

THE INDIAN LAW REPORTS ALLAHABAD SERIES



सत्यमेव जयते

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(2025) 3 ILRA 5
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 10.03.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

First Appeal From Order No. 137 of 2017
 &
 First Appeal From Order No. 217 of 2017

National Insurance Co. Ltd. Lucknow
...Appellant
Versus
Gaurav Sharma & Anr. ...Respondents

Counsel for the Appellant:
 Mrs. Pooja Arora

Counsel for the Respondents:
 Ashish Chaturvedi

Civil Law - Motor Vehicle Act, 1908 - Sections 166 & 173 - Enhancement of Compensation - Claim petition filed by claimant alleging that claimant met with accident due to negligent driving of driver of offending Truck, his left leg amputated in hospital - Allowed and awarded compensation - Impugned order - Held, disability certificate issued by Chief Medical Officer with signatures of orthopaedic surgeon as one of signatory - Certificate shows permanent disability of 70% - Rightly determined. (Para 10, 13, 41)

Tribunal awarded Rs.50,000/- for pain and sufferings, Rs.1,00,000/- for loss of amenities and degradation in married life - Claimant who was student of intermediate and 18 years of age, good player, on account of loss of one leg he became incapable of playing it, therefore, it cannot be equated in terms of money as he could made his career in any field in future but he cannot do the same, therefore, compensation to be enhanced to Rs.1,50,000/- (Para 42)

Regarding claim of future treatment, Rs.2,00,000/- will be sufficient as by interest of same, claimant will meet out said expenses in future - Thus, claimant entitled to compensation alongwith interest. (Para 43)

Writ petition partly allowed. (E-13)

List of Cases cited:

1. Raj Kumar Vs Ajay Kumar & anr.; (2011) 1 SCC 343/ 2011 ACJ 1, (Paras 12, 13, 19)
2. Gopal, Krishnaji Ketkar Vs Mahomed Haji Latif & ors.; AIR 1968 SC 1413/ 1968 SCC Online SC 63
3. Oriental Insurance Co. Ltd. at Nanded Vs Prakash Shahuraj Mali & ors.; 2020 (1) TAC 938
4. Rajesh Kumar @ Raju Vs Yudhvir Singh & anr.; AIR 2008 SC 2396
5. National Textile Corporation Ltd. Vs Naresh Kumar Badri Kumar Jagad & ors.; 2011 (12) SCC 695/ 2011 (29) LCD 1793
6. Anita Sharma & ors. Vs New India Assurance Co. Ltd. & anr.; (2021) 1 SCC 171, (Paras 21, 22)
7. Sunita & ors. Vs Rajasthan St. Road Transport Corporation & ors.; (2020) 13 SCC 486, (Para 22)
8. Laxman @ Laxman Mourya Vs Divisional Manager, Oriental Insurance Company Limited & anr.; (2011) 10 SCC 756, (Paras 8, 14, 15)
9. Nagappa Vs Gurudayal Singh & ors.; (2003) 2 SCC 274
10. Govind Yadav Vs New India Insurance Company Limited; 2011 (10) SCC 683
11. R.D. Hattangadi Vs Pest Control (India) Pvt. Ltd & ors.; (1995) 1 SCC 551
12. G. Ravindranath @ R. Chowdary Vs E Srinivas & anr.; (2013) 12 SCC 455
13. Lakshmana Gowda B.N. Vs Oriental Insurance Company Ltd. & anr.; (2023) SCC OnLine SC 786

14. Jagdish Vs Mohan & ors.; (2018) 4 SCC 571, (Para 14)

15. U.P.S.R.T.C., Ghaziabad Vs Smt. Neerja Bhatiya & ors.; FAFO No.1726 of 2001, date of order 04.08.2023

16. Uttar Pradesh St. Road Transport Corporation Vs Bhawani Prasad Manjhi; 2024 SCC OnLine All 7385

17. Phul Chand Yadav & ors. Vs Kedar Yadav & ors.; 2011 SCC OnLine ALL 1036

18. Coal India Limited & anr. Vs Ujjal Transport Agency & ors.; (2011) 1 SCC 117

19. Pankajbhai Rameshbhai Zalavadiya Vs Jethabhai Kalabhai Zalavadiya; (2017) 9 SCC 700, (Para 16)

20. Prabhavathi & ors. Vs The Managing Director, Bangalore Metropolitan, Transport Corporation; 2025 LiveLaw (SC) 266, (Para 11)

21. Syed Siddiqui Vs Divisional Manager United India; 2014 (1) TAC 369 SC

22. National Insurance Co. Ltd. Vs Pranay Sethi; (2017) 16 SCC 680

23. Sarla Verma Vs DTC, (2009) 6 SCC 121, (Para 42)

(Delivered by Hon'ble Rajnish Kumar, J.)

1. Heard, Mrs. Pooja Arora, learned counsel for the appellant in F.A.F.O. No.137 of 2017 and for respondent no.1 in F.A.F.O. No.217 of 2017 (here-in-after referred as learned counsel for the Insurance Company) and Shri Ashish Chaturvedi, learned counsel for the claimant-respondent no.1 in F.A.F.O. No.137 of 2017 and for appellant in F.A.F.O. No.217 of 2017 (here-in-after referred as learned counsel for claimant). None appeared on behalf of the owner i.e. the respondent no.2 in both the appeals.

2. The F.A.F.O. No.137 of 2017 has been filed under Section 173 of Motor Vehicle Act, 1908 (here-in-after referred as MV Act) challenging the judgment and award dated 23.11.2016 passed in Claim Petition No.163 of 2011 (Gaurav Sharma Vs. Rajesh Kumar Tiwari and another). The F.A.F.O. No.217 of 2017 has been filed for enhancement of compensation. Hence both the appeals are clubbed and decided together with this common judgment and order.

3. Learned counsel for the Insurance Company submits that the claimant; Gaurav Sharma, who appeared as PW-1 admitted in his cross-examination that he had seen in his rear view mirror of scooty that the truck is coming on his back side but he had not tried to save him, therefore, his contributory negligence can not be denied but the learned tribunal has failed to consider it. The PW-2 has admitted in his evidence that he had seen the accident after hearing, therefore, he can not be said to be an eye witness to the accident. Thus, the rash and negligent driving of the offending truck also can not be said to have been proved, but the learned tribunal failed to consider it all. She further submits that the concerned doctor has not been produced to prove as to what would be the extent of future loss to the claimant on account of the disablement suffered by him in the accident, therefore, the assessment in this regard made by the learned tribunal is not tenable. Even otherwise, as per the old act the permanent disability could have been determined in terms of schedule-II of the said act in application under Section 163-A of MV Act. Lastly, she submits that the proforma for filing application under Section 163-A is given in SR-49 and the tribunal could not have traveled beyond the provisions of said

section and allowed the compensation to the claimant treating the claim petition under section 166 of the MV Act. On the basis of above, learned counsel for the appellant submits that the judgment and award passed by the learned tribunal is not sustainable and liable to be set-aside.

4. Learned counsel for the Insurance Company opposing the appeal of the claimant for enhancement of compensation submits that the appeal has been filed on misconceived and baseless grounds. The doctor was not produced to prove the future loss on account of the disability suffered in the accident and no proof of any income from the sport or in regard to any other claim has been filed, therefore, the appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

5. She relies on **Raj Kumar Vs. Ajay Kumar and Another; (2011) 1 SCC 343/ 2011 ACJ 1, Gopal, Krishnaji Ketkar Vs. Mahomed Haji Latif and Others; AIR 1968 SC 1413/ 1968 SCC Online SC 63, Oriental Insurance Co. Ltd. at Nanded Vs. Prakash Shahuraj Mali and Others; 2020 (1) TAC 938, Rajesh Kumar @ Raju Vs. Yudhvirsingh and Another; AIR 2008 SC 2396, National Textile Corporation Ltd. Vs. Naresh Kumar Badri Kumar Jagad and Others; 2011 (12) SCC 695/ 2011 (29) LCD 1793, Anita Sharma and Others Vs. New India Assurance Co. Ltd. and Another; (2021) 1 SCC 171 and Sunita and Others Vs. Rajasthan State Road Transport Corporation and Others; (2020) 13 SCC 486.**

6. Per contra, learned counsel for the claimant submits that the accident and rash and negligent driving of the driver of

the offending truck has been proved by the claimants before the tribunal and merely because the claimant has stated in his cross-examination that he had seen the truck coming on his back side in the rear view mirror of his scooter, it can not be a ground for determination of any contributory negligence on his part because he has clearly stated that he was going on the left side of the road with a speed of 30-40 km/hour and if in such a situation the truck dashed from the back side, it can be only because of rash and negligent driving of driver of the offending truck. Thus, the appeal filed by the appellant challenging the award is misconceived and liable to be dismissed. He further submits that though the appeal was filed under Section 163-A of the MV Act but it was dealt with as an application under Section 166 of the MV Act and after framing the issues without any objection from the insurance company or any other party in regard to rash and negligent driving of truck driver, therefore, the learned tribunal has rightly decided the claim petition in accordance with law and once it has been decided the insurance company can not raise any objection in this regard.

