observed that interest, unless otherwise specified, refers to simple interest and that interest is payable only on principal amount and not on any accrued interest. It was further held that the compound interest can be awarded if there is a specific provision under the statute or in the contract for compounding of interest but no general discretion lies with the courts or tribunals to award compound interest or interest upon interest.

21. In **Hyder Consulting (UK) Limited vs. Governor, State of Orissa**,[5] this Court was dealing with Section 31(7) of the Arbitration and Conciliation Act, 1996, wherein for the purposes of payment of post-award interest, the phrase 'sum directed to be paid by award'

3 [1999] 2 SCR 830 : (1999) 4 SCC 327

4 [2010] 2 SCR 297 : (2010) 3 SCC 690

5 [2014] 14 SCR 1029 : (2015) 2 SCC 189

was used and it was held that it includes the pre-award interest and, therefore, post-award interest is payable on the sum awarded which includes pre-award interest. However, a distinction was made between Section 31(7) which simply uses the word 'sum' and Section 34 CPC wherein the phrase 'on principal sum adjudged' has been used. The departure in the use of the language in the two provisions was held to be of great significance which clearly showed that the term 'sum' under Section 31(7) refers to aggregate amount of the award and the pre-award interest whereas 'principal sum adjudged' under Section 34 CPC refers only to the amount awarded.

22. The case of **UHL Power Company Limited vs. State of Himachal Pradesh**,[6] is again in relation to interpretation of Section 31(7) of the Arbitration and Conciliation Act, 1996, wherein the principal laid down in **Hyder Consulting (UK) Limited** (supra) has been accepted.

23. In the light of the above legal provisions and the case law on the subject, it is evident that ordinarily courts are not supposed to grant interest on interest except where it has been specifically provided under the statute or where there is specific stipulation to that effect under the terms and conditions of the contract. There is no dispute as to the power of the courts to award interest on interest or compound interest in a given case subject to the power conferred under the statutes or under the terms and conditions of the contract but where no such power is conferred ordinarily, the courts do not award interest on interest.

24. Neither the Act specifically empowers the Arbitrator or the court to award interest upon interest or compound interest nor there is any other provision which provides for grant of compound interest or interest upon interest. Even Section 34 CPC is silent in this regard whereas Sub-Section (3) of Section 3 of the Interest Act specifically prohibits the same.

25. In view of the above legal position, we have to examine the award in question and the decree drawn in pursuance thereof to find out if compound interest or interest upon interest has been awarded.

26. The relevant part of the award pertaining to the interest and that of the decree has been reproduced hereinbefore.

6 [2022] 1 SCR 1 : (2022) 4 SCC 116

27. A plain reading of the aforesaid award and decree reveals that interest awarded under the award has been dissected into two parts. The first part relates to the pre-award period from the date of the completion of the work till the passing of the award whereas the second part is the post-award period commencing from the date of the award till the satisfaction of the award. In the first part, simple interest @ 12% per annum has been awarded on the 'amount awarded' whereas in the second part, interest @ 15% per annum has been awarded referring to the 'amount awarded'. The amount awarded in both the situations have to be the same and cannot be two distinct amounts. The 'amount awarded' refers to the principal amount of compensation awarded that is Rs.21,56,745/-. The award and the decree nowhere specifically contemplate for awarding 15% interest per annum on the amount awarded including the interest component i.e. the pre-award interest. This could not have been done even otherwise as there is no provision to that effect under the relevant statutes or the contract. No material has been placed before us or as a matter of fact before any court below to show that the terms and conditions of the contract contained any such provision.

28. In the light of the above discussion, we do not deem it appropriate under the facts and circumstances of the case to exercise our discretionary jurisdiction under Article 136 of the Constitution of India so as to interfere with the opinion expressed concurrently by the two courts below. Therefore, the Special Leave Petition is dismissed.

Result of the case: SLP dismissed.

†*Headnotes prepared by:* Divya Pandey

[2024] 8 S.C.R. 121 : 2024 INSC 586

Sri Dattatraya
v.
Sharanappa

(Criminal Appeal No. 3257 of 2024)

07 August 2024

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

Issue for Consideration

Whether the High Court had rightly affirmed the acquittal of the respondent in a complaint case moved for the offence punishable u/s. 138 of the Negotiable Instruments Act, 1881 by its judgment dated 03.03.2023.

Headnotes†

Negotiable Instruments Act, 1881 – ss.118, 138, 139 – Complainant-appellant case was that respondent had borrowed rupees two lakhs from him – Against the said loan the respondent issued a cheque, as a guarantee against repayment – Since the respondent failed to repay the loan despite repeated requests, the appellant presented the concerned cheque for encashment, as per the Bank Memo, the cheque was dishonoured on account of "insufficient funds" – A demand notice sent by the appellant – In reply to the demand notice, the respondent claimed that the accusations made by the appellant were false – Appellant filed a complaint case – The Trial Court adjudicated in favour of the respondent – The decision was affirmed by the High Court – Interference required or not:

Held: Applying the settled legal position to the present factual matrix, it is apparent that there existed a contradiction in the complaint moved by the appellant as against his cross-examination relatable to the time of presentation of the cheque by the respondent as per the statements of the appellant – This is to the effect that while the appellant claimed the cheque to have been issued at the time of advancing of the loan as a security, however, as per his statement during the cross-examination it was revealed that the same was presented when an alleged demand for repayment of alleged loan amount was raised before the respondent, after a period of six

* Author

months of advancement – Furthermore, there was no financial capacity or acknowledgement in his Income Tax Returns by the appellant to the effect of having advanced a loan to the respondent – Even further the appellant has not been able to showcase as to when the said loan was advanced in favour of the respondent nor has he been able to explain as to how a cheque issued by the respondent allegedly in favour of one M landed in the hands of the instant holder, that is, the appellant – The Trial Court had rightly observed that the appellant was not able to plead even a valid existence of a legally recoverable debt as the very issuance of cheque is dubious based on the fallacies and contradictions in the evidence adduced by the parties – Furthermore, the fact that the respondent had inscribed his signature on the agreement drawn on a white paper and not on a stamp paper as presented by the appellant, creates another set of doubt in the case – Since the accused has been able to cast a shadow of doubt on the case presented by the appellant, he has therefore successfully rebutted the presumption stipulated by Section 139 of the NI Act 1881 – The instant case pertains to challenge against concurrent findings of fact favouring the acquittal of the respondent, it is settled that this Court would ordinarily not interfere with such view considering the principle of liberty enshrined in Article 21 of the Constitution of India, unless perversity is blatantly forthcoming and there are compelling reasons – Thus, the present challenge to the aforesaid impugned judgment dated 03.03.2023 by the High Court is bereft of any merits and does not call for any interference. [Paras 27, 29, 31(ii), 33]

Negotiable Instruments Act, 1881 – Three essential conditions for invoking proceedings u/s.138:

Held: The NI Act 1881 enlists three essential conditions that ought to be fulfilled before the said provision of law can be invoked – Firstly, the cheque ought to have been presented within the period of its validity – Secondly, a demand of payment ought to have been made by the presenter of the cheque to the issuer, and lastly, the drawer ought to have had failed to pay the amount within a period of 15 days of the receipt of the demand. [Para 14]

Negotiable Instruments Act, 1881 – s.138 – Period of limitation:

Held: While referring to the period of limitation of one month of filing a complaint for the purpose of Section 138 of the NI Act 1881, the same is to begin after the drawer of the cheque has

failed to discharge his liability to the presenter within the prescribed period of 15 days as per the Proviso (c) to Section 138 of the NI Act 1881 – A cojoint reading of Sections 138 and 142 of the NI Act 1881 makes it clear that the cause of action only arises after the failure of the drawer to pay, subsequent to the receipt of the notice, and the complainant is restricted from initiating multiple complaints against the concerned drawer at different stages contemplated prior. [Para 16]

Negotiable Instruments Act, 1881 – s. 143 – Summary Trial – Attendance of accused – Non-bailable warrant:

Held: In light of such object encapsulated in the Amendment to Chapter VIII, the Parliament by virtue of Section 143 of the NI Act 1881 prescribed procedure of summary trial enlisted in provisions of Sections 260 to 265 of the CrPC 1973 to be adopted during proceedings under Section 138 of the NI Act 1881 – Therefore, it can be observed that the court shall adopt a liberal approach with regard to attendance of an accused person and until an accused's presence is indispensable, a court can allow for an exemption, in case of existence of any exceptional circumstances – Moreover, issuance of a non-bailable warrant in case of absence of the accused, at the first instance, shall, due to any circumstance, be avoided. [Para 17]

Negotiable Instruments Act, 1881 – s.139 – Presumption in favour of holder:

Held: The aforesaid presumption entails an obligation on the court conducting the trial for an offence under Section 138 of the NI Act 1881 to presume that the cheque in question was issued by the drawer or accused for the discharge of a particular liability – The use of expression "shall presume" ameliorates the conundrum pertaining to the right of the accused to present evidence for the purpose of rebutting the said presumption – Furthermore, the effect of such presumption is that, upon filing of the complaint along with relevant documents, thereby *prima facie* establishing the case against the drawer, the onus of proof shifts on the drawer or accused to adduce cogent material and evidence for rebutting the said presumption, and as established in Laxmi Dyechem v. State of Gujarat and others, based on preponderance of probabilities. [Para 19]

Jurisprudence – Criminal Jurisprudence – Essence of liberty – Presumption of innocence:

Held: Criminal jurisprudence emphasises on the fundamental essence of liberty and presumption of innocence unless proven guilty – This presumption gets emboldened by virtue of concurrent findings of acquittal – Therefore, this court must be extra cautious while dealing with a challenge against acquittal as the said presumption gets reinforced by virtue of a well-reasoned favourable outcome – Consequently, the onus on the prosecution side becomes more burdensome pursuant to the said double presumption. [Para 31(i)]

Criminal Law – Where two views are possible – Concurrent findings of acquittal:

Held: Where two views are possible, then this Court would not ordinarily interfere and reverse the concurrent findings of acquittal – However, where the situation is such that the only conclusion which could be arrived at from a comprehensive appraisal of evidence, shows that there has been a grave miscarriage of justice, then, notwithstanding such concurrent view, this Court would not restrict itself to adopt an oppugnant view. [State of Uttar Pradesh v. Dan Singh]. [Para 31(iii)]

Criminal Law – Concurrent findings favoring accused – When interference required:

Held: In situations of concurrent findings favoring accused, interference is required where the trial court adopted an incorrect approach in framing of an issue of fact and the appellate court whilst affirming the view of the trial court, lacked in appreciating the evidence produced by the accused in rebutting a legal presumption. [Rajesh Jain v. Ajay Singh] – Furthermore, such interference is necessitated to safeguard interests of justice when the acquittal is based on some irrelevant grounds or fallacies in re-appreciation of any fundamental evidentiary material or a manifest error of law or in cases of non-adherence to the principles of natural justice or the decision is manifestly unjust or where an acquittal which is fundamentally based on an exaggerated adherence to the principle of granting benefit of doubt to the accused, is liable to be set aside – Say in cases where the court severed the connection between accused and criminality committed by him upon a cursory examination of evidences. [State of Punjab v. Gurpreet Singh and Others and Rajesh Prasad v. State of Bihar]. [Para 31 (v)(vi)]

Case Law Cited

Hiten P. Dalal v. Bratindranath Banerjee [2001] 3 SCR 900 **: (2001) 6 SCC 16;** *K.N. Beena v. Muniyappan and Another* [2001] Supp. 4 SCR 374 **: (2001) 8 SCC 458;** *Babu v. State of Kerala* [2010] 9 SCR 1039 **: (2010) 9 SCC 189 – relied on.**

Rangappa v. Sri Mohan [2010] 6 SCR 507 **: (2010) 11 SCC 441;** *ICDS Ltd. v. Beena Shabeer and Another* [2002] Supp. 1 SCR 488 **: (2002) 6 SCC 426;** *Sadanandan Bhadran v. Madhavan Sunil Kumar* [1998] Supp. 1 SCR 178 **: (1998) 6 SCC 514;** *K. Bhaskaran v. Sankaran Vaidhyan Balan and Another* [1999] Supp. 3 SCR 271 **: (1999) 7 SCC 510;** *Laxmi Dyechem v. State of Gujarat and Others* [2012] 11 SCR 466 **: (2012) 13 SCC 375;** *Rajesh Jain v. Ajay Singh* [2023] 13 SCR 788 **: (2023) 10 SCC 148;** *Bir Singh v. Mukesh Kumar* [2019] 2 SCR 24 **: (2019) 4 SCC 197;** *State of Uttar Pradesh v. Dan Singh* [1997] 1 SCR 764 **: (1997) 3 SCC 747;** *State of Punjab v. Gurpreet Singh and Others* [2024] 2 SCR 1039 **: (2024) 4 SCC 469;** *Rajesh Prasad v. State of Bihar* [2022] 3 SCR 1046 **: (2022) 3 SCC 471;** *M/s Rajco Steel Enterprises v. Kavita Saraff and Another* [2024] 4 SCR 255 **: (2024) SCC OnLine SC 518 – referred to.**

List of Acts

Negotiable Instruments Act, 1881; Constitution of India; Penal Code, 1860; Code of Criminal Procedure, 1973.

List of Keywords

Negotiable Instruments; Section 138 of the Negotiable Instruments Act, 1881; Section 118 of the Negotiable Instruments Act, 1881; Section 139 of the Negotiable Instruments Act, 1881; Presumption in favour of holder of a cheque; Summary Trial; Attendance of accused; Non-bailable warrant; Discharge of a particular liability; Rebutting the presumption; Cogent material and evidence; Preponderance of probabilities; Failure of the drawer to pay; Receipt of demand notice; Financial capacity; Legally recoverable debt; Issuance of cheque; Fallacies and contradictions in the evidence; Concurrent findings of fact; Article 21 of the Constitution.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3257 of 2024

From the Judgment and Order dated 03.03.2023 of the High Court of Karnataka at Kalaburagi in CRLA No. 200139 of 2019

Appearances for Parties

Anand Sanjay M Nuli, Sr. Adv., M/s. Nuli & Nuli, Ms. Akhila Wali, Suraj Kaushik, Agam Sharma, Advs. for theAppellant.

Ms. Supreeta Sharanagouda, Sharanagouda Patil, Jyotish Pandey, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Augustine George Masih, J.

1. Leave granted.

2. The instant appeal was originally preferred as a petition before this Court, which is moved against the impugned Judgment dated 03.03.2023 in Criminal Appeal No. 200139 of 2019 by the High Court of Karnataka at Kalaburagi whereby the learned Single Judge affirmed the acquittal of the Respondent in Complaint Case No. 468 of 2014 moved for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "NI Act 1881").

3. The factual backdrop giving rise to the present challenge is that the Appellant is the original complainant who claims to know the sole Respondent for the last six years and that he had borrowed INR 2,00,000/- (Rupees Two Lakhs only) from the Appellant on account of family necessities and accommodation. Against the said loan the Respondent issued a cheque bearing No. 015639 which was drawn on the Bank of India, as a guarantee against repayment. He was to repay the said loan amount within a period of six months thereof. An agreement to this effect was also signed between the parties.

4. However, since the Respondent failed to repay the loan despite repeated requests, the Appellant presented the concerned cheque for encashment on 22.10.2013, but nevertheless, as per the Bank Memo dated 24.10.2013, the cheque was dishonoured on account of "insufficient funds".

5. Aggrieved from the said dishonour of cheque, a Demand Notice dated 31.10.2013 was sent by the Appellant to the Respondent, whereby, the Counsel on behalf of the Appellant alleged that the Respondent had intentionally cheated him and had not made any

efforts to discharge his liability. Accordingly, the Respondent was said to have committed offences punishable under Section 138 of the NI Act 1881 and Section 420 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC 1860").

6. Thereupon, the Respondent moved a Reply Notice dated 11.11.2013 whereby he claimed that the accusations made by the Appellant are false and bereft of pertinent details of the loan transaction, *inter alia*, the date and time of advancement of the said debt, which as claimed, was never advanced.

7. Unsatisfied with the response of the Respondent through the said Reply Notice, Appellant moved a Private Complaint No. 991 of 2013 under Section 200 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC 1973"). The said complaint came to be registered as CC/468/2014 before Judicial Magistrate First Class at Gulbarga. As part of the proceedings before the Trial Court, the Appellant examined himself as PW-01, while the Respondent examined himself as DW-01. However, the latter did not mark any documents from his side. It was the Respondent's plea that the concerned cheque was issued in favour of one Mr Mallikarjun in the year 2012 for security purposes, however, he did not return the same to the Respondent, and instead had left the village. While dealing with the said contention, the Trial Court observed that the Respondent had failed to explain as to how the cheque landed in the hands of the Appellant, and for what purpose was the cheque issued to Mr Mallikarjun.

8. It was also revealed as part of the statement during cross-examination of the Appellant that the cheque was originally, not given to the Appellant as security cheque. Instead, the same was allegedly given to the Appellant after the Respondent had thereby failed to repay his liability as existing against the Appellant after a period of six months. The Court further observed that the Agreement marked by the Appellant to assist his case does not include signature of the Respondent as against the terms of the agreement, but a signature is made by the Respondent on the stamp paper itself, and the same is not sustainable in the eyes of law. The Court also went on to scrutinize the Income Tax Returns of the Appellant, from where it was revealed that the Appellant failed to declare the alleged loan transaction as part of his returns to the Income Tax Department.

Accordingly, vide its Judgment dated 18.10.2019, the Trial Court adjudicated in favour of the Respondent, resultantly dismissing the complaint moved by the Appellant and acquitting the Respondent.

9. Aggrieved by the decision of Trial Court, the Appellant moved the High Court of Karnataka in Criminal Appeal No. 200139 of 2019, which went on to observe that, admittedly, there was a contradiction in the statement of the Appellant as to when the cheque was issued in his favour. Furthermore, as was laid down in the decision of this Court in ***Rangappa v. Sri Mohan***,[1] the presumption under Section 139 of the NI Act 1881 is a rebuttable one. The contention of the Respondent as to the financial capacity of the Appellant to grant a loan in his favour was to be discharged by him, and being unable to do so, it shall be presumed that a loan transaction had not taken place. Accordingly, the findings of the Trial Court were affirmed in the impugned Judgment dated 03.03.2023.

10. The Appellant has thereupon moved this Court in challenge to the said impugned judgment on the grounds that as the signature on the concerned cheque was admitted by the Respondent, the Appellant was able to successfully raise a presumption under Section 139 of the NI Act 1881 and as per the submissions of the Respondent, he had failed to rebut the said presumption. He also put forth that the reliance on the decision in ***Rangappa*** ***(supra)*** by the High Court was misplaced, and even going by the standard of preponderance of probabilities, the Respondent failed to discharge his onus.

11. Having heard the learned Senior Advocate for the Appellant as well as the learned Counsel on behalf of the Respondent, it is imperative to deliberate over the position of law apropos the applicable provisions of the NI Act 1881, and others, if any.

12. Earlier, a case of dishonour of a cheque was dealt through provisions of Section 420 read with Section 415 of the IPC 1860. To enhance the acceptability of cheques as well as to provide for adequate safeguards to prevent harassment of honest drawers through painting the liability arising out of dishonour of a cheque with a punitive brush, an amendment to the NI Act 1881 was brought about by introducing Chapter VIII. Thence, seeking to promote credibility in transactions

1 [2010] 6 SCR 507 : (2010) 11 SCC 441.

through the medium of banking channels and operations as well as their efficacy. Section 138 of the NI Act 1881 is reproduced below as:

> "***138. Dishonour of cheque for insufficiency, etc., of funds in the account.***
>
> *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years', or with fine which may extend to twice the amount of the cheque, or with both:*
>
> *Provided that nothing contained in this section shall apply unless—*
>
> *(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
>
> *(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*
>
> *(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.*
>
> *Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability.*"

13. This Court in ***ICDS Ltd. v. Beena Shabeer and Another***,[2] has held that proceedings under Section 138 of the NI Act 1881 can be initiated even if the cheque was originally issued as security and was subsequently dishonoured owing to insufficient funds. The failure to honour the concerned cheque is *per se* deemed as a commission of an offence under Section 138 of the NI Act 1881.

14. The NI Act 1881 enlists three essential conditions that ought to be fulfilled before the said provision of law can be invoked. Firstly, the cheque ought to have been presented within the period of its validity. Secondly, a demand of payment ought to have been made by the presenter of the cheque to the issuer, and lastly, the drawer ought to have had failed to pay the amount within a period of 15 days of the receipt of the demand. These principles and pre-requisites stand well established through Judgment of this Court in ***Sadanandan Bhadran v. Madhavan Sunil Kumar***.[3] There is an explicit limitation of 30 days, beginning from period when the cause of action arose, prescribed by the statute vide Section 142(b) of the NI Act 1881 to initiate proceedings under Section 138 of the NI Act 1881.

15. Furthermore, this Court expounded that the issuance of cheque towards a liability, the presentation of the cheque within the prescribed period, its return on account of dishonour, notice to the accused, and failure to pay within 15 days thereof, stand as *sine qua non* for an offence under Section 138 of the NI Act 1881 as per the decision in ***K. Bhaskaran v. Sankaran Vaidhyan Balan and Another***.[4] The same was subsequently reiterated in numerous judgments of this Court as well as that of the High Courts.

16. While referring to the period of limitation of one month of filing a complaint for the purpose of Section 138 of the NI Act 1881, the same is to begin after the drawer of the cheque has failed to discharge his liability to the presenter within the prescribed period of 15 days as per the *Proviso* (c) to Section 138 of the NI Act 1881. A co-joint reading of Sections 138 and 142 of the NI Act 1881 makes it clear that the cause of action only arises after the failure of the drawer to pay, subsequent to the receipt of the notice, and the complainant is

2 [2002] Supp. 1 SCR 488 : (2002) 6 SCC 426.

3 [1998] Supp. 1 SCR 178 : (1998) 6 SCC 514.

4 [1999] Supp. 3 SCR 271 : (1999) 7 SCC 510.

restricted from initiating multiple complaints against the concerned drawer at different stages contemplated prior.

17. Furthermore, in light of such object encapsulated in the Amendment to Chapter VIII, the Parliament by virtue of Section 143 of the NI Act 1881 prescribed procedure of summary trial enlisted in provisions of Sections 260 to 265 of the CrPC 1973 to be adopted during proceedings under Section 138 of the NI Act 1881. Therefore, it can be observed that the court shall adopt a liberal approach with regard to attendance of an accused person and until an accused's presence is indispensable, a court can allow for an exemption, in case of existence of any exceptional circumstances. Moreover, issuance of a non-bailable warrant in case of absence of the accused, at the first instance, shall, due to any circumstance, be avoided.

18. As the presumption contemplated by virtue of Section 118 of the NI Act 1881 entails, Section 139 was similarly introduced to provide for a presumption that the holder of cheque had received the concerned issued cheque towards discharging of the liability of the drawer, either in whole or in part. Therefore, at this juncture, it is ideal to make a reference to Section 118 of the NI Act 1881, which is reproduced as:

> "***118. Presumptions as to negotiable instruments***
>
> *Until the contrary is proved, the following presumptions shall be made:—*
>
> (a) *of consideration:—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;*
>
> (b) *as to date:—that every negotiable instrument bearing a date was made or drawn on such date;*
>
> (c) *as to time of acceptance:—that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;*
>
> (d) *as to time of transfer:—that every transfer of a negotiable instrument was made before its maturity;*

(e) *as to order of indorsements:—that the indorsements appearing upon a negotiable instrument were made in the order in which they appear then on;*

(f) *as to stamp:— that a lost promissory note, bill of exchange or cheque was duly stamped;*

(g) *that holder is a holder in due course:—that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.*"

Chapter XIII of the NI Act 1881, of which Section 118 is a part, lays down special rules for evidence to be adduced within the scheme of the Act herein. As the text of the said provision showcases, it raises a rebuttable presumption as against the drawer to the extent that the concerned negotiable instrument was drawn and subsequently accepted, indorsed, negotiated, or transferred for an existing consideration, and the date so designated on such an instrument is the date when the concerned negotiable instrument was drawn. It is also further presumed that the same was transferred before its maturity and that the order in which multiple indorsements appear on such an instrument, that is the deemed order thereon. Lastly, the holder of a negotiable instrument is one in its due course, subject to a situation where the concerned instrument while being obtained from a lawful owner and from his or her lawful custody thereof through undertaking of an offence as contemplated under any statute or through the means of fraud, the burden to prove him or her being a holder in due course, instead, lies upon such a holder.

19. Accordingly, to begin with, the bare provision of Section 139 of the NI Act 1881 is reproduced herein below:

> "***139. Presumption in favour of holder—****It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section138 for the discharge, in whole or in part, of any debt or other liability.*"

The aforesaid presumption entails an obligation on the court conducting the trial for an offence under Section 138 of the NI Act 1881 to presume that the cheque in question was issued by the drawer or accused for the discharge of a particular liability. The use of expression "shall presume" ameliorates the conundrum pertaining to the right of the accused to present evidence for the purpose of rebutting the said presumption. Furthermore, the effect of such presumption is that, upon filing of the complaint along with relevant documents, thereby *prima facie* establishing the case against the drawer, the onus of proof shifts on the drawer or accused to adduce cogent material and evidence for rebutting the said presumption, and as established in ***Laxmi Dyechem v. State of Gujarat and Others***,[5] based on preponderance of probabilities.

20. While describing the offence envisaged under Section 138 of the NI Act 1881 as a regulatory offence for largely being in the nature of a civil wrong with its impact confined to private parties within commercial transactions, the 3-Judge Bench in the decision of ***Rangappa*** ***(supra)*** highlighted Section 139 of the NI Act 1881 to be an example of a reverse onus clause. This is done so, as the Court expounds, in the light of Parliament's intent, which can be culled out from the peculiar placing of act of dishonour of cheque in a statute having criminal overtones. The underlying object of such deliberate placement is to inject and enhance credibility of negotiable instruments. Additionally, the reverse onus clause serves as an indispensable "device to prevent undue delay in the course of litigation". While acknowledging the test of proportionality and having laid the interpretation of Section 139 of the NI Act 1881 hereof, it was further held that an accused cannot be obligated to rebut the said presumption through an unduly high standard of proof. This is in light of the observations laid down by a co-ordinate Bench in ***Hiten P. Dalal v. Bratindranath Banerjee***,[6] whereby it was clarified that the rebuttal ought not to be undertaken conclusively by an accused, which is reiterated as follows:

> "***23.*** *In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion,*

5 [2012] 11 SCR 466 : (2012) 13 SCC 375.

6 [2001] 3 SCR 900 : (2001) 6 SCC 16.

> *but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when,*
>
> > *'after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists' [Section 3, Evidence Act].*
> >
> > *Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the 'prudent man'.*"

Therefore, it may be said that the liability of the defence in cases under Section 138 of the NI Act 1881 is not that of proving its case beyond reasonable doubt.

21. In light of the aforesaid discussion, and as underscored by this Court recently in the decision of ***Rajesh Jain v. Ajay Singh***,[7] an accused may establish non-existence of a debt or liability either through conclusive evidence that the concerned cheque was not issued towards the presumed debt or liability, or through adduction of circumstantial evidence vide standard of preponderance of probabilities.

22. Since a presumption only enables the holder to show a *prima facie* case, it can only survive before a court of law subject to contrary not having been proved to the effect that a cheque or negotiable instrument was not issued for a consideration or for discharge of any existing or future debt or liability. In this backdrop, it is pertinent to make a reference to a decision of 3-Judge Bench in ***Bir Singh v. Mukesh Kumar***,[8] which went on to hold that if a signature on a blank cheque stands admitted to having been inscribed voluntarily, it is sufficient to trigger a presumption under Section 139 of the NI Act 1881, even if there is no admission to the effect of execution of entire contents in the cheque.

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7 [2023] 13 SCR 788 : (2023) 10 SCC 148.

8 [2019] 2 SCR 24 : (2019) 4 SCC 197.

23. It is therefore apposite to make a reference to the provision of Section 140 of the NI Act 1881, which ruminates *mens rea* to be immaterial while dealing with proceedings under Section 138 of the NI Act 1881. The said legislative wisdom of the Parliament which is imbibed in the bare text of the provision is reproduced as below:

> "***140. Defence which may not be allowed in any prosecution under section 138—****It shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.*"

24. Through this legal fiction adopted by the legislature vide Amendment Act of 1988 to the NI Act 1881 it has barred the drawer of a cheque, which was dishonoured, to take a defence that at the time of issuance of the cheque in question he or she had no reason to believe that the same will be dishonoured upon being presented by the holder of such a cheque, especially and specifically for the reasons underlined in Section 138 of the NI Act 1881.

25. A comprehensive reference to the Sections 118, 139 and 140 of the NI Act 1881 gives birth to a deemed fiction which was also articulated by this Court in ***K.N. Beena v. Muniyappan and Another***[9] as follows:

> "*Under section 118, unless the contrary was proved, it is to be presumed that the negotiable instrument (including a cheque) had been made or drawn for consideration. Under section 139 the court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for discharge, in whole or in part, of a debt or liability. Thus, in complaints under section 138, the court has to presume that the cheque had been issued for a debtor's liability. This presumption is rebuttable. However, the burden of proving that a cheque had not been issued for a debt or liability is on the accused. The Supreme Court in the case of Hiten P. Dalal v. Bratindranath Banerjee has also taken an identical view.*"

9 [2001] Supp. 4 SCR 374 : (2001) 8 SCC 458.

26. Furthermore, on the aspect of adducing evidence for rebuttal of the aforesaid statutory presumption, it is pertinent to cumulatively read the decisions of this Court in ***Rangappa*** ***(supra)*** and ***Rajesh Jain*** ***(supra)*** which would go on to clarify that accused can undoubtedly place reliance on the materials adduced by the complainant, which would include not only the complainant's version in the original complaint, but also the case in the legal or demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice, his Section 313 CrPC 1973 statement or at the trial as to the circumstances under which the promissory note or cheque was executed. The accused ought not to adduce any further or new evidence from his end in said circumstances to rebut the concerned statutory presumption.

27. Applying the aforementioned legal position to the present factual matrix, it is apparent that there existed a contradiction in the complaint moved by the Appellant as against his cross-examination relatable to the time of presentation of the cheque by the Respondent as per the statements of the Appellant. This is to the effect that while the Appellant claimed the cheque to have been issued at the time of advancing of the loan as a security, however, as per his statement during the cross-examination it was revealed that the same was presented when an alleged demand for repayment of alleged loan amount was raised before the Respondent, after a period of six months of advancement. Furthermore, there was no financial capacity or acknowledgement in his Income Tax Returns by the Appellant to the effect of having advanced a loan to the Respondent. Even further the Appellant has not been able to showcase as to when the said loan was advanced in favour of the Respondent nor has he been able to explain as to how a cheque issued by the Respondent allegedly in favour of Mr Mallikarjun landed in the hands of the instant holder, that is, the Appellant.

28. Admittedly, the Appellant was able to establish that the signature on the cheque in question was of the Respondent and in regard to the decision of this Court in ***Bir Singh*** ***(supra)***, a presumption is to ideally arise. However, in the above referred context of the factual matrix, the inability of the Appellant to put forth the details of the loan advanced, and his contradictory statements, the ratio therein would not impact the present case to the effect of giving rise to the statutory presumption under Section 139 of the NI Act 1881. The

Respondent has been able to shift the weight of the scales of justice in his favour through the preponderance of probabilities.

29. The Trial Court had rightly observed that the Appellant was not able to plead even a valid existence of a legally recoverable debt as the very issuance of cheque is dubious based on the fallacies and contradictions in the evidence adduced by the parties. Furthermore, the fact that the Respondent had inscribed his signature on the agreement drawn on a white paper and not on a stamp paper as presented by the Appellant, creates another set of doubt in the case. Since the accused has been able to cast a shadow of doubt on the case presented by the Appellant, he has therefore successfully rebutted the presumption stipulated by Section 139 of the NI Act 1881.

30. Moreover, affirming the findings of the Trial Court, the High Court observed that while the signature of the Respondent on the cheque drawn by him as well as on the agreement between the parties herein stands admitted, in case where the concern of financial capacity of the creditor is raised on behalf of an accused, the same is to be discharged by the complainant through leading of cogent evidence.

31. The instant case pertains to challenge against concurrent findings of fact favouring the acquittal of the respondent, it would be cogent to delve into an analysis of the principles underlining the exercise of power to adjudicate a challenge against acquittal bolstered by concurrent findings. The following broad principles can be culled out after a comprehensive analysis of judicial pronouncements:

    i) Criminal jurisprudence emphasises on the fundamental essence of liberty and presumption of innocence unless proven guilty. This presumption gets emboldened by virtue of concurrent findings of acquittal. Therefore, this court must be extra-cautious while dealing with a challenge against acquittal as the said presumption gets reinforced by virtue of a well-reasoned favourable outcome. Consequently, the onus on the prosecution side becomes more burdensome pursuant to the said double presumption.

    ii) In case of concurrent findings of acquittal, this Court would ordinarily not interfere with such view considering the principle of liberty enshrined in Article 21 of the Constitution of India 1950, unless perversity is blatantly forthcoming and there are compelling reasons.

iii) Where two views are possible, then this Court would not ordinarily interfere and reverse the concurrent findings of acquittal. However, where the situation is such that the only conclusion which could be arrived at from a comprehensive appraisal of evidence, shows that there has been a grave miscarriage of justice, then, notwithstanding such concurrent view, this Court would not restrict itself to adopt an oppugnant view. [Vide ***State of Uttar Pradesh v. Dan Singh***[10]]

iv) To adjudge whether the concurrent findings of acquittal are '*perverse'* it is to be seen whether there has been failure of justice. This Court in ***Babu v. State of Kerala***[11] clarified the ambit of the term 'perversity' as

> "*if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/admissible material. The finding may also be said to be perverse if it is 'against the weight of evidence', or if the finding so outrageously defies logic as to suffer from the vice of irrationality.*"

v) In situations of concurrent findings favoring accused, interference is required where the trial court adopted an incorrect approach in framing of an issue of fact and the appellate court whilst affirming the view of the trial court, lacked in appreciating the evidence produced by the accused in rebutting a legal presumption. [Vide ***Rajesh Jain v. Ajay Singh***[12]]

vi) Furthermore, such interference is necessitated to safeguard interests of justice when the acquittal is based on some irrelevant grounds or fallacies in re-appreciation of any fundamental evidentiary material or a manifest error of law or in cases of non-adherence to the principles of natural justice or the decision is manifestly unjust or where an acquittal which is fundamentally based on an exaggerated adherence to the principle of granting benefit of doubt to the accused, is liable to be set aside. Say in

10 [1997] 1 SCR 764 : (1997) 3 SCC 747

11 [2010] 9 SCR 1039 : (2010) 9 SCC 189

12 [2023] 13 SCR 788 : (2023) 10 SCC 148

cases where the court severed the connection between accused and criminality committed by him upon a cursory examination of evidences. [Vide ***State of Punjab v. Gurpreet Singh and Others***[13] and ***Rajesh Prasad v. State of Bihar***[14]]

32. Upon perusal of the aforementioned principles and applying them to the facts and circumstances of the present matter, it is evident that there is no perversity and lack of evidence in the case of the respondent-accused. The concurrent findings have backing of detailed appraisal of evidences and facts, therefore, do not warrant interference in light of above enlisted principles. In a similar set of facts as in the present case, involving criminal liability arising out of dishonour of cheque, this Court in ***M/s Rajco Steel Enterprises v. Kavita Saraff and Another***[15] dejected from reversing the concurrent findings of acquittal of accused therein and underscored the principle of non-interference, unless such findings are perverse or bereft of evidentiary corroboration or lacks question of law.

33. In furtherance of the aforesaid principles and the reasons ascribed thereof, the present challenge to the aforesaid impugned judgment dated 03.03.2023 by the High Court of Karnataka at Kalaburagi is bereft of any merits and does not call for any interference of this court.

34. The instant appeal is dismissed and the findings of the High Court in the impugned judgment dated 03.03.2023 are affirmed.

35. Pending applications, if any, also stand disposed of.

Result of the case: Appeal dismissed.

†*Headnotes prepared by:* Ankit Gyan

13 [2024] 2 SCR 1039 : (2024) 4 SCC 469.

14 [2022] 3 SCR 1046 : (2022) 3 SCC 471.

15 [2024] 4 SCR 255 : 2024 SCC OnLine SC 518.

[2024] 8 S.C.R. 140 : 2024 INSC 565

M/s Pro Knits
v.
The Board of Directors of Canara Bank & Ors.

(Civil Appeal No. 8332 of 2024)

01 August 2024

[Bela M. Trivedi* and R. Mahadevan, JJ.]

Issue for Consideration

Whether the Notification dated 29.05.2015 issued by the Central Government in exercise of the powers conferred under Section 9 of the Micro, Small and Medium Enterprises Development Act, 2006, containing Instructions for the "Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises" as revised from time to time, is mandatory or directory.

Headnotes†

Micro, Small and Medium Enterprises Development Act, 2006 – ss.9, 10 – The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Banking Regulation Act, 1949 – ss.21, 35A – Loan accounts of the appellants-MSMEs were classified as Non-Performing Assets (NPA) by the respondents-Banks/Non-Banking Financial Companies (NBFCs) without following the procedure laid down in the Instructions for Framework for Revival and Rehabilitation of MSMEs issued vide Notification dated 29.05.2015 to provide a simpler and faster mechanism to address the stress in the accounts of MSMEs and to facilitate the promotion and development of MSMEs – Challenged by appellants – Writ petitions dismissed by High Court holding that the Banks/ NBFCs were not obliged to adopt the restructuring process contemplated in the aforesaid Notification on its own without there being any application by the MSMEs – Correctness:

Held: Not correct – Instructions for the "Framework for Revival and Rehabilitation of MSMEs" as notified vide Notification dated 29.05.2015 in exercise of the powers conferred u/s.9 of the MSMED Act, as revised by the RBI Notification dated 17.03.2016 and the Reserve Bank of India (Lending to Micro, Small and Medium Enterprises Sector) Directions, 2016, issued by RBI in exercise of the powers conferred by ss.21 and 35(A) of the Banking Regulation

* Author

Act, having statutory force, are mandatory in nature and binding on all Scheduled Commercial Banks, licensed to operate in India by RBI – Under the "Framework for Revival and Rehabilitation of MSMEs", the banks or creditors are required to identify the incipient stress in the account of the MSMEs, before their accounts turn into non-performing assets, by creating three sub-categories under the "Special Mention Account" Category – Further, it is also incumbent on the part of the concerned MSME to produce authenticated and verifiable doucments/material for substantiating its claim of being MSME, before its account is classified as NPA – If that is not done, and once the account is classified as NPA, the banks-secured creditors would be entitled to take the recourse to Chapter III of the SARFAESI Act for the enforcement of the security interest – Impugned order set aside. [Paras 13, 16, 19]

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Chapter III; ss.35, 13 – Enforcement of security interest created in favour of secured creditor – Process of initiation:

Held: Security interest created in favour of any Bank or secured creditor may be enforced by such creditor in accordance with the provisions contained in Chapter-III of the SARFAESI Act – As per s.35, the provisions of the SARFAESI Act have the effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law – However, the process of enforcement of security interest as contained in Chapter III could be initiated only when the borrower makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, in view of Section 13(2) of the said Act. [Para 14]

Banking Regulation Act, 1949 – ss.21, 35A – Directions issued under, mandatory:

Held: ss.21 and 35A empower the RBI to frame the policy and give directions to the banking companies in relation to the advances to be followed – Such directions supplement the provisions of the Banking Regulation Act and have statutory force and are mandatory. [Para 13]

Micro, Small and Medium Enterprises Development Act, 2006 – Securitisation and Reconstruction of Financial Assets

and Enforcement of Security Interest Act, 2002 – MSMEs obligated to substantiate their claim of being MSME and to show their eligibility to get the benefit of the Framework for Revival and Rehabilitation of MSMEs issued vide Notification dtd. 29.05.2015:

Held: It is mandatory or obligatory on the part of the Banks to follow the Instructions/Directions issued by the Central Government and the RBI with regard to the Framework for Revival and Rehabilitation of MSMEs – Thus, it is equally incumbent on the part of the concerned MSMEs to be vigilant enough to follow the process laid down under the said Framework, and bring to the notice of the concerned Banks, by producing authenticated and verifiable documents/material to show its eligibility to get the benefit of the said Framework. [Para 17]

List of Acts

Micro, Small and Medium Enterprises Development Act, 2006; The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; Banking Regulation Act, 1949.

List of Keywords

Micro, Small and Medium Enterprises; MSMEs; Framework for Revival, Rehabilitation of MSMEs; Promotion and development of MSMEs; Instructions/Directions/Guidelines issued by RBI; Guidelines/instructions pertaining to MSMEs; Loan accounts; Non-Performing Assets (NPA); Banks and Non-Banking Financial Companies (NBFCs); Restructuring process; Mandatory instructions; Mandatory; Directory; Incipient stress; Secured creditors; Security interest; Enforcement of security interest; Reserve Bank of India (RBI); Defaulters-Borrowers; RBI Notification; Banking companies.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No.8332 of 2024

From the Judgment and Order dated 11.01.2024 of the High Court of Judicature at Bombay in WPL No.20100 of 2023

With

Civil Appeal Nos. 8333, 8334, 8335, 8336 and 8337 of 2024

Appearances for Parties

Nikhil Goel, Sr. Adv., Nachiketa Vajpayee, Ms. Divyangna Malik, Sriram P., Mathews J. Nedumpara, Ms. Usha Nandini V., Ms. Maria Nedumpara, Ms. Hemali Kurne, Ms. Rohini Amin, Shameem Fayiz, Advs. for the Appellant.

Dinkar Singh, Deepak Goel, Ms. Alka Goyal, Ms. Rubi Kumari, Ms. Harshita Maheshwari, Rajesh Kumar Gautam, Anant Gautam, Dinesh Sharma, Ms. Shivani Sagar, R.P. Daida, Ms. Kavitoli G Yeptho, Kushagra Nilesh Sahay, Ajay Choudhary, Tikshta Modi, Sonia Munjal, Anshuman Gupta, Prashant Alai, Kunal Mimani, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Bela M. Trivedi, J.

1. Leave granted.

2. The Appellants in this batch of Appeals, who claim themselves to be the Micro, Small and Medium Enterprises (MSMEs) registered under the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the "MSMED Act"), have challenged the impugned common order dated 11.01.2024 passed by the High Court of Judicature at Bombay in Writ Petition (L) No. 20100 of 2023 and Others, whereby the High Court has dismissed the said Writ Petitions by holding that the Banks/ Non-Banking Financial Companies (NBFCs) are not obliged to adopt the restructuring process as contemplated in the Notification dated 29th May, 2015 issued by the Ministry of Micro, Small and Medium Enterprises, on its own without there being any application by the Petitioners/ MSMEs. The High Court without expressing any opinion on the merits or the factual aspects of the writ petitions granted leave to the Appellants -Writ Petitioners to agitate the other issues by adopting alternative remedies as may be available to them under the law.

3. The learned Counsels for the parties in the instant Appeals have also restricted their submissions only to the said issue decided by the High Court, without addressing other issues on the facts and merits involved in the writ petitions.

4. The Appellants who were the Writ Petitioners before the High Court had basically challenged the actions of the Respondents Banks/ NBFCs taken by them against the appellants under the provisions contained in The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act"). The bone of contention raised by the learned Counsel Mr. Mathews Nedumpara appearing for the Appellants in all the Appeals is that the respondents-Banks could not have classified the loan accounts of the appellants who were the MSMEs, as Non-Performing Assets (NPA), without following the procedure laid down in the Instructions for Framework for Revival and Rehabilitation of MSMEs issued vide the Notification dated 29th May, 2015 by the Ministry of MSME, in exercise of the powers conferred under Section 9 of the MSMED Act. According to him, it was incumbent on the part of the Respondents Banks/ NBFCs to identify incipient stress in the account by creating three sub categories as mentioned in the said Notification and to explore various options to resolve the stress in the account as contemplated in the said Notification. He further submitted that the said Notification and the subsequent Instructions/Directions issued by the Central Government and the Reserve Bank of India are for the purpose of facilitating the promotion and development and enhancing the competitiveness of MSMEs and therefore it was mandatory on the part of the respondents to follow the same. Non-observance of the mandatory Instructions contained in the said Notification has rendered all the subsequent actions taken by the respondents under the SARFAESI Act, illegal and *void ab initio*.

5. However, the learned Counsels appearing for the Respondents Banks/ NBFCs contended that the High Court has rightly not considered the process or procedure laid down in the Notification dated 29.05.2015 as mandatory, in as much as the provisions contained in the SARFAESI Act override the provisions of the other Acts including the MSME Act as per Section 35 of the said Act. In the instant cases, the concerned appellants had not applied to the Respondents Banks to avail the benefit of the said Notification at the relevant time and the Respondents Banks have already initiated and in certain cases concluded the proceedings undertaken under the SARFAESI Act after following the due process of law. They further submitted that the process of restructuring as contemplated in the

said Notification and classification of borrower's account as NPA are two independent subjects and therefore it can not be interpreted that unless the procedure under the said Notification for restructuring is adopted, the appellants accounts could not have been classified as NPAs. According to them, the Instructions issued under Section 9 of the MSMED Act are mere directory and not mandatory nor do they have any statutory force.

6. Before delving into the issue involved in the instant appeals as to whether the Notification dated 29.05.2015 issued by the Central Government in exercise of the powers conferred under Section 9 of the MSMED Act, as revised from time to time, is mandatory or directory, let us have a glance over the relevant provisions of the MSMED Act. It may be noted that the very object and purpose of the MSMED Act is to provide for facilitating the promotion and development and enhancing the competitiveness of Micro, Small and Medium Enterprises and for matters connected therewith and incidental thereto. Section 9 thereof empowers the Central Government to take measures for the purpose of facilitating such promotion and development and enhancing competitiveness of MSMEs by specifying the programmes, guidelines or instructions as it may deem fit, by issuing Notifications.

7. Section 10 of the MSMED Act states that the policies and practices in respect of the credit to the Micro, Small and Medium Enterprises shall be progressive and such as may be specified in the guidelines or instructions issued by the Reserve Bank, from time to time, to ensure timely and smooth flow of credit to such enterprises, minimize the incidence of sickness among and enhance the competitiveness of such enterprises.

8. At this juncture, it would also be apt to refer to the relevant provisions contained in the Banking Regulation Act, 1949. Section 21 of the said Act empowers the Reserve Bank of India to control advances by Banking companies. The said section *inter alia* provides that where the Reserve Bank is satisfied that it is necessary or expedient in the public interest or in the interest of the depositors or banking policy so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any company in particular and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be,

shall be bound to follow the policy as so determined. Sub-section (3) of Section 21 states that every banking company shall be bound to comply with any directions given to it under the said Section. Further, Section 35A of the said Banking Regulation Act reads as under: -

> **"35A. Power of the Reserve Bank to give directions. —**
>
> (1) Where the Reserve Bank is satisfied that-
>
> (a) in the public interest; or
>
> (aa) in the interest of banking policy; or
>
> (b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or
>
> (c) to secure the proper management of any banking company generally,
>
> it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.
>
> (2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect."

9. Thus, Section 21 read with Section 35A makes it clear that the directions issued by the Reserve Bank of India to the Banking companies are binding on them and they are bound to comply with such directions.

10. As stated earlier, the whole controversy in the instant appeals centers around the Notification dated 29.05.2015 issued by the Central Government in exercise of the powers conferred by Section 9 of the MSMED Act. The said Notification contains the Instructions for the "Framework for Revival and Rehabilitation of MSMEs". The

relevant part thereof with regard to the identification of the incipient stress and the committees for stressed MSMEs being relevant are reproduced hereunder: -

> **"NOTIFICATION**
>
> S.O.(E). 1432 In exercise of the powers conferred in section 9 of the Micro, Small and Medium Enterprises Development Act, 2006, the Central Government, for the purpose of facilitating the promotion and development of Micro, Small and Medium Enterprises, hereby notifies the instructions for the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises (hereinafter referred to as the "Framework"), which shall come into force on the date of its publication in the official Gazette, namely the **Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises.**
>
> **1. Identification of incipient stress**
>
> (1) Identification by Banks or creditors - Before a loan account of a Micro, Small and Medium Enterprise turns into a Non-Performing Asset (NPA), banks or creditors are required to identify incipient stress in the account by creating three sub - categories under the Special Mention Account (SMA) category as given in the Table below:

Special Mention Account **Sub-categories**	**Basis for classification**
(1)	(2)
SMA-0	Principal or interest payment not overdue for more than 30 days but account showing signs of incipient stress
SMA-1	Principal or interest payment overdue between 31-60 days
SMA-2	Principal or interest payment overdue between 61-90 days

(2) Identification by the Enterprise - Any Micro, Small or Medium Enterprise may voluntarily initiate proceedings under this Framework if enterprise reasonably apprehends failure or its business or its inability or likely inability to pay debts and before the accumulated losses of the enterprise equals to half or more of its entire net worth.

(3) The application for initiation of the proceedings under this Framework shall be verified by an affidavit of authorised person.

(4) When such a request is received by lender, the account should be processed as SMA-0 and the Committee under this Framework should be formed immediately.

2. Committees for Stressed Micro, Small and Medium Enterprises.

(1) Subject to any regulations prescribed by the Reserve Bank of India for this Framework, all banks shall constitute one or more Committees at such locations as may be considered necessary by the board of directors of such bank to provide reasonable access, to all eligible Micro, Small and Medium enterprises which have availed of credit facilities from such bank.

(2) Subject to inclusion in categories referred to in paragraph 1, stressed Micro, Small and Medium Enterprises shall have access to the Committee for stressed Micro, Small and Medium Enterprises for deciding on a corrective action plan and determining the terms thereof in accordance with regulations prescribed in this Framework

Provided that where the Committee decides that recovery is to be made as part of the corrective action plan, the manner and method of recovery shall be in accordance with the existing policies approved by the board of directors of the bank which has extended credit facilities to the

enterprise, subject to any regulations prescribed by the Reserve Bank of India.

3-16 ....."

11. The RBI in order to make the said Framework contained in the Notification dated 29.05.2015 compatible with the existing regulatory guidelines on "Income Recognition, Asset Classification and provisioning pertaining to Advances" issued to the banks by the RBI, had made certain changes in the said Framework, in consultation with the Central Government and issued revised Framework along with the operating Instructions vide the Communication dated 17th March, 2016, addressed to all the Scheduled Commercial Banks.

12. It is pertinent to note that in exercise of the powers conferred by Section 21 and 35A of the Banking Regulation Act, 1949, the Reserve Bank of India, after having being satisfied that it was necessary and expedient in the public interest to do so, had issued the Master Direction, called the "Reserve Bank of India [Lending to Micro, Small and Medium Enterprises (MSME) Sector] Directions, 2016," vide the Notification dated 21st July, 2016. The said Directions have been made applicable to every Scheduled Commercial Bank excluding Regional Rural Banks (RRBs) licensed to operate in India by the Reserve Bank of India. Amongst the other Directions, the Direction 4 contained in Chapter IV thereof, pertained to the common guidelines/ instructions for lending to MSME Sector. While advising all the Scheduled Commercial Banks to follow the guidelines/ instructions pertaining to MSMEs, it was directed in the Direction 4.8 as under: -

"**4.8** Framework for Revival and Rehabilitation of MSMEs.

The Ministry of Micro, Small and Medium Enterprises, Government of India, vide their Gazette Notification dated May 29, 2015 had notified a 'Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises' to provide a simpler and faster mechanism to address the stress in the accounts of MSMEs and to facilitate the promotion and development of MSMEs. The Reserve Bank was advised to issue necessary instructions to banks for effective implementation and monitoring of the said Framework. After carrying out certain changes in the captioned Framework in consultation with the Government

of India, Ministry of MSME so as to make it compatible with the existing regulatory guidelines on 'Income Recognition, Asset Classification and provisioning pertaining to Advances' issued to banks by RBI, the guidelines on the captioned Framework along with operating instructions were issued to banks on March 17, 2016. The revival and rehabilitation of MSME units having loan limits up to Rs.25 crore would be undertaken under this Framework. Banks were required to put in place their own Board approved policy to operationalize the Framework not later than June 30, 2016. The revised Framework supersedes our earlier Guidelines on Rehabilitation of Sick Micro and Small Enterprises issued vide our circular RPCD. CO. MSME & NFS.BC.40/06.02.31/2012-2013 dated November 1, 2012, except those relating to Reliefs and Concessions for Rehabilitation of Potentially Viable Units and One Time Settlement, mentioned in the said circular.

The salient features of the Framework are as under:

i) Before a loan account of an MSME turns into a Non-Performing Asset (NPA), banks or creditors should identify incipient stress in the account by creating three sub-categories under the Special Mention Account (SMA) category as given in the Framework.

ii) Any MSME borrower may also voluntarily initiate proceedings under this Framework.

iii) Committee approach to be adopted for deciding corrective action plan.

iv) Time lines have been fixed for taking various decisions under the Framework."

13. In view of the above, it is absolutely clear that the Instructions for the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises as notified by the Central Government vide the Notification dated 29th May, 2015 in exercise of the powers conferred under Section 9 of the MSMED Act, as revised by the RBI Notification dated 17th March, 2016, and the Master Directions i.e. the Reserve Bank of India (Lending to Micro, Small and Medium Enterprises Sector) Directions, 2016, issued by the Reserve Bank of

India in exercise of the powers conferred by Section 21 and 35(A) of the Banking Regulation Act, having statutory force, are binding to all Scheduled Commercial Banks, licensed to operate in India by the Reserve Bank of India, as stated in the said Directions. It cannot be gainsaid that the Banking Regulation Act 1949 basically seeks to regulate banking business and mandates a statutory comprehensive and formal structure of banking regulation and supervision in India. Section 21 and Section 35A of the said Act empower the Reserve Bank of India to frame the policy and give directions to the banking companies in relation to the advances to be followed by the banking companies. Such directions have got to be read as supplement to the provisions of the Banking Regulation Act and accordingly are required to be construed as having statutory force and mandatory.

14. As transpiring from the said Instructions/Directions, the entire exercise as contained in the "Framework for Revival and Rehabilitation of MSMEs" is required to be carried out by the banking companies before the accounts of MSMEs turn into Non-Performing Asset. It is true that the security interest created in favour of any Bank or secured creditor may be enforced by such creditor in accordance with the provisions contained in Chapter-III of the SARFAESI Act, and that as per Section 35 of the SARFAESI Act, the provisions of the said Act have the effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. However, pertinently the whole process of enforcement of security interest as contained in Chapter III of the SARFAESI Act, could be initiated only when the borrower makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, in view of Section 13(2) of the said Act.

15. What is contemplated in the "Framework for Revival and Rehabilitation of MSMEs" contained in the Instructions/ Directions stated hereinabove, is required to be followed prior to the classification of the borrower's account, (in the instant case MSMEs loan account), as Non-Performing Assets. The said Instructions contained in the Notification dated 29.05.2015 as part of measures taken for facilitating the promotion and development of MSMEs issued by the Central Government in exercise of powers conferred under Section 9 of the MSMED Act, followed by the Directions issued by the RBI in exercise

of the powers conferred under Section 21 and 35A of the Banking Regulation Act, the Banking companies though may be 'secured creditors' as per the definition contained in Section 2 (zd) of the SARFAESI Act, are bound to follow the same, before classifying the loan account of MSME as NPA.

16. We may hasten to add that under the "Framework for Revival and Rehabilitation of MSMEs", the banks or creditors are required to identify the incipient stress in the account of the Micro, Small and Medium Enterprises, before their accounts turn into non-performing assets, by creating three sub-categories under the "Special Mention Account" Category, however, while creating such sub-categories, the Banks must have some authenticated and verifiable material with them as produced by the concerned MSME to show that loan account is of a Micro, Small and Medium Enterprise, classified and registered as such under the MSMED Act. The said Framework also enables the Micro, Small or Medium Enterprise to voluntarily initiate the proceedings under the said Framework, by filing an application along with the affidavit of an authorized person. Therefore, the stage of identification of incipient stress in the loan account of MSMEs and categorization under the Special Mention Account category, before the loan account of MSME turns into NPA is a very crucial stage, and therefore it would be incumbent on the part of the concerned MSME also to produce authenticated and verifiable doucments/material for substantiating its claim of being MSME, before its account is classified as NPA. If that is not done, and once the account is classified as NPA, the banks i.e. secured creditors would be entitled to take the recourse to Chapter III of the SARFAESI Act for the enforcement of the security interest.

17. It is also pertinent to note that sufficient safeguards have been provided under the said Chapter for safeguarding the interest of the Defaulters-Borrowers for giving them opportunities to discharge their debt. However, if at the stage of classification of the loan account of the borrower as NPA, the borrower does not bring to the notice of the concerned bank/creditor that it is a Micro, Small or Medium Enterprise under the MSMED Act and if such an Enterprise allows the entire process for enforcement of security interest under the SARFAESI Act to be over, or it having challenged such action of the concerned bank/creditor in the court of law/tribunal and having failed, such an Enterprise could not be permitted to misuse the process

of law for thwarting the actions taken under the SARFAESI Act by raising the plea of being an MSME at a belated stage. Suffice it to say, when it is mandatory or obligatory on the part of the Banks to follow the Instructions/Directions issued by the Central Government and the Reserve Bank of India with regard to the Framework for Revival and Rehabilitation of MSMEs, it would be equally incumbent on the part of the concerned MSMEs to be vigilant enough to follow the process laid down under the said Framework, and bring to the notice of the concerned Banks, by producing authenticated and verifiable documents/material to show its eligibility to get the benefit of the said Framework.

18. In that view of the matter, we are of the opinion that the findings recorded by the High Court in the impugned order that the Banks are not obliged to adopt the restructuring process on its own or that the Framework contained in the Notification dated 29.05.2015, as revised from time to time could not be said to be mandatory in nature, are highly erroneous and cannot be countenanced. The Instructions/ Directions issued by the Central Government under Section 9 of the MSMED Act and by the RBI under Section 21 and Section 35A have statutory force and are binding to all the Banking companies.

19. The impugned order therefore is set aside. Since, it has been submitted by the Learned Counsels for the Respondents-banks that in all the cases, the proceedings under the SARFAESI Act have already been concluded and the possession of the respective premises of the petitioners has already been taken over, we do not propose to remand the matters to the High Court for deciding the Writ Petitions afresh. However, since the High Court has not dealt with the other issues based on the factual aspects of the writ petitions, we clarify that it would be open for the appellants to take recourse to any remedy as may be legally available to them for agitating the issues not decided by the High Court in the impugned order. All the appeals stand allowed to the aforesaid extent.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Divya Pandey

[2024] 8 S.C.R. 154 : 2024 INSC 592

The State of Rajasthan & Ors.
v.
Bhupendra Singh

(Civil Appeal Nos. 8546-8549 of 2024)

08 August 2024

[Hima Kohli and Ahsanuddin Amanullah,* JJ.]

Issue for Consideration

Order passed by the Single Judge of the High Court quashing the removal order passed by the Disciplinary Authority and issuing directions to reconsider the employee's case for promotion, which was upheld by the Division Bench, if justified.

Headnotes†

Service Law – Suspension/removal from service – Disciplinary authority accepting enquiry officer's findings and imposing punishment – Requirement of reasons – On facts, employee placed under suspension in contemplation of departmental enquiry for having committed various irregularities – Departmental Promotion Committee did not find the employee fit for promotion as he was under suspension – Charges having been proved, the employee removed from service – Employee challenged the suspension and removal order – Single Judge of the High Court quashed the removal order issuing directions to reconsider the employee's case for promotion – Said order upheld by the Division Bench – Sustainability:

Held: Not sustainable – Single Judge held that the enquiry was based on no evidence, and findings rendered therein were perverse, and as the Removal Order based on the same was not reasoned, quashed the same – Division Bench affirmed the said course of action – Despite noticing the position in law relating to non-interference by the appellate court to re-assess the evidence led in an enquiry or to interfere on the ground that another view was possible on the material on record, the Division Bench held that the Single Judge had rightly held that the enquiry proceedings were vitiated, without giving any reasons of its own as to how the Single Judge had arrived at such a conclusion – Single Judge and the Division Bench acted as Courts of Appeal and went on to

* Author

re-appreciate the evidence – Evidently, while reappraisal of facts and evidence is not impermissible by the High Court, the infirmity in the underlying order has to be greater than ordinary – It is not the employee's case that due to omissions by the Department in substantive and/or procedural compliances, prejudice ensued to him – Employee received an opportunity to submit a written representation as also an opportunity of hearing, thus, no violation of the principles of natural justice found – Removal Order cannot be said to be based on 'no evidence' – Removal Order was reasoned as on the aspects where the Disciplinary Authority disagreed with the Enquiry Officer's report, reasons therefor have been assigned – If the Disciplinary Authority accepts findings recorded by the Enquiry Officer and proceeds to impose punishment based on the same, no elaborate reasons are required – Removal Order makes it clear that the Disciplinary Authority has considered the whole material before it and was satisfied to impose punishment on the employee – Wherever and whenever the Disciplinary Authorities concerned impose a major punishment, it would be appropriate for their orders to better engage with the representations/submissions of the delinquent employees concerned – However, in the instant case, in view of the evidentiary material and the process by which a fair opportunity was given to the employee to present his version, this Court is dissuaded from upholding the impugned judgment on account of minor deficiency/ies in the process – Same have not caused prejudice to the employee to the extent warranting judicial interdiction – Factual position as regards the charges pertaining to non-handing over of full charge at the relevant point of time; appointing persons without permission from the Collector/ Registrar; as also, returning the money after one and a half years by the employee, could not be controverted – Moreover, looking to the respondent's conduct, no arbitrariness or perversity found in the punishment awarded to him – Thus, the impugned judgment quashed and set aside, and removal order passed by the Disciplinary Authority is restored. [Paras 21, 22, 28-37]

Case Law Cited

State of Andhra Pradesh v. S Sree Rama Rao [1964] 3 SCR 25 **: AIR 1963 SC 1723;** *State Bank of India v. Ram Lal Bhaskar* [2011] 12 SCR 1036 **: (2011) 10 SCC 249;** *State of Andhra Pradesh v. Chitra Venkata Rao* [1976] 1 SCR 521 **: (1975) 2 SCC 557;** *State Bank of India v. S K Sharma* [1996] 3 SCR 972 **: (1996) 3 SCC 364;** *Union of India v. K G Soni* [2006] Supp. 4 SCR 560 **: (2006)**

6 SCC 794; *State of Uttar Pradesh v. Man Mohan Nath Sinha* **[2009] 13 SCR 348 : (2009) 8 SCC 310;** *Bharti Airtel Limited v. A S Raghavendra* **[2024] 4 SCR 100 : (2024) 6 SCC 418;** *Boloram Bordoloi v. Lakhimi Gaolia Bank* **[2021] 1 SCR 858 : (2021) 3 SCC 806 – referred to.**

List of Acts

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958.

List of Keywords

Suspension; Removal from service; Disciplinary authority; Departmental enquiry for having committed various irregularities; Non-interference by the appellate court to re-assess the evidence led in an enquiry; Reasoned order; Enquiry proceedings vitiated; Re-appreciate the evidence; Substantive and/or procedural compliances; Principles of natural justice.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 8546-8549 of 2024

From the Judgment and Order dated 28.01.2021 of the High Court of Judicature for Rajasthan at Jaipur in DBCSAW No.1695 of 2008 and DBCSAW Nos.14, 15 and 65 of 2009.

Appearances for Parties

Vishal Meghwal, Milind Kumar, Jagdish Chandra Solanki, Ms. Yashika Bum, Ms. Neha Kapoor, Advs. for the Appellants.

K.Vijayan, T.R.B. Sivakumar, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Ahsanuddin Amanullah, J.

Heard learned counsel for the parties.

2. Leave granted.

3. The present appeals are directed against the common Final Judgment and Order dated 28.01.2021 (hereinafter referred to as the "Impugned

Judgment") passed by the Division Bench of the High Court of Judicature for Rajasthan, Jaipur Bench (hereinafter referred to as the "High Court") by which D.B. Special Appeal Writs No.1695/2008, 14/2009, 15/2009 and 65/2009 were dismissed.

BRIEF FACTUAL OVERVIEW:

4. The sole respondent was appointed as Inspector (Executive) in the year 1960 and later appointed as Assistant Registrar on 05.04.1973 on selection by the Rajasthan Public Service Commission (hereinafter referred to as the "RPSC"). On 29.04.1976, the respondent granted permission for construction of godown of Sadulshahar Jamidara Co-operative Marketing Society Ltd. despite the Registrar having issued a direction to consult the Public Works Department to obtain a technical opinion. The respondent, further, appointed two persons on 04.01.1977, despite order to get the permission from the Registrar. On 06.05.1977, the respondent was reverted to the post of Inspector and also directed to handover charge to Mr. Amar Chand Dhaka but he did not comply with the same and allegedly obstructed the other person from duty.

5. On 18.05.1977, the respondent issued an order nominating himself as Administrator of the Bharat Bus Transport Cooperative Society Limited though he was reverted from that post and charge was taken over from him by another person. During such period, the respondent sold 9 shops without adopting the procedure of auction at very low prices compared to the market value of the said shops. He is further said to have made irregular payments on 30.05.1977. On 21.06.1977, he withdrew an amount of Rs.9,025/- (Rupees Nine Thousand Twenty-Five) from the account of the Bharat Bus Transport Cooperative Society Limited as expenses incurred for purchase of stamps though the same were recovered from the shop-buyers and thus, illegally kept by him. On 01.08.1977, the Collector of the district asked the respondent to hand over charge of Administrator of Hanumangarh Society but he did not hand over the charge and cash balance etc. till 19.08.1977.

6. On 04.10.1979, he was placed under suspension in contemplation of departmental enquiry for having committed various irregularities. As per the seniority list published on 05.10.1979, the respondent was at Sl. No.39 as on 01.07.1978. On 07.02.1980, Appeal No.361/79 was filed by the respondent seeking promotion which was dismissed on

the ground that there were adverse entries in his Annual Confidential Records (hereinafter referred to as "ACRs") for the years 1975-1976, 1976-1977 and 1977-1978. However, it was observed that if the said adverse entries were expunged, the respondent would have a case for reconsideration.

7. On 03.10.1980, charge sheet under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as the "1958 Rules") was issued against the respondent levelling 16 charges including sub-charges. The preliminary statement of the respondent was recorded on 23.05.1983 in connection with the said enquiry. Examination of witnesses took place on various dates. In the meantime, on 28.11.1983, in Appeal No.237/82, adverse entries in the ACR were expunged. On 05.03.1984 and 04.06.1984, detailed statement of the respondent was also recorded. Finally, the enquiry report was submitted on 19.04.1984. Thereafter, the Departmental Promotion Committee (hereinafter referred to as the "DPC") in its meeting held on 21.11.1984 did not find the respondent fit for promotion as he was under suspension on that day. The respondent had moved the High Court in Single Bench Civil Writ Petition No.590/1983, wherein suspension order dated 04.10.1979 against the respondent was prospectively stayed by the learned Single Judge. The respondent filed Appeal No.358/85 for consideration of his promotion to the posts of Deputy Registrar with effect from 23.02.1979 and Joint Registrar with effect from 06.04.1985.

8. After completion of the enquiry and the charges having been proved, the respondent was removed from service by order dated 25.09.1985. Appeal No.358/85 preferred by the Respondent was partially allowed, by order dated 21.08.1991, directing the appellant to convene the DPC for the vacancies of the year 1984-1985 and review the case of the respondent for promotion to the post of Deputy Registrar. The respondent had also moved against his order of removal before the High Court in Single Bench Civil Writ Petition No.793/1986 wherein *vide* order dated 18.12.1991, the order of removal was quashed granting liberty to the appellants to conduct enquiry and proceed after giving the respondent a copy of the enquiry report and the opinion of the RPSC. Compliance of the said order was made on 07.04.1992. The respondent submitted written representations on 25.05.1992 and 10.06.1992 denying all the charges levelled against him. On 11.09.1992, the DPC found the respondent suitable for 1980-81 but

not for 1979-80 for which the recommendation was kept in a sealed cover in view of pendency of the departmental enquiry. In the challenge to the decision of the DPC by the respondent in Contempt Petition No.358/1985, by order dated 08.04.1993, the High Court upheld the decision of the DPC. On 28.09.1993, after affording an opportunity of hearing to the respondent, an order for his removal was passed. Being aggrieved, the respondent preferred a contempt petition in the High Court which was dismissed and the D.B. Special Appeal No.36/94 filed against the same was also rejected on 04.04.1994.

9. The respondent then filed four writ petitions being SBCWP Nos.6486/1993; 5651/1994; 5752/1994, and; 846/1995 in the High Court which were decided by a common judgment dated 22.02.2008, wherein SBCWP Nos.6486/1993 and 5651/1994 were allowed, while SBCWP Nos.5752/1994 and 846/1995 were partly allowed, and directions were issued to reconsider the respondent's case for promotion. Aggrieved thereby, the appellants preferred D.B. Special Appeal Writs No.1695/2008, 14/2009, 15/2009 and 65/2009 whereas the respondent also filed D.B. Special Appeal Writ No.24/2009. The appeal filed by the respondent was related to his claim for costs. *Vide* common Final Judgment and Order dated 28.01.2021, all these writ appeals were dismissed, which has given rise to the present four appeals at the instance of the appellants.

SUBMISSIONS BY THE APPELLANTS:

10. Learned counsel for the appellants submitted that the respondent had a chequered history and proved himself unfit for being retained in service. It was submitted that even during probation, the respondent was found unsuitable and was reverted/asked to handover charge to Mr. Amar Chand Dhaka by order dated 06.05.1977 but he disobeyed and obstructed him from assuming charge of his office. It was submitted that even earlier, when the Registrar had issued directions to the respondent to consult the PWD for technical opinion with regard to permission for construction of godown of Sadulshahar Jamidara Co-operative Marketing Society Ltd., without doing so, he himself had given such permission and had even appointed Mr. Dharam Chand and Mr. Birbal on 04.01.1977 on his own, without permission from the Registrar. Further, it was submitted that on 18.05.1977, the respondent had issued Order No.995-98 nominating himself as the Administrator of the Bharat Bus Transport Cooperative Society Ltd. while he was reverted from that post and charge was taken from

him by Mr. Amar Chand Dhaka. It was contended that during the said period, the respondent sold 9 shops at a much lower price than the market price without following the due prescribed procedure. He submitted that on 30.05.1977 also, the respondent made irregular payments and on 21.06.1977, he embezzled Rs.9025/- by withdrawing the said amount from the account of the society on the head of expenses of stamps which were recovered from shopkeepers and the amount was illegally kept with him.

11. Further, it was argued by learned counsel for the appellants that on 05.07.1977, the respondent prepared a bill of Rs.4,600/- against rent without obtaining clearance of the Collector and on 06.05.1977, he resumed the post from which he was reverted without authority of law. Even the said amount of Rs.4,600/- was not paid by the respondent to the landlord. He submitted that on 21.07.1977, the respondent embezzled Rs.4,000/- by making fake entry of returning deposit of the said amount to Smt. Ganga Bai in the Cash Book, but kept the amount without any authority. Similarly, it was submitted that on 25.07.1977, he received Rs.7,766.83/- and kept it with him, which he returned only at the time of inspection under compulsion. Further, on 30.07.1977, learned counsel submitted that the respondent made irregular and doubtful entries relating to payments made by him during the period for which he stood demoted to the post of Inspector. It was submitted that another glaring example of the respondent committing insubordination was that despite the order of the Collector, Sh. Ganganagar dated 01.08.1977, directing the respondent to handover charge of Administrator, Hanumangarh Society, he did not handover the cash balance and other charge till 19.08.1977.

12. Further contention was that the respondent temporarily embezzled an amount of Rs.4,764.36/- of the Bharat Bus Transport Cooperative Society Ltd. and the amount was returned only after the respondent got transferred to Bhilwara. It was submitted that even the said amount which was due on 18.08.1977 itself was sent by the respondent in the shape of Demand Drafts of Rs.3,000/- on 07.02.1979, Rs. 764.36/- on 09.02.1979 and Rs.1,000/- on 20.02.1979 i.e., after one and a half years. He submitted that on 04.10.1978, the respondent took advance of Rs.2,000/- to purchase material for godown while working as Administrator of Ravla Sale-purchase Co-operative Society Ltd. but did not deposit the same and in the meantime, he was transferred to Bhilwara and upon repeated reminders and correspondence he

sent the amount under Demand Draft No.738095 on 20.03.1979. Another irregularity pointed out was that the respondent did not take any steps for new appointment on 28% posts reserved for Scheduled Castes/Scheduled Tribes candidates on the one hand, while on the other hand he appointed one Rajkumar against reserved post on 07.10.1978 as a junior clerk in violation of the order.