7. Learned counsel for the claimant pressing his appeal for enhancement submits that the deceased was a student of class-12. Besides studying, he used to play Cricket and was a fast bowler. He had participated in many competitions and had also got certain trophies and on account of the disability suffered in the accident, he has been restrained from pursuing the Cricket and if he would have not suffered the disability, he could have pursued the Cricket and may have played in the National Cricket. He further submits that the learned tribunal has not allowed the compensation on all the heads claimed by

the claimant, therefore, the judgment and award is liable to be modified and the compensation is liable to be enhanced accordingly.

8. He relies on **Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and Another; (2011) 10 SCC 756, Nagappa Vs. Gurudayal Singh and Others; (2003) 2 SCC 274, Govind Yadav Vs. New India Insurance Company Limited; 2011 (10) SCC 683, R.D. Hattangadi Vs. Pest Control (India) Pvt. Ltd and Others; (1995) 1 SCC 551, Raj Kumar Vs. Ajay Kumar and Another; (2011) 1 SCC 343/ 2011 ACJ 1, G. Ravindranath @ R. Chowdary Vs. E Srinivas and Another; (2013) 12 SCC 455, Lakshmana Gowda B.N. Vs. Oriental Insurance Company Ltd. and Another; (2023) SCC OnLine SC 786, Jagdish Vs. Mohan and Others; (2018) 4 SCC 571, U.P.S.R.T.C., Ghaziabad Vs. Smt. Neerja Bhatiya and Others; First Appeal From Order No.1726 of 2001, Uttar Pradesh State Road Transport Corporation Vs. Bhawani Prasad Manjhi; 2024 SCC OnLine All 7385.**

9. I have considered the submissions of learned counsel for the parties and perused the records.

10. The claim petition was filed by the claimant alleging therein that the claimant met with an accident on 05.08.2010 due to negligent driving of the driver of the offending Truck No.U.P.32-Z-0458 near Krishna Nagar Kotwali, on account of which he was hospitalized and his left leg was amputated in hospital. The claimant was riding on a scooter activa bearing No.U.P.32-BD-9557 and was going to Krishna Nagar from his residence slowly

and cautiously on the left side of the road following all the traffic rules. When he reached near Krishna Nagar Kotwali, the Truck No.U.P.32-Z-0458 hit the scooter of the claimant on his back from behind, by driving rashly and negligently by its driver, on account of which the claimant fell down and got grievous injuries, on account of which his left leg was amputated. The truck driver was caught by the local inhabitants from the site of the accident and handed over to the Krishna Nagar Police Station and they also took the claimant to the Lal Hospital in the area, from where he was referred to the Trauma Center, Medical College, Lucknow on the same date. The Pelvic bone of the claimant was broken. After few days the claimant was shifted to Vivekanant Polyclinic, where his left leg was amputated on account of critical condition. After some time he was shifted to Sahara Hospital from where he ultimately was discharged on 25.09.2010. Thereafter also the treatment is going on.

11. It has further been alleged that the claimant was good in studying and studying in Class-12. He was a very good sport person also. He had twice participated in C.K. Naidu Cricket Tournament at district level as a fast bowler. He also participated in Gali-10 Cricket Competition and district level 20-20 Cricket competition. He also participated in fast bowler competition at district level. He had a bright future and had he not met with the said accident, there were chances of the claimant to become a national level Cricketer. The earning of claimant was claimed as Rs.3000/- per month. Thus, it was pleaded that on account of the accident, a good sport person and a good student is constrained to live a life of handicapped as he had become permanent

disable. Accordingly, the compensation was claimed.

12. The claim petition was contested by the respondent no.1 in the claim petition i.e. the owner denying the averments made in the claim petition and disclosing therein that the Registration, Insurance Policy, License of driver, Permit, Fitness etc. of Truck No. U.P.32-Z-0548 were in order, therefore, in case any compensation is to be paid, the Insurance Company would be liable to pay the amount of compensation. The owner also filed the cover note of the Insurance Policy, which shows that the policy was effective on the date of accident. Thereafter the Insurance Company was impleaded as respondent no.2. The Insurance Company filed a written statement denying the averments made in the claim petition and taking general pleas as are being taken by the Insurance Company without verifying the facts of even Insurance Policy, which remains available with it and other documents. After exchange of pleadings, the tribunal framed six issues, which are extracted here-in-below:-

"1. क्या दिनांक 05.08.2010 को समय 9.30 बजे ए.एम. स्थान निकट कृष्णनगर कोतवाली थाना कृष्णनगर, लखनऊ में याची गौरव शर्मा अपने स्कूटर नं० यू०पी०-32/डीबी-9557 से अपने घर से कृष्णनगर जाते समय ट्रक नं० यू०पी०-32/जेड-0458 के चालक ने तेजी व लापरवाही से चलाते हुए स्कूटर में टक्कर मार दी जिससे याची को गंभीर चोट आयी ?

2. क्या दुर्घटना की तिथि को ट्रक नं० यू०पी०-32/जेड-0458 के चालक के पास वैध एवं प्रभावी अनुज्ञा पत्र था?

3. क्या दुर्घटना की तिथि को ट्रक नं० यू०पी०-32/जेड-0458 विपक्षी सं०-2 से भीमित थी?

4. क्या याचिका आवश्यक पक्षकारों के असंयोजन के कारण दोषपूर्ण है?

5. क्या दुर्घटना में याची/चोटहिल की स्वयं की योगदायी उपेक्षा एवं लापरवाही थी?

6. याची कोई अनुतोष यदि कोई हो पाने का अधिकारी है, यदि हां तो किससे व कितनी ?"

13. The oral as well as the documentary evidence was adduced by the parties. The claimant got himself examined as PW-1 and one another eye witness Shri Satya Prakash Awasthi as PW-2. The claimant filed a copy of F.I.R., copy of license of the claimant, disability certificate issued by the Chief Medical Officer, Hathras, copy of charge sheet, site plan and other medical related documents. The owner filed photo copies of the Registration Certificate, Insurance Policy and Driving License of the truck driver. The Insurance Company filed the original form 54. The learned tribunal after hearing learned counsel for the parties and considering the records passed the impugned judgment and award and allowed the claim petition and awarded compensation to the tune of Rs.9,52,600/- alongwith interest @ 7% per annum from the date of filing of claim petition.