13. Learned counsel submitted that in the background of such conduct, the respondent was placed under suspension in contemplation of departmental enquiry by order dated 04.10.1979.

14. Learned counsel submitted that on 03.10.1980, a Charge Sheet under Rule 16 of the 1958 Rules was issued levelling 16 charges against the respondent, inclusive of sub-charges. During the enquiry, 10 witnesses were examined, who deposed against the respondent, whereafter, on 05.03.1984 and 04.06.1984, detailed statement(s) of the respondent was also recorded. The enquiry report was finally submitted on 19.04.1984. It was contended that, rightly, the DPC in its meeting held on 21.11.1984 did not find the respondent suitable, on the ground that he was under suspension at that time. It was submitted that though on 22.02.1985 the learned Single Judge of the High Court in SBCWP No.590/1983 stayed the operation of the order of suspension dated 04.10.1979 against the appellant, but the same was with prospective effect and Appeal No.358/85 filed by the respondent for considering his promotion to the post of Deputy Registrar w.e.f. 23.02.1979 and Joint Registrar w.e.f. 06.04.1985, was partly allowed with the direction to convene the DPC for the vacancies for the year 1984-85 to review the case of the respondent for promotion to the post of Deputy Registrar. In the meantime, during the departmental proceeding against the respondent, charges were proved and by order dated 25.09.1985, he was removed from service.

15. It was submitted that though the High Court by order dated 18.12.1991 in Single Bench Civil Writ Petition No.793/1986 quashed the removal order against the respondent, liberty was granted to the appellants to conduct an enquiry after giving him a copy of the enquiry report and the opinion of the RPSC. In compliance of the said order, in the departmental proceedings, the respondent submitted his written representation denying all charges and was also heard on his representation. However, learned counsel submitted that on 11.09.1992, the DPC found him suitable for 1980-1981 but not for

1979-1980, with the recommendation kept under sealed cover in view of the pending departmental enquiry. It was submitted that in Contempt Petition No.358/1985, preferred by the respondent, by order dated 08.04.1993, the decision of the DPC was found to be proper.

16. Learned counsel submitted that after following all due procedure under the law and after affording the respondent full opportunity of being heard, the removal order was passed on 28.09.1993, holding that in light of the serious nature of the charges and partly/fully five charges having been found to be proved by the enquiry officer, there were sufficient grounds for punishment. The Contempt Petition filed by the respondent was dismissed and Special Appeal No.36/94 before the Division Bench was also rejected.

17. It was submitted that in this background, when the respondent filed four writ petitions challenging the removal order dated 28.09.1993, the High Court quashed the removal order on the ground of violation of principles of natural justice observing that though there was a reference to the representation filed by the respondent but there was no discussion in the order. Further, as a consequence, the suspension order was also quashed holding the respondent entitled for the remaining salary from the date of his suspension till the date of fresh removal and stating that the entire period will also be counted for the purpose of pension. Moreover, the respondent having been found fit for promotion in 1980-1981 but denied the same on the ground of pendency of departmental enquiry by keeping the result in a sealed cover, the suspension as well as the removal order having been quashed, the respondent was held entitled for consideration for promotion to the post of Deputy Registrar in the year 1979-1980 and 1980-1981 and all consequential benefits, in the event he was so promoted.

18. Learned counsel for the appellants submitted that there has been gross miscarriage of justice since despite five charges having been proved documentarily, still, on hyper-technicality, the High Court interfered. Further, it was contended that the view taken by the authorities cannot be said to be perverse as it was also a plausible view. It was urged that in such matters, the settled law is that where two views are possible, the one taken by the authorities ought not to be interfered with, only because there can be another view. Learned counsel submitted that the act of the respondent stood admitted with regard to his conduct of financial irregularity(ies) and insubordination

by not obeying orders relating to his transfer, other directions given for permission of construction granted to a Cooperative society as also acting beyond jurisdiction of assuming power, both in appointing persons as well as appointing himself as an Administrator of a Co-operative Society. It was submitted that the Division Bench totally erred in not appreciating the points, both legal and factual, raised by the appellants. It was further submitted that the Division Bench erroneously held that the enquiry proceedings were vitiated as they were based on no evidence and were perverse, which finding, learned counsel contended, was itself perverse, as there were documents to prove the charges, which the respondent had not challenged as being forged and/or fabricated. Hence, it was prayed that these appeals may be allowed.

SUBMISSIONS BY THE RESPONDENT:

19. *Per contra*, learned counsel for the respondent submitted that both the learned Single Judge and the Division Bench have concurrently held that the enquiry was vitiated, and it was a case of no evidence. Thus, this Court may also not interfere in the matter. It was submitted that both the learned Single Judge and the Division Bench found that the charge relating to temporary embezzlement is illegal as the same was not proved but still he has been found guilty. Moreover, it was pointed out that though Charge 1-GA is with regard to embezzlement of Rs.9,025/- of the sale of shops, the Appellate Authority had exonerated the respondent and the Enquiry Officer did not find the respondent guilty of the said charge of embezzlement, but found sale of those shops irregular which was not even the charge.

20. Similarly, it was pointed out that the learned Single Judge on the issue of competence of the respondent to sell the shop at a lower price held that despite the finding of the Enquiry Officer that no loss was proved, still the charge has been found proved, which is improper and there cannot be any dispute on this account. He submitted that the order of the learned Single Judge, which has been upheld by the Division Bench, does not require interference. He, therefore, impressed upon us that the appeals deserved dismissal.

ANALYSIS, REASONING AND CONCLUSION:

21. Having considered the matter, the Court finds that the Impugned Judgment cannot be sustained. On a prefatory note, we would begin by quoting what the Division Bench has noted on page No.7:

> '*It is well settled preposition* (sic) *of law that courts will not act as an Appellate Court and re-assess the evidence led in domestic enquiry, nor interfere on the ground that another view was possible on the material on record. If the enquiry has been fairly and properly held and findings are based on evidence, the question of adequacy of evidence or reliable nature of the evidence will be no ground for interfering with the finding in departmental enquiry. However, when the finding of fact recorded in departmental enquiry is based on no evidence or where it is clearly perverse then it will invite the intervention of the court*.'

22. The learned Single Judge held that the findings returned in the enquiry were without evidence, contrary to the record, and as the Removal Order based on the same was not reasoned, proceeded to quash the same. This course of action adopted by the learned Single Judge has been affirmed by the Division Bench. Surprisingly, despite noticing the aforesaid position in law relating to non-interference by the Appellate Court to re-assess the evidence led in an enquiry or to interfere on the ground that another view was possible on the material on record, the Division Bench went on to record that the learned Single Judge had rightly held that the enquiry proceedings were vitiated as they were based on no evidence and were perverse, without giving any reasons of its own as to how the learned Single Judge had arrived at such a conclusion, namely, that the enquiry was based on no evidence and the findings rendered therein were perverse. Upon detailed assistance from both sides on the factual prism, coupled with the materials on record, we are of the considered opinion that the judgments delivered by the learned Single Judge and the Division Bench are unsustainable.

23. The scope of examination and interference under Article 226 of the Constitution of India (hereinafter referred to as the 'Constitution') in a case of the present nature, is no longer *res integra*. In ***State of Andhra Pradesh v S Sree Rama Rao***, **AIR 1963 SC 1723**, a 3-Judge Bench stated:

> '***7.*** *… The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to*

determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.'

(emphasis supplied)

24. The above was reiterated by a Bench of equal strength in ***State Bank of India v Ram Lal Bhaskar*****, (2011) 10 SCC 249**. Three learned Judges of this Court stated as under in ***State of Andhra Pradesh v Chitra Venkata Rao*****, (1975) 2 SCC 557**:

> '***21.*** *The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in* ***State of A.P. v. S. Sree Rama Rao*** *[AIR 1963 SC 1723: (1964) 3 SCR 25: (1964)*

2 LLJ 150]. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

xxx

23. *The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See* ***Syed Yakoob v. K.S. Radhakrishnan*** *[AIR 1964 SC 477: (1964) 5 SCR 64].*

24. *The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.*

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26. *For these reasons we are of opinion that the High Court was wrong in setting aside the dismissal order by reviewing and reassessing the evidence. The appeal is accepted. The judgment of the High Court is set aside. Parties will pay and bear their own costs.*'

(emphasis supplied)

25. In ***State Bank of India v S K Sharma*****, (1996) 3 SCC 364**, two learned Judges of this Court held:

'***28.*** *The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in* ***Russell v. Duke of Norfolk*** *[(1949) 1 All ER 109: 65 TLR 225] way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See* ***Mohinder Singh Gill v. Chief Election Commr.*** *[(1978) 1 SCC 405: (1978) 2 SCR 272]) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See* ***A.K. Roy v. Union of India*** *[(1982) 1 SCC 271: 1982 SCC (Cri) 152] and* ***Swadeshi Cotton Mills v. Union of India*** *[(1981) 1 SCC 664].) As pointed out by this Court in* ***A.K. Kraipak v. Union of India*** *[(1969) 2 SCC 262] , the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable — a fact also emphasised by House of Lords in* ***Council of Civil Service Unions v. Minister for the Civil Service*** *[(1984) 3 All ER 935 : (1984) 3 WLR 1174 : 1985 AC 374, HL] where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing — applying the test of prejudice, as it may be called — that any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding — which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with*

*natural justice was evolved in some of the cases, e.g., **Liberty Oil Mills v. Union of India** [(1984) 3 SCC 465]. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram partem altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate — take a case where the person is dismissed from service without hearing him altogether (as in **Ridge v. Baldwin** [1964 AC 40: (1963) 2 All ER 66: (1963) 2 WLR 935]). It would be a case falling under the first category and the order of dismissal would be invalid — or void, if one chooses to use that expression (**Calvin v. Carr** [1980 AC 574: (1979) 2 All ER 440: (1979) 2 WLR 755, PC]). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (**Managing Director, ECIL v. B. Karunakar** [(1993) 4 SCC 727: 1993 SCC (L&S) 1184: (1993) 25 ATC 704]) or without affording him a due opportunity of cross-examining a witness (**K.L. Tripathi** [(1984) 1 SCC 43 : 1984 SCC (L&S) 62]) it would be a case falling in the latter category — violation of a facet of the said rule of natural justice — in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct — in the light of the above decisions to say that for any and*

every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in ***B. Karunakar*** *[(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.*'

26. In ***Union of India v K G Soni*****, (2006) 6 SCC 794**, it was opined:

'***14.*** *The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [****Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.,*** *(1948) 1 KB 223: (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.*

15. *To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.*'

(emphasis supplied)

27. The legal position was restated by two learned Judges in ***State of Uttar Pradesh v Man Mohan Nath Sinha*, (2009) 8 SCC 310**:

> '***15.*** *The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to reappreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions. In the instant case, the High Court fell into grave error in scanning the evidence as if it was a court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error and, in our thoughtful consideration, the matter requires fresh consideration by the High Court in accordance with law. On this short ground, we send the matter back to the High Court.*'

28. Turning our gaze back to the facts herein, we find that the learned Single Judge and the Division Bench acted as Courts of Appeal and went on to re-appreciate the evidence, which the above-enumerated authorities caution against. The present *coram*, in ***Bharti Airtel Limited v A S Raghavendra*, (2024) 6 SCC 418**, has laid down:

> '***29.*** *As regards the power of the High Court to reappraise the facts, it cannot be said that the same is completely impermissible under Articles 226 and 227 of the Constitution. However, there must be a level of infirmity greater than ordinary in a tribunal's order, which is facing judicial scrutiny before the High Court, to justify interference. We do not think such a situation prevailed in the present facts. Further, the ratio of the judgments relied upon by the respondent in support of his contentions, would not apply in the facts at hand.*'
>
> (emphasis supplied)

29. Evidently, while reappraisal of facts and evidence is not impermissible by the High Court, the infirmity in the underlying order has to be greater than ordinary. It is not the respondent's case that due to omissions by the appellants in substantive and/or procedural compliances, prejudice has ensued to him. Let us examine the aspect independently too. The

facts reveal that an earlier removal order was quashed, and a copy of the Enquiry Report alongwith the RPSC's opinion was supplied to the respondent. The respondent, thereafter, received an opportunity to submit a written representation, which he availed of. Further, he was afforded an opportunity of hearing as well. In this view, we are unable to find any violation of the principles of natural justice.

30. Before the Enquiry Officer, 13 witnesses and 75 documents were exhibited on behalf of the Authority. 3 witnesses deposed in defence of the delinquent employee-respondent. Considering the evidence on record, the Enquiry Officer by his report held certain charges levelled against the respondent to have been proved in full/part. Subsequently, a fresh Removal Order was passed, agreeing with the conclusions drawn by the enquiry officer. This Removal Order cannot be said to be based on 'no evidence'. On perusal thereof, we find that the Removal Order is reasoned as on the aspects where the Disciplinary Authority disagreed with the Enquiry Officer's report, reasons therefor have been assigned. On the areas of agreement, the Removal Order bears discussion on the relevant evidence.

31. It is well-settled that if the Disciplinary Authority accepts findings recorded by the Enquiry Officer and proceeds to impose punishment basis the same, no elaborate reasons are required, as explained by three learned Judges of this Court *vide* ***Boloram Bordoloi v Lakhimi Gaolia Bank*****, (2021) 3 SCC 806**:

> '***11.*** *... Further, it is well settled that if the disciplinary authority accepts the findings recorded by the enquiry officer and passes an order, no detailed reasons are required to be recorded in the order imposing punishment. The punishment is imposed based on the findings recorded in the enquiry report, as such, no further elaborate reasons are required to be given by the disciplinary authority. …*'

32. The Removal Order makes it clear that the Disciplinary Authority has considered the whole material before it and was satisfied to impose punishment on the respondent.

33. The observation on page 7 by the Division Bench makes it apparent that it was conscious of the proposition of law but still tried to make a distinction, which we do not find just and proper. It runs contrary to the record. Though arguments have been addressed

by the appellants with regard to each and every charge, we would not go individually into the same as we are not re-appreciating the evidence. Suffice it would be to say that broadly, the charges were proved based on the factual position, which, in turn, was based on official documentation, which at no point of time, the respondent has controverted or denied. The respondent has not alleged that the documents were non-existent/false/fabricated.

34. The learned Single Judge had also reasoned that there was no difference between the earlier order of removal and the Removal Order passed subsequently. The learned Single Judge was of the view that simple reference to the respondent's representation had been made, but without discussion thereon, as such, the Removal Order was passed mechanically and without reasons. Even though this ground has not been taken by the respondent *qua* the Impugned Judgment, we deem it fit to deal therewith. Upon a comparative overview of both the orders of removal, the similarities between the two are inescapable.

35. Having said so, we may point out that the respondent-employee's representation has been considered in the fresh Removal Order, *albeit* not in as many words. Going forward, wherever and whenever the Disciplinary Authorities concerned impose a major punishment, it will be appropriate for their orders to better engage with the representations/submissions of the delinquent employees concerned. However, in the instant case, in view of the evidentiary material and the process by which a fair opportunity was given to the respondent to present his version, we are dissuaded from upholding the Impugned Judgment on account of minor deficiency/ies in the process. As noted hereinbefore, the same have not caused prejudice to the respondent to the extent warranting judicial interdiction.

36. At this juncture, it would be relevant to point out that on a specific query to the learned counsel for the respondent *apropos* the charges pertaining to non-handing over of full charge at the relevant point of time; appointing persons without permission from the Collector/ Registrar; as also, returning the money after one and a half years by the respondent, learned counsel could not controvert the factual position and only relied upon the judgment rendered by the learned Single Judge and the Impugned Judgment. Moreover, looking to the respondent's conduct, we do not find any arbitrariness or perversity in the punishment awarded to him.

37. Accordingly, for the reasons recorded above, the Impugned Judgment is quashed and set aside, and the Removal Order dated 28.09.1993 passed by the Disciplinary Authority is restored. Consequences in law to follow. However, by way of extraordinary indulgence, keeping in mind the fact that the respondent has retired and is aged, payments, if any, already made to him in the interregnum, shall not be recovered by the appellants. The appeals are disposed of in the above terms. No order as to costs.

Result of the case: Appeals disposed of.

†*Headnotes prepared by:* Nidhi Jain

[2024] 8 S.C.R. 175 : 2024 INSC 581

Rajasthan Agricultural University, Bikaner, Through Its Registrar
v.
Dr. Zabar Singh Solanki and Ors.

(Special Leave Petition (Civil) No. 22278 of 2011)

06 August 2024

[Hima Kohli and Ahsanuddin Amanullah,* JJ.]

Issue for Consideration

In the Civil Appeals arising from Special Leave Petitions (Civil) No. 22278/2011 and 22813/2011, the respondents herein are the Research Assistants, who were designated as Lecturers and later re-designated as Assistant Professors were deprived of the benefit of the Career Advancement Scheme (CAS). Whether by re-designating Research Assistants as Lecturers and thereafter as Assistant Professors, they could be granted the benefit of CAS.

In the Civil Appeal arising from SLP (C) No. 30963/2018, the respondents herein before their regular appointment as Assistant Professors in the University, served on an ad-hoc basis in other educational institutions. Whether services rendered in such ad-hoc capacity while determining their eligibility for the grant of senior pay-scale under the CAS.

Headnotes†

Udaipur University Act, 1962 – Rajasthan Universities Teachers and Officers (Selection for Appointment) Act, 1974 – In the Civil Appeals arising from Special Leave Petitions (Civil) No. 22278/2011 and 22813/2011, the appellant has submitted that merely by re-designating Research Assistants as Lecturers and thereafter as Assistant Professors, they could not have been granted the benefit of CAS – This benefit was available only to Lecturers, who were directly appointed on the posts of Assistant Professors under 1974 Act and had completed eight years of service:

Held: On an overall circumspection of the facts and circumstances, it is clear that upon re-designation of the Research Assistants as Lecturers/Assistant Professors, they got what was due to them in the form of the same pay-scale as was applicable to the

* Author

directly-recruited Lecturers, but once it came to the CAS, the CAS specifically envisaged that benefit thereunder was restricted to persons completing 8 years of service after regular appointment – Only by reason that the respondents were receiving the same pay-scale as the direct recruits, would not entitle them to get benefit of CAS as it was subject to fulfilment of certain conditions, including completion of certain years of service viz. 8 years – There would be a segregation in the two cadres – *Ipso facto*, benefits accorded to one would not accrue to the other unless so specified in the relevant Scheme, as may be framed by the employer i.e., State Government/University – It is held that the writ petitioners/private respondents are not entitled to benefits under the CAS, as notified by the Government of India *vide* Letter dated 22.07.1988. [Paras 24, 25]

Udaipur University Act, 1962 – Rajasthan Universities Teachers and Officers (Selection for Appointment) Act, 1974 – In the Civil Appeal arising from SLP (C) No.30963/2018, in this case, respondents, before their regular appointment as Assistant Professors in the University, served on an *ad-hoc* basis in other educational institutions and also in the University – These respondents preferred a writ petition before the High Court with a prayer to reckon their services rendered in such *ad-hoc* capacity while determining their eligibility for the grant of senior pay-scale under the CAS – The relief claimed was granted by the Single Judge and affirmed by the Division Bench of the High Court – Justified or not:

Held: Notably, the State Government vide its Letter dated 20.09.1994, had specifically clarified that the period of *ad-hoc* service rendered by the respondents/Assistant Professors shall not be counted for giving benefit of senior pay-scale under the CAS – As elaborated, in the Civil Appeals arising from Special Leave Petitions (Civil) No.22278/2011 and 22813/2011 that the CAS is essentially a policy, and as such, the respondents cannot claim, nor would they have any vested right for claiming that the clauses therein be interpreted in a particular manner – Such an interpretative exercise would have to be left, in the domain of the appellant, subject to the State Government's directives unless patently perverse or arbitrary – The High Court, hence, was not justified in counting of the *ad-hoc* service rendered by the respondents for reckoning the period of computation as required for applying the CAS. [Para 30]

Rajasthan Agricultural University, Bikaner, Through Its Registrar v. Dr. Zabar Singh Solanki and Ors.

Service Law – Regular appointment and re-designation – Distinction:

Held: The very usage of the term/phrase "regular appointment" has to be given its proper interpretation and cannot be rendered redundant or superfluous – Here, there is a distinction between re-designation and regular appointment – Re-designation cannot be said to be a regular appointment as it is only that one post/category/cadre which is given equivalence with another existing post/category/cadre, but the basic distinction would still lie that the re-designated post/category/cadre would always be considered to be an equivalent post of Lecturer/Assistant Professor, whereas the other/mainline cadre would always be considered to comprise only of direct recruits. [Para 21]

Case Law Cited

State of Maharashtra v. Tara Ashwin Patel **(2016) 15 SCC 717 – relied on.**

State of Rajasthan v. Milap Chand Jain **[2013] 5 SCR 472 : (2013) 14 SCC 562;** *State of Rajasthan v. Dr Suresh Chand Agrawal* **[Supreme Court vide judgment/order dated 10.03.2011 in Civil Appeal No.469/2007] – referred to.**

List of Acts

Udaipur University Act, 1962; Rajasthan Universities Teachers and Officers (Selection for Appointment) Act, 1974.

List of Keywords

Service Law; Re-designation; Regular appointment; Appointment on ad-hoc basis; Research Assistants; Lecturers; Assistant Professors; Career Advancement Scheme; Entitlement to benefits under the Career Advancement Scheme; Fulfilment of conditions; Distinction between regular appointment and re-designation.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No.8509 of 2024

From the Judgment and Order dated 20.01.2011 of the High Court for Rajasthan at Jodhpur in D.B. Special Civil Appeal No. 382 of 2002

With

Civil Appeal Nos. 8510 and 8491 of 2024

Appearances for Parties

Puneet Jain, Christi Jain, Mann Arora, Ms. Akriti Sharma, Ms. Pratibha Jain, Advs. for the Appellant.

Manu Mridul, Pratap Singh Rawat, Surya Kant, Bankey Bihari, Pankaj Sharma, Pratap Singh Ahluwalia, Ms. Sonal Shukla, Naveen Kumar Chaudhary, Kartikeya Gautam, Ram Niwas, Nikhil Jain, Ms. Divya Jain, Prashant Mohla, Santanu Ghosh, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Ahsanuddin Amanullah, J.

Heard learned counsel for the parties.

2. Leave granted in all the petitions.

3. Civil Appeals arising from Special Leave Petitions (Civil)[1] No.22278/2011 and 22813/2011 are directed against the common Judgment and Order dated 20.01.2011, passed by the High Court of Judicature for Rajasthan at Jodhpur[2] in D.B. Civil Special Appeals No.382/2002 and 470/2002 respectively, whereby the writ appeals filed by the appellant were dismissed. The Civil Appeal emanating from SLP (C) No.30963/2018 is directed against the Judgment and Order dated 04.05.2018, passed by the High Court in D.B. Special Appeal Writ No.714/2018, whereby another appeal filed by the appellant came to be dismissed.

BRIEF FACTUAL OVERVIEW:

4. We propose to deal, first, with the challenge to the order dated 20.01.2011. For the sake of convenience, the factual background, details and status of the parties shall be with reference to the Civil Appeal emerging from SLP (C) No.22278/2011.

5. Respondents No.1 to 54 were appointed as Research Assistants in the erstwhile University of Udaipur, renamed as Mohan Lal Sukhadia University and later on, post-bifurcation, named as the Rajasthan

1 hereinafter referred to as the 'SLP(C)'.

2 hereinafter referred to as the 'High Court'.

Agricultural University, Bikaner[3] (appellant) in the University Grants Commission[4]-recommended Pay-Scale of Rs.300-600 prevailing at the time. On 07.09.1977, the University of Udaipur proceeded to designate Research Assistants as Lecturers in terms of a Notification dated 02.07.1974, where the term "*Junior Lecturer*" was substituted by the term "*Lecturer*". It was notified that teachers holding the post of Junior Lecturers or equivalent post are designated as Lecturers. Consequently, Respondents No.1 to 54 came to be designated as Lecturers**.** They were also designated as Assistant Professors later on and began drawing the same pay-scale as admissible to other Lecturers/Assistant Professors.

6. The Government of India, Ministry of Human Resource Development, Department of Education *vide* Communication dated 22.07.1988 decided to implement a Career Advancement Scheme[5] to make the revision of pay-scale of teachers in Universities and Colleges with effect from 01.01.1986, such that every Lecturer was to be placed in a senior scale of Rs.3000-5000 if the person had completed eight years of service after regular appointment**.**

7. The Government of Rajasthan[6] decided to implement CAS. Consequent thereto, the Board of Management[7] of the appellant in its Meeting held on 24.11.1988 resolved to give the revised UGC pay-scales to Lecturers and Research Assistants. The Board further resolved to designate Lecturers/Research Assistants as Assistant Professors. However, it was decided that persons appointed as Assistant Professors directly, will rank senior to the Lecturers/ Research Assistants, so designated as Assistant Professors. The Board Resolution dated 24.11.1988 was again reviewed by the Board in its Meeting held on 28.01.1989 and the same was confirmed. Notification dated 04/06.05.1989 was issued by the appellant to the effect that all duly selected Lecturers/Research Assistants will be designated as Assistant Professors with effect from 01.01.1973.

8. The appellant *vide* Letter dated 22.11.1990 notified Rules for implementing the CAS for Assistant Professors in the University.

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3 hereinafter referred to as the 'University'.

4 hereinafter referred to as the 'UGC'.

5 hereinafter referred to as the 'CAS'.

6 hereinafter referred to as the 'State Government'.

7 hereinafter referred to as the 'Board'.

However, on request being made to the State Government to grant approval to the Resolution dated 24.11.1988 of the Board, the State Government requested the Vice-Chancellor of the appellant that the Resolution of the Board dated 24.11.1988 be rescinded**.** However, fact remained that in anticipation of the approval, the appellant had already issued the requisite orders. Thereafter, the Board in its Meeting dated 29.07.1991, resolved that if any Research Assistant or Lecturer had been selected as Assistant Professor by the Statutory Selection Committee,[8] then his service period shall be counted from the date when he was duly selected by the SSC as Assistant Professor.

9. Later, the Deputy Secretary (AP), Government of Rajasthan, Agriculture (Gr.2A) Department, Jaipur on 27.03.1991 wrote a Letter requesting the University to amend the Resolution of the Board dated 24.11.1988. It was requested that the order by which Research Assistants/Lecturers were designated as Assistant Professors be rescinded and the benefit of CAS be extended only to those Assistant Professors, who were directly selected after regular selection by the SSC and not to those who were designated as Assistant Professors. The recommendations which were made by the University as well as by the Board were, thus, not accepted by the State Government. Hence, the Research Assistants, who were designated as Lecturers and later re-designated as Assistant Professors were deprived of the benefit of the CAS. Respondents No. 1 to 54 preferred writ petitions assailing such action(s) and the learned Single Judge allowed their writ petitions. The learned Single Judge's judgment(s) were affirmed by the Division Bench, which is impugned in the instant batch of appeals.

SUBMISSIONS BY THE APPELLANT(S):

10. The appellant submits that past service(s) as Lecturers/Research Assistants cannot be given the same weightage for *ex-cadre* promotion as services rendered in the capacity of Assistant Professors. The grade of Lecturers/Research Assistants is a separate grade, though the pay may be the same and, therefore, the services rendered in that grade cannot be considered at par with the services of Assistant Professors. It was urged that as per the CAS, those Lecturers/

8 hereinafter referred to as the 'SSC'.

Assistant Professors are eligible for grant of senior scale, who have completed 8 years of service after regular appointment and that period of service has to be reckoned from the date of regular appointment. It was advanced that, admittedly, respondents No.1 to 54 were not appointed as Assistant Professors on a regular basis.

11. The appellant has submitted that merely by re-designating Research Assistants as Lecturers and thereafter as Assistant Professors, they could not have been granted the benefit of CAS. This benefit was available only to Lecturers, who were directly appointed on the posts of Assistant Professors under the Rajasthan Universities Teachers and Officers (Selection for Appointment) Act, 1974[9] and had completed eight years of service. Further, it was stated that the definition of the word "*teacher*" as contained in Section 2(ix) of the 1974 Act cannot be said to be applicable to Research Assistants. and considering the *non-obstante* clause contained in Sections 3 and 12 of the 1974 Act, the relief of CAS could not have been accorded to the Respondents No.1 to 54 by granting similar pay-scales.

SUBMISSIONS BY THE RESPONDENTS NO.1 TO 54:

12. Learned counsel for the Respondents submitted that a "*Research Assistant*" is also a teacher under the 1974 Act and in the previous round of litigation, it has already been held that they are Lecturers under Section 2(j), Udaipur University Act, 1962 and in view of the clarification issued by the UGC on 27.11.1990, there was not an iota of doubt that the persons serving as Lecturers or on other equivalent posts, were also entitled to the benefit of CAS.

13. When the Research Assistants have been re-designated as Lecturers and thereafter as Assistant Professors, it was submitted that they cannot be deprived of the benefit available to Lecturers. Learned counsel would canvass that the CAS does not provide that the benefit is not available to such incumbents, whose posts have been designated as Lecturers. The decision was rightly taken by the Board of the appellant to accord the benefit of CAS, which was unnecessarily objected to by the State Government. The submission was that such decision has been illegally reviewed by the appellant, under the directions of the State Government.

9 hereinafter referred to as the '1974 Act'.

ANALYSIS, REASONING AND CONCLUSION:

14. Having perused the record and heard learned counsel for the parties, the Court finds that the order dated 20.01.2011 passed by the Division Bench needs interference. The basic premise for allowing the claim of the original writ petitioners/instant Respondents No.1 to 54 to the benefit of CAS is that when Research Assistants have been designated as Lecturers and thereafter as Assistant Professors, they cannot be deprived of the benefit(s) available to Lecturers.

15. At this stage, it is worthwhile to refer to the earlier order of this Court dated 25.04.1985 in Writ Petition No.9555/1984 and analogous cases, whereby it was clarified that the order passed by the High Court and summary dismissal of the SLP (C) thereagainst, "*had nothing to do with amalgamation of cadres, a common seniority list or a feeder source for further promotions*" and reiterated that "*Research Assistants and Lecturers are separate and distinct cadres.*" Further, the Court went on to state that the only thing common would be that both would enjoy the same pay-scale as recommended by the UGC. The Court also observed that "*Research Assistants and Lecturers will form separate cadres*" and that "*they need not be brought on a common seniority list only on the ground that both enjoy the same pay scale as recommended by the University Grants Commission*".

16. Subsequent to the Research Assistants (designated as teachers holding the post of Junior Lecturers or equivalent post) being designated as Lecturers, they were later re-designated as Assistant Professors, drawing the same pay-scale as admissible to other faculty members like Lecturers/Assistant professors. After this, the Government of India notified CAS *vide* Letter dated 22.07.1988 to make the revision of the pay-scales of teachers in universities and colleges. Every Lecturer was to be placed in a senior scale of Rs.3000-5000 if he had completed 8 years of service after regular appointment. In terms thereof, the Board in its Meeting held on 24.11.1988, resolved to give the revised UGC pay-scales to Lecturers and Research Assistants. The Board further resolved to designate Research Assistants and Lecturers as Assistant Professors. However, it was decided that persons duly/directly appointed as Assistant Professors would rank senior to the Lecturers/Research Assistants designated as Assistant Professors. This Resolution was again reviewed by the Board in its Meeting dated 28.01.1989 and

was confirmed, followed by Notification dated 04/06.05.1989 to the effect that all duly selected Lecturers/Research Assistants will be designated as Assistant Professors with effect from 01.01.1973. The Board under Resolution No.245 dated 08.08.1990 approved the rules for implementing CAS for Assistant Professors and, finally, by way of the Letter dated 22.11.1990, the appellant notified the said rules. At this stage, when the appellant requested the State Government to grant approval to the Board's Resolution dated 24.11.1988, the Vice-Chancellor was approached by the State Government to rescind the said Resolution. Meanwhile, in anticipation of approval by the State Government, the appellant had already issued the requisite orders.

17. Thereafter, the Board in its Meeting dated 29.07.1991 resolved that if any Research Assistant/Lecturer had been selected as Assistant Professor by the SSC, then his/her service period shall be counted from the date when he was duly selected by the SSC as Assistant Professor. Once again, under Letter dated 27.05.1992 of the Deputy Secretary, Agricultural Department, Government of Rajasthan requested the University to amend the Board's Resolution dated 29.07.1991, stating that the order, by which the Research Assistants/ Lecturers were designated as Assistant Professors, be withdrawn and benefit of CAS be extended only to those Assistant Professors who were directly/regularly selected by the SSC and not to those who were designated as Assistant Professors. The recommendations which were made by the University as well as its Board were, thus, not accepted by the State Government. This prompted filing of various Writ Petitions in the High Court assailing such action(s).

18. It transpires that earlier also, the matter of these Research Assistants was before the High Court, where the claim was that Research Assistants were employed for the purpose of conducting and guiding research and must therefore be regarded as teachers for the purposes of Section 2(j), Udaipur University Act, 1962. The said relief was granted by the learned Single Bench of the High Court, whereupon the State of Rajasthan preferred an intra-Court appeal before the Division Bench, where it did not succeed. The learned Single Judge allowed the respondents' writ petitions and held that the period of service rendered by the respondents as Lecturers/Assistant Professors after re-designation as such, can also be counted while counting the period of 8 years for availing the benefit of CAS. The learned Single Judge also took the view that the respondents shall

be entitled to consequential benefits with the rider that seniority shall not be given to them over the Assistant Professors appointed directly and that the respondents would rank junior to the direct appointees. The Division Bench held that as the post of Research Assistant was included in the post of Lecturer**,** a Research Assistant must be held to be entitled for the same revision of pay-scale which has been extended to a Lecturer of the University, which was so done. Taking exception to the Division Bench agreeing with the learned Single Judge, the State of Rajasthan petitioned this Court too, which again did not bear fruit for the State.

19. From the above discussion, it is clear that the learned Single Judge erred in making a fine distinction that the order of this Court in Writ Petition No.9555/1984 and analogous cases dated 25.04.1985 was only with regard to the seniority and the existence of a distinct cadre. Significantly, this order had nothing to do with pay-scales.

20. We find that such a view is justified only to the extent of granting the respondents pay-scales/revised pay-scales as per the UGC recommendations. However, the CAS was distinct to a general increase or revision in pay-scales. The CAS was intended for a specific purpose i.e., to encourage the teaching staff by offering a higher pay-scale, subject to various conditions. This distinction unfortunately has been lost sight of by the learned Single Judge, which, in our considered opinion, was a vital factor to be considered. Whenever a Scheme/Policy is brought into force, *ceteris paribus*, the Court could not and would not import something which is not present therein and which may not be proper to be interfered with, especially when it relates to financial matters where primacy is required to be granted to the pay-master as to what scale was to be granted to the category of staff concerned. By its very nature, such exercise would fall under the realm of policy-formulation. In the present case, the CAS itself envisaged that it was meant for persons who were directly recruited as Assistant Professors. The CAS specifically provided that every Lecturer was to be placed in a senior scale of Rs.3000-5000 if he/she had completed 8 years of service after regular appointment.

21. Pausing here for a moment, the very usage of the term/phrase "*regular appointment*" has to be given its proper interpretation and cannot be rendered redundant or superfluous. Here, there is a distinction between re-designation and regular appointment. Re-designation

cannot be said to be a regular appointment as it is only that one post/category/cadre which is given equivalence with another existing post/category/cadre, but the basic distinction would still lie that the re-designated post/category/cadre would always be considered to be an equivalent post of Lecturer/Assistant Professor, whereas the other/mainline cadre would always be considered to comprise only of direct recruits. We find our understanding to be in conformity with the order of this Court dated 25.04.1985 (*supra*), where it has been clarified that the posts of Research Assistants and Lecturers will form separate cadres.

22. If at all, in law, it was the position that both the cadre of Research Assistants re-designated as Lecturers/Assistant Professors and the cadre of directly-recruited Lecturers/Assistant Professors was one and the same, there was no occasion for this Court to categorically direct for maintaining separate cadre and the only clarification which would have been required would be as to how the persons coming from the two separate cadres would be placed in a common cadre. But there was no requirement of a common cadre as the cadres were different and distinct. Notably, the CAS itself restricts the benefits flowing therefrom to persons who had completed eight years of service "*after regular appointment*" – this shows the clear-cut intent as to which of the two cadres were the subject-matter of those benefits. Thus, there was no ambiguity in the CAS *per se*. If the intention was that the benefits should go across the board to both cadres, then there was no requirement to restrict it to persons who had completed eight years of service after regular appointment.

23. Significantly, it is not in dispute that the re-designated Research Assistants/Assistant Professors (respondents) were never directly appointed as Lecturers/Assistant Professors. This Court in ***State of Maharashtra v Tara Ashwin Patel,*** **(2016) 15 SCC 717** held:

> '*9. We have, therefore, examined the present appeals on first principles. We find from a bare reading of the two Resolutions dated 25-10-1977 and 27-2-1989 that for the purposes of career advancement the appellants had upgraded the post of Demonstrator/Tutor to the post of Lecturer and it appears that the respondents were also getting wages for the period of upgradation i.e. from 1-7-1975 to 25-10-1977. However, for the purposes of*

grant of senior scale and, subsequently, for the grant of selection grade, what was required in terms of the aforesaid resolutions was actual service or regular appointment in the post of Lecturer. Thus, the respondents did not have and they cannot get the benefit of the deemed status of upgradation from 1-7-1975 to 25-10-1977. The deemed status was apparently for the purposes of pay and other allowances and cannot be counted towards actual physical service rendered by the respondents in the post of Lecturer.'

(emphasis supplied)

24. Thus, on an overall circumspection of the facts and circumstances, it is clear that upon re-designation of the Research Assistants as Lecturers/Assistant Professors, they got what was due to them in the form of the same pay-scale as was applicable to the directly-recruited Lecturers, but once it came to the CAS, the CAS specifically envisaged that benefit thereunder was restricted to persons completing 8 years of service after regular appointment. Only by reason that the respondents were receiving the same pay-scale as the direct recruits, would not entitle them to get benefit of CAS as it was subject to fulfilment of certain conditions, including completion of certain years of service *viz*. 8 years. Till the time, the CAS as a scheme had not been interfered with, it was not proper for the learned Single Judge to interpret the same in a way which would obliterate the distinction between the two separate cadres. We may also add that had the intention been that everybody comes on the same platform and gets all subsequent benefits, there was no requirement of having/maintaining two cadres. Further, there was no need for this Court to clarify that the re-designatees and direct appointees would have separate identities, if for all practical purposes, no distinction was to be made either on facts or in law. However, this Court clarified that there would be a segregation as the two cadres would remain, which is indicative of a difference between the two. *Ipso facto*, benefits accorded to one would not accrue to the other unless so specified in the relevant Scheme, as may be framed by the employer i.e., State Government/University.

25. Accordingly, for the reasons aforesaid, these appeals succeed; the orders in question, passed by the learned Single Judge and affirmed by the Division Bench, are set aside. It is held that the writ petitioners/

private respondents are not entitled to benefits under the CAS, as notified by the Government of India *vide* Letter dated 22.07.1988.

26. Needless to state, if the two cadres are given exactly similar benefits under orders of the Court, then it would amount to doing something indirectly which cannot be done directly. Moreover, this was substantially negated in the earlier round of litigation, referred to above.

27. We may however clarify that to direct for any recovery of monies which may have already been disbursed to the Respondents No.1 to 54 would amount to inequity at this late stage. Hence, the same shall not be recovered, but all the pay and emoluments for the purposes of retiral/service conditions and for post-retiral benefits shall be reckoned notionally without granting any benefit under the CAS. Assuming that the respondents are otherwise entitled to any benefit under any other Scheme/Policy, it is directed that the State Government or the appellant will not deprive the respondents thereof by virtue of the instant judgment alone.

28. The Civil Appeals arising from SLP (C) Nos.22278/2011 and 22813/2011 are disposed of in the above fashion.

29. Onto the Civil Appeal arising from SLP (C) No.30963/2018, which traces its genesis to the order dated 04.05.2018, passed by the Division Bench. This was tagged with SLP (C) No.22813/2011 by order dated 30.11.2018 of this Court. In this case, respondents No.1 to 9, before their regular appointment as Assistant Professors in the **University**, served on an *ad-hoc* basis in other educational institutions and also in the **University**. These respondents preferred a writ petition with a prayer to reckon their services rendered in such *ad-hoc* capacity while determining their eligibility for the grant of senior pay-scale under the CAS. The relief claimed was granted by the learned Single Judge and affirmed by the Division Bench relying on the judgment in ***State of Rajasthan v Milap Chand Jain*, (2013) 14 SCC 562**. This Court, while disposing of ***Milap Chand Jain*** (*supra*), relied on its earlier judgment dated 10.03.2011 in Civil Appeal No.469/2007 entitled ***State of Rajasthan v Dr Suresh Chand Agrawal*,** which was dismissed *in limine*, leaving the question of law open. Review Petitions (Civil) No.2124-2125/2011 filed in ***Dr Suresh Chand Agrawal*** (*supra*) were also dismissed by this Court on 14.09.2011. In ***Milap Chand Jain*** (*supra*), the State of Rajasthan

had moved this Court in respect of the same impugned order therein, against which appeals stood previously dismissed by this Court.

30. Notably, the State Government *vide* its Letter dated 20.09.1994, had specifically clarified that the period of *ad-hoc* service rendered by the respondents/Assistant Professors shall not be counted for giving benefit of senior pay-scale under the CAS. We have already elaborated *supra*[10] that the CAS is essentially a policy, and as such, the respondents cannot claim, nor would they have any vested right for claiming that the clauses therein be interpreted in a particular manner. Such an interpretative exercise would have to be left, in the domain of the appellant, subject to the State Government's directives unless patently perverse or arbitrary. The High Court, hence, was not justified in counting of the *ad-hoc* service rendered by the respondents for reckoning the period of computation as required for applying the CAS.

31. However, it is directed that there shall not be any recoveries made from the respondents. The respondents shall be entitled to the notional benefit of the pay and emoluments for purposes of calculating their retiral/service conditions and for post-retiral benefits, but without grant of any benefit under the CAS. It is clarified that if the respondents are entitled to benefits under CAS after reckoning eight years of service from the date(s) of their regular appointment or to benefits under any other Scheme/Policy, the State Government or the appellant shall not deny such an advantage to them by virtue of this judgment alone.

32. Accordingly, for reasons aforesaid, the appeal[11] succeeds. The orders, as passed by the learned Single Judge and affirmed by the Division Bench, are hereby quashed and set aside.

33. Parties are left to bear their own costs. Pending applications are disposed of in light of the appeals being finally adjudicated on merits.

Result of the case: Appeals allowed.

[†]*Headnotes prepared by:* Ankit Gyan

10 In our discussion *re the Civil Appeals arising from SLP (C) Nos. 22278/2011 and 22813/2011.*

11 Civil Appeal arising out of SLP(C) No. 30963/2018.

[2024] 8 S.C.R. 189 : 2024 INSC 589

The Blue Dreamz Advertising Pvt. Ltd. & Anr.
v.
Kolkata Municipal Corporation & Ors.

(Civil Appeal No. 8516 of 2024)

07 August 2024

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

Issue for Consideration

Where the case is of an ordinary breach of contract and the explanation offered by the person concerned raises a bona fide dispute, whether blacklisting/debarment can resorted to as a penalty.

Headnotes†

Tender – Tender conditions – Breach of contract – Blacklisting/ debarment – Respondent no.1-Corporation invited bids for allotment of contract for display of advertisement on street hoardings (including V shaped), Bus passenger shelter and kiosks – Appellant was the successful bidder – There were issues between the appellant and the Corporation with regard to the fulfilment of the reciprocal obligations in the bid document – Following which appellant was blacklisted – By an order of 02.03.2016, the Corporation debarred the appellant from participating in any tender for a period of five years – The Single Judge of the High Court set aside the order of debarment on the ground that there was a bona fide civil dispute between the parties – However, the Division Bench of the High Court set aside the judgment of the Single Judge of the High Court – Justified or not:

Held: The appellant, after the award of the tender, has admittedly paid an amount of Rs. 3,71,96,265/-, though, according to the Corporation, the outstanding amount as on the date of the debarment was Rs. 14,63,24,727/- – However, as would be clear from the facts, right from the inception there have been issues between the appellant and the Corporation with regard to the fulfilment of the reciprocal obligations in the bid document – There was exchange of correspondence between the parties with each side blaming the other for not performing the reciprocal obligations – While the appellant had a case with regard to the

* Author

non-issuance of work orders; non-receipt of formal format of bank guarantee; refusal of No Objection Certificate for obtaining connection from the Calcutta Electric Supply Corporation Ltd.; existence of only 200 out of 250 allotted street hoardings and so on demonstrating breach of obligations by the Corporation – The Corporation had a case that Bank Guarantee was not the mode of payment and as such there was no reason to insist on Bank Guarantee; that in the joint inspection the appellant's men failed to cover all the areas and thereafter when appellant was asked to submit a list of allotted location, the appellant failed to furnish the same and further there was huge default on the part of the appellant – All these reasons fall far short of rendering the conduct of the appellant in the present case, so abhorrent as to justify the invocation of the drastic remedy of blacklisting/ debarment – The appellant very clearly has been subjected to a disproportionate penalty – The exchange of correspondence resulted in invocation of the arbitration and it is undisputed that by an award of 26.04.2024, the appellant has been awarded after due set off Rs. 2,23,14,565/- with 8% interest per annum under the very same dispute – It does signify is that there was a bona fide contractual dispute between the parties – The Single Judge was right in setting aside the order of debarment on the ground that there was a bona fide civil dispute between the parties – Therefore, the judgment of the Division Bench of the High Court is set aside and the judgment of the Single Judge of the High Court is restored. [Paras 28, 30, 31, 42]

Case Law Cited

Erusian Equipment & Chemicals Ltd. v. State of West Bengal & Anr. [1975] 2 SCR 674 **: (1975) 1 SCC 70;** *B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. & Ors.* [2006] Supp. 8 SCR 11 **: (2006) 11 SCC 548;** *Kulja Industries Ltd. v. Chief General Manager Western Telecom Project BSNL & Ors.* [2013] 14 SCR 430 **: (2014) 14 SCC 731;** *Patel Engineering Limited v. Union of India and Another* **(2012) 11 SCC 257 – relied on.**

List of Keywords

Tender; Tender conditions; Breach of contract; Blacklisting; Debarment; Bid document; *Bona fide* contractual dispute; Advertisement on street hoardings; Fulfilment of the reciprocal obligations; Breach of obligations; Disproportionate penalty.

**The Blue Dreamz Advertising Pvt. Ltd. & Anr. v.
Kolkata Municipal Corporation & Ors.**

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No.8516 of 2024

From the Judgment and Order dated 21.06.2017 of the High Court at Calcutta in MAT No.277 of 2017.

Appearances for Parties

P. S. Datta, Sr. Adv., Ms. Anwesha Saha, Salim Ansari, Advs. for theAppellants.

L. C. Agrawala, Pankaj Agarwal, Sujoy Mondal, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

K.V. Viswanathan, J.

1. Leave granted.

2. The present Appeal is filed against the judgment and order dated 21.06.2017 passed by the Division Bench of the High Court at Calcutta in M.A.T. No. 277 of 2017. By the said judgment, the High Court allowed the Appeal of the respondents and set aside the judgment of the learned Single Judge. Consequently, the Writ Petition filed by the appellant stood dismissed.

Brief Facts:

3. The respondent no. 1-Kolkata Municipal Corporation (hereinafter referred to as the 'Corporation') invited bids for allotment of contract for display of advertisement on Street Hoardings (including V Shaped), Bus Passenger shelter and Kiosks within its jurisdiction. Under the tender conditions, the contract was to be awarded for a period of one year, subject to extension of two more years. By an award of 28.05.2014, the appellant who had participated in the tender and quoted the highest rate at Rs. 3,70,00,000/- each for cluster no. I, II, III, VI and VIII was notified as a successful bidder and was requested to confirm the acceptance. On 29.05.2014, the appellant conveyed its acceptance.

4. Thereafter, a series of correspondence ensued with the appellant on matters like, alleged non-receipt of any formal work order (on

11.06.2014); non-receipt of any format of the Bank Guarantee (on 13.06.2014); request for a 'No Objection Certificate' for obtaining new connection from Calcutta Electric Supply Corporation Ltd. (on 26.06.2014); problems with the execution like, non-matching of the unit code numbers with the hoardings or the non-matching of locations; existence of same unit code for different locations, rendering the commencement of work incapable (letter of 26.06.2014) and existence of lesser hoardings out of the 250 street hoardings (letter of 07.07.2014).

5. The Corporation, by its letter dated 08.07.2014, demanded payment for the month of June. Thereafter, the appellant wrote a letter of 19.07.2014 stating that till date they have identified 200 numbers of street hoardings out of the 250 allotted and sought for a joint inspection to identify the rest of them. At this stage, the Corporation issued a letter of 10.09.2014 stating that there was no reason why the appellant was insisting for the Bank Guarantee Format since Bank Guarantee was not the mode of payment. According to the Corporation, the bills for 5 clusters of Rs. 4,62,67,500/- (for only July to September, 2014) had not been paid in spite of service of the bill on 08.07.2014. The Corporation also mentioned that in the joint inspection the appellant's men failed to cover all the areas and thereafter, the appellant was asked to submit a list of allotted locations which, according to the Corporation, the appellant had not furnished. The appellant was warned that in case the payment as demanded was not paid, steps as per the tender clauses would be taken.

6. When the matter stood thus, the appellant wrote a letter on 14.11.2014 setting out all the earlier correspondence and the grievances raised by them and ultimately praying that they be granted diminution, reduction and/or adjustment of the license fee. They prayed that their demand for 174 hoardings be confirmed so that they could make the payment. The Corporation served a memo dated 06.12.2014 setting out that already a notice of 20.11.2014 was served demanding payment of 8,16,15,870/- up to December, 2014 but the same has not been cleared. The appellant was asked to appear on 12.12.2014 to show cause why the allotment of hoarding shall not be cancelled. On 28.02.2015, a Show Cause Notice was issued asking the appellant to show cause why the appellant's allotment be not terminated as dues to the tune of Rs. 10,28,52,918/- plus interest had not been cleared.

7. In this scenario, on 29.07.2015, a notice was published in English Daily "The Times of India" Kolkata stating that the appellant had been blacklisted from participating in any advertisement in the city of Kolkata. However, on a challenge made in Writ Petition No. 960 of 2015, on 04.08.2015, a submission was made to the Court by the learned senior counsel for the Corporation that the decision of the blacklisting of appellant was to be withdrawn and that the Corporation would proceed with the matter in accordance with law after providing opportunity of hearing. The Writ Petition was disposed of.

8. The appellant had earlier filed Writ Petition No. 261 of 2015 challenging the Show Cause Notice of 28.02.2015. The learned Single Judge dismissed the Writ Petition on 04.03.2015. An appeal bearing APOT No. 89 of 2015 was preferred along with GA No. 782 of 2015. The Appeal and G.A. were disposed of by an order of 24th August 2015 recording the submissions of the Learned Additional Advocate General appearing for the Corporation and disposing of the matter in the following terms:-

> "Due to typographical errors in the show cause notice dated 28th February, 2015, the learned Additional Advocate General very fairly submitted he is not pressing this show cause notice but the appropriate proceedings shall be taken before the Arbitrator."

9. Thereafter, the Corporation issued a Show Cause Notice dated 27.08.2015 to the appellant, stating that as on the said date Rs. 16,84,34,431/- along with interest is due and payable towards license fee/advertisement tax. The Show Cause Notice also alleged that the appellant had failed to execute the agreement for street hoardings, which was issued on 29.11.2014 and failed to submit the bank guarantee which was issued on 27.09.2014 and it also alleged that the appellant had illegally shifted several hoardings without the consent of the authority. The show cause notice asserted that in spite of repeated requests and/or reminders, the appellant had failed to make payment and refused and/or neglected to perform the obligations as per the terms and conditions of the tender. The Show Cause Notice further clearly alleged as under:

> "In view of the aforesaid breach of the terms and conditions of the tender, you are requested to file a show cause as to why befitting action to blacklist you from participating in

> any tender process should not be taken all (sic.) you make the outstanding payment and comply with the terms and conditions of the tender. You are required to submit your reply within 15 days from the date of Receipt of this letter, failing which the authority will take appropriate decision in accordance with law."

10. By its reply of 15.09.2015, the appellant responded to the Show Cause Notice. The appellant mentioned therein that the tender document did not empower the Corporation to determine the alleged breach on the part of the company arising out of the contract; that in view of the submission made by the Corporation before the Division Bench, it is only the arbitrator in terms of Clause 18 who can decide the dispute mentioned in the Show Cause Notice of 27.08.2015; that Corporation is a party to the proposed arbitration proceeding and it cannot usurp the power of the arbitrator; that the decision to blacklist the appellant without recourse to arbitration proceeding is illegal and that any decision to blacklist before the decision of the arbitrator would be prejudging the alleged guilt without deciding the issue. The appellant prayed that the Show Cause Notice be not given effect to till the disposal of the arbitration proceeding.

11. It further appears that by notice dated 05.10.2015, the appellant invoked clause 18 of the tender document and sought reference to the Joint Municipal Commissioner as arbitrator.

Debarment Order:

12. By an order of 02.03.2016, the Corporation debarred the appellant from participating in any tender for a period of five years or till the date of exoneration of the company from the allegation of negligent performance/action and also of nonpayment of huge amount or till the date of payment of entire dues with interest under the direction of any authority/forum/court, whichever is later. The order, after recording the history of the dispute and after noticing the fact that at the hearing given, the company took the same plea as stated by them in their reply, observed as under:-

> "… …. The company had alleged that it could find only 174 hoarding out of 250 hoardings but the company in their letter dated 14th November, 2014 stated, inter alia, that they were able to find 200 street hoarding including 26-V-shaped.

The company cannot take such plea particularly when the display sites/hoardings were specified in the lists under annexure-I, II & III to the tender notice. The description of works under clause-2 of the tender notice clearly stated that the street hoarding in the annexure would be allotted in "As in where is basis". The company after having understood the scope and effect of the terms and condition of the notice the offers which were accepted by the authorities. The bills for 5 clusters amounting to Rs.4,58,97,360/- had already been served. The company was informed of its failure to pay the sum of Rs.4,58,97,360/- for the period from July 2014 to September 2014. The company paid part amount for 55 nos. of hoarding as against the said demand for the said quarter.

The company failed to mention the unit code on the allotted street hoarding and the company did not adhere to the instruction as made in this respect by writing letters on repeated occasions.

Clause-2.1 as incorporated in the tender notice is redundant in respect of the hoardings already in-existence since such hoardings remain fitted with the provision for supply of electricity. In fact, no objection certificate is not required from the KMC in respect of the existing hoardings. All that is necessary is for confirmation of the change of the name of the user/agency. It is on record that the company continued to display the advertisement in the hoardings without requiring the no objection certificate from the KMC until 3rd March 2015 when a letter was issued in this respect. There is no document to show that the company applied to the CESC for electric connection and the CESC required no objection certificate from the KMC. It is on record that the contract period commenced from 1st June 2014 and hence there was no cogent reason to write the letter for No Objection Certificate after about 8 months. No application to the CESC in the name of the petitioners for the purpose illuminated street hoarding was submitted to the concerned authorities. The company used the supply of Electricity without requiring to inform the KMC AND EACH AND EVERY HOARDING was found illuminated during

inspection failed to obtain the interim order as prayed for preferred the appeal being APOT No. 290 of 2015 and an application being G.A. No. 2374 of 2015 was filed in connection with the said appeal. The Hon'ble appeal court while dismissing the appeal and also the application by an order dated 3rd August 2015 was pleased to observe that there was no urgency in the matter in view of pendency of the writ petition. It was also observed that if the appellants were aggrieved in any manner with respect to the contract it was necessary for them to invoke arbitration clause.

The company earlier filed the writ petition being W.P. No.261 of 2015 relating to the notice to show cause dated 28th February 2015. The company was asked to show cause why the allotment should not be terminated for not clearing the dues amounting to Rs. 10,28,52,918/- as then calculated plus interest to take defense upon certain facts in the written argument. I am not fully convinced and/or satisfied with the stand and/or explanation for several reasons and/or ground as stated hereinbefore. It appears to me that the company did not have the financial capacity to have the display of advertisement rights in 5 clusters and as such the company started creating problems on one plea to another since after obtaining the allotment of Sites. The company in one hand stopped the KMC to allot the said site to others and on the other hand itself stopped the due payment for 5 clusters. The KMC has thus suffered in both counts. Moreover the company has made an attempt to set up a bad example to others having interest to enjoy the advertisement rights.

That being the position the KMC has no alternative but to blacklist the company for gross negligent action. The company is therefore debarred from participating in any tender to have the award of contract for a period of 5 years or till the date of exoneration of the company from the allegation of negligent, performance/action and also of nonpayment of huge amount or till the date of payment of entire dues with interest under the direction of any authority/forum/court whichever is later."

13. In the meantime, it appears that in August, 2016, the appellant also filed a claim before the arbitrator claiming an award for Rs. 19,81,60,400/-. At the hearing before us, it was submitted that the arbitrator Justice (Retd.) Narayan Chandra Sil, who ultimately heard the matter, passed an award on 26.04.2024 awarding the claimant a sum of Rs. 2,23,14,565/- after excluding the set off amount of Rs. 78,03,435/- along with interest of 8% per annum from the date of the award till realization. This statement is reiterated in the written submissions. We were also given a copy of the award. The respondent has not disputed the said fact.

Proceedings in the High Court:

14. The appellant also filed a Writ Petition, namely, Writ Petition No. 6616(W) of 2016 challenging the order of 02.03.2016. The learned Single Judge of the High Court while setting aside the order of 02.03.2016 held as under:

> "It is well settled by the above authorities that blacklisting is a civil consequence. The rules of natural justice have to be scrupulously followed. This denotes that proper reasons have to be given. The reasons, should have suggested that public interest would be affected if the writ petitioner was continued to be awarded contracts by the respondent Corporation. Or it was to be established that the writ petitioner was a dishonest business organisation, or irresponsible or wholly lacking in business integrity. The government or a government agency like the respondent-Corporation could not blacklist the writ petitioner without assigning these reasons or reasons akin thereto. There is a civil dispute between the parties. The matter has gone to arbitration. At best, the writ petitioner can be accused of taking the contract, not fully paying for it and not performing it. The respondent Corporation has a monetary claim against the writ petitioner. It does not appear that the writ petitioner has made payment of any significant part of the contract price. It is astonishing that the respondent Corporation did not terminate the contract within the contract period and award hoardings to another party when the writ petitioner made a breach of the payment condition to pay the quarterly licence fee in advance. It waited till after the expiry of

the contract period on 30th June, 2015. Thereafter, they proceeded to show cause the writ petitioner. This shows considerable fault on the part of the respondent Corporation. It also goes to indicate that expressly or impliedly the respondent Corporation had accepted the alleged breach of contract made by the petitioner.

Moreover, the defence of the writ petitioner in their written notes of argument is that 174 hoardings which were awarded to them were "non-lucrative". As the respondent Corporation did not issue a no objection certificate, CESC Limited could not give permission to light the hoardings. The writ petitioner could not put them to any use. If this is the defence raised by the writ petitioner it could not be cast aside as one totally devoid of any merit. Therefore, following the ratio laid down by Mr. Justice Sinha in the case of *B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd and another* reported in (2006) 11 SCC 548 blacklisting proceeding should not have proceeded with because the writ petitioner in my opinion raised a bona fide dispute. Furthermore, blacklisting ought not to have been made until and unless this dispute was resolved.

For all the above reasons, the impugned order dated 2nd March, 2016 is set aside. Only the issue of blacklisting is decided by this order. Any observation regarding any other dispute between the parties is to be taken as tentative."

15. The matter was carried in Appeal by the Corporation and by the impugned order, the High Court has allowed the same by holding that since the appellant was given a hearing and since the order of 02.03.2016 cannot be held to be unreasonable or unfair or disproportionate, there existed sufficient reasons for debarring the appellant. So holding, the Appeal was allowed. The appellant aggrieved is before us in Appeal. This Court while issuing notice in the matter by its order of 27.04.2018 stayed the operation of the impugned judgment.

Contentions:

16. We have heard Mr. P.S. Datta, learned senior counsel for the appellant and Mr. Sujoy Mondal, learned counsel for the respondent. We have

also perused the written submissions filed by the appellant. The respondent has not filed any written submissions.

17. The learned senior counsel for the appellant contends that the Corporation could at best have imposed only a 'penalty' for making late payments or in the case of default of payments under clause 9 and there could not have been blacklisting; that blacklisting can be only made when there was deviation of clauses 2.8, 11 & 14 and that the Show Cause Notice precisely setting out why the blacklisting was to be imposed need to have been given; that the grounds of blacklisting are not the one stated in clauses 2.8, 11 & 14; that the order of blacklisting was passed during the pendency of the arbitration proceedings; that the issues relating to blacklisting were akin to the facts in issue before the arbitration; that the Corporation has failed to prove gross misconduct or irregularities or fraud involving of any element of public interest; that the learned Single Judge was right in setting aside the order of blacklisting; that the Corporation is guilty of having not acted fairly and reasonably by not facilitating the appellant to perform his contractual right; that the Corporation despite the repeated undertaking before the High Court for taking resort to arbitration has deliberately issued the order of blacklisting and that any and every act of alleged breach of contract would not ensue blacklisting.

18. In support of their submission, the appellant relied on ***B.S.N. Joshi & Sons Ltd. vs Nair Coal Services Ltd. & Ors.* (2006) 11 SCC 548**. The appellant also assailed the judgment of the Division Bench by contending that the Division Bench failed to consider that there was no element of violation of public interest involved in the conduct of the appellant and in fact the Corporation was guilty of having not acted fairly and reasonably and that the Division Bench has completely overlooked this aspect. The appellant further contended that the order of blacklisting was disproportionate and contrary to the judgment in ***Kulja Industries Ltd. vs Chief General Manager Western Telecom Project BSNL & Ors.* (2014) 14 SCC 731**.

19. The learned counsel for the Corporation defended the order of blacklisting as well as the judgment of the Division Bench and prayed that there was no case for interference by this Court.

20. We have considered the submissions of the learned counsels and perused the record.

Questions for consideration:

21. The following questions arise for consideration:

    a. Whether in the facts and circumstances of the case, the order of the Corporation dated 02.03.2016, debarring the appellant for a period of five years is valid and justified in the eye of the law?

    b. If so, what reliefs is the appellant entitled to?

Reasons and conclusions:

22. Blacklisting has always been viewed by this Court as a drastic remedy and the orders passed have been subjected to rigorous scrutiny. In ***Erusian Equipment & Chemicals Ltd. vs State of West Bengal & Anr.*** ***(1975) 1 SCC 70***, this Court observed that

> "20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction…."

23. In ***Mr. B.S.N. Joshi*** ***(supra)***, this Court held that

> "41. … When a contractor is blacklisted by a department he is debarred from obtaining a contract, but in terms of the notice inviting tender when a tenderer is declared to be a defaulter, he may not get any contract at all. It may have to wind up its business. The same would, thus, have a disastrous effect on him. Whether a person defaults in making payment or not would depend upon the context in which the allegations are made as also the relevant statute operating in the field. When a demand is made, if the person concerned raises a bona fidedispute in regard to the claim, so long as the dispute is not resolved, he may not be declared to be defaulter."
>
> (Emphasis supplied)

24. This Court in ***Kulja Industries Ltd.*** ***(supra)*** after setting out the legal position governing blacklisting/debarment in USA and UK held that:

> "25. Suffice it to say that "debarment" is recognised and often used as an effective method for disciplining

> deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the "debarment" is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.
>
> 26. In the case at hand according to the respondent BSNL, the appellant had fraudulently withdrawn a huge amount of money which was not due to it in collusion and conspiracy with the officials of the respondent Corporation. Even so permanent debarment from future contracts for all times to come may sound too harsh and heavy a punishment to be considered reasonable especially when (a) the appellant is supplying bulk of its manufactured products to the respondent BSNL, and (b) the excess amount received by it has already been paid back."

25. What is significant is that while setting out the guidelines prescribed in USA, the Court noticed that comprehensive guidelines for debarment were issued there for protecting public interest from those contractors and recipients who are non-responsible, lack business integrity or engage in dishonest or illegal conduct or are otherwise unable to perform satisfactorily. The illustrative cases set out also demonstrate that debarment as a remedy is to be invoked in cases where there is harm or potential harm for public interest particularly in cases where the person's conduct has demonstrated that debarment as a penalty alone will protect public interest and deter the person from repeating his actions which have a tendency to put public interest in jeopardy. In fact, it is common knowledge that in notice inviting tenders, any person blacklisted is rendered ineligible. Hence, blacklisting will not only debar the person concerned from dealing with the concerned employer, but because of the disqualification, their dealings with other entities also is proscribed. Even in the terms and conditions of tender in the present case, one of the conditions of eligibility is that the agency should not be blacklisted from anywhere.

26. In other words, where the case is of an ordinary breach of contract and the explanation offered by the person concerned raises a

bona fide dispute, blacklisting/debarment as a penalty ought not to be resorted to. Debarring a person albeit for a certain number of years tantamounts to civil death inasmuch as the said person is commercially ostracized resulting in serious consequences for the person and those who are employed by him.

27. Too readily invoking the debarment for ordinary cases of breach of contract where there is a bona fide dispute, is not permissible. Each case, no doubt, would turn on the facts and circumstances thereto.

28. Examining the facts of this case from that perspective, we find that the appellant, after the award of the tender, has admittedly paid an amount of Rs. 3,71,96,265/-, though, according to the Corporation, the outstanding amount as on the date of the debarment was Rs. 14,63,24,727/-. However, as would be clear from the facts discussed hereinabove, right from the inception there have been issues between the appellant and the Corporation with regard to the fulfilment of the reciprocal obligations in the bid document. There has been exchange of correspondence between the parties with each side blaming the other for not performing the reciprocal obligations. While the appellant had a case with regard to the non-issuance of work orders; non-receipt of formal format of bank guarantee; refusal of No Objection Certificate for obtaining connection from the Calcutta Electric Supply Corporation Ltd.; existence of only 200 out of 250 allotted street hoardings and so on demonstrating breach of obligations by the Corporation, the Corporation had a case that Bank Guarantee was not the mode of payment and as such there was no reason to insist on Bank Guarantee; that in the joint inspection the appellant's men failed to cover all the areas and thereafter when appellant was asked to submit a list of allotted location, the appellant failed to furnish the same and further there was huge default on the part of the appellant.

29. Even in the order dated 02.03.2016 by which the appellant was debarred for a period of five years, the reason given is that the tender notice had clearly stated that the street hoardings in the annexures would be allotted on 'as is where is' basis; that the company having understood the scope and effect of the terms and conditions of the notice accepted the award; that, 'No Objection Certificate', is not required in respect of the existing hoardings; that there was no document to show that the company had applied to

the Calcutta Electric Supply Corporation Ltd. for connection and that it appeared to the Corporation that the company did not have the financial capacity to pay and as such the company was creating problems on one pretext or the other since obtaining the allotment of sites. The order also stated that the appellant had set up a bad example to others having interest to enjoy the advertisement rights.

30. All these reasons fall far short of rendering the conduct of the appellant in the present case, so abhorrent as to justify the invocation of the drastic remedy of blacklisting/debarment. The appellant very clearly has been subjected to a disproportionate penalty. The Corporation has lifted a sledgehammer to crack a nut. We disapprove of the said course of action on the facts of this case.

31. The exchange of correspondence resulted in invocation of the arbitration and today it is undisputed that by an award of 26.04.2024, the appellant has been awarded after due set off Rs. 2,23,14,565/- with 8% interest per annum under the very same dispute. We are not here concerned with the correctness of the award. What it does signify is that there was a bona fide contractual dispute between the parties and we hold that the learned Single Judge was right in setting aside the order of debarment on the ground that there was a bona fide civil dispute between the parties.

32. What renders the matter a fortiori is that when APOT No. 89 of 2015 along with GA 782 of 2015 filed against the order of the learned Single Judge dismissing Writ Petition No. 261 of 2015, the counsel for the Corporation had submitted to the Court that the Show Cause Notice was being withdrawn at that stage and appropriate proceeding was to be taken before the arbitrator. In spite of the statement, the Corporation did not invoke arbitration.

33. The appellant invoked arbitration and no doubt a counter claim was filed by the Corporation before the arbitrator. Ultimately, the counter claim was decreed for Rs. 78,03,435/- and the claim was decreed for Rs. 3,01,18,000/- and after ordering set off, an award has been passed for Rs. 2,23,14,565/-.

34. The issues framed by the arbitrator also indicate that the assertions and counter assertions of the appellant and the Corporation were clearly in the nature of a bona fide civil dispute only to demonstrate that aspect, the issues are extracted herein below:

"1. Is the arbitral proceeding barred by reasons of accord and satisfaction?

2. Did the respondents fail to allot 250 street hoardings in terms of tender document?

3. Did the respondents fail and neglect to provide clear sites to the claimants by intervening and removing illegal hoardings for obstructions at the allotted sites?

4. Did the respondents issue 'no objection certificate' to the claimants for getting new connections from the CESCP?

5. Was there any mis-match of unit code and the location hoardings?

6. Was it established and accepted in joint inspection by the KMC that only 200 street hoardings out of 250 could be located?

7. Did the claimants fail to deposit the requisite amount in advance under the contract for which the KMC, the respondent, suffered substantial loss in revenue?

8. Was there any obligation of the respondents to identify the location of the street hoardings as the agreement was on 'as is where is basis'?

9. Did the parties discharge their respective liabilities under the contract and if so to what extent?

10. Is the claimant entitled to the claim amount as claimed?

11. Are the respondents entitled to the amount of counter-claim as claimed in their statement of counter-claim?

12. To what other relief or reliefs the parties are entitled?"

35. The Division Bench has, in our opinion, not appreciated the case in its proper perspective. Merely saying that the blacklisting order carried reasons is not good enough. Do the reasons justify the invocation of the penalty of blacklisting and is the penalty proportionate, was the real question.

36. The Division Bench has observed that blacklisting is a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. It also observed that between two private parties the right to take any such decision is absolute and untrammeled by any constraints whatsoever. The observations are too sweeping in their ambit and wholly overlook the fact that the respondent-Corporation is a statutory body vested with the duty to discharge public functions. It is not a private party. Any decision to blacklist should be strictly within the parameters of law and has to comport with the principle of proportionality.

37. The Division Bench having noticed the fact that any decision to blacklist will be open to scrutiny on the anvil of the doctrine of proportionality has failed to apply the principle to the facts of the case in the correct perspective. The Division Bench has also failed to correctly appreciate the ratio of the decision in ***B.S.N. Joshi*** ***(supra)***.

38. There has been no enquiry by the Division Bench as to whether the conduct of the appellant was part of the normal vicissitudes in business and common place hazards in commerce or whether the appellant had crossed the rubicon warranting a banishment order, albeit for a temporary period in larger public interest.

39. One such case where this Court found the Lakshman Rekha to be breached by the party blacklisted was ***Patel Engineering Limited*** vs. ***Union of India and Another***, (2012) 11 SCC 257. In that case, while upholding the order of blacklisting, this Court recorded the following:

> "33. From the impugned order it appears that the second respondent came to the conclusion that: (1) the petitioner is not reliable and trustworthy in the context of a commercial transaction; (2) by virtue of the dereliction of the petitioner, the second respondent suffered a huge financial loss; and (3) the dereliction on the part of the petitioner warrants exemplary action to "curb any practice of 'pooling' and 'mala fide' in future".
>
> 34. We do not find any illegality or irrationality in the conclusion reached by the second respondent that the petitioner is not (commercially) reliable and trustworthy in the light of its conduct in the context of the transaction in question. We cannot find fault with the second respondent's

> conclusion because the petitioner chose to go back on its offer of paying a premium of Rs 190.53 crores per annum, after realising that the next bidder quoted a much lower amount. Whether the decision of the petitioner is bona fide or mala fide, requires a further probe into the matter, but, the explanation offered by the petitioner does not appear to be a rational explanation.
>
> 36. …. The dereliction, such as the one indulged in by the petitioner, if not handled firmly, is likely to result in recurrence of such activity not only on the part of the petitioner, but others also, who deal with public bodies, such as the second respondent giving scope for unwholesome practices…..”