14. The application for compensation was filed with the caption 'Claim Petition under section 163-A of the Motor Vehicles Act, 1988'. Section 163-A provides special provisions as to payment of compensation on structured formula basis. However, the application has been dealt with and decided after framing the issue of rash and negligent driving of the truck driver. The U.P. Motor Vehicle Rules, 1998 (here-in-after referred as the Rules of 1988) have been made under various sections of MV Act 1988 including section 176 of the MV Act. Under Section 176, the State Government may make rules for the purpose of carrying into effect the

provisions of Sections 165 to 174 and in particular such rules may provide the form of application for claims for compensation and the particulars it may contain, and fees, if any, to be paid in respect of such application including the other rules made in the section. Rule 204 of the Rules of 1988 provides the application for payment before the claims tribunal. It provides that the every application for payment of compensation under Section 166 shall as far as possible be made in form SR-48 and if the compensation is claimed under Section 163-A in Form SR-49. In both SR-48 and SR-49, the necessary particulars of the person dead/ injured/and/ or suffering damage to property and the vehicle involved in the accident etc. are to be given. There is only one difference that in SR-49 after paragraph 23 two declarations are to be made; one that the applicant have not filed any other application for compensation and thereafter that the compensation may be determined in accordance with the second schedule of MV Act, 1988 and direct for payment of the same, which shall be full and final compensation in respect of the aforesaid accident, but it is not in SR-48 on which the application under Section 166 of MV Act was filed. Therefore, it is very material to consider as to whether the application is under Section 163-A or Section 166 of MV Act. The form given in SR-48 and aforesaid declaration of SR-49 are extracted here-in-below:-

FORM SR-48

[See Rule 204 (1)]

Application For Compensation

(Otherwise than under Section 163-A)

To,

The Motor Accidents/ Claims
Tribunal

.....
.....
I,
.....son/daughter/widow of
.....residing at having been
injured and/or suffered damage to property
in a motor vehicle accident hereby apply
for the grant of compensation for the injury
sustained and or damage suffered.
Necessary particulars in respect of the
injury/damage to property, vehicle etc., are
given below:

1,
.....son/daughter/wife/widow of
.....residing at
.....hereby apply as a legal
representative/agent, for the grant of
compensation on account of death of/injury
sustained and/or damage suffered by
Sri/Kumari/Srimati..... ..
...son/daughter/wife/widow of ..Sri/Srimati
.....who died/ was injured
and/or damage suffered in a Motor Vehicle
accident. Necessary particulars of the
person dead/injured/and/or suffering
damage to property and the vehicles
involved in the accident etc. are
hereunder_____

1. Name with Farther/Husband's
name of the person dead/injured and or
suffering damage to property.

2. Full address of the person
dead/injured and or suffering damage to
property.

3. Age of the person injured/dead.

4. Occupation of the person
injured/dead.

5. Name and address of the
employer of the deceased, if any.

6. Monthly income of the person
injured/dead.

7. Name and age of each of the
dependents of the deceased/injured
indicating relationship with him, and also
monthly average income of the

deceased/injured and the source of such income.

8. Details of the property damaged and the extent of damage caused.

9. Does the person in respect of whom compensation is claimed pay income tax (to be supported by documentary evidence).

10. Place, date and time of the accident.

11. Name and address of police station in whose jurisdiction the accident took place or FIR was registered.

12. Was the person in respect of whom compensation is claimed, travelling by the vehicle involved in the accident if so, give the names of places of starting of journey and destination.

13. Nature of injuries sustained.

14. Name and address of the Medical Officer/Practitioner, if any, who attended on the injured/dead.

15. Period of treatment and expenditure, if any, incurred thereon (to be supported by documentary evidence).

16. Registration number and the type of the vehicle involved in accident.

17. Name and address of the owner of the vehicle.

18. Name and address of the insurer of the vehicle.

19. Has any claim been lodged with the owner/insurer, if so with what result.

20. Relationship with the deceased.

21. Title to the property of the deceased.

22. Amount of compensation claimed.

23. Any other information that may be necessary or helpful in the disposal of the claim.

I solemnly declare that the particulars given above are

true and correct to the best of my knowledge.

Signature or thumb-impression of the applicant

FORM SR-49
[See Rule 204(1)]
Application for compensation under
Section 163-A

To,
The Motor Accident Claims Tribunal
.....

I,
.....
.....
.....
.....
.....are hereunder____
.....
.....

1.
.....
.....
.....
.....
.....
.....

23.
.....

I have not filed any other application for compensation.
I, ... therefore, request that the amount of compensation in respect of the aforesaid accident may be determined in accordance with the Second Schedule of the Motor Vehicles Act, 1988 and the owner/insurer may be directed to make payment of the compensation so determined, to me, which shall be full and final compensation in respect of the aforesaid

accident. I shall not file any other claim in respect thereof under Section 140 and under Section 163-A of the Motor Vehicles Act, 1988.

I,.....solemnly declare that the particulars given above are true and correct to the best of my knowledge.

Signature or Thumb-Impression of the
Applicant

15. The aforesaid declaration claiming compensation in accordance with the second schedule of the MV Act, 1898 is not in SR-48 on which, the application under Section 166 of the MV Act is filed for compensation. Perusal of the application filed by the claimant in the instant case, which is on record of the tribunal, indicates that there is no such declaration in the application and in fact the application is on proforma given in Form SR-48, therefore, mere mention of the application under section 163-A of the MV Act in the caption would not change the nature of the application and claim made therein, therefore, it has rightly and in accordance with law has been dealt with and decided by the tribunal treating it under Section 166 of MV Act after framing relevant issues. It is only that because of this no such objection was also raised before the tribunal at the time of framing of the issues by the tribunal and even thereafter till disposal of the claim petition, therefore, once the application was filed claiming compensation on the proforma given in Form SR-48 and not in the Form SR-49 of the Rules of 1988 and the issue of rash and negligent driving of the truck driver was also framed, but no objection was raised either before the tribunal or before this Court, the contention of learned counsel for the Insurance Company in this regard is misconceived and not tenable and

liable to be rejected and rejected accordingly.

16. This Court, in the case of **Phul Chand Yadav and Others Vs. Kedar Yadav and Others; 2011 SCC OnLine ALL 1036**, has held that quoting a wrong provision is never fatal.

17. The Hon'ble Supreme Court, in the case of **Coal India Limited and Another Vs. Ujjal Transport Agency and Others; (2011) 1 SCC 117**, has held that the application for filing of an application for condonation of delay under a wrong provision of law will not vitiate the application.

18. The Hon'ble Supreme Court, in the case of **Pankajbhai Rameshbhai Zalavadiya Vs. Jethabhai Kalabhai Zalavadiya; (2017) 9 SCC 700**, has held that it is by now well settled that a mere wrong mention of the provision in the application would not prohibit a party to the litigation from getting justice. Ultimately, the courts are meant to do justice and not to decide applications based on technicalities. The relevant portion of paragraph 16 is extracted here-in-below:-

"16.

.....
.....*It is by now well settled that a mere wrong mention of the provision in the application would not prohibit a party to the litigation from getting justice. Ultimately, the courts are meant to do justice and not to decide the applications based on technicalities.*
.....

.....
....."

19. A co-ordinate Bench of this Court, by means of the judgment and order dated 04.08.2023 passed in **U.P.S.R.T.C., Ghaziabad Vs. Smt. Neerja Bhatiya and Others; First Appeal From Order No.1726 of 2001**, held that when the parties have accepted both before the Tribunal and also before this Court that the claim petition was to be decided as per provisions of Section 166 of Motor Vehicles Act, 1988, no such ground can now be raised before this Court that it was a petition under Section 163A of the Act.

20. The learned tribunal considered the issue no.1 and 5 together, which are in regard to the accident on account of rash and negligent driving of the driver of the truck No.U.P.32-Z-0548 and contributory negligence of claimant. The claim petition was filed alleging thereon that the accident had occurred on 05.08.2010 at about 09:30 in the morning, when the claimant was going on his Activa Scooter from his house to Krishna Nagar, when the truck No.U.P.32-Z-0548 being driven rashly and negligently by its driver, dashed the scooty of the claimant from the back side, on account of which he fell down and suffered serious injuries. The truck driver was caught on spot by the persons present there and handed over to Police Station- Krishna Nagar and the claimant was admitted in a nearby Lal Hospital, from where he was referred to the Trauma Center, King George Medical College, Lucknow on the same date, where he remained up to 09.08.2010. Thereafter he was shifted to Vivekanand Polyclinic Lucknow, where his left leg was amputated on 10.08.2010 to save his life. The first information report of the accident was lodged on 21.10.2020 by the father of the claimant vide Case Crime No.423 of 2010, under Section 279 and 338 I.P.C. at Police Station- Krishna Nagar,

District- Lucknow, in which the charge sheet has been filed against the driver of the truck, a copy of the charge sheet and site plan were placed on record. The reason for delay in F.I.R. has been given in the F.I.R. itself that on account of the treatment of his son i.e. the claimant whose condition was serious and he was busy in the same. He was disturbed mentally and financially, therefore, the report could not be lodged immediately. The driving license of the claimant was also placed on record, which was valid and effective w.e.f. 14.12.2009 to 13.12.2029.

21. The claimant appeared as PW-1, who proved the accident. He stated in his cross-examination that he had seen in the rear view mirror that the truck is coming on his back. He further stated that at the time of accident the speed of his scooter was 30-40 KM/hour and he was going on the left side of the road. The PW-2, who is also an eye witness, has also proved the accident. However he has stated that he had seen the accident after hearing the voice. It is apparent that the accident had occurred on account of rash and negligent driving of the Truck No.U.P.32-Z-0548 and it was proved by the PW.1 and PW.2, therefore, merely because the claimant stated that he has seen the truck in rear view mirror coming on the back side and PW-2 stated that he had seen accident after hearing the voice, can not be a ground to hold that the claimant was negligent and there was any contributory negligence because he was going at a moderate speed on the left side of the road and if even then the truck coming from the back side hit the scooty from the back side, it can be only because of the rash and negligent driving of the driver of the truck because the truck being a heavy vehicle, the driver thereof, should have been cautious enough to drive the vehicle. Even

otherwise the accident and rashness and negligence of the truck driver have been proved by the claimant himself and the evidence of PW-2 supports it. The claimant himself is an injured, whose one leg has been amputated on account of said accident. The driver was also caught on the spot and handed over to the police. The charge sheet has also been filed against the driver. These all are sufficient to prove the accident on account of rash and negligent driving of the driver of the truck and involvement of truck in the accident in question. Nothing also could be extracted from PW-1 and PW-2, which may create any doubt about the veracity of evidence given by them. No contrary evidence or any other evidence has also been adduced by the Insurance Company or the Owner of the truck, which may even indicate that the accident had not occurred on account of rash and negligent driving of the truck driver or there was any negligence or contributory negligence on the part of the claimant. The claimant had also valid and effective driving license on the date of accident.

22. The Hon'ble Supreme Court in the case of **Prabhavathi and Others Vs. The Managing Director, Bangalore Metropolitan, Transport Corporation; 2025 LiveLaw (SC) 266**, has held that in absence of any direct or corroborative evidence on record, it can not be assumed that the accident occurred due to the rash and negligent driving of both the vehicles. The relevant paragraph 11 is extracted here-in-below:-

*"11. Thus, in our considered view, the contributory negligence taken by the High Court at 25% of the deceased is erroneous. We advert to the principles laid down in **Jiju Kuruvila v. Kunjuamma***

***Mohan'**, where it was held that in the absence of any direct or corroborative evidence on record, it cannot be assumed that the accident occurred due to the rash and negligent driving of both the vehicles. This exposition came to be followed in **Kumari Kiran v. Sajjan Singh and Ors.2**. In the present case, therefore, on an allegation simpliciter, it cannot be presumed that the accident occurred due to rash and negligent driving of both vehicles, for having driven at high speed."*

23. In view of above, the findings recorded by the learned tribunal that the driver of truck caused the accident driving rashly and negligently, in which claimant suffered serious injuries and there was no contributory negligence on the part of the claimant does not suffer from any illegality are perversity, therefore, the contention in this regard of learned counsel for the Insurance Company is misconceived and not tenable and liable to be rejected and rejected accordingly.

24. The issue no.6 as to whether the claimant is entitled for any compensation, if so, how much and from whom, has been considered by the tribunal. The claim for medical expenses on the basis of photo copies of the prescription and bills filed as C28/2 to C28/179 has been rejected by the tribunal on the ground that the claimant himself has admitted in his cross-examination that he does not know that his father has received the payment in regard to the dues of the accident from his office, therefore, he has not denied that the payment of the said bills has been received by his father from his office. The original bills were also not placed on record because payment of the same were taken from the department, therefore, he is not

entitled for payment of the same. There is no illegality or infirmity in it.

25. The learned Tribunal on the basis of pleading, material on record and evidence adduced before it found that the claimant was a student of intermediate and his age was 18 years. He suffered serious injuries in the accident on account of which his left leg was amputated. The disability certificate has been issued by the Chief Medical Officer, Mahamaya Nagar, Hathras, which has been placed on record as Paper No.C-38/3, in which his disability has been shown 70% and it is permanent. His photo is also pasted on the said certificate. In the disability certificate his left leg has been amputated below the knee. The claimant pleaded and deposed in evidence that he was a good player of Cricket. He has filed the certificate of intermediate college, in which he has participated in the competition of State Colleges of Division in C.K. Naidu Cricket Tournament of Secondary State Colleges and his performance was outstanding in the said state level tournament. He also filed a chart showing his performance as published in news papers in various matches. The Tribunal has recorded a finding on the basis of pleadings, evidence and material on record that it appears that the claimant had good reputation in Cricket as a bowler and definitely amputation of left leg of such a student makes his life dark in the said field.

26. The learned tribunal, after considering the judgment of Hon'ble Supreme Court, in the case of **Syed Siddiqui Vs. Divisional Manager United India; 2014 (1) TAC 369 SC**, in which on account of amputation of left leg of a vegetable seller, the Supreme Court determined the functional disability of 85% and his monthly income was Rs.6500 per

month in the year 2011 and accordingly the compensation was determined, held that in comparison thereof, the claimant has claimed his monthly income as Rs.3000/- per month, which is equivalent to a labour and it is only an example of his bona fide. Accordingly, looking to his being good player of Cricket determined the functional disability of 80%. The learned tribunal has further awarded the future prospects to the tune of 50% and Rs,50,000/- for pain and suffering and Rs.1,00,000/- for loss of amenities and degradation in the marriage life and Rs.25,000/- towards the transport and fuel etc.

27. The Hon'ble Supreme Court, in the case of **Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and Another (Supra)**, has held that personal sufferings of the survivors of the road accidents and those who are disabled in such accidents are manifold. Some time they can be measured in terms of money but most of the times it is not possible to do so. In cases involving total or partial disablement, the term 'compensation' used in Section 166 of the Motor Vehicles Act, 1988 would include not only the expenses incurred for immediate treatment, but also the amount likely to be incurred for future medical treatment/care necessary for a particular injury or disability caused by an accident. It has further been held that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earning and victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the

accident. The relevant paragraphs 8, 14 and 15 are extracted here-in-below:-

"8. The personal sufferings of the survivors of road accidents and those who are disabled in such accidents are manifold. Sometimes they can be measured in terms of money but most of the times it is not possible to do so. If an individual is permanently disabled in an accident, the cost of his medical treatment and care is likely to be very high. In cases involving total or partial disablement, the term "compensation" used in Section 166 of the Motor Vehicles Act, 1988 (for short "the Act") would include not only the expenses incurred for immediate treatment, but also the amount likely to be incurred for future medical treatment/care necessary for a particular injury or disability caused by an accident.

14. In Raj Kumar v. Ajay Kumar [(2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161] the Court considered some of the precedents and held: (SCC pp. 347-48, paras 5-6)

"5. The provision of the Motor Vehicles Act, 1988 ('the Act', for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be

compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

...

6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(second) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(secondi) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (second)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (second)(b), (secondi), (v) and

(vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

(emphasis supplied)

15. The ratio of the abovenoted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to the accident, loss of earning and the victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

28. The Hon'ble Supreme Court, in the case of **Nagappa Vs. Gurudayal Singh and Others (Supra)**, has held that it would be difficult to hold that for future medical expenses which are required to be incurred by a victim, fresh award could be passed. However, for such medical treatment, Court has to arrive at a reasonable estimate on the basis of the evidence brought on record. In the said case nothing was awarded for change of artificial leg every two or three years which was required as pointed out for replacing the artificial leg. The court awarded Rs.1,00,000/- as an additional compensation as the appellant would be in a position to meet the said expenses from the interest of the said amount.

29. The Hon'ble Supreme Court, in the case of **Govind Yadav Vs. New India Assurance Company (Supra) and G. Ravindranath @ R. Chowdary Vs. E Srinivas and Another (Supra)**, has taken the similar view as in the aforesaid two cases and awarded an amount of

Rs.2,00,000/- to the appellant for future treatment.