40. Equally so in ***Kulja Industries*** ***(supra)***, the party blacklisted was alleged to have fraudulently withdrawn a huge amount of money which was not due to it in collusion and conspiracy with officials of the respondent Corporation.

41. ***Patel Engineering (supra)*** and ***Kulja Industries*** ***(supra)*** bring out the contrast between cases of that ilk and others, like the case in question. It is this distinction the Division Bench has grossly overlooked which, however, the learned Single Judge had rightly brought to the fore.

42. For all the reasons set out hereinabove, we set aside the impugned judgment of the Division Bench dated 21.06.2017 passed in M.A.T. No. 277 of 2017 and restore the judgment of the learned Single Judge. The result will be that the Writ Petition No. 6616(W) of 2016 filed by the appellant before the High Court at Calcutta would stand allowed and the order of blacklisting dated 02.03.2016 would stand set aside. The Appeal is, accordingly, allowed. No order as to costs.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan

[2024] 8 S.C.R. 207 : 2024 INSC 578

Government of NCT of Delhi
v.
Office of Lieutenant Governor of Delhi

(Writ Petition (Civil) No. 348 of 2023)

05 August 2024

[Dr Dhananjaya Y Chandrachud, CJI, Pamidighantam Sri Narasimha* and J.B. Pardiwala, JJ.]

Issue for Consideration

Whether the Lt. Governor can exercise power of nomination under Section 3(3)(b)(i) of the Delhi Municipal Corporation Act, 1957 as a statutory duty attached to his office or he is bound by the aid and advice of the Council of Ministers of NCTD as provided in Article 239AA(4) of the Constitution of India.

Headnotes†

Delhi Municipal Corporation Act, 1957 – s.3(3)(b)(i) – Interpretation – Delhi Municipal Corporation (Amendment) Act No. 67 of 1993 – Constitution (Sixty-Ninth Amendment) Act, 1991 – Article 239AA(4), 239AB – Government of National Capital Territory Act, 1991 – ss.41-45 – Nomination of 10 persons with special knowledge in municipal administration to the Delhi Municipal Corporation, by the Lt. Governor u/s.3(3)(b)(i) – Whether to be on the aid and advice of the Council of Ministers or the Lt. Governor is to act as per his discretion:

Held: s.3(3)(b)(i) of the Delhi Municipal Corporation Act is a Parliamentary enactment vesting the power of nomination of persons with special knowledge in municipal administration with the Lt. Governor – The said power is to be exercised as a statutory duty of the Lt. Governor and not as the executive power of the Government of NCTD – The context in which the power is located confirms that the Lt. Governor is intended to act as per the mandate of the statute and not to be guided by the aid and advice of the Council of Ministers – Notifications issued by the Lt. Governor u/s.3(3)(b)(i) nominating ten members to the Corporation are not in violation of Article 239AA r/w s.41 of the GNCTD Act. [Paras 39, 38, 40]

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* Author

Constitution of India – Articles 163, 239AA(4) – Discretionary power under – Distinction – Plea that the position of the Lt. Governor is akin to that of a Governor in a State u/Article 163:

Held: Rejected – There is a clear distinction between the discretionary power of the Governor u/Article 163 and that of the Lt. Governor u/Article 239AA(4) – While Article 163 requires Governor of a State to act on the aid and advice of the Council of Ministers, 'except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion', the exception in so far as the Lt. Governor, under Article 239AA(4) is concerned, he will act in his discretion, 'in so far as he is required by or under any law' – Article 239AA takes into account the unique position of NCTD and therefore adopts the mandate of 'law' as a distinct feature for exercise of discretion. [Para 21]

Constitution of India – Article 239AA(3)(a),(b),(c), 239AA(4) – Legislative, Executive, Statutory relations between the Union and National Capital Territory of Delhi (NCTD) – Reiterated.

Delhi Municipal Corporation Act, 1957 – Power, functions and duties of the Lt. Governor vis-à-vis Government of NCTD – Competing power structure – Discussed.

Delhi Municipal Corporation Act, 1957 – s.3(3)(b)(i) – 'ten persons to be nominated by the Administrator' – Delhi Municipal Corporation (Amendment) Act No. 67 of 1993 – Government of National Capital Territory Act, 1991 – Plea that the word 'administrator' was used in many pre-1991 legislations which relate to subjects now falling within the purview of the Legislative Assembly of NCTD and thus, vesting of power in the name of Administrator/Lt. Governor in s.3(3)(b)(i) continued by default or 'semantic lottery':

Held: Rejected – Submission is oblivious of the 1993 amendment to the Act – The (Amendment) Act gave effect to a scheme by which powers, duties, and responsibilities were allocated to the authorities, depending on the functions they performed under the Act, including comprehensive amendments to s.3(3)(b)(i) of the Act – The power to nominate was brought into the Statute for the first time with the introduction of the 1993 amendment to the DMC Act – The word 'Administrator' is not a relic of the past- a pre-1991 legislation when there was no Legislative Assembly for

Delhi, as s.3(3)(b)(i) was introduced only in 1993 to give effect to the two constitutional amendments – Under the statutory regime, the entrustment of the powers is intended to be exercised by Lt. Governor as a statutory duty. [Paras 29, 37]

Case Law Cited

Samsher Singh v. State of Punjab [1975] 1 SCR 814 **: (1974) 2 SCC 831;** *Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly* [2016] 6 SCR 1 **: (2016) 8 SCC 1;** *State (NCT of Delhi) v. Union of India* **(2018) 8 SCC 501;** *Government of NCT of Delhi v. Union of India* [2023] 9 SCR 493 **: (2023) 9 SCC 1 – referred to.**

List of Acts

Delhi Municipal Corporation Act, 1957; Delhi Municipal Corporation (Amendment) Act No. 67 of 1993; Constitution of India; Constitution (Sixty-Ninth Amendment) Act, 1991; Government of National Capital Territory Act, 1991.

List of Keywords

Delhi Municipal Corporation; National Capital Territory of Delhi (NCTD); Government of National Capital Territory of Delhi (GNCTD); Aldermen; Nomination of Aldermen; Power of nomination; Nomination of persons with special knowledge in municipal administration to the Delhi Municipal Corporation; Lt. Governor; Statutory duty; Not bound by the aid and advice of the Council of Ministers of NCTD; Not executive power of the Government of NCTD; Discretionary power of the Governor, Lt. Governor; Administrator; Sui Generis status of NCTD; Article 239AA; Article 239AB; Section 3(3)(b)(i) of the DMC Act.

Case Arising From

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 348 of 2023

(Under Article 32 of The Constitution of India)

Appearances for Parties

Dr. Abhishek Manu Singhvi, Sr. Adv., Shadan Farasat, Amit Bhandari, Aman Sharma, Shourya Dasgupta, Aman Naqvi, Ms. Hrishika Jain, Ms. Natasha Maheshwari, Ms. Mreganka Kukreja, Advs. for the Petitioner.

Sanjay Jain, A.S.G., Shreekant Neelappa Terdal, Arkaj Kumar, Ms. Bani Dkshit, Bhuvan Kapoor, Padmesh Mishra, Dr. N. Visakamurthy, Ms. Tanya Aggarwal, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Pamidighantam Sri Narasimha, J.

1. Section 3(3)(b)(i) of the Delhi Municipal Corporation Act, 1957[1] provides that the Lieutenant Governor[2] of National Capital Territory of Delhi[3] shall nominate 10 persons with special knowledge in municipal administration to the DMC. The question for our consideration is whether the Lt. Governor can exercise that power of nomination as a statutory duty attached to his office or he is bound by the aid and advice of the Council of Ministers of NCTD as provided in Article 239AA(4) of the Constitution.

2. ***Facts:*** Before we take up a detailed analysis of the law and precedents on the subject, a short reference to the facts leading to the filing of the present writ petition is necessary to understand the contextual relevance of the issue under consideration. Delhi Municipal Corporation is composed of: (a) councillors chosen by *direct elections* from the wards[4] and (b) persons represented through nominations.[5]

3. In the recent elections to the DMC held on 4th December, 2022, Aam Aadmi Party obtained simple majority by winning 134 out of 250 wards and Bharatiya Janata Party came second winning 104 wards. By the end of the month, i.e., 02.01.2023, Municipal Secretary, DMC sent a note, countersigned by the Commissioner, DMC that Lt. Governor will nominate ten persons to the Corporation as provided under Section 3(3)(b)(i) of the DMC Act. In fact, on the very next day, by his order dated 03.01.2023, the Lt. Governor nominated ten members and it was notified in the Delhi Gazette. There was a minor

1 Hereinafter referred to as the 'DMC Act' and 'DMC' for Delhi Municipal Corporation.

2 After the establishment of Legislative Assembly for the Union Territory of Delhi, the Administrator is redesignated as Lieutenant Governor.

3 Hereinafter referred to as NCTD.

4 Under Section 3(3)(a)

5 Under Section 3(3)(b)

correction and the same was carried out and the corrigendum was also published in the Gazette on the next day, i.e., on 04.01.2023.

4. Challenging the legality and propriety of nominations by the Lt. Governor, the instant writ petition was filed by the Government of NCTD under Article 32 for a Writ of Certiorari to quash the notifications dated 03.01.2023 and 04.01.2023 and also for a direction to the Lt. Governor to nominate persons under Section 3(3)(b)(i) only in accordance with the *aid and advice* of the Council of Ministers.

5. ***Submissions:*** Dr. Abhishek Manu Singhvi, learned Senior Advocate assisted by Shri Shadan Farasat, AOR, appearing on behalf of the Government of NCTD submitted that the 'Lt. Governor can act in his discretion only when it is expressly provided by a law or where no other interpretation of a legal provision is possible'. After taking us through the mandate of Article 239AA, in particular, sub-Article (4), read in conjunction with Section 41 of the Government of National Capital Territory Act of 1991,[6] he submitted that these provisions mirror Article 163 of the Constitution, requiring the Governor to act only on the *aid and advice* of the popularly elected Government. For this purpose, the principles laid down in *Samsher Singh* v. *State of Punjab*[7] *and Nabam Rebia and Bamang Felix* v. *Deputy Speaker, Arunachal Pradesh Legislative Assembly*[8] were relied on to put forth the point that the satisfaction of the Lt. Governor in the cabinet system of Government is the satisfaction of his Council of Ministers.

   5.1 Referring to Section 3(3)(b)(i) of the DMC Act, it is also argued that the provision cannot be construed as expressly vesting any discretion in the Lt. Governor to nominate persons to the Corporation. He further submitted that the issue, if any, is conclusively decided by the Constitution Bench decisions of this Court in *State* (*NCT of Delhi)* v. *Union of India,*[9] and the recent pronouncement in the case of *Government of NCT of Delhi* v. *Union of India*.[10]

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6 Hereinafter referred to as GNCTD Act.

7 [1975] 1 SCR 814 : (1974) 2 SCC 831

8 [2016] 6 SCR 1 : (2016) 8 SCC 1

9 (2018) 8 SCC 501

10 [2023] 9 SCR 493 : (2023) 9 SCC 1

6. Shri Sanjay Jain, Learned Additional Solicitor General, representing the Lt. Governor has not joined issue on the interpretation of Article 239AA, or on the ratio in *Samsher Singh* (supra) and the two Constitution Bench Judgments of this Court on Article 239AA. It is his submission that the relevant provision of the DMC Act must be read in consonance with Part IXA of the Constitution relating to grant of Constitutional Status to 'Municipalities'.

   6.1 Mr. Jain has taken us through certain provisions of the GNCTD Act, as well as the DMC Act to demonstrate the distribution of powers and duties among various authorities. Interpreted in this context, he submitted it will be evident that the Lt. Governor is specifically empowered under Section 3(3)(b)(i) to nominate persons of his own accord and that obligation does not fall within the duty to act on the aid and advice of the Council of Ministers.

7. In rejoinder, Dr. Singhvi submitted that there is a long-standing practice of over 30 years of the Administrator/Lt. Governor nominating councillors only on the *aid and advice* of the Council of Ministers and that there is no justification for deviating from the established past practice.

Legislative history of election and nomination of Aldermen[11]:

8. Municipal administration in Delhi is governed by and under the DMC Act enacted by the Parliament in 1957. Interestingly, there was no provision for appointment or nomination of Aldermen in the Delhi Municipal Corporation Bill[12] as it was originally introduced in the Parliament by Shri Govind Ballabh Pant on 2nd September,

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11 DMC Act initially used the expression 'Aldermen' to represent persons other than councillors who were represented in the Corporation. However, after the 1993 Amendment to the DMC Act, the term 'Aldermen' was dropped and substituted by the descriptive language-*'persons who have special knowledge and experience in municipal administration*'.

12 "**3. Establishment of the Corporation**
(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be a Corporation charged with the municipal government of Delhi, to be known as the Municipal Corporation of Delhi.
(2) The Corporation shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and may by the said name sue and be sued.
(3) The Corporation shall consist of eighty councillors chosen by direct election on the basis of adult suffrage from various wards into which Delhi shall be divided in accordance with the provisions of section 5:
Provided that twelve out of the eighty seats of councillors shall be reserved for the members of the Scheduled Castes."
Gazette of India Extraordinary, Jan-Dec 1957, Part 2 Section 2 pg. 552.

1957. However, when the Act was notified on 28th December, 1957, Section 3[13] relating to Constitution of the Corporation comprised of councillors as well as Aldermen was introduced. The procedure for election of Aldermen was provided in Section 13[14] of the Act, as per which they were to be elected by the councillors from persons who are qualified to be councillors, but were neither councillors nor had contested in the election to the post of councillors.

Constitution (Sixty-Ninth) Amendment and establishment of Legislative Assembly for NCTD and introduction of Articles 239AA and 239AB:

9. A little after three decades of passing of the DMC Act, the Union Government felt the need to reorganize the administrative and municipal authorities in the Union Territory of Delhi and constituted a committee (popularly referred to as the Balakrishnan Committee) to study and make recommendations on the same. The Committee recommended the decentralization of Delhi administration and the constitution of a legislative assembly for NCTD by way of a Constitutional Amendment. In so far as municipal administration is concerned, the Committee inter-alia touched upon the then position relating to election of Aldermen and made certain recommendations.[15]

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13 "**3. Establishment of the Corporation**
(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be a Corporation charged with the municipal government of Delhi, to be known as the Municipal Corporation of Delhi.
(2) The Corporation shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and may by the said name sue and be sued.
(3) The Corporation shall be composed of councillors and aldermen.
(4) ……
(5) ……
(6) ……
(7) The total number of aldermen shall always be six."
Gazette of India Extraordinary, Jan-Dec 1957, Part 2 Section 1 pg. 696.

14 *"**13. (1)** The six aldermen referred to in sub-section (7) of section-3 shall be elected at a meeting of the councillors immediately after the publication of the results of the general election of councillors under section 14. or*
(2) No person shall be entitled to stand as a candidate at any election of an alderman if at any election of a councillor immediately preceding the election of any alderman he stood as a candidate and failed to be elected as a councillor.
(3) In the case of an equality of votes at any election of an alderman the person presiding at the meeting whether or not entitled to vote in the first instance shall have and exercise a casting vote.
(4) As many persons as there are vacancies to be filled being persons who have the largest number of votes shall be declared by the person presiding at the meeting to be elected.
(5) As soon as may be after the occurrence of any casual vacancy in the office of an alderman election shall be held to fill such casual vacancy."

15 *"11.6.5. The Act makes provision for the election of six Aldermen by the elected members of the*

10. Following acceptance of Balakrishnan Committee Report on decentralization, through the Constitution (Sixty-Ninth Amendment) Act, 1991, Articles 239AA and 239AB were introduced in Part VII of the Constitution. This led to the constitution of a Legislative Assembly for the NCTD under Article 239AA with certain special features including redesignation of the Administrator as Lt. Governor.

11. The provision relevant for the purpose of this case is sub-Article (4) of Article 239AA, as per which the Council of Ministers are to *aid and advice* the Lt. Governor in relation to matters where the Legislative Assembly has the power to make laws. The same sub-Article also provides an exception to this rule, that is where the Lt. Governor *is, by or under any law, required to act in his discretion*. Article 239AA, being crucial for our determination, is reproduced hereinbelow for ready reference:

> "***Article 239AA. Special provisions with respect to Delhi-:***
>
> *(1) As from the date of commencement of the Constitution (Sixty-ninth Amendment) Act, 1991, the Union territory of Delhi shall be called the National Capital Territory of Delhi (hereafter in this Part referred to as the National Capital Territory) and the administrator thereof appointed under article 239 shall be designated as the Lieutenant Governor."*
>
> *(2) (a) There shall be a Legislative Assembly for the National Capital Territory and the seats in such Assembly*

Corporation. The only qualification for an Alderman prescribed by the Act is that every such person should be qualified to be elected as a Councillor and should, not already be a Councillor. This means that the Aldermen are no different from Councillors, except for their mode of election. There is obviously no apparent purpose in providing for the institution of Aldermen if they are also to belong to the same category of persons as the Councillors. It only stands to reason that Aldermen should be elderly men with a measure of maturity, experience and standing in the public so as to enable them to provide a valuable input to the deliberations of the Corporations by reason of their expertise or experience in public affairs. The present provisions in the Act do not ensure this. We consider that an Alderman, if he is to play any useful role, should be a person elected from members of the public, residing within the limits of the Corporation concerned, with adequate knowledge, reputation and experience of public affairs and with a background of public service. They can be chosen from persons who have retired after rendering service as teachers, doctors, engineers or government servants. Delhi is full of such men of experience and it will be in the public interest that the talents of such experienced men should be utilized usefully in the civic administration. We recommend that the Act should prescribe these qualifications. The Aldermen should be elected by the Councillors from among persons so qualified by the method of proportional representation by means of a single transferable vote. We recommend accordingly. We also recommend that the actual number of Alderman may be fixed for each corporation at a figure not less than two but more than four." Committee on Reorganisation of Delhi Set-up Report, December 1989 Part II."

shall be filled by members chosen by direct election from territorial constituencies in the National Capital Territory.

(b)…

(c)…

(3) (a) Subject to the provisions of this Constitution, the Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the State List or in the Concurrent List in so far as any such matter is applicable to Union territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that List in so far as they relate to the said Entries 1, 2 and 18.

(b) Nothing in sub-clause (a) shall derogate from the powers of Parliament under this Constitution to make laws with respect to any matter for a Union territory or any part thereof.

(c) If any provision of a law made by the Legislative Assembly with respect to any matter is repugnant to any provision of a law made by Parliament with respect to that matter, whether passed before or after the law made by the Legislative Assembly, or of an earlier law, other than a law made by the Legislative Assembly, then, in either case, the law made by Parliament, or, as the case may be, such earlier law, shall prevail and the law made by the Legislative Assembly shall, to the extent of the repugnancy, be void:

Provided that if any such law made by the Legislative Assembly has been reserved for the consideration of the President and has received his assent, such law shall prevail in the National Capital Territory:

Provided further that nothing in this sub-clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislative Assembly.

(4) There shall be a Council of Ministers consisting of not more than ten per cent of the total number of members in the Legislative Assembly, with the Chief Minister at the head to aid and advise the Lt. Governor in the exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except in so far as he is, by or under any law, required to act in his discretion.

Provided that in the case of difference of opinion between the Lieutenant Governor and his Ministers on any matter, the Lieutenant Governor shall refer it to the President for decision and act according to the decision given thereon by the President and pending such decision it shall be competent for the Lieutenant Governor in any case where the matter, in his opinion, is so urgent that it is necessary for him to take immediate action, to take such action or to give such direction in the matter as he deems necessary.

(5)…

(6)…"

12. Following the introduction of Articles 239AA and 239AB, Parliament enacted the GNCTD Act, 1991 to give full effect to the constitutional amendment. Part IV of the GNCTD Act relates to 'Lieutenant Governor and Ministers' and Sections 41 to 45 falling under this Part are relevant for our purpose and we will refer them at the relevant place.

Judicial Interpretation of Article 239AA and GNCTD Act:

13. The distribution of *legislative powers* between the Parliament and the Legislative Assembly of NCTD, as well as the distribution of the *executive powers* between the Union Government and the Government of NCTD was discussed and basic principles were laid down in the two Constitution Bench judgments of 2018 in *State (NCT of Delhi) v. Union of India*[16] and of 2023 *in* Government of NCT of Delhi v. Union of India.[17]

16 Supra no. 9

17 Supra no. 10

14. The 2023 decision of the Constitution Bench in *Government of NCT of Delhi* v. *Union of India* reaffirmed the unique position of NCTD enunciated in the 2018 decision- that its Legislative Assembly has competence to make laws for all matters enumerated in List II and List III (except with respect to entries 1, 2 & 18 of List II). While Union has executive power with respect to matters concerning entries 1, 2 & 18 of List II, the Government of NCTD has executive power with respect to all matters in List II as well as List III (except of course for matters with respect to entries 1, 2 & 18 of List II).

15. Article 239AA(3)(b) confers legislative power on the Parliament to make laws on any and all matters in Lists II and III. Article 239AA(3)(c) further provides that in case the Parliament exercises such legislative power, any law passed by the Legislative Assembly of NCTD shall be void to the extent of repugnancy with the Parliamentary law. Paragraphs 22 to 27 of the 2023 judgment authored by the Hon'ble Chief Justice (Dr. D Y Chandrachud) are relevant for our consideration and the same are reproduced herein for ready reference. These will conclusively establish the principle that if the Parliament makes a law in relation to any subject in List II and List III, the executive power of GNCTD shall then be limited by the law enacted by the Parliament.

> *"Legislative and executive power of NCTD*
>
> *22. Article 239AA(3)(a) stipulates that the Legislative Assembly of Delhi shall have the power to make laws for the whole or any part of NCTD with respect to matters in the State List and the Concurrent List "insofar as any such matter is applicable to Union Territories" except for certain subjects expressly excluded. The provisions expressly excludes entries 1, 2, and 18 of the State List, and entries 64, 65 and 66 of List II insofar as they relate to the entries 1, 2, and 18. Article 239AA(3)(b) confers on Parliament the power "to make laws with respect to any matter" for a Union Territory or any part of it. Thus, while the Legislative Assembly of NCTD has legislative competence over entries in List II and List III except for the excluded entries of List II, Parliament has legislative competence over all matters in List II and List III in relation to NCTD, including the entries which have been kept out of the legislative domain of NCTD by virtue of Article*

239AA(3)(a). This is where there is a departure from the legislative powers of Parliament with respect to States. While Parliament does not have legislative competence over entries in List II for States, it has the power to make laws on entries in List II for NCTD. This was the view taken in the 2018 Constitution Bench judgment.

23. As the concurring opinion of Justice Chandrachud held:

> *"316… Unlike State Legislative Assemblies which wield legislative power exclusively over the State List, under the provisions of Article 246(3), the legislative assembly for NCT does not possess exclusive legislative competence over State List subjects. By a constitutional fiction, as if it were, Parliament has legislative power over Concurrent as well as State List subjects in the Seventh Schedule. Sub Clause (c) of Clause 3 of Article 239AA contains a provision for repugnancy, similar to Article 254. A law enacted by the legislative assembly would be void to the extent of a repugnancy with a law enacted by Parliament unless it has received the assent of the President. Moreover, the assent of the President would not preclude Parliament from enacting legislation in future to override or modify the law enacted by the legislative assembly… "*

24. The 2018 Constitution Bench judgment held that the executive power of NCTD is co-extensive with its legislative power, that is, it shall extend to all matters with respect to which it has the power to legislate. Article 239AA(4) provides that the Council of Ministers shall aid and advise the Lieutenant Governor in the exercise of the functions of the latter in relation to matters with respect to which the Legislative Assembly has the power to make laws. Thus, the executive power of NCTD shall extend over entries in List II, except the excluded entries. After analysing the provision of Article 239AA(4), it was held in the opinion of the majority in the 2018 Constitution Bench judgment that the Union

has executive power only over the three entries in List II over which NCTD does not have legislative competence, that is, entries 1,2, and 18 in List II. It was held:

> *"222. A conjoint reading of Article 239-AA(3)(a) and Article 239-AA(4) reveals that the executive power of the Government of NCT of Delhi is coextensive with the legislative power of the Delhi Legislative Assembly which is envisaged in Article 239- AA(3) and which extends over all but three subjects in the State List and all subjects in the Concurrent List and, thus, Article 239-AA(4) confers executive power on the Council of Ministers over all those subjects for which the Delhi Legislative Assembly has legislative power.*
>
> *223. Article 239-AA(3)(a) reserves Parliament's legislative power on all matters in the State List and Concurrent List, but clause (4) nowhere reserves the executive powers of the Union with respect to such matters. On the contrary, clause (4) explicitly grants to the Government of Delhi executive powers in relation to matters for which the Legislative Assembly has power to legislate. The legislative power is conferred upon the Assembly to enact whereas the policy of the legislation has to be given effect to by the executive for which the Government of Delhi has to have coextensive executive powers…*
>
> *224. Article 239-AA(4) confers executive powers on the Government of NCT of Delhi whereas the executive power of the Union stems from Article 73 and is coextensive with Parliament's legislative power. Further, the ideas of pragmatic federalism and collaborative federalism will fall to the ground if we are to say that the Union has overriding executive powers even in respect of matters for which the Delhi Legislative Assembly has legislative powers. Thus, it can be very well*

said that the executive power of the Union in respect of NCT of Delhi is confined to the three matters in the State List for which the legislative power of the Delhi Legislative Assembly has been excluded under Article 239-AA(3)(a). Such an interpretation would thwart any attempt on the part of the Union Government to seize all control and allow the concepts of pragmatic federalism and federal balance to prevail by giving NCT of Delhi some degree of required independence in its functioning subject to the limitations imposed by the Constitution…

284.16. As a natural corollary, the Union of India has exclusive executive power with respect to NCT of Delhi relating to the three matters in the State List in respect of which the power of the Delhi Legislative Assembly has been excluded. In respect of other matters, the executive power is to be exercised by the Government of NCT of Delhi. This, however, is subject to the proviso to Article 239-AA(4) of the Constitution. Such an interpretation would be in consonance with the concepts of pragmatic federalism and federal balance by giving the Government of NCT of Delhi some required degree of independence subject to the limitations imposed by the Constitution."

25. The judgment of the majority, however, clarified that if Parliament makes a law in relation to any subject in List II and List III, the executive power of GNCTD shall then be limited by the law enacted by Parliament. It was held:

"284.15. A conjoint reading of clauses (3)(a) and (4) of Article 239-AA divulges that the executive power of the Government of NCTD is coextensive with the legislative power of the Delhi Legislative Assembly and, accordingly, the executive power of the Council of Ministers of Delhi spans over all subjects in the Concurrent

> *List and all, but three excluded subjects, in the State List. However, if Parliament makes law in respect of certain subjects falling in the State List or the Concurrent List, the executive action of the State must conform to the law made by Parliament. (sic)"*

26. The above view was also taken by Justice Chandrachud in his concurring opinion:

> *"316. the provisions of Clause 2 and Clause 3 of Article 239AA indicate that while conferring a constitutional status upon the legislative assembly of NCT, the Constitution has circumscribed the ambit of its legislative Powers firstly, by carving out certain subjects from its competence (vesting them in Parliament) and secondly, by enabling Parliament to enact law on matters falling both in the State and Concurrent lists. Moreover, in the subjects which have been assigned to it, the legislative authority of the Assembly is not exclusive and is subject to laws which are enacted by Parliament."*

27. The 2018 Constitution Bench judgment authoritatively held that the legislative and executive power of NCTD extends to all subjects in Lists II and III, except those explicitly excluded. However, in view of Article 239AA(3)(b), Parliament has the power to make laws with respect to all subjects in List II and III for NCTD."

16. It is in the above referred constitutional position of NCTD that we will examine the law enacted by the Parliament on Municipality, i.e. the Delhi Municipal Corporation Act, 1957.

Delhi Municipal Corporation Act 1957, as amended by Act 67/93:

17. The Delhi Municipal Corporation Act is a law which relates to Entry 5 of State List.[18] This is an Act to *consolidate and amend the law*

18 This is an admitted position as can be seen from para 2.2 of the written submission of Dr. Singhvi that, *"In the present case, the DMC Act relates to Entry 5 of State List*".

relating to the Municipal Government of Delhi. We are concerned with Section 3(3)(b)(i) of the Act, introduced by an amendment in 1993, after introduction of Article 239AA in 1991, which requires the Lt. Governor to nominate persons to be represented in the Corporation. Section 3 being central to our consideration, we will extract a substantial part of it for ready reference:-

> *"**3. Establishment of the Corporation***
>
> *(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be a Corporation charged with the municipal Government of Delhi, to be known as the Municipal Corporation of Delhi.*
>
> *(2) The Corporation shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and may by the said name sue and be sued.*
>
> *(3) (a) The Corporation shall be composed of the councillors;*
>
> *(b) the following persons shall be represented in the Corporation, namely:—*
>
> *(i) ten persons, who are not less than 25 years of age and who have special knowledge or experience in municipal administration, to be nominated by the Administrator:*
>
> *Provided that the persons nominated under this sub-clause shall not have the right to vote in the meetings of the Corporation;*
>
> *(ii) members of the House of the People representing constituencies which comprise wholly or partly the area of the Corporation and the members of the Council of States registered as electors within the area of the Corporation;*
>
> *(iii) as nearly as possible one-fifth of the members of the Legislative Assembly of the National Capital Territory of Delhi representing constituencies which comprise wholly or partly the area of the Corporation to be nominated by*

the Speaker of that Legislative Assembly, by rotation, every year:

Provided that while nominating such members, by rotation, the Speaker shall ensure that as far as possible all the members are given an opportunity of being represented in the Corporation at least once during the duration of the Corporation; (iv) the Chairpersons of the Committees, if any, constituted under sections 39, 40 and 45, if they are not councillors.

*(4) Councillors shall be chosen by direct election on the basis of adult suffrage from various wards into which Delhi shall be divided in accordance with the provisions of this Act ***."*

18. The Parliamentary enactment on the subject of Municipality for Delhi, being the DMC Act as amended in 1993, the legislative power of the Legislative Assembly of NCTD to make laws is to be considered. The '*Sui Generis'* status of NCTD has been analysed and declared by both the Constitution Bench judgments. In the 2018 Constitution Bench Judgment on NCT, Delhi, Justice Dipak Misra, speaking for the majority held:

> *"284.15. However, if Parliament makes law in respect of certain subjects falling in the State List or the Concurrent List, the executive action of the State must conform to the law made by Parliament."*

19. A similar observation is made by Justice D.Y. Chandrachud in his concurring Judgment. In Para 316 of the Judgment, it is observed that;

> *"316. The provisions of Clause 2 and Clause 3 of Article 239AA indicate that while conferring a constitutional status upon the legislative assembly of NCT, the Constitution has circumscribed the ambit of its legislative Powers firstly, by carving out certain subjects from its competence (vesting them in Parliament) and secondly, by enabling Parliament to enact law on matters falling both in the State and Concurrent lists. Moreover, in the subjects which have been assigned to it, the legislative authority*

> *of the Assembly is not exclusive and is subject to laws which are enacted by Parliament."*

20. Reiterating the same position, even in the 2023 Constitution Bench Judgment, Chief Justice Dr. D.Y. Chandrachud observed that:

> *"The judgment of the majority, however, clarified that if Parliament makes a law in relation to any subject in List II and List III, the executive power of GNCTD shall then be limited by the law enacted by Parliament."*

21. In view of the distinct constitutional position as it exists for NCTD, we cannot agree with the submissions of Dr. Singhvi that the position of Lt. Governor is akin to that of a Governor in a State under Article 163 of the Constitution. There is a clear distinction between the discretionary power of the Governor under Article 163 and that of the Lt. Governor under Article 239AA(4). While Article 163 requires Governor of a State to act on the aid and advice of the Council of Ministers, '*except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion',* the exception in so far as the Lt. Governor, under Article 239AA(4) is concerned, he will act in his discretion*, 'in so far as he is required by or under any law'*. Article 239AA of the Constitution takes into account the unique position of NCTD and therefore adopts the mandate of '*law'* as a distinct feature for exercise of discretion.

22. In view of the constitutional position and the decisions of this Court, a restatement of the relations between the Union and the NCTD is necessary before we proceed to interpret Section 3(3)(b)(i) of DMC Act to consider whether the Lt. Governor is to nominate on the *aid and advice* of the Council of Ministers or is to act as per his discretion.

A. Legislative Relationship

(i) Legislative Assembly of NCTD shall have power to make laws (legislative power) for NCTD with respect to 'any of the matters' enumerated in State List or Concurrent List. (except entries 1, 2 and 18 of State List). (Article 239AA(3)(a)).

(ii) Notwithstanding the above, Parliament shall have power to make laws (legislative power) for NCTD with respect to 'any matter' in the three lists. *This is where there is a departure from the legislative powers of Parliament with respect to States. While*

Parliament does not have legislative competence over entries in List II for States, it has the power to make laws even with respect to matters enumerated in List II for NCTD [(Article 239AA(3)(b)].

(iii) Law made by the Parliament shall prevail, whether made before or after any law made by the Legislative Assembly of NCTD, and the law made by the Legislative Assembly, to the extent of repugnancy, shall be void. Only exception is when the law made by Legislative Assembly of NCTD receives Presidential assent. (proviso to Article 239AA(3)(c))

(iv) Once Parliament exercises its legislative power and makes a law on a subject in List II or List III, the Legislative Assembly of NCTD is denuded of its legislative competence to make laws with respect to that subject. Once there is no legislative power for Legislative Assembly of NCTD, there would be no executive power as executive power is always co-extensive and coterminous with legislative power.

B. Executive Relationship

(v) Government of NCTD has the executive power in relation to all matters with respect to which Legislative Assembly of NCTD has power to make laws. The executive power extends to all matters enumerated in the Concurrent List as well as State List (Except Entries 1, 2 and 18 of State List).

(vi) Union of India shall have exclusive executive power with respect to matters in Entries 1, 2 and 18 of the State List, which are specifically excluded from the legislative power of NCTD.

(vii) The executive power of Government of NCTD shall be exercised through the Lt. Governor who shall act on the aid and advice of the Council of Ministers [Art 239AA(4)] read with Section 44 of the GNCTD Act. Another constitutionally recognized departure for NCTD is that while Governor of a State under Article 163 acts on the aid and advice of Council of Ministers on all matters except when he is by or under the Constitution required to exercise his functions in his discretion, the Lt. Governor, under Article 239AA(4) is to exercise discretion, 'in so far as he is, by or under any law, required to act in his discretion'. 'Law' requiring him to act in his discretion could be a law of the Legislative Assembly of NCTD or a Parliamentary law.

C. Statutory Regulation

(viii) Once Parliament makes Law on a subject over which NCTD also has legislative competence and consequently executive power, the powers, duties and obligations of the authorities will then be governed by the mandate of the Law made. This position is already mentioned in statements (iii) and (iv). If the Law vests a power, duty or an obligation on the Lt. Governor, the Lt. Governor will act under the mandate of the Act and not as per the 'executive power' of Government of NCTD. Therefore, statutory provision alone will determine whether the power is intended to be exercised by the Lt. Governor on his own accord or on the aid and advise of the Council of Ministers.

23. Before examining the statute, i.e., DMC Act in detail, we will deal with yet another submission of the petitioner. It is argued by Dr. Singhvi that vesting of power in the name of Administrator/Lt. Governor in Section 3(3)(b)(i) is nothing but a 'semantic lottery', as the word 'administrator' has been used in many pre-1991 legislations which relate to subjects that now fall within the purview of the Legislative Assembly of NCTD.

24. We will examine if this apparent vesting of the power in the name of Administrator, to nominate councillors under Section 3(3)(b)(i) is by default, as the old statutory regime would have continued without incorporating the Legislative status for NCTD after the introduction of Article 239AA in 1991.