30. The Hon'ble Supreme Court, in the case of **R.D. Hattangadi Vs. Pest Control (India) Pvt. Ltd and Others (Supra)**, has held that when compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. It has further been observed that the amount of compensation for non pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration and allowed Rs.1,50,000/- in respect of claim for pain and suffering and Rs 1,50,000 in respect of loss of amenities of life i.e. total Rs.3,00,000/- against the claim of Rs.6,00,000/- under the heads "Pain and Suffering" and "Loss of amenities of life".

31. The Hon'ble Supreme Court, in the case of **Raj Kumar Vs. Ajay Kumar and Another (Supra)**, has held that a person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. It has further been held in paragraphs 12 and 13 as to how the assessment of future loss of earnings due to permanent disability would be made and summarized the principles in paragraph 19, which are extracted here-in-below:-

"12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;

(second) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(secondi) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood,

or (second) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (secondi) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

19. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(second) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(secondi) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

32. The Hon'ble Supreme Court, in the case of **Lakshmana Gowda B.N. Vs.**

Oriental Insurance Company and Another (Supra), has observed that the claimant clearly deposed that on account of the injuries sustained and consequential disability suffered his marriage prospects have become bleak as none has come forward to marry him and allowed Rs.50,000/- towards the “loss of marriage prospects.”

33. A three judges Bench of Hon'ble Supreme Court, in the case of **Jagdish Vs. Mohan and Others (Supra)**, has held that the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. The relevant paragraph-14 is extracted here-in-below:-

"14. In making the computation in the present case, the court must be mindful of the fact that the appellant has suffered a serious disability in which he has suffered a loss of the use of both his hands. For a person engaged in manual activities, it requires no stretch of imagination to understand that a loss of hands is a complete deprivation of the ability to earn. Nothing—at least in the facts of this case—can restore lost hands. But the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss

and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity."

34. This Court, in the case of **Uttar Pradesh State Road Transport Corporation Vs. Bhawani Prasad Manjhi (Supra)**, has held that the claimant-respondent is entitled for the future prospects and interest thereon also.

35. The Hon'ble Supreme Court, in the case of **National Textile Corporation Ltd. Vs. Naresh Kumar Badri Kumar Jagad and Others (Supra)**, has held that pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned and it is not permissible for the court to travel beyond the pleadings as the pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ and where the evidence is not in line of the pleadings and is at variance with it, the said evidence cannot be looked into or relied upon.

36. The Hon'ble Supreme Court, in the case of **Anita Sharma and Others Vs. New India Assurance Co. Ltd. and Another (Supra)**, has held that one needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with nonexamination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze

the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. The relevant paragraphs 21 and 22 are extracted here-in-below:-

"21. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyse the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true.

22. A somewhat similar situation arose in Dulcina Fernandes v. Joaquim Xavier Cruz [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] wherein this Court reiterated that : (SCC p. 650, para 7)

"7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pick-up van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (Bimla Devi v. Himachal RTC [Bimla Devi v. Himachal RTC, (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101] .)"

(emphasis supplied)

37. The Hon'ble Supreme Court, in the case of **Sunita and Others Vs. Rajasthan State Road Transport Corporation and Others (Supra)**, has held that while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases and once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation and it shall not be strictly bound by the pleadings of the parties. The relevant paragraph- 22 is extracted here-in-below:-

"22. It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases."

38. Adverting to the facts of the present case, the learned tribunal has rightly dealt with the case and decided the claim petition in accordance with law. The learned tribunal has allowed the claim petition and accepted the income of the claimant as Rs.3000/- and he was of 18 years of age at the time of accident,

therefore, applied the multiplier of 18, which is in accordance with law and judgment of the Hon'ble Supreme Court, in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi; (2017) 16 SCC 680**. In the said case the Hon'ble Supreme Court has upheld the multiplier determined in the case of **Sarla Verma Vs. DTC, (2009) 6 SCC 121**, in which an operative multiplier of 18 for the age group of 15 to 20 has been provided. The relevant paragraph 42 is extracted here-in-below:-

"42. As far as the multiplier is concerned, the Claims Tribunal and the courts shall be guided by Step 2 that finds place in para 19 of Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] read with para 42 of the said judgment. For the sake of completeness, para 42 is extracted below : (Sarla Verma case [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , SCC p. 140)

"42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the Table above (prepared by applying Susamma Thomas [Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176 : 1994 SCC (Cri) 335] , Trilok Chandra [UP SRTC v. Trilok Chandra, (1996) 4 SCC 362] and Charlie [New India Assurance Co. Ltd. v. Charlie, (2005) 10 SCC 720 : 2005 SCC (Cri) 1657]), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is, M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55

years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

39. The contention of learned counsel for the Insurance Company that in view of principles laid down by the Hon'ble Supreme Court in the case of **Raj Kumar Vs. Ajay Kumar and Another (Supra)**, since the doctor was not produced to prove the future disability of the claimant, therefore, the tribunal could not have considered and decided the same is misconceived and not tenable because the Hon'ble Supreme Court has held that the doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety and the same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors and the manner in which the effect of the permanent disability on the actual earning capacity can be ascertained in the manner provided in paragraph-13 of the judgment. The judgment, in the case of **Rajesh Kumar @ Raju Vs. Yudhvir Singh and Another (Supra)**, has been passed in the facts and circumstances of that case, in which the certificate was obtained after two years, therefore, it is of no assistance to the Insurance company as there is no such pleadings and the certificate has not been disputed in which 70% disability has been determined on account of amputation of one leg. Similarly the case of **Oriental Insurance Co. Ltd. at Nanded Vs. Prakash Shahuraj Mali and Others (Supra)** and **Gopal, Krishnaji Ketkar Vs.**

Mahomed Haji Latif and Others (Supra) also not of any assistance to Insurance Company.

40. In view of above, loss of one leg of a good student of intermediate and a good sport person, who has attained name and fame as a fast bowler is a very big loss because he after studying in any field could have been placed in a very good position but on account of loss of one leg, the doors of many jobs and activities closed for him, which can not be disputed. Though the handicapped persons have now been employed at various places but the effect of loss of one leg on efficiency in work even in those places can not be disputed and limitation of choices also. The claimant was also a good Cricketer and a fast bowler. He participated in many competitions and done very well at the level of secondary level but on account of loss of one leg he has become incapable of playing the Cricket for whole of his life, in which field also he could have done very well or even could have made a career. Even otherwise, the sports can enhance the mental and physical ability to perform the works in his career and other fields also. The sport is a good mode of recreation also, which enhances the capacity and capability of a person to do his work more efficiently but the claimant has lost it for all the times to come.

41. The disability certificate has been issued by the competent authority i.e. the Chief Medical Officer with the signatures of orthopedic surgeon as one of the signatory. The certificate shows the permanent disability of 70%, which could not be disputed. The only dispute raised is that in absence of evidence of any doctor, who had treated the claimant, the future disability could not have been determined.

Where a leg has been amputated below knee, it can not be denied that a person would face many difficulties not only in his day to day life but in his career also and he has also lost the chances of playing Cricket, therefore the disability of 80% has rightly been determined. It does not suffer from any illegality or error.

42. The learned tribunal has awarded a sum of Rs.50,000/- for pain and sufferings and Rs.1,00,000/- for loss of amenities and degradation in married life. This Court is of the view that in view of the pain and sufferings to the claimant, who was a student of intermediate and of 18 years of age and also a good player and on account of loss of one leg in the accident he has become incapable of playing it, therefore, it can not be equated in terms of money as he had whole life before him and he could have made his career in any field in future in the manner he would have liked but now he can not do the same, therefore, the same is liable to be enhanced to Rs.1,50,000/- and Rs.1,50,000/- on both courts.

43. So far as the claim of future treatment is concerned, learned counsel for the Insurance Company had submitted that there is no pleadings in this regard whereas the claim petition indicates that the appellant has pleaded the same and also claimed Rs.6,00,000/- on this ground. It can not be disputed that the claimant, who has lost his one leg requires the artificial leg for whole life, therefore, even if it has not been pleaded specifically, whereas he has deposed that Rs.2,50,000/- has been spent on artificial leg and claimed compensation for future treatment, contention of learned counsel for the Insurance company is misconceived and not tenable. This Court is of the view that Rs.2,00,000/- will be sufficient in this head

as by interest of the same, the claimant will be able to meet out the said expenses in future.

44. In view of above and considering over all facts and circumstances of the case, the appeal filed by the Insurance Company is misconceived and the grounds taken therein are not tenable in the eyes of law and liable to be dismissed and the appeal filed by the claimant is liable to be partly allowed and compensation is liable to be enhanced as indicated above and accordingly the claimant is entitled for a total sum of Rs.9,52,600+Rs.1,00,000+Rs.50,000+Rs.2,00,000 i.e. Rs.13,02,600/- as compensation alongwith interest awarded by the tribunal.

45. With the aforesaid, the F.A.F.O. No.137 of 2017 filed by the Insurance Company is hereby **dismissed** and the F.A.F.O. No.217 of 2017 filed by the claimant for enhancement is **partly allowed**. The judgment and award dated 23.11.2016 is, accordingly, modified. The enhanced amount alongwith remaining, if any, alongwith interest till the date of deposit shall be deposited by the Insurance Company within a period of four weeks from today before the concerned tribunal. No order as to costs.

46. The amount of statutory deposit made before this Court for adjustment in compensation and the tribunal's records shall be remitted to the concerned tribunal forthwith and in any case within a period of three weeks from today.

(2025) 3 ILRA 23

APPELLATE JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 17.03.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

First Appeal From Order Defective No. 178 of 2024

Dig UP Police Headquarters Allahabad & Anr. ...Appellants

Versus

Smt. Mithlesh & Ors. ...Respondents

Counsel for the Appellants:
C.S.C.

Counsel for the Respondents:

Civil Law — Limitation Act, 1963 - Section 5 — Delay Condonation — Departmental appeal filed with delay of 700 days — St. failed to furnish sufficient cause — Casual and negligent conduct — Delay attributed to administrative lethargy and bureaucratic red tape — Court held that such conduct cannot justify condonation — Exercise of discretion in condoning delay must be judicious — Delay not explained satisfactorily Government not entitled to special treatment under limitation law — Appeal dismissed. (Paras 7, 8, 14, and 15)

HELD:

From a perusal of the averments made in the application for condonation of delay duly supported by an affidavit and the supplementary affidavit, it emerges that it took the government almost ten months to take a decision for filing of the appeal and despite the appeal having been allegedly drafted in December 2023, it took the pairakar almost 11 months in order to find out as to whether the appeal has in fact been filed or not. This itself indicates the cavalier and casual attitude on the part of the officials in filing the appeal before this Court which has resulted in a delay of 700 days. (Para 7)

In the aforesaid judgments, the Hon'ble Supreme Court has been of the view that where a case has been presented in the Court beyond limitation, the person has to explain the Court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the Court within

limitation. Though limitation may harshly affect the rights of a party, it has to be applied with all rigour when prescribed by statute. (Para 14)

In the instant case, as already indicated above, there has been a casual, cavalier and lackadaisical approach on the part of the appellants all along inasmuch as, it has taken the St. almost ten months to take a decision for filing of the appeal and despite the appeal having been allegedly prepared, it took the pairkar eleven months to realize that the appeal has not been filed. This is sheer negligence on the part of the appellants and thus, the grounds, as taken in the applications for condonation of delay, do not inspire confidence and consequently, the applications for condonation of delay merit to be rejected and are accordingly, rejected. (Para 15)

Application dismissed. (E-14)

List of Cases cited:

1. Chief Post Master General & ors. Vs Living Media India Ltd. & anr. reported in (2012) 3 SCC 563
2. Union of India Vs Central Tibetan Schools Admin & ors. reported in (2021) SCC OnLine 119
3. Commissioner of Customs, Chennai & ors. Volex Interconnect (India) Pvt. Ltd. reported in (2022) 3 SCC 159
4. Pathupati Subba Reddy (Died) by L.Rs. & ors. Vs The Special Deputy Collector (LA) [2024] 4 S.C.R. 241
5. St. of M.P. Vs Ramkumar Choudhary reported in 2024 INSC 932

(Delivered by Hon'ble Abdul Moin, J.)

(Order on I.A. Nos.1/2024 and 3/2025)

1. Heard learned Standing counsel for the appellant.

2. These are the applications for condonation of delay in filing the appeal and the supplementary affidavit in support of the said application.

3. Delay is of 700 days.

4. Notice has been issued to the respondents by this Court on 15.01.2025.

5. As per the office report dated 07.03.2025, notice has been served on respondents No.1 & 3 personally and on respondents No.2 & 4 through mother and thus, as per the office report dated 07.03.2025, service of notice upon the respondents is sufficient. However, nobody responds on behalf of the respondents, as such, the Court proceeds to hear and decide the applications for condonation of delay.

6. Learned Standing counsel has placed reliance on the applications for condonation of delay as well as the supplementary affidavit justifying the delay in filing the appeal in order to explain the delay of 700 days which has occurred in filing of the appeal. He contends that the judgment was pronounced by the learned Tribunal on 30.09.2022. The learned Advocate conducting the said matter informed about the said judgment through his letter dated 03.12.2022. In turn, the Additional District Magistrate (Administration) Rampur has informed through his letter dated 16.12.2022 about the letter of the learned Advocate and about the said judgment having been passed by the Tribunal. Thereafter, a letter was sent to the Home (Police) Section- 02, Uttar Pradesh Government, Lucknow regarding filing of the appeal. Almost ten months later, the government has granted permission for filing of an appeal through its letter dated 06.10.2023. Thereafter, the

paikar had contacted the office of the learned Chief Standing counsel and the appeal was prepared in December 2023. Sanguine in the belief that the appeal has been filed, the paikar went away and only came back in November 2024 to inquire about the status of the appeal from which it transpired that an application for condonation of delay is to be filed and thereafter, the application of condonation along with the appeal itself has been filed before this Court on 02.12.2024.

7. From a perusal of the averments made in the application for condonation of delay duly supported by an affidavit and the supplementary affidavit, it emerges that it took the government almost ten months to take a decision for filing of the appeal and despite the appeal having been allegedly drafted in December 2023, it took the paikar almost 11 months in order to find out as to whether the appeal has in fact been filed or not. This itself indicates the cavalier and casual attitude on the part of the officials in filing the appeal before this Court which has resulted in a delay of 700 days.

8. The delay which often occurs on the part of the department in filing the appeals/revisions has been considered threadbare by the Apex Court in the case of **Chief Post Master General & Ors. vs. Living Media India Ltd. & Anr. reported in (2012) 3 SCC 563** wherein the Apex Court after placing reliance on various earlier judgments of the Apex Court, including a few over which the learned Standing counsel has also placed reliance, held as under:-

"27.It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved

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

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

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

should not be swirled for the benefit of a few."

9. Likewise, the Apex Court in the case of **Union of India vs. Central Tibetan Schools Admin and Ors.** reported in **(2021) SCC OnLine 119** has held as under:-

"4. We have heard the learned Additional Solicitor General for some time and must note that the only error which seems to have occurred in the impugned order [Union of India v. Central Tibetan Schools Admn., 2018 SCC OnLine Del 13371] is of noticing that it is not an illiterate litigant because the manner in which the Government is prosecuting its appeal reflects nothing better! The mighty Government of India is manned with a large Legal Department having numerous officers and advocates. The excuse given for the delay is, to say the least, preposterous.

5. We have repeatedly been counselling through our orders various Government Departments, State Governments and other public authorities that they must learn to file appeals in time and set their house in order so far as the Legal Department is concerned, more so as technology assists them. This appears to be falling on deaf ears despite costs having been imposed in a number of matters with the direction to recover it from the officers responsible for the delay as we are of the view that these officers must be made accountable. It has not had any salutary effect and that the present matter should have been brought up, really takes the cake!

6. The aforesaid itself shows the casual manner in which the petitioner has approached this Court without any cogent or plausible ground for condonation of

delay. In fact, other than the lethargy and incompetence of the petitioner, there is nothing which has been put on record. We have repeatedly discouraged State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgment in State of M.P. v. Bherulal [State of M.P. v. Bherulal, (2020) 10 SCC 654 : (2021) 1 SCC (Civ) 101 : (2021) 1 SCC (Cri) 117 : (2021) 1 SCC (L&S) 84] and State of Odisha v. Sunanda Mahakuda [State of Odisha v. Sunanda Mahakuda, (2021) 11 SCC 560]. The leeway which was given to the Government/public authorities on account of innate inefficiencies was the result of certain orders of this Court which came at a time when technology had not advanced and thus, greater indulgence was shown. This position is no more prevalent and the current legal position has been elucidated by the judgment of this Court in Postmaster General v. Living Media (India) Ltd. [Postmaster General v. Living Media (India) Ltd., (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649]. Despite this, there seems to be a little change in the approach of the Government and public authorities.