25. For giving effect to the Constitutional 69th Amendment introducing Articles 239AA and 239AB and the specific recommendations of Balakrishnan Committee for reorganizing municipalities, the Delhi Municipal Corporation (Amendment) Bill, 1992 was introduced in the Lok Sabha on 24th November, 1992.

26. While the Bill was pending consideration, another constitutional development took place. In its Winter Session, Parliament passed the Constitution (Seventy-fourth Amendment) Bill relating to 'Panchayats' and 'Municipalities'. Part IX-A relating to Municipalities comprising of Articles 243P to Articles 243ZG came into effect from 01.06.1993. The Constitutional recognition of Municipalities, coupled with provisions granting autonomy for municipal administration, its elections,

composition, duration, reservation, etc. had to be incorporated in the DMC Act. In order to 'harmonize' the position, Government withdrew the pending Bill and introduced the new Bill No. 66 of 1993. The Bill was passed and was notified on 17.09.1993 as the Delhi Municipal Corporation (Amended) Act No. 67 of 1993.

27. The DMC Act, as amended in 1993 is of seminal importance. The amendment gives effect to two Constitutional developments. While the first relates to the recognition and grant of quasi-statehood to Delhi with the introduction of Articles 239AA and 239AB, the other relates to grant of a Constitutional status to the Municipalities. The statement of objects and reasons of Amendment Act 67 of 1993 record the circumstance in which amendments to the principal Act were brought about:

"STATEMENT OF OBJECTS AND REASONS

The need for reorganization of administrative and municipal set up in Delhi was being felt and the matter has been under the consideration of the Government for some time. For making an in-depth study, the Government appointed a Committee to go into the various issues connected with the administrative and municipal set up of Delhi and to recommend measures, inter alia, for streamlining of the municipal set up. The Committee on re-organisation of the Delhi set up (popularly known as Balakrishnan Committee) went into the matter in great detail and recommended a decentralized municipal administration.

2. To give effect to the recommendation of the Committee, and decision of the Government thereto, the Delhi Municipal Corporation (Amendment) Bill, 1992 was introduced in Lok Sabha on 24th November, 1992. Meanwhile, during the Winter Session of the Parliament, the Constitution (Seventy-second Amendment) Bill, 1992 relating to Panchayats and the Constitution (Seventy-third Amendment) Bill, 1992, relating to the municipalities were passed. These Bills have now become Acts. As the provisions of the aforesaid two Constitutional Amendments have a bearing on the composition, duration reservation of seats and responsibilities of Panchayats and Municipalities,

it has become necessary to make further changes in the Delhi Municipal Corporation (Amendment) Bill, 1992 so as to harmonise the provisions of the Delhi Municipal Corporation Act, 1957 with the provisions of the aforesaid two Constitutional Amendments.

3. Government has, therefore, proposed to withdraw the Delhi Municipal Corporation (Amendment) Bill, 1992 to introduce a new Amendment Bill in harmony with aforesaid Constitution Amendment Acts, with such modifications as are necessary in view of the special requirements of the Union Territory of Delhi.

4. The important changes sought to be brought about by the Bill are-

(i), (ii)…….

(iii) Provision has been made for ten persons of not less than 25 years of age and possessing special knowledge or experience in municipal administration, to be nominated by the Administrator to the Corporation;

(iv) to (xv)…….

Notes on Clauses

Many of the clauses of the Bill provide for amendments to the Delhi Municipal Corporation Act, 1957 in order to bring its provisions, as far as possible, in consonance with the provisions contained in the Constitution (Seventy-third Amendment) Act, 1992 and the Constitution (Seventy-fourth Amendment) Act, 1992 as well as consequent on the transfer of certain functions now being performed by the Municipal Corporation of Delhi to other agencies.

Clause 3 provides for the increase in the number of Councillors from one hundred to one hundred and thirty-four. It also provides for representation of ten persons, having special knowledge or experience in municipal administration (without voting right) to be nominated by the Administrator and representation of MPs from Delhi and Members of Legislative Assembly of Delhi…."

The 1993 Amendment to the DMC Act:

28. The DMC Act, as amended in 1993 (by Act 67/93) recognizes five authorities exercising distinct powers and duties under the Act. They are the, i) Central Government, ii) Government of NCTD, iii) Administrator, iv) Corporation, and v) the Commissioner. These authorities are also defined under the Act. Section 2(21A) defines 'Government' as '*the Government of National Capital Territory of Delhi'*, 'Administrator' is defined under Section 2(1) as *'the Lt. Governor of the National Capital Territory of Delhi'*, the 'Corporation' is defined under Section 2(7) as *'the Municipal Corporation of Delhi'* and finally the 'Commissioner' is defined under Section 2(6) as *'the Commissioner of the Corporation appointed under Section 54 of the Act'.*

29. The (Amendment) Act carries out as many as 136 amendments to the principal Act to give effect to a scheme by which powers, duties, and responsibilities are allocated to the authorities, depending on the functions that they perform under the Act. This also includes comprehensive amendments to Section 3(3)(b)(i) of the Act. For instance, while the power of nomination of Aldermen is given to the Lt. Governor under Section 3(3)(b)(i), the power of nomination of MLA's is given to the Speaker of the House under this very Section. It is therefore incorrect to suggest that the power vested in the Lt. Governor continued by default or 'Semantic Lottery'. In fact, the power to nominate is brought into the Statute for the first time with the introduction of the 1993 amendment to the DMC Act. This submission is therefore rejected as it is oblivious of the 1993 amendment to the Act.

The 'Text' and the 'Context' of Section 3(3)(b)(i) of DMC Act:

30. We will now examine Section 3(3)(b)(i) and also the 'context' in which it is located with other provisions of the Act to gather the true purpose and intention of the Parliament. The text of the provision is clear. Section 3(3)(b)(i) provides that 'ten persons to be nominated by the Administrator'.

31. It is now necessary to refer to the statutory scheme involving power, functions and duties of the ***Lt. Governor*** and that of the Government of NCTD in order to appreciate the true intendment behind Section 3(3)(b)(i), i.e., whether the power is to be exercised by the Lt. Governor on the *aid and advice* of the Council of Ministers or it is a statutory duty to be exercised at its own discretion as the Lt. Governor.

32. Provisions of the DMC Act imposing certain duties on the Lt. Governor are as follows:

(i) Section 3(3)(b)(i) provides that ten persons who have special knowledge and experience in municipal administration are *to be nominated by the* Administrator.

(ii) Section 7 relates to the duty, superintendence, direction and control of elections by the Election Commissioner and the Administrator is given the duty to *appoint the Election Commissioner*. The other power relates to a duty to maintain the integrity of the elections.

(iii) Section 33 relates to the duty to decide if any councillor has become subject to disqualification. The duty is entrusted to the Administrator and the Section provides that *"the question shall be referred to the decision of the Administrator and* his decision shall be final"*.* Sub-Section 4 of the same Section provides that before giving any decision on the question, the Administrator shall obtain the opinion of the Election Commissioner and the Lt. Governor shall act in accordance with the opinion of the Election Commission.

(iv) Section 73 relates to the duty of the Administrator to *convene the first meeting of the Corporation* after the General Elections.

(v) Section 77 prescribes the duty of the Administrator to *nominate a presiding officer* for the election of the Mayor. This duty is prescribed in terms that the *"Administrator shall nominate a Councillor".*

(vi) Section 82 relates to the power of the Lt. Governor to *decide the time, place and procedure of the first meeting of the Corporation* after the General Elections.

(vii) Section 95 provides for the Administrator being the *Appellate Authority* against imposition of punishment on municipal officer and other employees who are appointed by the Commissioner.

(viii) Section 107A provides that the Administrator shall *constitute the Finance Commission.*

(ix) Section 347D also provides an *appeal to the Administrator for adjudicating* disputes against the order of the Appellate Tribunal made under Section 343 or 347B.

33. In contrast, we will now examine the powers and duties entrusted to the ***Government of NCTD*** by the DMC Act.

(i) Under Section 479, the Government of NCTD has the *power to make Rules*. The Government also has the power to *approve Bye-Laws* made by the Corporation.

(ii) Section 7B relates to the preparation of Electoral Rolls in which the *Electoral Registration Officer shall be appointed* in consultation with the Government.

(iii) Section 43 empowers the Government to give *general or special orders with respect to any function that the Corporation may perform* in exercise of its duty.

(iv) Under Section 52, the Government has the *power to pass general or special orders as specified in Fifteenth Schedule* of the Act, with respect to exercise of powers and functions of the Ward Committees.

(v) Under Section 89, the *appointment of the Municipal Chief Auditor* shall be made *with the previous approval* of the Government. Similarly, all the officers mentioned in Section 89(1), except the Municipal Chief Accountant and Municipal Secretary, shall be subject to confirmation by the Government.

(vi) Under Section 92A, *direct recruitment to category B* and C posts shall be made by the Government and it may prescribe the agencies for performing its function.

(vii) Under Section 116, the Government has the *power to appoint and notify the Municipal Valuation Committee* which comprises a Chairperson and such other members as the Government may determine.

(viii) Under Section 150 the power of the Corporation to *levy taxes* is subject to the sanction of the Government.

(ix) Under Section 169 the Government shall have the power to *constitute the Municipal Taxation Tribunal* and such other members as the Government may determine.

(x) Under Section 207 the Government has the power to *appoint an Auditor for the purpose of making a special audit* of the Municipal Fund and reporting thereon to the Government.

(xi) Under Section 347A the Government also has the power to *constitute one or more Appellate Tribunal* for deciding appeals under section 343 and 347B.

(xii) Under Section 347A(4) the Government has the power to *appoint one or more persons having special knowledge or experience* in the matters involved in such appeals to act as assessors to advice the Appellate Tribunal. In this very context it is important to note that in so far as appointment of person manning the Appellate Tribunal is concerned, the power is given to the Central Government.

(xiii) Under Section 469, the Government has the power to appoint *Municipal Magistrates for conducting* the trial of offences under the Act. Under sub-Section (3) the Government has the power to prescribe the salary, pension, and leave etc.

34. Apart from the powers and duties of Lt. Governor and the Government of NCTD as noted in Paras 32 and 33, the DMC Act also refers to powers, functions and duties of other authorities such as the Central Government, the Corporation,[19] and the Commissioner.[20] The specific powers that are entrusted to them are mentioned in the footnote for the purpose of brevity as we are concerned only with the competing power structure between the Lt. Governor and the Government of NCTD.

35. The provisions of the Act relating to the Lt. Governor are relating to matters such as nomination of experts, Election Commissioner, constituting Finance Commission, convening the first meeting of the Corporation, acting as an appellate authority, etc. These functions seem to suggest that they are intended to enable the authority (Lt. Governor) in which the power is vested to act as an independent body.

36. On the other hand, powers and duties entrusted to the Government under the DMC Act are very distinct from that of the Lt. Governor. Para 30 evidences this fact. Powers and duties of Government of NCTD relate to matters such as making of subordinate legislation, having superintendence, making direct recruitment, imposing taxes,

19 See Sections 39, 89, 98, 209

20 See Sections 89, 90, 92, 98

establishment of Tribunals, appointment of Authorities such as the Municipal Chief Auditor, Valuation Committee, etc.

37. Having examined Section 3(3)(b)(i) of the DMC Act empowering the Lt. Governor to nominate persons having special knowledge to the DMC, we will underscore the point that it is law made by Parliament. As the law requires the Lt. Governor to exercise the power of nomination, it satisfies the exception contemplated under Article 239AA(4) to act in his discretion as he is by or under any law so required to act. We also reject the submission that the word 'Administrator' is a relic of the past- a pre-1991 legislation when there was no Legislative Assembly for Delhi, for the reason that Section 3(3)(b)(i) was introduced only in 1993 to give effect to the two constitutional amendments. Apart from the 'text' of Section 3(3)(b)(i) specifically requiring the Lt. Governor to nominate, we have also examined the 'context' in which the said provision is located, and it evidences the existence of a statutory scheme in which powers and duties are entrusted to different authorities under the Act to subserve the constitutional purposes. The statutory regime makes it clear that the entrustment of the powers is intended to be exercised by Lt. Governor as a statutory duty.

38. We would therefore proceed to add the following two principles to the statement of the relations between Union and NCTD in para 22:

(ix) The statutory power under Section 3(3)(b)(i) to nominate persons of special knowledge was vested in the Lt. Governor for the first time by the 1993 amendment to the Delhi Municipal Corporation Act, 1957 to incorporate the Constitutional changes through Articles 239AA, 239AB and introduction of Part IX-A relating to municipalities. The power to nominate is therefore not a vestige of the past or a power of the Administrator that is continued by default. It is made to incorporate change in the Constitutional structure of NCTD.

(x) The 'text' of *Section 3(3)(b)(i) of the DMC Act, 1957 as amended by Act 67/1993 expressly enables the 'Lt. Governor' to nominate persons having special knowledge to the Corporation. The power expressed by the statute in the name of Lt. Governor, also seen in the 'context' of other provisions of the statute, demonstrates the statutory scheme in which powers and duties are distributed among authorities under*

the Act. The context in which the power is located confirms that the Lt. Governor is intended to act as per the mandate of the statute and not to be guided by the aid and advice of the Council of Ministers.

39. Having examined the provisions of the Act, we are of the opinion that Section 3(3)(b)(i) of the Delhi Municipal Corporation Act is a Parliamentary enactment vesting the power of nomination of persons with special knowledge in municipal administration with the Lt. Governor. The power is to be exercised as a statutory duty of the Lt. Governor and not as the executive power of the Government of NCTD.

40. For the reasons stated above, the notifications dated 03.01.2023 and 04.01.2023 issued by the Lt. Governor under Section 3(3)(b)(i) are not in violation of Article 239AA read with Section 41 of the GNCTD Act.

41. Accordingly, this Writ Petition (C) No. 348 of 2023 under Article 32 of the Constitution of India is dismissed.

42. No order as to costs.

Result of the case: Writ Petition dismissed.

†*Headnotes prepared by:* Divya Pandey

[2024] 8 S.C.R. 235 : 2024 INSC 588

Tusharbhai Rajnikantbhai Shah
v.
Kamal Dayani & Ors.

Contempt Petition (C) D. No. 1106 of 2024
In
(Special Leave Petition (Crl.) No. 14489 of 2023)

07 August 2024

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

Issue for Consideration

Accused-petitioner was granted absolute interim protection of anticipatory bail by Supreme Court, until modified or altered upon final disposal of the present SLP which was pending consideration before this Court. However, in gross violation of the said order, the petitioner was remanded to police custody during the currency of the aforesaid interim order. Present contempt petition filed by the petitioner against the respondents-police officials and the ACJM. Respondents, if committed contempt of this Court's order.

Headnotes†

Contempt of Court – When – Accused-petitioner was remanded to police custody during the currency of the interim order passed by Supreme Court granting anticipatory bail to him – Contempt petition filed by the petitioner against the respondents (the police officials and the ACJM) for wilful disobedience and contempt of the Court's order:

Held: There was no such stipulation in the order under contempt dtd. 08.12.2023 which was passed exercising jurisdiction u/Article 136 of the Constitution of India that the accused could be remanded to police custody – The portrayal made by the Investigating Officer (IO)-contemnor-respondent No. 4 in the remand application to claim that the petitioner was not cooperating in the investigation was totally cooked up – During subsistence of the order dtd. 08.12.2023, there was neither any authority with the IO to seek police custody remand of the accused nor was the prayer for remand justified in the backdrop of the fact that the FIR itself was lodged in relation to a civil dispute which arose from an oral agreement for sale of property – There was neither bona fide nor genuine need for grant of police custody of the petitioner – Thus, respondent No.4, acted

in flagrant defiance and gross contempt of the aforesaid order by applying for police custody remand of the petitioner – Further, the ACJM-contemnor-respondent No.7 also acted with bias and in a high-handed manner while granting police custody remand of the accused – The SLP filed on behalf of the petitioner had not been finally decided and was still pending adjudication, when the remand application was entertained and hence, there was no occasion for her to have proceeded to interpret this Court's order in a fanciful manner and that too while acting on a tainted remand application filed by the IO – The reason offered by her that she was acting under a misconception owing to settled and prevailing practice in the State of Gujarat, is in disregard to the order passed by this Court – Order under contempt allowed only one interpretation i.e. the petitioner had to be released on bail in the event of arrest – The action of the respondent No.7 in granting police custody remand of the petitioner and in failing to release him upon completion of the said period is clearly in teeth of this Court's order dtd. 08.12.2023 and tantamounts to contempt – Respondent No. 7's contumacious actions also contributed to the illegal detention of the petitioner for almost 48 hours after the period of police remand had come to an end – Detention of the accused till 18.12.23 was unconstitutional and contrary to the letter and spirit of Articles 20 and 21 – Respondent Nos.4 and 7 guilty of committing contempt of this Court's order dtd. 08.12.2023. [Paras 45-47, 59.3, 59.4, 60]

Code of Criminal Procedure, 1973 – s.438 – Bhartiya Nagarik Suraksha Sanhita, 2023 – s.482 – Anticipatory bail – Investigating Officer (IO), if has the liberty to seek police custody remand of the accused after anticipatory bail has been granted by the competent Court – Plea of the Government of Gujarat and the High Court of Gujarat about such long-standing practice prevailing in the State of Gujarat:

Held: Power to grant anticipatory bail is to be exercised with a great degree of circumspection and not in a routine manner – Once, a Court exercises such power bearing in mind the strict parameters applicable to grant of anticipatory bail, then giving a handle to the IO to seek police custody remand of the accused, would virtually negate and frustrate the very purpose behind the order of anticipatory bail – Neither s.438, CrPC nor s. 482, BNSS, 2023 contemplate any such liberty to the IO – The practice prevalent in the State

of Gujarat that the Courts while dealing with the anticipatory bail application routinely impose the restrictive condition whereby, the IOs are granted blanket permission to seek police custody remand of the accused, in whose favour the order of anticipatory bail is passed, is in direct contravention to the ratio of the Constitution Bench judgment of this Court in the case of Sushila Aggarwal v. State (NCT of Delhi) reported as [2020] 2 SCR 1. [Paras 55, 58]

Criminal jurisprudence – Power to grant police remand – Exercise of, not to be in a routine manner – FIR was filed against the accused-petitioner in a prima facie civil dispute pertaining to sale and purchase of property – He was remanded to police custody during the currency of the interim order passed by Supreme Court granting anticipatory bail to him – Impermissibility:

Held: Before exercising the power to grant police custody remand, the Courts must apply judicial mind to the facts of the case so as to arrive at a satisfaction as to whether the police custody remand of the accused is genuinely required – Mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial investigation is required would not be sufficient – The State would have to show or indicate more than prima facie case as to why custodial investigation of the accused is required for the purpose of investigation – Courts are not messengers of the investigating agencies and the remand applications should not be allowed in a routine manner – In the present case, the FIR against the petitioner was pertaining to a dispute which prima facie appears to be of a civil nature and hence, the Magistrate ought not to have toed the line of the Investigating Officer while granting police custody remand of the petitioner – Application seeking police custody remand of the petitioner could not have been entertained without seeking permission of this Court as observed in Sushila Aggarwal v. State (NCT of Delhi) reported as [2020] 2 SCR 1. [Paras 48-50]

Criminal Law – Investigation – On being interrogated, accused not obligated to confess to the crime:

Held: Non-cooperation by the accused is one matter and the accused refusing to confess to the crime is another – There would be no obligation upon the accused that on being interrogated, he must confess to the crime and only thereafter, would the Investigating Officer be satisfied that the accused has cooperated with the investigation. [Para 35]

Code of Criminal Procedure, 1973 – ss.54, 200, 202 – Non-compliance – Complaint of custodial violence by the accused-petitioner– ACJM-contemnor-Respondent No.7 made a note on the complaint that after personally examining the feet of the accused, she did not find any injury thereupon:

Held: When the accused makes a complaint of torture in police custody, it is incumbent upon the concerned Magistrate to have got the accused subjected to medical examination as per the mandate of s.54 – The formal complaint lodged by the petitioner on 16.12.2023 was proceeded with by 8th Additional Chief Judicial Magistrate who took cognizance thereof on 22.12.2023 and directed that the complaint be posted for verification – After cognizance had been taken on a private complaint, the statements of the complainant and his witnesses ought to be recorded by taking recourse to the mandatory procedure prescribed u/ss.200 and 202 – However, in sheer disregard to the aforesaid order dated 22.12.2023, the respondent No.7 dismissed the complaint filed by the petitioner which order was rightly reversed by the High Court in the revision petition filed by the petitioner. [Para 54]

Case Law Cited

Sunilbhai Sudhirbhai Kothari v. State of Gujarat **(2014) SCC OnLine Guj 14451 – overruled.**

Sushila Aggarwal v. State (NCT of Delhi) [2020] 2 SCR 1 **: (2020) 5 SCC 1 – followed**.

Siddhram Satlingappa Mhetre v. State of Maharashtra [2010] 15 SCR 201 **: (2011) 1 SCC 694;** *Paramvir Singh Saini v. Baljit Singh and Another* [2020] 13 SCR 770 **: (2021) 1 SCC 184;** *Sanuj Bansal v. The State of Uttar Pradesh & Anr.* **(Petition for Special Leave to Appeal (Crl.) No. 10536/2023);** *Rekha v. State of T.N.* [2011] 4 SCR 740 **: (2011) 5 SCC 244;** *Ashok Kumar v. Union Territory of Chandigarh* **(2024) SCC OnLine SC 274;** *P. Chidambaram v. Directorate of Enforcement* [2019] 14 SCR 450 **: (2019) 9 SCC 24 – referred to.**

List of Acts

Contempt of Courts Act, 1971; Code of Criminal Procedure, 1973; Bhartiya Nagarik Suraksha Sanhita, 2023; Constitution of India; Income Tax Act, 1961; Prevention of Money Laundering Act, 2002.

List of Keywords

Anticipatory bail; Pre-arrest bail; Absolute interim protection; Interim order; SLP pending consideration; Remand application; Police custody; Police custody remand; Police custody remanded; During currency of the interim order; Contempt; Order under contempt; Contempt of the Court; Contempt petition; Wilful disobedience; Contempt of the Court's order; IO and ACJM/ Magistrate guilty of contempt; Remand application; Civil dispute given criminal colour; Oral agreement for sale of property; Non-functioning CCTV cameras; Defiance; Gross contempt; Contemptuous; Contemnor; Contumacious actions; Custodial violence; Illegal detention; Illegal custody; Custodial investigation; Non-cooperation by the accused; Refusal to confess to the crime; Torture in police custody; Alleged custodial violence subject matter of departmental proceedings; Individual freedom; Right to liberty.

Case Arising From

INHERENT/CRIMINAL APPELLATE JURISDICTION: Contempt Petition (Civil) Diary No. 1106 of 2024

In

Special Leave Petition (Criminal) No. 14489 of 2023

From the Judgment and Order dated 05.10.2023 of the High Court of Gujarat at Ahmedabad in CRLMA No.15242 of 2023

With

Special Leave Petition (Crl.) No. 14489 of 2023 and Special Leave Petition(CRL.) Nos. 537 and 1116 of 2024

Appearances for Parties

Iqbal Syed, Sr. Adv., Rajivkumar, Anurag Singh, J.K Mishra, Amaan Syed, Mohammad Aslam, Aniq Kadri, Vishrut Bhandari, Dipesh Dalal, Abid Ali Beerani, Advs. for the Petitioner.

S.V. Raju, Ms. Aishwarya Bhati, A.S.Gs., Ms. Archana Pathak Dave, Nikhil Goel, D.N. Ray, R Basant, Sr. Advs., Ms. Swati Ghildiyal, Prashant Bhagwati, Ms. Devyani Bhatt, Ms. Neha Singh, Ms. Devyanti Bhatt, K. Parameshwar, Ms. Ruchi Kohli, Ms. Srishti Mishra, Kushagra Pandey, Ms. Radha Gupta, Ashutosh Ghade, Shushil Shukla, Nimit Bhimjiyani, Purvish Jitendra Malkan, Ms. Neha Bhidey, Ms. Dharita Purvish Malkan, Ms. Deepa Gorasia, Alok Kumar, Kush Goel, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

By the Court

Contempt Petition (Civil) No(s). …….of 2024 (D.No. 1106 of 2024) in SLP(Crl.) No(s). 14489 of 2023

1. The instant petition under Section 12 of the Contempt of Courts Act, 1971 read with Article 129 of the Constitution of India has been filed by the petitioner alleging wilful disobedience by the respondents-contemnors of the order dated 8th December, 2023 passed by this Court in SLP(Crl.) No. 14489 of 2023.

Brief facts: -

2. The petitioner, along with other co-accused, was arraigned as an accused in FIR No. 11210068230266 dated 21st July, 2023 filed by the contemnor-respondent No. 6 herein(the complainant), with an allegation that the petitioner had received a sum of Rs.1.65 crores in cash from the complainant towards the sale of 15 shops but the possession thereof was not handed over to the complainant despite the assurance given by the accused at the time of entering into an oral agreement.

3. The petitioner, apprehending his arrest in connection with the said FIR, sought anticipatory bail from the Sessions Court, which was denied whereafter, an application for anticipatory bail was filed before the High Court, which also came to be rejected. Being aggrieved, the petitioner approached this Court by filing SLP(Crl.) No. 14489 of 2023 seeking anticipatory bail.

4. This Court granted interim anticipatory bail to the petitioner *vide* order dated 8th December, 2023(hereinafter being referred to as 'the order under contempt'), which is reproduced hereinbelow:-

> "1. Perusal of the impugned order would reveal that the High Court has not even considered the case on merits.
>
> 2. In that view of the matter, issue notice, returnable in four weeks.

3. In addition to the usual mode, liberty is granted to the petitioner to serve notice through the Standing Counsel for the respondent/State.

4. By way of ad interim order, in the event of arrest petitioner be released on bail in connection with FIR being No.11210068230266 dated 21.07.2023 registered with Vesu Police Station, Surat City, subject to him executing personal bonds for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only), with one or more sureties in the like amount.

5. However, the petitioner is directed to cooperate with the investigation and report to the Investigating Officer as and when directed to do so."

5. The petitioner appeared at Vesu Police Station on 11th December, 2023 with a copy of the order under contempt dated 8th December, 2023 intending to join and cooperate with the investigation. Shri R.Y. Raval, Investigating Officer(contemnor-respondent No. 4) arrested the petitioner and thereafter, released him on bail upon execution of the requisite bail bonds in terms of order dated 8th December, 2023. On the very same day, the petitioner was served with a notice under Section 41A of the Code of Criminal Procedure, 1973 (hereinafter being referred to as 'CrPC') requiring him to remain present at the police station before the Investigating Officer for recording of further statement. When the petitioner appeared at the police station, another notice dated 12th December, 2023 was served upon him requiring him to remain present before the Court of concerned Additional Chief Judicial Magistrate for the purpose of seeking remand. The contents of the notice dated 12th December, 2023 are relevant and shall have a material bearing on the outcome of the instant contempt petition and hence, the same are reproduced below for the sake of ready reference: -

" **N O T I C E**

It is hereby given to you this notice in written form that, for the matter of offence committed u/s. 420, 120(b) of Indian Penal Code registered before Vesu Police Station vide Part-A-11210068230366/2023 Complainant Abhishek Vinodkumar Goswami aged: 28 years, occupation: Business Real Estate Residing at C/405, Surya Palace, Ct

Light, Surat City Mobile No 9879215044 filed a complaint against you and others for which you are remained present as per order passed by Hon'ble Supreme Court of India in the matter of Special Leave Application No.14489/2023 on 08/12/2023 and you were arrested on 11/12/2023 at 2100 hrs and thereafter, released on bail on basis of the order of the court. During course of investigation proceedings of the offence, you are hereby informed to remain in(*sic*) present by yourself or through your advocate on 13/12/2023 at 1500 hrs before 5th Additional Senior Civil Judge and ACJM Surat Court No 608, New Court Building, Athwalines Surat for the matter of remand which please note seriously.

Date 12/12/2023

R.Y. Raval
Police Inspector
Vesu Police Station
Surat City

To,
Tushar Rajnikant Shah
Residing at
Flat No E/902, Florence Building,
Opp Rajhans Cinema, VIP Road,
Vesu, Surat City Mobile No 9825038475"

6. It is apposite to note that this notice makes a distinct reference to the order dated 8th December, 2023 passed by this Court. However, the notice is blissfully silent on the aspect that the petitioner had not cooperated with the investigation.

7. In compliance of the said notice, the petitioner appeared before learned 6th Additional Chief Judicial Magistrate, Surat('contemnor-respondent No.7') on 13th December, 2023 on which date, the Investigating Officer, filed an application seeking his police custody remand for seven days. When the remand application was taken up, learned counsel representing the petitioner produced a copy of the order under contempt dated 8th December, 2023 and made a fervent submission that the Supreme Court, while providing interim protection to the petitioner had not granted any liberty to the Investigating Officer to seek police custody remand and thus, the application seeking remand ought to be rejected. However, the 6th ACJM, Ms. Deepaben Sanjaykumar Thakar, the contemnor-respondent No. 7

in gross derision to the order dated 8th December, 2023 passed by this Court granting interim protection to the petitioner, observed that the order of Supreme Court did not indicate that the Investigating Officer could not seek remand of the accused or that the Court cannot grant remand and accordingly, she proceeded to remand the petitioner to police custody till 16th December, 2023. The order dated 13th December, 2023 which is the foundation of these contempt proceedings is reproduced hereinbelow: -

> "**ORDER PASSED BELOW APPLICATION TO AVAIL POLICE CUSTODY REMAND OF THE ACCUSED TUSHAR RAJNIKANT SHAH IN THE MATTER OF VESU POLICE STATION CRIMINAL BEARING REGISTER NO. 11210068230266/2023.**
>
> 1. Application produced is taken into consideration similarly; the record of the matter is also taken into consideration. Heard arguments advanced by Learned APP Shri S.P. Chauhan for Prosecution side and Learned Advocate Shri Dipesh Dalal for Accused Person.
>
> 2. It is the representation of Learned APP Shri Saurabhbhai Chauhan that, an offence against accused person for offence committed u/s. 420, 120[b] of Indian Penal code is registered for maximum sentence of seven years in which the main role played by the present accused and total of 15 shops were shown to be present along with Accused No. Sumit Goyenka and gave the information that he is the builder and accordingly the Complainant and witness obtained A sum of Rs. 1,65,00,000/- as consideration and also by way of cheque a sum of Rs.54,00,000/- also obtained and in that regard accused no.5, 6 and 7 given payment Diaries and then planned delinquency by the accused Conspirator committed the offense of cheating [deception] fraud. According to the ground for remand, they submit that the main accused has taken total of 9 cheques from the complainant which cheques are important for the present matter and same are required to be collected for the purpose of investigation proceedings. Recovery of Rs. 1,65,00,000/- is pending and in furtherance, addition of other offence of Umra Police Station First Criminal

Register No 62/2019 for offence committed u/s. 447, 448, 451, 427, 114 of Indian Penal Code is registered and accordingly, accused person having criminal history and does not cooperate with police investigations The other co-accused are absconding, and hence, requested to allow police custody remand of Days-7.

3. On 05/10/2023, Learned Advocate Shri Dipesh Dalal on behalf of accused person produced copy of order of R/Criminal Misc. Appln [For Anticipatory Bail] No 15242/2023 and order passed by Hon'ble Supreme Court in the matter of Special Leave to Appeal [Cri] No 14489/2023 dated 05/12/2023 **submitted and it was submitted that there is an order to release the bail if the accused is detained and there is no mention of remand. In furtherance, they submit that the petitioner has cooperated with the police investigation and will continue to cooperate in the future as well so there is no need for remand**. In furtherance, they submit that the provision of maximum punishment in the present matter is seven years, therefore, in the matter of Satender Antil versus CBI of the Hon'ble Supreme Court A remand application cannot be granted mechanically as held in the judgment of the further submit that the accused has been present in the police station frequently and has cooperated fully in the investigation, hence the said application is proposed to be rejected.

4. Heard, on 21/7/2023 for the present matter, the complainant filed u/s 420, 120[b] of Indian Penal Code against a total 7 accused in Vesu Police Station. A complaint under section 4R0, 120(b) is lodged which provides for a maximum sentence of seven years. In the present matter, the co-accused is yet to be arrested, if we take the matter diary regarding the behavior of the accused Tushar Rajinikanth Shah mentioned in the remand petition. they will be called on 8/12/2023 for the matter of Special Leave to Appeal No 14486/2023 is not present at the police station for investigation till the order of "releasing the applicant from bail due to arrest" is passed. The facts of the matter diary become significant. The police have visited the house of the main accused, issued notices and reminders under

section 41(A) but the accused himself was not found present at the house, his wife or his mother was present and replied that he was there for the last two months. Not present means the accused person did not cooperate with the police investigation proceedings. Taking into consideration the matter diary dated 11/12/2023, appeared after the order of the Hon'ble Supreme Court and wrote his answer which answer taking into account the facts of the main complaint, it is prima facie evident on the record that the present accused has been dealt with other co-accused, the prime of the present matter. Accused Sumit Goenka is yet to be arrested, other accused are yet to be arrested, police investigation is pending in that direction. In the present matter it is pending investigation as to which accused took the paid compensation of the project property; the main accused has admitted in his statement that the diary was written by him. So, it becomes clear that their criminal role is there and if we note the extreme importance, in the present matter the prosecution has made serious allegations of pre-planned and criminal conspiracy, then a thorough investigation is pending in that regard. In the present matter it becomes necessary to bring the modus operandi of the accused on record. At this stage, it is to be noted that in the present time, the amount of offence related to property like land and houses has increased, in which most of the builder level people are also involved, while in the present matter, there is a deal of 15 shops, so the compensation amount is Rs. 1,65,00,000/- paid, thorough investigation of the offence becomes necessary so the reasons stated in the remand application are true. The present application is eligible to be granted if the co-accused is investigated properly and the modus operandi of the offence is placed on record. In furtherance at this stage there is truth in the reasons stated. The present application is eligible to be granted if the co- accused is investigated properly and the modus operandi of the crime is placed on record. **In furtherance, it is to be noted at this stage that Learned Advocate Shri Dipesh Dalal has emphasized on the order of the Hon'ble Supreme Court but in that order no order has been made that**

the investigating officer cannot ask for remand or the court here cannot grant remand so the Hon'ble Supreme Court in the matter of Satender Antil versus CBI All the principles laid down in the judgment have been followed by this Court. In the present matter Remand application not automatically but taking into consideration the circumstances of the matter, diary and conduct of the accused, I consider the following order to be appropriate just and appropriate in the interest of justice.

(emphasis supplied)

// ORDER //

Remand application is partly allowed.

Police custody remand of Accused Tushar Rajnikant Shah is granted till 16/12/2023 at 1500 hrs.

Signature of accused person and Investigation Officer shall be obtained below order passed.

Investigation Officer shall strictly adhere [follow] the guideline of Hon'ble Supreme Court and send a copy of this order to Chief Judicial Magistrate.

Pronounced this order on 13/12/2023 in the open court.

13/12/2023 Surat	Deepaben Sanjaykumar Thakar 6th Addl. Chief Judicial city Surat [GJ00943]

Seen
Sign Illegible

Seen
Sign Illegible

Accused is taken into custody
And remand order copy is received.
Sign Illegible

Today explanation of remand order is received,
Sign Illegible"

8. The petitioner has alleged that during the period of police custody remand, he was tortured by the Deputy Commissioner of Police(contemnor-

respondent No. 3) and the Police Inspector(contemnor-respondent No. 4). It is further alleged that upon completion of the period of remand, the petitioner was compelled by the 6th ACJM, i.e., contemnor-respondent No. 7 to move a regular bail application under Section 437 CrPC which was objected to by the learned Assistant Public Prosecutor(in short 'APP'). The 6th ACJM(contemnor-respondent No. 7) proceeded to allow the application for bail *vide* order dated 16th December, 2023.

9. On 16th December, 2023, when the petitioner was presented before the 6th ACJM(contemnor-respondent No. 7) at the end of the remand period, he made a complaint regarding torture in police custody which fact was noted by the 6th ACJM(contemnor-respondent No. 7) in the order sheet dated 16th December, 2023. The 6th ACJM(contemnor-respondent No. 7) proceeded to record the statement of the petitioner virtually as if he was being cross-examined. She also undertook an exercise of self-observation of the legs of the accused-petitioner and made a remark in the proceeding sheet that no signs of beating were visible thereupon. These proceedings are relevant to the issue at hand in a limited sphere and thus, the same are reproduced hereinbelow for the sake of ready reference:-

> "My name is Tushar Rajnikant Shah, I am 43 years old. I want to say many things, but my mental condition is not proper so that I can properly dictate everything.