7. We have also categorised such kind of cases as "certificate cases" filed with the only object to obtain a quietus from the Supreme Court on the ground that nothing could be done because the highest Court has dismissed the appeal. The objective is to complete a mere formality and save the skin of the officers who may be in default in following the due process or may have done it deliberately. We have

deprecated such practice and process and we do so again. We refuse to grant such certificates and if the Government/public authorities suffer losses, it is time when officers concerned responsible for the same, bear the consequences. The irony, emphasised by us repeatedly, is that no action is ever taken against the officers and if the Court pushes it, some mild warning is all that happens.

8. Looking to the gross negligence and the impunity with which the Union of India had approached this Court in a matter like this, we consider it appropriate to impose special costs of Rs 1 lakh in this case to be recovered from the officer(s) concerned, to be deposited with the Supreme Court Advocates-on-Record Welfare Fund within four weeks.

9. The special leave petitions are dismissed as time-barred in terms aforesaid. Pending application stands disposed of."

10. Incidentally, the judgment of the Apex Court in the case of **Central Tibetan Schools (supra)** is a judgment by three Hon'ble Judges.

11. The Apex Court in the case of **Commissioner of Customs, Chennai vs. Volux Interconnect (India) Pvt. Ltd. reported in (2022) 3 SCC 159** has held as under:-

"2. This is one more case of what we have already categorised as "certificate cases" and we do not delve further, as the purpose seems just to bring the matter to the Courts to put a closure to the same without giving any cogent explanation for condonation of delay in terms of Postmaster Generalv. Living Media (India) Ltd. [Postmaster Generalv.Living Media (India) Ltd., (2012) 3 SCC 563 : (2012) 2

SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649].

3. We have also examined the case on merits despite the aforesaid and find that a correct view has been taken by the Tribunal as the Department itself is treating the assessee in the same manner for subsequent years so far as classification is concerned.

4. We are thus of the view that for both the aforesaid reasons, the appeal is not liable to be entertained. The appeal is dismissed accordingly."

12. Recently, the Hon'ble Supreme Court in the case of **Pathupati Subba Reddy (Died) by L.Rs. & Ors. vs. The Special Deputy Collector (LA) [2024] 4 S.C.R. 241** has held as under:-

"16. Generally, the courts have adopted a very liberal approach in construing the phrase 'sufficient cause' used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice. In Collector, Land Acquisition, Anantnag and Ors. vs. Katiji and Ors.2, this Court in advocating the liberal approach in condoning the delay for 'sufficient cause' held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning

the delay, existence of 'sufficient cause' for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases liberal approach, justice-oriented approach and cause for the advancement of 'substantial fustice cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation. Act.

17. It must always be borne in mind that while construing 'sufficient cause' in deciding application under Section 5 of the Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favour of a decree-holder accrues and this right ought not to be lightly disturbed. The decree-holder treats the decree to be binding with the lapse of time and may proceed on such assumption creating new rights.

18. This Court as far back in 1962 in the case of *Ramlal, Motilal And Chhotelal vs. Rewa Coalfields Ltd* has emphasized that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is not entitled to the condonation of delay as excusing the delay is the discretionary jurisdiction vested with the court. The court, despite establishment of a 'sufficient cause' for various reasons, may refuse to condone the delay depending upon the *bona fides* of the party."

13. Again, the Hon'ble Supreme Court in the case of **State of Madhya Pradesh vs. Ramkumar Choudhary** reported in **2024 INSC 932** has held as under:-

"5. The legal position is that where a case has been presented in the Court beyond limitation, the petitioner has

to explain the Court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the Court within limitation. In *Majji Sannemma v. Reddy Sridevi*, it was held by this Court that even though limitation may harshly affect the rights of a party, it has to be applied with all its rigour when prescribed by statute. A reference was also made to the decision of this Court in *Ajay Dabra v. Pyare Ram* wherein, it was held as follows:

"13. This Court in the case of *Basawaraj v. Special Land Acquisition Officer* ((2013) 14 SCC 81] while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

14. *Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant."*

Thus, it is crystal clear that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and that, the expression 'sufficient cause' cannot be liberally interpreted, if negligence, inaction or lack of bona fides is attributed to the party.

5.1. *In Union of India v. Jahangir Byramji Jeejeebhoy (D) through his legal heir (2024) SCC OnLine SC 489 wherein, one of us (J.B.Pardiwala, J) was a member, after referring to various decisions on the issue, it was in unequivocal terms observed by this Court that delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party. The relevant passage of the same is profitably extracted below:*

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

25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned. This litigation between the parties started sometime in 1981. We are in 2024. Almost 43 years have elapsed. However, till date the

respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the respondent to undergo the rigmarole of the legal proceedings.

26. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

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

xxx

xxx

xxx

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

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

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

Applying the above legal proposition to the facts of the present case, we are of the opinion that the High Court correctly refused to condone the delay and dismissed the appeal by observing that such inordinate delay was not explained satisfactorily, no sufficient cause was shown for the same, and no plausible reason was put forth by the State. Therefore, we are inclined to reject this petition at the threshold."

14. In the aforesaid judgments, the Hon'ble Supreme Court has been of the view that where a case has been presented in the Court beyond limitation, the person has to explain the Court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the Court within limitation. Though limitation may harshly affect the

rights of a party, it has to be applied with all rigour when prescribed by statute.

15. In the instant case, as already indicated above, there has been a casual, cavalier and lackadaisical approach on the part of the appellants all along inasmuch as, it has taken the State almost ten months to take a decision for filing of the appeal and despite the appeal having been allegedly prepared, it took the pairakar eleven months to realize that the appeal has not been filed. This is sheer negligence on the part of the appellants and thus, the grounds, as taken in the applications for condonation of delay, do not inspire confidence and consequently, the applications for condonation of delay merit to be rejected and are accordingly, **rejected**.

(Order on the Memo of Revision)

16. Since the applications for condonation of delay have been rejected, the revision also stands **dismissed**.

(2025) 3 ILRA 30
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 05.03.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

First Appeal From Order No. 182 of 2023

TATA AIG General Insurance Company Ltd. **...Appellant**

Versus

Aman Kumar & Ors.

...Respondents

Counsel for the Appellant:

Deepak Kumar Agarwal

Counsel for the Respondents:

Arunendra Nath Mishra, Praveen Chandra

Criminal Law - Motor Vehicles Act, 1988 - Sections 168, 169 & 173 — Motor Accident Claim — Duty of Tribunal — Mandatory inquiry — Tribunal failed to conduct proper inquiry under Section 168 — Contradictory vehicle registration numbers in FIR and claim petition — Tribunal proceeded without deciding application to summon key eyewitness for cross-examination —Plea of accident involving insured vehicle not proved — Award passed without adequate scrutiny — Judgment and award set aside — Matter remitted for fresh adjudication-Appeal partly allowed. (Paras 10 to 13, 14,16, and 23)

HELD:

The Hon'ble Supreme Court, in the case of Gopal Krishnaji Ketkar Vs Mohamed Haji Latif & ors.; 1968 AIR SC 1413/1968 SCC OnLine SC 63, has held that if a party, even if the burden of proof does not lie on him/her, withholds important evidence in his possession which can throw light on the facts in issue, the adverse inference may be drawn by the court. (Para 14)

The aforesaid facts were required to be examined by the Tribunal under the facts and circumstances of the case because the accident was denied by the owner and driver. They adduced evidence to the effect that the vehicle was being driven in their village on the date of accident, though they have specifically not St.d that at the time of the accident the vehicle was not at the place of accident, but there are several discrepancies in the pleadings and evidence adduced by the claimant-respondent, which were required to be inquired by the Tribunal in inquiry under Section 168 of the M.V.Act. Section 168 of the M.V.Act provides that on receipt of an application for compensation made under Section 166, the claims Tribunal shall, after giving notice to the insurer and parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or as the case may be, subject to the provisions of Section 163, and may make an award determining the amount of compensation which appears to it to be just. (Para 16)