Question:	What is your complaint against police?
Answer:	Yes, I am beaten a lot, tortured also.
Question:	On which part of body beaten?
Answer:	Allowing me to sit and on the bottom of the leg beaten and beaten with belt written as Satyashodahk Yantra.
Question:	Who has beaten?
Answer:	Three officers were there, (1) ACP Gurjar Saheb, IPS and other two I can identify if I see them and they were in simple dress and name plate was not there. I have not given food since I went there. Complainant Abhishek or Akhilesh on whose face black spot is there was doing torturing arriving there.

Question:	What torturing was done?
Answer:	To give money, do settlement, this all belongs to my father and will not spare you.
Question:	Except this what is your complaint?
Answer:	Now I will state after taking lunch peacefully.
Question:	You are standing on your legs?
Answer:	Yes
Question:	Do you have any problem in standing?
Answer:	In left leg I feel more problem.
Question:	Do you came walking on your leg in the court?
Answer:	Yes
Question:	Any other thing you want to say against police now?
Answer:	Nothing now
Above statement is read by me and thereafter I put my signature.	
After taking said statement of the accused on bottom portion of the leg of the accused I have done self-observation wherein no sign of beating is found. Before me Sd/- Illegible 16/12/23 (Kum. D.S. Thaker)	

Today, the accused who is present after completion of remand, made a complaint against the police stating that they have ill-treated him which has been registered as per the said statement of the accused. However, after a detailed checking from the bottom of the legs of the accused, no signs are found, as alleged. It is the complaint of the accused that he is beaten by "Satyashodhak Yantra written belt", however, it is to be noted that the clothes the accused was wearing on the day when remand was granted to the accused are different from the clothes he is wearing today after three days of remand, it could be seen that the same is clean and proper. Even looking at

the physical condition of the accused, it could be concluded that he was kept in good condition and he was provided with clean clothes by his family which was handed over to the accused by the police. It is the submission of the accused that he had not been provided with food on the day when he went on remand. Even if the statement of the accused is to be noted and believed to be correct, it could not be possible that after beaten with the belt, as alleged, the accused could stand properly on his leg today. Therefore, the statement made by him that he has not been provided with food cannot be believed. The accused in the beginning had stated that, he has a lot of things to say but due his mental condition, he has not been able to express everything clearly. However, it is peculiar to note that during the aforesaid statement made by the accused, he was frequently looking at his Ld. Advocate while giving reply due to which the accused was asked that, "*why are you looking at your Advocate and giving reply, ill-treatment is done with you then you must be aware what has happened and it is you who have to give your statement.*" Thereafter, he has given his statement. The accused has not complained that he is mentally tortured. At this stage, it is notable to mention that the accused is working as a builder having a reputation in society and in such condition and circumstances, remaining in police custody for interrogation, could have been uncomfortable to him. Taking into consideration the mental state of the accused, the serious allegations made by him against the police could not be found reasonable and justifiable in view of the present case and circumstances. All the aforesaid observations and evaluations made today is noted by directly observing the accused.

Sd/-Illegible
16/12/23
6th Add. Sr. Civil Judge &
A.C.J.M., Surat."

10. It is noteworthy that pursuant to the order dated 16th December, 2023 granting regular bail, the petitioner was compelled to file fresh bail

bonds and was ultimately released from custody on 18th December, 2023. Apparently thus, the petitioner was kept in confinement for a period of nearly 48 hours even after the period of police custody remand had come to an end. Immediately after being released from custody, the petitioner filed a complaint(Annexure P-10) to the Commissioner of Police alleging torture by the Deputy Commissioner of Police(contemnor-respondent No. 3), Police Inspector(contemnor-respondent No. 4), Police Constable(contemnor-respondent No. 5) and other police officials of Vesu Police Station. A prayer was made in said complaint to call for and preserve the CCTV footage of the police station, lest the police officials of Vesu Police Station tamper with the evidence in form of the recording and thereby, cause grave prejudice to the petitioner's complaint case. The Commissioner of Police, however, did not take any cognizance of the said complaint of the petitioner whereupon, the petitioner filed a private complaint against contemnor-respondent Nos. 3, 4 and 5 as well as the complainant i.e. contemnor-respondent No. 6. The petitioner categorically alleged in the complaint that he was tortured in Vesu police station, where the complainant of the case was also present, and was pressurised to make payment to the complainant and compromise the matter.

11. Since the 6th ACJM(contemnor-respondent No. 7) was on leave, the learned Magistrate on duty (8th Additional Chief Judicial Magistrate) took cognizance of the said complaint *vide* order dated 21st December, 2023, with a clear finding that the acts complained of were not committed by the concerned police officials while discharging official duties and therefore, sanction to prosecute was not required under Section 197 CrPC. The complaint was kept for verification on 3rd January, 2024.

12. Later, the 6th ACJM(contemnor-respondent No.7) took up the complaint and proceeded to reject the same *vide* order dated 6th January, 2024 without recording the statements of the complainant and his witnesses as mandated by Sections 200 and 202 CrPC. The contents of this order are also considered germane for the purpose of adjudication of the instant contempt petition since the same has a direct bearing upon the conduct of contemnor-respondent No. 7 and hence, the same are being reproduced hereinbelow for the sake of ready reference: -

"Criminal Inquiry No. 280/2023

ORDER BELOW EX-1

1. The said private complaint is filed by complainant Tushar Rajnikant Shah against police officers u/s 323, 342, 344, 363, 384, 504, 506(2), 120(b) of IPC. It is submitted in complainants application that against him in Vesu Police Station A-part CR No.11210068230266/23 is filed u/s 420, 120(b) on date 21.7.2023 wherein he was mentioned as accused no. 4. Investigation officer has taken his statement. The complainant has filed in the Hon'ble Court of Principal District and Sessions Judge at Surat Anticipatory bail application no. 5922/2023 on date 27.7.2023 which was rejected on date 1.8.2023. Thereafter he has filled in the Hon'ble Gujarat High Court CRMA No. 15242/2023 and made order partly allowing the same, being aggrieved by it the complainant filed SLP in Hon'ble Supreme Court on date 5.10.2023 bearing No. 14489/2023 and order was passed allowing his anticipatory bail application. Pursuance to the said order complainant has given his statement on date 11.12.2023 in Vesu Police Station as an accused no. 4 and given bail bond and surety. Thereafter I.O, has Issued notice on date 12.12.2023 to remain present and therefore on date 12.12.2023 remained present at 1/00 and till night up to 10/00 given his reply. Thereafter, on date 13.12.2023 LO. has demanded 7 days remand for him and Hon'ble Lower Court made order allowing 3 days remand. It is submitted by him that during police remand custody with Satyashodhak Yantra belt beating 35 to 40 belt and to do compromise made, him physically uneasy have done unbearable coercion and therefore he became mentally unwell and family members gave courage and he filed present complaint. The complainant has prayed to do legal Inquiry against accused.

2.As per complaint of the complainant on date 3.1.2024 verification is taken and in the said verification he has not stated facts as per his complaint. He has not stated fact about which police officer has beaten him. Compare to complaint application in his verification different facts are coming out like "one person was standing on leg and beat me in bottom of the leg." As this one person which

police officer was there no such facts are stated. Asking about who used to come to give clothes, no one has come from his home, his friend Rajendranbhai Rawal came, such facts he has stated but no such friend's name is mentioned by him as his witness or such witness affidavit as a documentary evidence list is produced along with original complaint. The said complainant has not made satisfactory clarification about any person coming from his family to give clothes. Thereafter he was clearly asked that on completion of remand prior to bringing him in this Court he was taken to medical checkup and its reply is given by him in affirmative. At this stage it is notable that in said original case i.e. Vesu Police Station A-part CR No. 11210068230266/23 medical checkup produced it is clearly mentioned that on body portion of the said accused no apparent injury is there. Further it is notable that he during checkup ha not submitted to the Doctor that he has been assaulted. And in reference to the question he has stated that, " I am not allowed to speak such", but at that time the said complaint accused paikee which accused did not allow him to speak such, no such facts are stated. Thereafter he was clearly asked that on completion of remand and on producing in this Court he has stated his facts willingly as per his desire which is replied by him in affirmative. Thereafter he was asked that this Court has at the same time ask him to sit down and checked his bottom of the legs but no signs of beating was found such is stated and he gave his reply in affirmative. Thus, said verification considering entirely with the complaint in Vesu Police Station A-part CR No.11210068230266/23, the accused has filed ill-treatment complaint and therefore in the present separately given complaint nothing remains to be done. Main notable facts is such that in medical certificate of the accused no signs of assault are seen and this Court has personally done observation but no such signs are seen. **Further, this Court has on the same day after observing the accused personally in details of observation and evaluation noted and considering it the complainant's private complaint is not maintainable. The accused naturally remained in police custody and**

in police lock up, have dissatisfaction against police employees which is very casual and natural reaction. No person would like to remain in police custody and therefore the said complaint is prima facie is filed keeping grudge against the police with a feeling of revenge is made self-clear. As per the said complaint no facts are recorded by accused after completion of remand immediately is not stated in his ill-treatment and therefore the said complaint is not valid and tenable and therefore following order I understand is reasonable and justified.

(emphasis supplied)

ORDER

1. The order is made to cancel the said complaint u/s. 203 of Cr. P.C.

Order declared today on date 06.01.2023 in open Court.

Date: 06.01.2024
Surat.
Seen
Sd/- Illegible

Sd/- Illegible 6.1.24
(Kum. Deepaben Sanjaykumar Thaker)
6th Add. Chief. Judi. Magistrate
Surat (GJ00943)

13. A perusal of the order reveals that the 6th ACJM(contemnor-respondent No.7) proceeded to deal with the complaint in a pre-determined manner and rejected the same without recording the statements of the petitioner(complainant) and his witnesses as per the mandate of Sections 200 and 202 CrPC. Acting purely on her own whims and fancies, the contemnor-Respondent No.7 concluded that *ex facie* the complaint was filed keeping grudge against the police and with the feeling of seeking revenge. The order dated 6th January, 2024 passed by 6th ACJM(contemnor-respondent No.7) has been set aside by the High Court of Gujarat and rightly so, in our opinion, *vide* order dated 22nd February, 2024 while accepting the revision petition filed by the petitioner, being R/Criminal Revision Application

No. 273 of 2024. Relevant observations made by the High Court are reproduced hereinbelow:-

> **"11.** As per Section 203 of the Code, the learned Magistrate ought to have recorded the statement on oath of the complainant and of the witnesses and when in-charge Magistrate has directed the complainant to remain present with his witnesses and the witnesses were present before the learned Magistrate, learned Magistrate without giving any reasons for not recording the statements of the witnesses has dismissed the complaint which is illegal and improper. That if the statements of the witnesses were recorded, learned Magistrate could have applied her mind and form the judgment whether there is sufficient ground for proceeding against the accused or not. That learned Magistrate has acted erroneously and has passed the impugned order which is illegal and improper and hence, the same is required to be set aside.
>
> **12.** On perusal of the impugned order, it appears that the complainant was directed to remain present with his witnesses and as per the submission of the learned senior advocate for the applicant, witnesses were present before the learned Magistrate, but their statements have not been recorded. No reasons have been given by the learned Magistrate for non-recording of the statements of the witnesses and hence, the applicant original complainant has not been given full opportunity for putting up his case before the learned Magistrate. That the impugned order is improper and perverse and is required to be set aside. Learned(sic)
>
> **13.** Under the circumstances, the application is allowed. The impugned order dated 6.1.2024 passed below Exh.1 in Criminal Inquiry No.280 of 2023 is quashed and set aside. The learned Magistrate is directed to record the statements of the witnesses and then after applying judicial mind to the material placed before the Court, form the judgment whether or not, there is sufficient ground to proceed."

14. It is in the aforesaid backdrop, that the petitioner has approached this Court by way of the instant contempt petition with a prayer seeking

prosecution of the respondents and to convict and sentence them for wilful disobedience and gross contempt of this Court's order dated 8th December, 2023.

15. Notice of the contempt proceedings was issued to the respondents on 10th January, 2024.

16. The High Court of Gujarat was subsequently impleaded in the matter *vide* order dated 29th January, 2024.

17. Reply affidavits in response to the notice for contempt, have been filed on behalf of the respondents arraigned in the contempt petition. The petitioner has also filed separate rejoinder affidavits.

Submissions on behalf of the petitioner: -

18. Mr. Iqbal Syed, learned senior counsel appearing for the petitioner advanced the following pertinent submissions: -

18.1 That the order dated 8th December, 2023 passed by this Court was explicit to the effect that the petitioner was to be released on bail in event of his arrest. No liberty was ever granted by this Court to the Investigating Officer to seek police custody remand of the petitioner while he was under the protective umbrella of the interim anticipatory bail order passed by this Court.

18.2 That the SLP seeking anticipatory bail filed by the petitioner was still pending consideration before this Court and thus, if at all, the Investigating Officer desired to seek police custody remand of the petitioner on the alleged ground of non-cooperation in investigation, then the appropriate procedure would have been to move an application before this Court to seek such liberty.

18.3 That the Investigating Officer had already accepted the bail bonds of the petitioner on 11th December, 2023 and hence, there could not have been any occasion for grant of police custody remand of the petitioner because such course of action resulted into fresh arrest of the petitioner which is clearly in teeth of the order passed by this Court.

18.4 That a pertinent objection was raised before the 6th ACJM(contemnor-respondent No. 7) that there was no scope for granting police custody remand of the petitioner in view of this Court's order, but the 6th ACJM No. 6(contemnor-

respondent No. 7) totally glossed over the interim order passed by this Court and granted 3 days' police custody remand of the petitioner by assigning a totally flimsy justification that this Court had not precluded the Investigating Officer from seeking police custody remand of the petitioner nor was the Magistrate prohibited from exercising such power. In support of the submission that there was no scope to remand the petitioner to police custody, learned senior counsel for the petitioner placed reliance on the judgment passed by this Court in the case of ***Siddhram Satlingappa Mhetre v. State of Maharashtra***.[1]

18.5 He urged that in spite of the interim order of anticipatory bail granted by this Court being in currency, the petitioner was not released from custody even at the end of the police remand period, and rather, he was compelled to file a regular bail application under Section 437 CrPC to which the learned Assistant Public Prosecutor(APP) objected. However, the application was allowed, and the bail bonds of the petitioner were accepted, and he was released from custody on 18th December, 2023 which aggravates the contemptuous acts of the contemnor-respondent No. 7 because the petitioner was kept in illegal custody for more than 48 hours.

As per learned senior counsel, it is a clear case of the petitioner being kept in illegal custody for a period of 6 days in teeth of the interim order granted by this Court and that too, during pendency of the special leave petition.

18.6 He urged that the biased, pre-determined and prejudiced bent of mind of the 6th ACJM(contemnor-respondent No.7) is fortified from the fact that when the petitioner made a complaint regarding torture in police custody on being produced before the Court at the end of the remand period, the 6th ACJM(contemnor-respondent No. 7) proceeded to record a calculated finding that the accused-petitioner was not having signs of injury by even going to the extent of personally examining the feet of the petitioner which procedure was purely within the domain of a Medical Expert.

1 [2010] 15 SCR 201 : (2011) 1 SCC 694

18.7 Over and above this, the private complaint filed by the petitioner alleging torture in police custody was rejected in an arbitrary and high-handed fashion even without recording the statements of the complainant (petitioner herein) and the witnesses under Sections 200 and 202 CrPC which is the mandate of law.

The High Court of Gujarat, *vide* order dated 22nd February, 2024 while reversing the order passed by the 6th ACJM (contemnor-respondent No.7) rejecting the complaint has taken note of the fact that learned Magistrate committed grave legal error in ignoring the provisions of CrPC while rejecting the complaint filed by the petitioner.

18.8 That the petitioner after being released from custody lodged a prompt complaint to the Commissioner of Police, Surat (contemnor-respondent No.2) on 20th December, 2023 with a pertinent prayer to preserve the CCTV footage of Vesu Police Station. However, no action was forthcoming on the said complaint, and it is only after this Court took cognizance of the contempt proceedings and issued notice that an inquiry was initiated in this regard.

18.9 That the Commissioner of Police, Surat (contemnor-respondent No. 2) has admitted in his affidavit that CCTV cameras installed at Vesu Police Station by a private agency were not functional and this fact was brought to notice of Mr. R.Y. Raval, Police Inspector (contemnor-respondent No. 4) by the PSO in charge on 21st December, 2023. He contended that the clear omission and negligence on part of the concerned police officials in not ensuring the functioning of the CCTV cameras is in sheer disobedience of the mandate of this Court's judgment in the case of ***Paramvir Singh Saini v. Baljit Singh and Another***.[2]

18.10 That as per the reply affidavit filed by the Commissioner of Police, Surat(contemnor-respondent No. 2), the FSL examination carried out on the internal storage(hard disk) and the DVR reveals that the CCTV footage of Vesu Police

2 [2020] 13 SCR 770 : (2021) 1 SCC 184

Station from 13th December, 2023 to 16th December, 2023 was not found in hard disk which clearly establishes that the police officials had tampered with the DVR and deleted the data saved between 13th December, 2023 to 16th December, 2023, in order to destroy the evidence of custodial violence committed upon the petitioner.

18.11 That the very fact, that the police officials registered the FIR on the basis of complaint filed by complainant(contemnor-respondent No. 6), being FIR No. 11210068230266 for allegations which *ex facie* disclose a civil dispute plain and simple, reflects their *mala fide* and biased approach.

On these grounds, the learned senior counsel implored the Court to prosecute and suitably punish the respondents while holding them guilty of wilful disobedience/gross contempt of this Court's order dated 8th December, 2023. He also prayed that the interim protection granted to the petitioner *vide* order dated 8th December, 2023 passed in SLP(Crl.) No. 14489 of 2023 may be made absolute.

Submissions on behalf of the respondents: -

19. Shri R. Basant, learned senior counsel appearing for the freshly impleaded respondent, the High Court of Gujarat (respondent No. 8) advanced the following submissions: -

19.1 The contention of learned counsel for the petitioner that the Investigating Officer could not have sought remand of the petitioner is misplaced since, the judgment relied upon by the petitioner i.e. ***Siddhram Satlingappa Mhetre*** (*supra*) wherein, it was held that tenure of anticipatory bail order cannot be limited has been explicitly overruled by a larger Bench of this Court in the case of ***Sushila Aggarwal v. State(NCT of Delhi)***.[3] He placed reliance on the following paras from the above judgment in support of this contention:-

> "**92.6**- An order of anticipatory bail should not be "blanket" in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of

3 [2020] 2 SCR 1 : (2020) 5 SCC 1

> arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.
>
> **92.7**- An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail."

19.2 He submitted that the Courts in Gujarat based on the view taken by the Division Bench of High Court of Gujarat in the case of ***Sunilbhai Sudhirbhai Kothari v. State of Gujarat,***[4] have been following a consistent practice of incorporating a condition in the orders granting anticipatory bail that the Investigating Officer would be entitled to seek police custody remand of the accused as and when required. In ***Sunilbhai Sudhirbhai Kothari****(surpa)*, the reference was made to the Division Bench to answer the following question of law: -

> "Whether the Investigating Agency has power to get police custody under Section 167 of the Code of Criminal Procedure, 1973, when an accused is already granted bail under the provision of Section 438 of the Code of Criminal Procedure, 1973."

The Division Bench answered the reference in affirmative and thus, there was no impediment for the Investigating Officer to have sought police custody remand of the petitioner and that the learned Magistrate was also acting well within the jurisdiction conferred upon her by CrPC while granting police remand of the petitioner.

20. The learned counsel representing the contemnor-respondent Nos. 2 to 7 submitted in cohesion that all the contemnors have tendered unconditional apology in their reply affidavits for the alleged contumacious acts. They urged that the contemnors had no intention whatsoever to disobey or disregard this Court's order dated 8th December, 2023 and the infraction, if any, in this regard is purely unintentional and thus, a lenient view may be taken and the contempt notices may be discharged.

4 2014 SCC OnLine Guj 14451

21. Mr. S.V. Raju, learned ASG appearing on behalf of Commissioner of Police, Surat(contemnor-respondent No. 2) advanced the following submissions: -

21.1 That respondent No. 2 has no direct role in the contempt proceedings and thus the contempt notice issued to him may be discharged.

21.2 That Commissioner of Police(contemnor-respondent No. 2) has tendered an unconditional apology for any of the alleged action/omission which may have resulted in contempt of this Court's order dated 8th December, 2023.

21.3 That Vesu Police Station was a newly established police station and thus, CCTV cameras installed in the police station were not properly functional.

21.4 That the DVR and hard disks of the CCTV cameras installed in the police station were forwarded for analysis to the FSL, from where a report has been received that there was some technical defect in the DVR and that the video footage from 13th December, 2023 to 16th December, 2023 could not be preserved therein. The fact regarding the technical defect in the DVR was not brought to the knowledge of the Commissioner of Police (contemnor-respondent No.2) and hence, he cannot be held guilty of wilful negligence in discharge of duties.

21.5 That Commissioner of Police (contemnor-respondent No. 2) has already initiated departmental proceedings against the erring police officials. The Police Inspector/Investigating Officer (contemnor-respondent No. 4) and Police Constable (contemnor-respondent No. 5) have been placed under suspension.

He thus implored the Court to discharge the contempt notice issued to the Commissioner of Police, Surat(contemnor-respondent No.2).

22. Ms. Aishwarya Bhati, learned ASG, appearing on behalf of Deputy Commissioner of Police, Surat(contemnor-respondent No. 3) advanced the following submissions: -

22.1 That the said contemnor has tendered an unconditional apology for any act or omission which may have contributed to the non-compliance/contempt of this Court's order dated 8th

December, 2003. Learned ASG reiterated the averments made in the reply affidavit filed on behalf of the officer and urged that he was, in no manner, connected with the investigation of the subject FIR and thus he cannot be held responsible for the contumacious acts. She fervently contended that the contemnor-respondent No. 3 had no role to play either in the investigation of the case or the custodial torture allegedly meted out to the petitioner during the period of police custody. She also urged that no injuries were found on the person of the petitioner as per the medical report.

22.2 Regarding the issue of the non-functioning of the CCTV cameras in the Vesu Police Station, she submitted that the CCTV cameras had been installed some time back and were functional but there was some problem with the DVR storage not just during the 3 days of custodial period of the petitioner but was persisting since November, 2023. On these grounds, Ms. Bhati, learned ASG implored the Court to accept the unconditional apology filed on behalf of contemnor-respondent No.3 and discharge the contempt notice issued to him.

23. Mr. K. Parameshwar, learned counsel appearing on behalf of Shri R.Y. Raval, Police Inspector(contemnor-respondent No. 4) urged that the officer had no intention whatsoever to disregard or wilfully disobey this Court's order. He advanced the following submissions: -

23.1 At the outset, Investigating Officer (contemnor-respondent No. 4) in his reply affidavit has tendered an unconditional apology for any contumacious act/conduct arising of inadvertent action/omission attributed to him in the contempt proceedings.

23.2 That when the petitioner appeared at the police station with the order of this Court dated 8th December, 2023, he was immediately released on bail by accepting his bail bonds. However, the petitioner gave evasive replies upon being interrogated and was totally non-cooperative in the process of investigation and thus, the Investigating Officer, contemnor- respondent No. 4 felt a genuine requirement to seek police custody remand of the petitioner to effect discovery of incriminating evidence.

23.3 That there prevails a long-standing practice being followed by all the Courts in the State of Gujarat whereby the Investigating Officer is given liberty to seek police custody remand in

orders granting anticipatory bail to the accused. Swayed by this misconception based on the practice consistently being followed in the State, the Inspector *bona fide* moved the application for police custody remand of the petitioner herein.

23.4 That even the learned Magistrate misconstrued this Court's order and granted police custody remand of the petitioner and hence, the Inspector cannot be faulted and punished for contempt just for moving the remand application.

23.5 That no maltreatment was ever meted out to the petitioner during the period of police custody which fact is borne out from the observations made in the proceedings recorded by the learned Magistrate on 16th December, 2023.

23.6 That the Police Inspector (contemnor-respondent No.4) had joined Vesu Police Station on 5th October, 2023 and thus, the allegation that he was hands in glove with the complainant(contemnor-respondent No. 6) is totally misplaced.

23.7 That contemnor-respondent No.4 was sincerely discharging his official duties while investigating the FIR No. 11210068230266 dated 21st July, 2023 wherein, the petitioner was alleged to have cheated the complainant of a huge sum of money running into more than Rs. 1.65 crores and thus, he cannot be attributed the motive of colluding with the complainant.

23.8 That the cheques given by the complainant to the accused-petitioner were illegally retained and, the recovery thereof was imperative for fair investigation of the case and therefore, the Police Inspector had sought police custody remand of the petitioner herein in an absolutely *bona fide* and unbiased manner.

23.9 That the petitioner's claim of being tortured during the period of police custody is yet to be adjudicated in the complaint filed by the petitioner which is pending enquiry.

23.10 In addition to above, learned counsel submitted that contemnor-respondent No.4 is already facing departmental proceedings in relation to these very allegations and hence, these contempt proceedings would tantamount to double jeopardy.

On strength of the above submissions, learned counsel implored the Court to take a sympathetic view and discharge the contempt notice issued to contemnor-respondent No. 4.

24. Learned senior counsel, Mr. D.N. Ray, representing 6th ACJM No.6 (contemnor-respondent No. 7), at the outset, submitted that the judicial officer is having an impeccable service record. She had no intention whatsoever of committing wilful or intentional disobedience of this Court's order and that the judicial officer has expressed unconditional and unqualified apology for the acts done in discharge of judicial functions which are wrongly branded as contumacious by the petitioner. He advanced the following submissions: -

24.1 On perusing the remand application filed by the Investigating Officer, the contemnor-respondent No.7 inculcated a reasonable belief that the petitioner was not cooperating with the investigation in terms of the order passed by this Court.

24.2 She was also guided by the long prevailing practice being followed in the State of Gujarat wherein, the Courts, while granting anticipatory bail, incorporate a condition that in case the accused in whose favour the order of anticipatory bail has been passed does not cooperate in investigation then, the concerned Magistrate would be empowered to direct police custody remand of such accused.

24.3 He submitted that it is purely based on this long-standing practice prevalent in the State of Gujarat that 6th ACJM (contemnor-respondent No. 7), in *bona fide* discharge of her judicial functions allowed the application filed by the Investigating Officer and remanded the petitioner to three days' police custody. He urged that at the end of the remand period, the petitioner voluntarily filed an application under Section 437 CrPC seeking bail, which was routed through the Registry of the Court and that is why the Magistrate, was left with no other option but to pass an order on the said application requiring the accused petitioner to furnish bail bonds in lieu of release on bail.

However, on a pertinent query being put, Mr. Ray, was not in a position to dispute the fact that the petitioner herein was released from custody after a delay of nearly 48 hours from the date i.e. 16th

December, 2023, the period when the police custody remand had come to an end.

24.4 Regarding the proceedings taken on the complaint of custodial violence made by the petitioner, learned counsel urged that contemnor-respondent No. 7 was acting well within her jurisdiction by virtue of provisions contained in CrPC when she questioned the petitioner and also conducted preliminary body examination so as to take note of the injuries, if any, suffered by him owing to the alleged custodial violence. These facts were recorded in the court order sheet as per the observations made during the course of judicial proceedings. The formal complaint was dismissed by the contemnor while exercising judicial discretion conferred upon a Magistrate by virtue of Section 203 CrPC. The order rejecting the complaint has already been set aside by the High Court and since the said complaint is *sub judice*, any expression by this Court on this issue may have an adverse reflection on the service record of the contemnor.

24.5 Mr. Ray reiterated that 6th ACJM (contemnor-respondent No. 7) was deluded by the prevailing practice referred to *supra* while passing the order of police custody remand. She had no intention whatsoever to flout or disregard the order passed by this Court and that she tenders unconditional apology for any act or omission committed by her which may be construed to be in disregard to the order dated 8th December, 2023.

On these submissions, he implored the Court to condone the unintentional act of the contemnor-respondent No.7 and to discharge the contempt notice issued to her.

25. By way of additional submissions, Shri S.V. Raju, learned ASG appearing on behalf of Kamal Dayani, Additional Chief Secretary, Government of Gujarat (contemnor-respondent No. 1) and Shri R. Basant, learned senior counsel appearing on behalf of the High Court of Gujarat (respondent No. 8) tried to persuade the Court that no contempt was committed by any of the contemnors, by harping upon the prevailing practice in the State of Gujarat that the Courts, be it the Sessions Court or the High Court while passing pre-arrest bail orders under Section 438 CrPC, invariably incorporate a clause to the effect that in case the Investigating Officer wants to seek

police custody of the accused, an application in this regard may be filed before the concerned Magistrate who would be empowered to direct that the accused in whose favour the anticipatory bail order is passed, could be detained in police custody under valid order of the concerned Magistrate. Learned counsels thus, urged that the contemnors-respondent Nos. 1 and 8 who were acting under this misconception based on a long-standing practice formed by virtue of the Division Bench judgment in ***Sunilbhai Sudhirbhai Kothari*** *(supra)* may not be castigated as having acted in wilful disobedience of this Court's order and therefore, the contempt notices may be discharged while accepting the unconditional apology tendered on behalf of them.

26. So far as contemnor-respondent Nos. 1 and 6 are concerned, they have neither filed any affidavits nor any significant contest was made on behalf of these contemnors-respondents to the contempt proceedings presumably because the thrust of the petitioner's allegations regarding non-compliance/flouting of this Court's order is directed against the other respondents.

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

Discussion: -

28. Before proceeding to consider the rival submissions, at the outset, we may note that a bare perusal of the order under contempt dated 8th December, 2023 would leave no room for doubt that the interim protection of anticipatory bail granted by this Court to the petitioner was absolute, until modified or altered upon final disposal of the Special Leave Petition(Crl.) No. 14489 of 2023 which is still pending consideration before this Court. The language of the order was clear and unambiguous, hence, none of the contemnors-respondents could have entertained any doubt in their minds nor was there any scope for the interpretation that the petitioner could be remanded to police custody during the currency of the interim order dated 8th December, 2023.

29. Shri Ajay Kumar Tomar, Commissioner of Police, Surat (contemnor-respondent No. 2) had no role to play in the investigation or the proceedings pertaining to the remand of the petitioner and thus, *prima facie*, he cannot be held responsible for the contumacious

acts. His role is limited to the aspect of non-functionality of the CCTV cameras, and we would be dealing with this aspect later.

The contempt notice issued to contemnor-respondent No.2 is thus, discharged.

30. Shri Vijaysinh Gurjar, contemnor-respondent No. 3 being the Deputy Commissioner of Police, Zone-4, Surat has sworn an affidavit tendering unconditional apology for any of the acts/omissions which may have led to the order of this Court being flouted.

31. We may note that the reply affidavit of this Officer (contemnor-respondent No.3) is relevant only in context of non-functioning of the CCTV cameras and the custodial torture allegedly meted out to the petitioner during police custody for the period between 13th December, 2023 and 16th December, 2023, wherein it is alleged that the petitioner was beaten in the presence of the said contemnor. The following averments are made in the reply affidavit filed by contemnor-respondent No. 3:-

31.1 At para 6 of the reply affidavit, it has been stated that the respondent was busy in the preparation and deployment on account of visit of the Hon'ble Prime Minister of India in Surat on 17th December, 2023. In connection with the said preparations, he had briefly visited Vesu Police Station on 13th December, 2023. He has denied having any role to play in the investigation of the FIR lodged against the petitioner.

The issue regarding custodial violence allegedly meted out to the petitioner is subject matter of departmental proceedings and is also *sub judice* in proceedings of the criminal complaint filed by the petitioner. Thus, it is neither necessary nor justified to make any observation thereupon because the said aspect has no live link to the contempt proceedings.

31.2 Regarding the aspect of non-functioning of CCTV cameras installed at Vesu Police Station and storage thereof, the contemnor-respondent No. 3 has come out with the following details in para 7 of the reply affidavit:-

> **7.** "That in so far as the CCTV footage of the Vesu Police Station for the period 13.12.2023 to 16.12.2023 is concerned, it is humbly that my office

has received the FSL Report dated 25.01.2024 sent by the Directorate of Forensic Science, Gujarat State, Gandhinagar, regarding the recording of the CCTV cameras installed at the Vesu Police Station, which has inter-alia opined that the DVR and the Hard disc of the CCTV cameras were not physically damaged and were found in working condition and that One lakh four thousand seven hundred ninety-nine (1,04,799) CCTV video footages and clips were found present in the Hard disk, which occupied the entire space of the hard disk i.e. 1.81 TB/1.81 T. The footages shows the time period from 09.01.2000 to 13.01.2000, 29.05.2020 to 20.07.2020, 23.10.2023 to 28.11.2023 and 12.01.2024 to 12.01.2024. However, "*the CCTV video footage(s)/clip(S) having date stamp i.e. 13.12.2023 to 16.12.2023 were not found in the Hard disk Exh-H1 of the DVR Exh-1".*

32. Going by the above averments, it is clear that the mandate to install and ensure functionality of CCTV cameras in all police stations by virtue of this Court's judgment in the case of ***Paramvir Singh Saini***(*supra*) has not been complied in letter and spirit by the concerned police officials. Even if we accept the fact that CCTV cameras were installed in some parts of Vesu Police Station and it is the DVR which was not functional, the fact remains that no CCTV camera was installed in the interrogation room of the police station which is an admitted position as evident from the record. However, we feel that these shortcomings should be dealt with at the departmental level rather than being made subject of these contempt proceedings.

The contempt notice issued to contemnor-respondent No.3 is thus, discharged.

33. The language of the remand application filed by the Investigating Officer, Shri R.Y. Raval(contemnor-respondent No.4) would be relevant for dealing with his case and hence, the same is reproduced hereinbelow: -

"To
5th Additional Senior Civil Judge and
Additional Civil Judicial Magistrate,
New Court Building, Surat City

SUB TO ALLOW REMAND FOR DAYS-7 OF ACCUSED PERSON

I, R.Y.Rawal, I/c Police Inspector Vesu Police Station Surat City respectfully submitting that,

On 21/07/2023 Complainant Abhishek Vinodkumar Goswami Aged: 28 years Occupation: Business of Real Estate residing at C/405, Surya Palace, City Light, Surat City Mobile No 9879215044 preferred complaint before Vesu Police Station Part A 11210068230266/2023 for offence committed under Section 420,120(B) of Indian Penal Code against Accused persons (1) Partners of Shrestha Group Developers Bhavinbhai Durhabbhai Patel Resident of Navi Colony Sarthana Village Surat Mobile No 9925112073 (2) Pradip Tamakuwala Mobile No 9227906150 (3) Vasant Patel (4) Tusharbhai Rajnikantbhai Shah Mobile No 9825038475 (5) Sumit Goenka Mobile No 7710827133 (6) Rajsing Mobile No 6353949599 (7) Omkarsing Mobile No 9106115519 and the facts of the compliant are that,

On 28/01/2023 at around 1600 hrs Accused person no 4 and 5 of the matter shown shop no 204, 301, 302, 303, 304, 305, 306, 307, 308, 309, 404, 405, 407, 408, 409 in total 15 shops situated at Vesu VIP Road, Solarium Business Center and accused no 4 Tushar Shah himself informed that he was the builder and assured that the project was his, the Complainant and witness Akhil Ramanuj Bhattar were ready to buy 15 shops and paid Rs. 1,65,00,000/- (in words One Crore Five Sixty Lakh only) was paid to accused no. 4 and cheque of Rs. 54,00,000/-(in words Rupees Fifty four lakhs only) was also paid, after which a diary of full payment was also produced in presence of accused no. 5, 6, 7 and even after frequently informing all the accused of this matter neither the Deed of shops executed nor returning the money and committed the offence by making pre-planned criminal conspiracy by accused person against complainant and witness.

For said matter accused in the above offence, Tushar Rajinikanth Shah, aged: 43 years Occupation: Business

Residing at Flat No. E/902, Florence Building, Opposite Rajhans Cinema, VIP Road, Vesu Suraj City having Mobile No 9825038475 was arrested on 11/12/2023 at 2100 hrs and on 08/12/2023 the accused allowed anticipatory bail application vide order passed by Hon'ble Supreme Court of India Special in the matter of Leave Application No. 14489/2023 so that the accused in this matter released on bail on furnishing suitable sureties based on the order of the Supreme Court of India and they While obtaining a detailed statement, they are concealing the truth during the investigation proceedings so that the accused should be remanded in police custody for day-07 to investigate the offence.

GROUNDS FOR REMAND

1. During course of investigations proceeding of this matter, on prima facie evidence found against the accused Tusharbhai Shah in which the complainant himself stated to be the builder of said Builder which is the fact that the present accused had prima facie intention with the accused in a pre-planned manner with the other accused in this matter. It was found that there is disloyalty [betrayal]of the complainant so that it is necessary to investigate the entire pre-planned conspiracy with the other accused so that the present accused is required to be in police custody.

2. Accused person of this matter Tushar Shah issued cheques to the complainant of Kotak Mahindra Bank, Kumbhariya Cheque No. (1) 000394 dated 31/01/2023 signed in the name of authorized signatory of Branch, Surat for a sum of Rs. 2,00,000/- and (2) 000395 dated 31/01/2023 for a sum of Rs. 2,00,000/- (3) 000396 dated 31/01/23 a sum of Rs. 2,00,000/-(4) 000397 dated 31/01/2023 a sum of Rs. 2,00,000/- (5) 000398 31/01/2023 a sum of Rs.2,00,000/-(6) 000022 14/02/2023 a sum of Rs. 11,00,000/- (7) 000021 10/02/2023 a sum of Rs. 11,00,000/- (8) 000023 dated 18/02/2023 a sum of Rs. 11,00,000/- (9) 00024 dated 20/02/23 a sum of Rs. 11,00,000/- and with

regard to said cheques, Accused have not disclosed any material fact that they are not cooperating with the investigation proceedings regarding the places where the Cheques are kept and also all the above Cheques are important circumstantial evidences which have to be grabbed [seized] for the purpose of investigation proceedings so the presence of the accused in the police custody is required.

3. The complainant and the witness paid a sum of Rs. 1,65,00,000/- (in words Rupees One Crore Sixty Lakh only) to the accused in various installments which they have not admitted to have taken even in cash and what was the use of such a huge amount. Investigation proceedings are to be conducted so that the presence of the accused in the police custody is required.

4. Against the accused of this matter, Umra Police Station First Criminal Register No. 62/2019 for offence committed u/s 447, 448, 451, 427, 114 of Indian Penal Code registered so that the accused has a criminal history apart from this how many other offences have they committed while during course of interrogation, they are passing the time by giving wayward replies and many important information from this inquiry may come out during the course of investigation proceedings which cannot be obtained without presence during their investigation so the police custody of accused person is essential.

5. Ever since the offence was filed against the accused in this matter, he is on the run till date and the other co-accused in this matter are hiding information about them, which also needs to be investigated so that the police custody of accused person is essentially required.

Considering the above grounds, we request to approve the police custody remand of the accused on Day-07. A copy of the diary is enclosed herewith which please note by Your Honor.

13/12/2023 R.Y Raval
Police Inspector
I/c Vesu Police Station
Surat City"

34. At para No. 3 of the remand application, the Investigating Officer(contemnor-respondent No.4) has noted that the accused-petitioner did not admit having taken cash to the tune of Rs. 1.65 crores which the complainant claims to have paid to the accused-petitioner in various instalments. Para No. 4 of the application reads that Crime No. 62/2019 had been registered against the accused at P.S. Umra for the offences punishable under Sections 447, 448, 451, 427 and 114 of the Indian Penal Code, 1860 and it was imputed that the accused had a criminal history and that he was giving evasive replies to the questions being put to him. However, it is pertinent to note that the Investigating Officer never made any effort to re-summon the accused for investigation even for a single time after 12th December, 2023 when abruptly a notice to appear before the Additional Chief Judicial Magistrate was given to the accused for seeking his police remand. The language of the notice has been reproduced at para 5 *(supra)* and it does not give a whisper of indication that the accused was not cooperating in the investigation.

35. We are of the firm opinion that non-cooperation by the accused is one matter and the accused refusing to confess to the crime is another. There would be no obligation upon the accused that on being interrogated, he must confess to the crime and only thereafter, would the Investigating Officer be satisfied that the accused has cooperated with the investigation. As a matter of fact, any confession made by the accused before a police officer is inadmissible in evidence and cannot even form a part of the record.

36. This Court *vide* order dated 12th July, 2024 passed in ***Petition for Special Leave to Appeal (Crl.) No.10536/2023*** titled as ***'Sanuj Bansal v. The State of Uttar Pradesh & Anr.'*** has held that such confessions recorded in the interrogation notes of the accused cannot form part of the charge sheet.

37. Looking at the allegations in the FIR, we are of the firm view that the Investigating Officer should have, at the first instance, put the complainant to serious questioning and strict proof because while alleging in FIR that he had given a huge sum of Rs. 1.65 crores

to the accused-petitioner, the complainant (contemnor-respondent No. 6) himself had acted in gross contravention of the provisions of the Income Tax Act, 1961 and the Prevention of Money Laundering Act, 2002 (for short 'PMLA'). By blindly placing reliance on the unverified allegations of the complainant based on a huge cash transaction and registering the FIR without even making a basic enquiry on this vital aspect, the police officials to be specific, the Investigating Officer (contemnor-respondent No. 4) clearly colluded with the complainant (contemnor-respondent No. 6) by trying to give the civil dispute, based on allegation of breach of oral agreement, the colour of a crime.

38. The complainant(contemnor-respondent No. 6) categorically stated in the FIR that it was he who had given cheques of about Rs. 54 lakhs to the petitioner and it was agreed that on clearance of the cheques, the accused-petitioner would execute the registered sale deed in respect of the subject property in favour of the complainant. In clear contradiction to this allegation of the complainant, the Investigating Officer at para No. 2 of the remand application*(supra)* noted that the cheques of Kotak Mahindra Bank had been signed by accused-petitioner for being given to the complainant(contemnor-respondent No. 6) and that he was not getting the same recovered. The above statement made in the remand application seems to be at sheer variance with the allegation set out in the FIR that the cheques were given by the complainant to the petitioner i.e., Tusharbhai Shah and not *vice versa*. The assertion made in the FIR, that the accused-petitioner was not lodging the cheques of the complainant(contemnor-respondent No. 6) in his bank and was holding on to the same was clearly a wishful allegation created somehow or the other for framing the accused in a criminal case, rather than resorting to civil proceedings. It is not even the stated case of the complainant that before lodging the FIR, he had asked the accused-petitioner to return the cheques to him.

39. We may also state, had the accused-petitioner suffered an information under Section 27 of the Indian Evidence Act, 1872, which gave rise to a reasonable belief that such information could lead to discovery of an incriminating fact, perhaps the remand application could have been justified to some extent. However, that is not the situation in the case at hand.

40. The narration made in the remand application that the Investigating Officer wanted to find out about the criminal antecedents of the accused is also fanciful on the face of it. With the digitisation of the records, the criminal antecedents/records of accused would be readily available on CCTNS i.e., Crime and Criminal Tracking Network System and thus, the Investigating Officer could not have sought police custody remand of the accused in order to find out his criminal antecedents.

41. Apparently thus, the Investigating Officer (contemnor-respondent No. 4), while filing the remand application, made blatant misinterpretations and procured the police custody of the accused-petitioner who was under the protective umbrella of this Court's order dated 8th December, 2023.

42. If at all, by any stretch of imagination, the Investigating Officer felt genuine and *bona fide* requirement to seek police custody remand of the petitioner, then the proper course of action would have been to move this Court for seeking appropriate directions rather than moving the Magistrate by way of the remand application, which was tainted, malicious and a contemptuous act on the face of the record.

43. Now, we shall take up the case of the contemnor-respondent No. 7 being the 6th Additional Chief Judicial Magistrate, Surat who passed the order dated 13th December, 2023 granting police custody remand of the petitioner. The contemnor has made the following averments in her reply affidavit: -

43.1 At para No. 2 of the reply affidavit, the officer has offered unconditional apology for what has been termed to be a *bona fide* mistake in interpretation of the order of this Court.

43.2 In para No. 3 of the reply affidavit, the contemnor-respondent No. 7 has emphatically stated that this Court had granted ad-interim relief to the petitioner subject to the condition of cooperating with the Investigating Agency and being the Court of 6th ACJM, the officer was vested with the jurisdiction under Section 167 CrPC to grant police custody remand of the accused. The officer has projected in the reply affidavit that by granting police remand of the accused-petitioner, she rather ensured the compliance of this Court's order with *bona fide* objective of ensuring that the investigation is carried out fairly.

43.3 At para No. 3.1 of the reply affidavit, the contemnor-respondent No. 7 has sworn that upon receiving the remand application from the Investigating Agency, alleging non-cooperation in the investigation by the petitioner, she merely followed the practice and procedure prevalent in the State of Gujarat, wherein the Courts issue anticipatory bail orders with a direction to the accused-petitioner to cooperate with investigation and upon failure to do so, liberty is given to the Investigating Officer to seek police remand. The contemnor-respondent No. 7 has annexed certain orders of the High Court of Gujarat to buttress this plea taken in the affidavit in reply to the contempt notice.

43.4 That the petitioner was served with the notice directing him to remain present before the Court of 6th ACJM for the purpose of seeking his police remand. This notice was at the behest of the Investigating Officer and was routed through the Assistant Public Prosecutor (APP). The Investigating Officer sought 7 days remand of the petitioner on the ground that he was not cooperating with the investigation as directed by this Court. The petitioner, neither filed any written protest nor any affidavit to oppose the remand application. He also did not make an affirmative statement of having cooperated with the Investigating Agency by providing information and documents in his possession. An emphatic denial has been given by the contemnor-respondent No. 7 to the plea of the petitioner that the order granting police remand was passed without providing a fair opportunity of hearing to the petitioner or his Advocate.

43.5 At para No. 5.3 of the reply affidavit, the contemnor-respondent No. 7 has reiterated that this Court *vide* order dated 8th December, 2023, granted ad-interim relief in favour of the petitioner with a direction to the petitioner to cooperate with the investigation and thus, order of remand was passed considering the purport of para 5 of the order (*supra*) dated 8th December, 2023.

43.6 At para No. 5.4 of the reply affidavit, contemnor-respondent No. 7 has stated that as the order of this Court was not being complied with by the petitioner and since investigation was permitted to be continued, the contemnor was under a *bona*

fide belief of having the power to hear and allow the remand application. It is in the course of exercise of judicial discretion conferred on the officer by law, that the order dated 13th December, 2023 came to be passed.

43.7 The complaint of ill-treatment made by the petitioner was dealt with by the contemnor-respondent No. 7 by following the procedure prescribed in para 14 of the Criminal Manual, Gujarat High Court. Since the petitioner made a complaint of ill-treatment by police in presence of his Advocates, the contemnor-respondent No.7 proceeded to make physical observation of the petitioner wherein no external injury or mark of violence was found on his body which fact was recorded in the statement of the petitioner which was also signed by him.

43.8 At para No. 7 of the reply affidavit, it is stated that the petitioner filed a bail application under Section 437 CrPC without there being any order taking him in judicial custody. The said application was submitted before the Registry of the Court and was registered in the Central Filing System and thereafter, placed before the Court. The Assistant Public Prosecutor (APP) objected to the prayer for bail, but the contemnor-respondent No. 7 considering the facts and circumstances of the case and the ad-interim relief granted to the petitioner by this Court, directed his release on bail.

43.9 At para No. 8 of the reply affidavit, it has been stated that 8th Additional Chief Judicial Magistrate, Surat passed an order to keep the complaint filed by the petitioner alleging ill-treatment in police custody for verification, but since the petitioner had admitted that his complaint of custodial violence had already been recorded by the contemnor-respondent No.7 on the very date of the completion of the remand period, i.e., 16th December, 2023, she thought it fit to pass a detailed order dismissing the complaint on 6th January, 2024 by exercising jurisdiction under Section 203 CrPC. The contemnor-respondent No. 7 has pleaded that to her knowledge, the petitioner has not challenged the said judicial order.

At this stage, it would be apposite to note that the contemnor-respondent No. 7 has assigned no reasons in the reply affidavit as to how the order dated 21st December, 2023 passed by the

predecessor, i.e., 8th Additional Chief Judicial Magistrate directing that the complaint should be placed for verification which would mean recording the statements under Sections 200 and 202 CrPC could have been reviewed by her. Be that as it may, the order dated 6th January, 2024 passed by the contemnor-respondent No. 7 has already been set aside by the High Court of Gujarat by exercising revisional jurisdiction *vide* order dated 22nd December, 2024 passed in R/Criminal Revision Application No. 273 of 2024.

43.10 At para Nos. 10 and 10.1 of the reply affidavit, it has been pleaded that the contemnor-respondent has served the judiciary honestly, sincerely and with total commitment since 2010 and that she continues to discharge her duties within the four corners of law. She had *bona fide* misinterpreted the order of this Court and her sole intention was to secure the interest of justice and hence, the acts alleged should not be termed to be wilful and deliberate disobedience of this Court's order dated 8th December, 2023 as alleged by the petitioner.

44. The contemnor-respondent No. 7 has placed emphatic reliance on the following lines from this Court's order dated 8th December, 2023: -

> "5. However, the petitioner is directed to cooperate with the investigation and report to the Investigating Officer as and when directed to do so."

It was contended on her behalf that by directing the petitioner to cooperate with the investigation, this Court had given liberty to the Investigating Officer to seek his police custody, in case, he did not cooperate with the investigation. She tried to make out a case that by passing the order granting police custody remand of the petitioner, she rather ensured the compliance of the above direction issued by this Court.

45. The 6th ACJM (contemnor-respondent No.7) has laid much stress in her affidavit upon the fact that the Investigating Officer had noted in his application that the accused-petitioner was not cooperating with the investigation. We fail to comprehend as to what could be construed to be cooperation in a criminal case based on allegations which *prima facie* appear to be in relation to a civil dispute. The transaction *inter se* between the parties pertained to sale and purchase of property. However, there was no written agreement for documenting the alleged sale transaction. Undisputedly, the accused-petitioner had

appeared before the Investigating Officer on 11th December, 2023 with the copy of the order under contempt, immediately upon being summoned, at the police station. Thus, there was neither *bona fide* nor genuine need for grant of police custody of the petitioner.

46. The contemnor-respondent No. 7 in her reply affidavit has tried to explain that the order granting police custody was passed on the basis of a perception arising from the practice being followed in the State of Gujarat based on the Division Bench judgment of the High Court of Gujarat in the case of ***Sunilbhai Sudhirbhai Kothari*** *(supra)*. The said explanation is neither convincing nor tenable in view of the fact that it is not a case wherein a Court in Gujarat had passed an order of anticipatory bail under Section 438 CrPC which was vague or open to different interpretations or contained a stipulation that the Investigating Officer could seek police remand of the accused. The order under contempt dated 8th December, 2023 was passed by this Court while exercising its jurisdiction under Article 136 of the Constitution of India wherein there was no such stipulation that the accused could be remanded to police custody. The approach of contemnor-respondent No. 7 in first granting police custody of the petitioner on a clearly frivolous and *mala fide* remand application filed by Investigating Officer (contemnor-respondent No. 4), and in trying to justify the same in her reply affidavit, that it was based on so called prevalent practice in the State of Gujarat cannot be countenanced. It is noteworthy that despite the period of police custody remand having come to an end on 16th December, 2023, the accused petitioner was further detained till 18th December, 2023 on which date, he was released on bail upon furnishing fresh bail bonds, which is clearly in teeth of this Court's order dated 8th December, 2023. The contemnor-respondent No. 7 has clearly stated in the reply affidavit that no order was passed remanding the accused-petitioner to judicial custody. In this background, detention of the accused till 18th December, 2023 was absolutely unconstitutional and contrary to the letter and spirit of Articles 20 and 21 of the Constitution of India. This Court has placed the individual freedom and right to liberty at the highest pedestal in numerous decisions. Reference in this regard may be to the decision of this Court in the case of ***Rekha v. State of T.N.,***[5] wherein it was held as under:-

5 [2011] 4 SCR 740 : (2011) 5 SCC 244

> **"14.** Article 21 is the most important of the fundamental rights guaranteed by the Constitution of India. Liberty of a citizen is a most important right won by our forefathers after long, historical and arduous struggles. Our Founding Fathers realised its value because they had seen during the freedom struggle civil liberties of our countrymen being trampled upon by foreigners, and that is why they were determined that **the right to individual liberty would be placed on the highest pedestal along with the right to life as the basic right of the people of India**."
>
> (emphasis supplied)

47. If the order granting police custody remand was passed *bona fide* based on some misconception, then, the contemnor-respondent No. 7 should have ensured that the accused-petitioner be released from custody immediately at the end of the period of police custody remand without imposing any further conditions and without any delay. The special leave petition filed on behalf of the petitioner had not been finally decided and was still pending adjudication, when the remand application was entertained and hence, there was no occasion for the 6th ACJM (contemnor-respondent No. 7) to have proceeded to interpret this Court's order in a fanciful manner and that too while acting on a tainted remand application filed by the Investigating Officer.

48. Criminal jurisprudence requires that before exercising the power to grant police custody remand, the Courts must apply judicial mind to the facts of the case so as to arrive at a satisfaction as to whether the police custody remand of the accused is genuinely required. The Courts are not expected to act as messengers of the investigating agencies and the remand applications should not be allowed in a routine manner.

49. As discussed above, the FIR against the accused-petitioner was pertaining to a dispute which *prima facie* appears to be of a civil nature and hence, the learned Magistrate ought not to have toed the line of the Investigating Officer while granting police custody remand of the accused-petitioner.

50. As a matter of fact, the application seeking police custody remand of the petitioner could not have been entertained without seeking

permission of this Court as observed in the case of ***Sushila Agarwal****(supra)*.

51. In this regard, we are benefitted by the judgment of this Court in the case of ***Ashok Kumar v. Union Territory of Chandigarh***[6] wherein, it has been held that a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial investigation is required would not be sufficient. The State would have to show or indicate more than *prima facie* case as to why custodial investigation of the accused is required for the purpose of investigation.

52. Moving further, it must be noted that at the end of the remand period, the 6th ACJM (contemnor-respondent No. 7) entertained an application filed on behalf of the accused-petitioner under Section 437 CrPC and directed his release on bail on furnishing bail bonds. Indisputably, the accused had already furnished bail bonds to the Investigating Officer pursuant to his appearance on 11th December, 2023 and hence, the direction given by the contemnor-respondent No. 7 in requiring the accused to furnish a fresh set of bail bonds for his release from custody was improper and clearly contumacious. The explanation sought to be offered regarding the misconception that had played in the mind of contemnor-respondent No. 7 may have been accepted, had the accused been released without insisting for fresh bail and bonds. However, the fact that a formal application was taken under Section 437 CrPC and only thereafter, the accused-petitioner was released on bail is in clear defiance of this Court's order dated 8th December, 2023. The period between the culmination of the police custody remand and the release of the accused-petitioner upon furnishing bail bonds i.e. from 16th December, 2023 to 18th December, 2023 is a grey area in which there was no order authorising the custody of the petitioner and thus clearly the petitioner was illegally detained for nearly 48 hours.

53. It is pertinent to note that the learned senior counsel appearing for the petitioner had taken a strong exception to the remand application which fact is noted in the proceedings sheet dated 13th December, 2023. However, the contemnor-respondent No. 7 brushed aside the said objection which according to us, was bound to be sustained

6 2024 SCC OnLine SC 274

without any exception, since this Court's order was unambiguous and only possible interpretation was that the petitioner should be released on bail, in the event of his arrest.

54. We, *prima facie* feel that the contemnor-respondent No. 7 seems to have acted in defence of the police officials when she made a note on the complaint of custodial violence made by the petitioner on 16th December, 2023, that after personally examining the feet of the accused, she did not find any injury thereupon. Law requires that the moment the accused had made a complaint of torture in police custody, it was incumbent upon the concerned Magistrate to have got the accused subjected to medical examination as per the mandate of Section 54 CrPC. The formal complaint lodged by the petitioner herein was proceeded with by 8th Additional Chief Judicial Magistrate who took cognizance thereof on 22nd December, 2023 and directed that the complaint be posted for verification. The only permissible action as per law after cognizance had been taken on a private complaint, would be to record the statements of the complainant and his witnesses by taking recourse to the mandatory procedure prescribed under Sections 200 and 202 CrPC. However, in sheer disregard to the order dated 22nd December, 2023 passed by 8th Additional Chief Judicial Magistrate, the 6th ACJM (contemnor-respondent No.7) dismissed the complaint filed by the petitioner *vide* order dated 6th January, 2024 which has been rightly reversed by the High Court of Gujarat *vide* order dated 22nd February, 2024 passed in R/Criminal Revision Application No. 273 of 2024. This conduct of contemnor-respondent No. 7 gives a strong indication of her biased approach in the matter.

55. The arguments advanced by learned senior counsel appearing for the Additional Chief Secretary, Government of Gujarat as well as the High Court of Gujarat about the long-standing practice prevailing in the State, that the Investigating Officer(s) are given liberty to seek police custody remand of the accused after competent Court has granted anticipatory bail does not appeal to us for a moment. Such an interpretation does not appear to be in consonance with the unambiguous position of law. The provisions of anticipatory bail enumerated under Section 438 CrPC or the newly enacted Section 482 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter being referred to as 'BNSS'), which has come into force with effect from 1st

July, 2024, do not contemplate any such liberty to the Investigating Officer. However, the Court adjudicating an application for anticipatory bail may, in a given case, restrict the tenure of anticipatory bail in view of the law laid down by this Court in the case of ***Sushila Agarwal*** *(supra)* and may also impose suitable conditions in light thereof. However, it does not stand to reason that as a matter of course, the High Court or the Court of Sessions, as the case may be, while exercising anticipatory bail jurisdiction, grants pre-arrest bail to the accused and yet, invariably the Investigating Officer is given blanket liberty to keep the accused in custody for prolonged periods in a routine manner. This would virtually frustrate the very purpose and intent behind the grant of anticipatory bail to an accused. The relevant excerpts in this regard from the Constitution Bench judgment of this Court in the case of ***Sushila Agarwal*** *(supra)* are reproduced below for the sake of ready reference: -

> **"85.3.** Section 438 CrPC does not compel or oblige courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While weighing and considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified — and ought to impose conditions spelt out in Section 437(3) CrPC [by virtue of Section 438(2)]. The necessity to impose other restrictive conditions, would have to be weighed on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. **Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases.** Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.
>
> **85.4-85.7**…...

> **85.8. It is open to the police or the investigating agency to move the court concerned, which granted anticipatory bail, in the first instance, for a direction under Section 439(2) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc.** The court, in this context, is the court which grants anticipatory bail, in the first instance, according to prevailing authorities."
>
> (emphasis supplied)

56. The ratio of the above judgment makes it clear that Section 438 CrPC does not compel or oblige courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. The necessity to impose restrictive conditions other than those spelt out in Section 437(3) CrPC would have to be weighed on a case-by-case basis and depending upon the materials produced by the State or the Investigating Agency. Such special or other restrictive conditions may be imposed if the factual context of the case warrants but should not be imposed in a routine manner and the Court would have to act with circumspection depending on the particular facts of each case before endeavouring to impose such conditions.

57. This Court has time and again held that the discretion to grant pre-arrest bail should be exercised with great degree of circumspection. Reference in this regard may be made to ***P. Chidambaram v. Directorate of Enforcement***.[7]

58. Thus, the power to grant anticipatory bail is not to be exercised in a routine manner and the Courts are expected to use this provision with a great degree of circumspection. Once, a Court bearing in mind the strict parameters applicable to grant of anticipatory bail exercises such power, then in such a situation, giving a handle to the Investigating Officer to seek police custody remand of the accused, would virtually negate and frustrate the very purpose behind the order

7 [2019] 14 SCR 450 : (2019) 9 SCC 24

of anticipatory bail. Hence, we have no hesitation in holding that the practice prevalent in the State of Gujarat that the Courts while dealing with the anticipatory bail application routinely impose the restrictive condition whereby, the Investigating Officers are granted blanket permission to seek police custody remand of the accused, in whose favour the order of anticipatory bail is passed, is in direct contravention to the ratio of the Constitution Bench judgment of this Court in the case of ***Sushila Agarwal*** (*supra*). The Division Bench judgment of the Gujarat High Court in the case of ***Sunilbhai Sudhirbhai Kothari*** *(supra)* does not hold good in law as the same runs contrary to the ratio of ***Sushila Agarwal*** (*supra*) and thus, the same stands impliedly overruled.

Conclusion: -

59. Having considered the rival submissions and upon a threadbare discussion of the material available on record, we conclude as below:-

59.1 Having considered the role attributed to contemnor-respondent No. 2, the Commissioner of Police, Surat, we find that there is not even a whisper of an allegation against the said officer other than the aspect relating to the non-functioning of the CCTV cameras at the Vesu Police Station. Thus, the said respondent cannot be held responsible for the non-compliance/ contempt of this Court's order dated 8th December, 2023 and hence, the contempt notice issued to the contemnor-respondent No.2 i.e, Ajay Kumar Tomar, Commissioner of Police, Surat, is discharged.

59.2 That contemnor-respondent No.3, Deputy Commissioner, Surat, is not directly responsible for non-compliance of this Court's order dated 8th December, 2023. However, his role in failing to ensure proper installation and maintenance of CCTV cameras in the police station can be made a subject matter of enquiry at a departmental level, if so desired. Thus, the contempt notice issued to contemnor-respondent No. 3, Vijaysinh Gurjar, Deputy Commissioner of Police, Zone-4, Surat, is discharged.

59.3 That the Investigating Officer, contemnor-respondent No. 4, Police Inspector acted in flagrant defiance and gross contempt of this Court's order dated 8th December, 2023 by applying for police custody remand of the petitioner herein. The portrayal

made by the Investigating Officer in the remand application to claim that the accused-petitioner was not cooperating in the investigation was totally cooked up and a clear attempt to draw wool over the Court's eyes. During subsistence of this Court's order dated 8th December, 2023, there was neither any authority with the Investigating Officer to seek police custody remand of the accused nor was the prayer for remand justified in the backdrop of the fact that the FIR itself was lodged in relation to a civil dispute which arose from an oral agreement for sale of property. A clear misrepresentation was made in the remand application wherein, the Investigating Officer projected that the cheques issued by the accused-petitioner had to be recovered. It is an admitted position as per the FIR, that the cheques had been issued by the complainant to the accused-petitioner and not *vice versa.* By failing to test the truth of the complainant's allegations regarding transmission of huge cash amount to the tune of Rs. 1.65 crores to the accused, the Investigating Officer acted in sheer ignorance to the mandate of the Income Tax Act, 1961 as well as the provisions of PMLA. Admittedly, the Investigating Officer (contemnor-respondent No. 4) had only made investigation from the accused for a few hours on 12th December, 2023 and immediately thereafter, the police custody remand application came to be submitted. The notice for remand to the accused on 12th December 2023 does not indicate that he had not cooperated in the investigation.

We are, therefore, inclined to hold that there was not even a shred of *bona fide* in the actions of the Investigating Officer (contemnor-respondent No.4) while seeking police custody remand of the accused on the purported ground of non-cooperation in investigation. The exercise of seeking police custody remand during currency of the interim protection granted to the petitioner was in sheer defiance of this Court's order dated 8th December, 2023 and tantamounts to contempt on the face of the record. Hence, we have no hesitation in holding that while seeking for and procuring the police custody remand of the accused in the teeth of the order dated 8th December, 2023, the Investigating Officer, R.Y. Raval, Police Inspector, Vesu Police Station, Surat (contemnor-respondent No. 4) is guilty of gross contempt.

59.4 That the explanation offered by 6th ACJM (contemnor-respondent No.7), that the order dated 13th December, 2023 granting police custody remand of the petitioner was passed in the *bona fide* exercise of jurisdiction, based on a genuine misunderstanding of the legal position does not appeal to us. In view of the findings recorded in preceding paras, it is clear that contemnor-respondent No. 7 acted with bias and in a high-handed manner while granting police custody remand of the accused. The reason offered by her that she was acting under a misconception owing to settled and prevailing practice in the State of Gujarat, is clearly in disregard to the order passed by this Court. The said plea does not hold water since the order under contempt dated 8th December, 2023 allowed only one interpretation i.e. the accused-petitioner had to be released on bail in the event of arrest. The action of the contemnor-respondent No.7 in granting police custody remand of the petitioner and in failing to release him upon completion of the aforesaid period is clearly in teeth of this Court's order dated 8th December, 2023 and tantamounts to contempt. The contemnor-respondent No. 7's contumacious actions also contributed to the illegal detention of the petitioner for almost 48 hours after the period of police remand had come to an end.

60. Accordingly, the contempt notices issued to respondent Nos. 2 i.e., Ajay Kumar Tomar, Commissioner of Police, Surat, respondent No. 3 i.e., Vijaysinh Gurjar, Deputy Commissioner of Police, Zone-4, Surat and respondent No. 6 i.e., Abhishek Vinodkumar Goswami (complainant) stand discharged.

61. As a result of the above discussion, we hold R.Y. Raval, Police Inspector, Vesu Police Station, Surat (contemnor-respondent No.4) and Deepaben Sanjaykumar Thakar, 6th Additional Chief Judicial Magistrate, Surat (contemnor-respondent No.7) guilty of having committed contempt of this Court's order dated 8th December, 2023.

SLP (Crl.) No(s). 14489 of 2023, 537 of 2024 and 1116 of 2024

62. The orders dated 8th December, 2023, 11th January, 2024 and 23rd January, 2024 passed by this Court in SLP Nos. 14489 of 2023, 537 of 2024 and 1116 of 2024, respectively are made absolute

and it is directed that the ad-interim anticipatory bail granted to the petitioners shall enure till culmination of the proceedings from the FIR No. 11210068230266 of 2023 dated 21st July, 2023.

63. The special leave petitions are accordingly disposed of.

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

Result of the case: Contempt petition listed for next date, SLPs disposed of.

†*Headnotes prepared by:* Divya Pandey

[2024] 8 S.C.R. 287 : 2024 INSC 598

Rahul
v.
National Insurance Company Ltd. and Another

(Civil Appeal No. 8614 of 2024)

09 August 2024

[Sudhanshu Dhulia and R. Mahadevan,* JJ.]

Issue for Consideration

High Court, if justified in reducing the percentage of disability suffered by the pillion rider who met with an accident from 25% as fixed by the tribunal, to 20% while determining the compensation payable to him.

Headnotes†

Motor Vehicles Act, 1988 – Motor accident – Compensation – Reduction of the percentage of disability suffered in a motor accident by the claimant-pillion rider on a motorcycle from 25% as fixed by the tribunal to 20% by the High Court and re-assessed the compensation – Correctness:

Held: Pillion rider underwent a surgery in which, plates and screws were implanted in his hands – As per disability certificate issued by the doctor, the pillion rider suffered 50% permanent disablement and the said doctor was also examined as prosecution witness – Considering the oral and documentary evidence, the tribunal took the disability of the pillion rider only at 25% and determined the compensation payable to him – Without assigning plausible reason, the High Court re-assessed the compensation by reducing the disability suffered by the pillion rider to 20% – Reduction of compensation was not required, when there was no basis in support thereof – Thus, the judgment passed by the High Court set aside and that of the tribunal fixing the disability of the pillion rider at 25% restored. [Paras 10, 11]

List of Keywords

Reducing the percentage of disability suffered; Compensation; Motor accident; Disability certificate; Permanent disablement; Reduction of compensation.

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* Author

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8614 of 2024

From the Judgment and Order dated 13.11.2018 of the High Court of Karnataka Circuit Bench at Dharwad in MFA No. 103118 of 2014

Appearances for Parties

Manjunath Meled, Mrs. Vijayalaxmi Meled, Ganesh Kumar R., Advs. for the Appellant.

Manu Luv Shahalia, Ms. Manjeet Chawla, Abid Ali, Manek Sharma, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

R. Mahadevan, J.

1. Delay condoned.

2. Leave granted.

3. In the present case, the appellant challenges the final judgment dated 13.11.2018 passed by the High Court of Karnataka, Dharwad Bench, (hereinafter shortly referred to as "the High Court"), thereby partly allowing MFA No. 103118/2014 (MV) filed by the Respondent No.1 (hereinafter referred to as "the insurance company").

4. Originally, the appellant filed a claim petition in MAC No.1587 of 2013 before the Senior Civil Judge & MACT at Raibag (hereinafter shortly referred to as "the Tribunal"), seeking a compensation of Rs. 20,00,000/- for the injuries sustained by him in a motor accident that had occurred on 27.01.2013, while he was travelling as a pillion rider in the motor cycle bearing registration No. KA-23/ EC-6369 insured with the insurance company. Based on the oral and documentary evidence, the Tribunal awarded a sum of Rs. 5,38,872/- along with interest at 6% p.a. from the date of petition till deposit, as compensation payable to the appellant, after taking into account the disability sustained by him at 25%. Aggrieved by the same, the insurance company filed an appeal in MFA No. 103118 of 2014 (MV) before the High Court.

5. After hearing both sides, the High Court re-assessed the compensation by reducing it to Rs. 4,74,072/- by taking into consideration, disability

only at 20% and allowed the appeal in part, by the final judgment dated 13.11.2018, which is under challenge before us.

6. The learned counsel for the appellant, drawing the attention of this court to Exs.P56 to 60, medical records pertaining to the appellant, submitted that the appellant sustained three injuries *viz*., fracture of right radius, fracture of left radius and fracture of styloid process of ulna, for which, he had undergone surgery and plates and screws were implanted in his both hands. The doctor N.Y. Joshi gave Ex.P57, disability certificate to the effect that the appellant suffered 50% disability, as a whole. Based on the same, the Tribunal determined the compensation under the head 'Loss of future income' by taking into account the disability at 25%. However, the High Court re-determined the compensation by reducing the disability suffered by the appellant to 20%, by observing that the doctor who issued the disability certificate had not been examined before the Tribunal, which is erroneous. It is also submitted that the appellant, being an agriculturist, is unable to do agricultural operations, due to the disability suffered by him. Therefore, the learned counsel sought our interference in the judgment passed by the High Court and thereby enhance the compensation payable to the appellant.

7. On the other hand, the learned counsel for the insurance company submitted that the High Court has awarded a just and fair compensation to the appellant, considering the facts and circumstances of the case and hence, prayed for dismissal of this appeal.

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

9. The only issue that arises for our consideration is, whether the High Court is right in reducing the percentage of disability suffered by the appellant from 25% as fixed by the Tribunal, to 20% while determining the compensation payable to him.

10. The factum of accident and the involvement of the motorcycle insured with the insurance company, are not disputed. From a perusal of the records, *viz*., Exs. P56 to P60 - medical records of the appellant, more particularly, Ex.P56 wound certificate, it is evident that the appellant sustained the following injuries in the accident:

    (i) Displaced fracture upper 1/3rd of the shaft of right radius and ulnar shafts and bone of the right forearm.

(ii) Fracture of ulnar stoiloid and evidence of angulated fracture of distal end of left radius.

Further, for the above injuries, the appellant underwent a surgery, in which, plates and screws were implanted in his hands. As per Ex.P57 disability certificate issued by the doctor, N.Y. Joshi, the appellant suffered 50% permanent disablement and the said doctor was also examined as PW2. Considering all these oral and documentary evidence, the Tribunal has taken the disability of the appellant only at 25% and determined the compensation payable to him. Without assigning plausible reason, the High Court re-assessed the compensation by reducing the disability suffered by the appellant to 20%. We are of the view that the reduction of compensation was not required, particularly, when there is no basis in support thereof. Therefore, the judgment passed by the High Court is liable to be interfered with.

11. Accordingly, the impugned judgment dated 13.11.2018 passed by the High Court in MFA No.103118 of 2014 (MV) is set aside and the judgment dated 28.06.2014 passed by the Tribunal in MAC No.1587 of 2013 fixing the disability of the appellant at 25% is restored. The insurance company is directed to deposit the entire compensation along with interest as determined by the Tribunal, after adjusting the amounts already deposited, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant is permitted to withdraw the same.

12. This Civil Appeal is allowed.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Nidhi Jain