In view of aforesaid Section 169 of the M.V.Act the Claims Tribunal may, subject to any rules

that may be made in this behalf, follow such summary procedure as it thinks fit. Sub-Section (2) of Section 169 provides that the Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed and it shall be deemed to be a Civil Court. Thus the Claims Tribunal has to hold the inquiry following the summary procedure to ascertain the truth to be just. It is true that the claim petition under the M.V.Act has to be decided on the preponderance of probabilities and the strict proof beyond doubt as required under the Criminal Cases is not required but when discrepancies as above were pointed out before the Tribunal and an application was also moved by the appellant for summoning the eye witness for cross-examination, whose evidence could have been material to clarify the discrepancies, the same was required to be inquired by the Tribunal or adverse inference could have been drawn. (Para 18)

In view of above and considering the overall facts and circumstances of the case, this court is of the view that the learned Tribunal has not only failed to make inquiry as required under Section 168 of the M.V.Act, but also failed to given sufficient opportunity to the appellant by not considering and disposing of its applications before passing the impugned judgment and award, therefore the same is liable to be set aside with the direction to the Tribunal to consider and decide the case afresh in accordance with law and in the light of the observations made here-in-above in this order. (Para 23)

Appeal partly allowed. (E-14)

List of Cases cited:

1. Gopal Krishnaji Ketkar Vs Mohamed Haji Latif & ors.; 1968 AIR SC 1413/1968 SCC OnLine SC 63
2. Kuldeep Singn Bawa & ors. Vs Tika Ram & ors.; 2009 SCC OnLine Del. 4293
3. Bhagat Singh Vs Jai Bhagwan & ors.; 2011 SCC OnLine P&H 12472

4. Mayur Arora Vs Amit @ Pange & ors.; 2011
(1) TAC 878 (Del.)

(Delivered by Hon'ble Rajnish Kumar, J.)

1. Heard, Shri Deepak Kumar Agarwal, learned counsel for the appellant and Shri Praveen Chandra, learned counsel for the respondent no.1. None appeared on behalf of respondents no.2 and 3.

2. This First Appeal From Order (here-in-after referred as F.A.F.O.) has been filed under Section 173 of the Motor Vehicles Act, 1988 (here-in-after referred as M.V.Act) against the judgment and order dated 10.03.2023 and award dated 13.03.2023 passed in Motor Accident Claim Petition No.287 of 2017; Aman Kumar Versus Arun Kumar and others by the Motor Accident Claims Tribunal, Hardoi.

3. Learned counsel for the appellant submits that the First Information Report was lodged with a delay of four months and odd without any explanation for delay because the alleged accident was occurred on 23.04.2017 and the First Information was lodged on 26.08.2017. He further submitted that the First Information Report was lodged alleging the accident from the Motorcycle having Registration No.UP-30-AJ-7710, but the claim petition was filed against the Motorcycle having Registration No.UP-30-AF-7710 and the learned Tribunal has accepted the same on the ground that the application was submitted by the claimant-respondent for correction in the First Information Report, whereas he denied to give the same before the Tribunal. In the First Information Report lodged by the claimant-respondent the final report was filed against the Motorcycle having Registration No.UP-30-AJ-7710.

He further submitted that learned Tribunal has also failed to consider the factum of the accident appropriately as there are glaring discrepancies in the description of the respondent-claimant. The respondent-claimant had lodged the First Information Report alleging therein that he was standing alongwith one Desh Raj when the alleged accident occurred and it has also been pleaded in the claim petition and his evidence on affidavit (examination-in-chief) was also filed alongwith the affidavit of claimant-respondent, but the said Desh Raj did not appear in the cross-examination and despite the application moved by the appellant for summoning him for cross-examination, the same was not considered and no orders were passed by the Tribunal before passing the impugned judgment and award. Thus the submission is that the learned Tribunal has failed to make the inquiry as required under Section 168 of the M.V.Act and failed to record any finding after considering as to whether the alleged Motorcycle having Registration No.UP-30-AF-7710 was involved in the accident or not. Thus the impugned judgment and award is not sustainable in the eyes of law and liable to be set aside.

4. Per contra, learned counsel for the claimant-respondent submits that the claimant-respondent had suffered serious injuries in the accident, on account of which his one leg was amputated and he had remained hospitalized for about one month and on account of the mental and physical shock he could not lodge the First Information Report in time and the reason for delay has been given in the First Information Report itself, therefore, the delay in lodging the First Information Report cannot be a ground for rejection of claim petition. Even otherwise once the accident and rash and negligent driving of

the offending vehicle is proved before the Tribunal under the M.V.Act, the proceedings of the criminal case has no bearing on it. He further submits that merely because the final report was filed in regard to the vehicle having Registration No.UP-30-AJ-7710 the involvement of vehicle having Registration No.UP-30-AF-7710 cannot be denied as it could not be found by the investigating officer. The respondent no.2 i.e. the owner of the offending vehicle has admitted that Ram Sagar was driving the vehicle on the date of accident. Though a plea has been taken that he was driving in the village, but no evidence of the same has been given. Even otherwise he has not disputed the accident and the respondent no.3 i.e. the driver of the Motorcycle has also supported the evidence of the respondent no.2, but they have not denied that they were not at the place of accident on the date and time of the accident. Thus learned counsel for the claimant-respondent submits that the impugned judgment and award has rightly been passed by the learned Tribunal after considering the pleadings, evidence and material on record, which does not suffer from any illegality or error, which may call for any interference by this court. The appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

5. I have considered the submissions of learned counsel for the parties and perused the records.

6. The claim petition was filed by the claimant-respondent alleging therein that he alongwith Desh Raj was waiting for the transport for coming to his house from village Singuwamau, Police Station-Sursa, District-Hardoi on 23.04.2017 at about 7 in the evening, when the Motorcycle having

Registration No.UP-30-AF-7710, coming from the side of Lucknow, being driven rashly and negligently by its driver, came on the wrong side and hit him, in which he suffered serious injuries. He was admitted to District Government Hospital, Hardoi, but on account of serious condition he was referred to Lucknow. During treatment his left leg was amputated and the other leg was operated and the treatment is still going on. He has become completely handicapped from both the legs. The First Information Report in regard to the accident was lodged by the order of the Superintendent of Police, Hardoi vide case Crime No.208 of 2017, under Sections 279, 338 IPC, at Police Station-Sursa, District-Hardoi. The claimant-respondent was a vegetable trader and used to earn Rs.15,000/- per month, but on account of the injuries suffered in the accident he is unable to earn the livelihood, therefore, he is entitled for compensation from the respondents.

7. Owner of Motorcycle having Registration No.UP-30-AF-7710, the respondent no.2, filed his written statement mainly denying the averments made in the claim petition. He also stated that the alleged accident has not occurred from his vehicle. The vehicle involved in the accident is different. He has no concern with the accident. He has been implicated on account of enmity and party rivalry. His vehicle was validly registered and insured with the Tata AIG Insurance Company Ltd. and its Driver Ram Sagar had the valid driving licence. Thus the claim petition is liable to be dismissed against him.

8. The respondent no.3 i.e. the appellant filed the written statement mainly denying the averments made in the claim petition. It was further stated that looking

to the nature of accident it appears that the accident had occurred from unknown vehicle and false case has been lodged in collusion with the police to get the claim. The First Information Report has been lodged against the Motorcycle having registration No.UP-30-AJ-7710, but subsequently the Motorcycle having Registration No.UP-30-AF-7710 has been planted in the accident. The documents such as proof of age, medical prescriptions seems to be fabricated, therefore, the Insurance Company is not liable to make the payment of interest for the said period and the claim petition is liable to be dismissed with costs.

9. On the basis of pleadings of the parties four issues were framed. Thereafter documentary as well as oral evidence was adduced by the parties.

10. The learned Tribunal, while considering the issue no.1 in regard to accident on 23.04.2017 at about 7 in the evening near village Singuwamau, Police Station-Sursa, District Hardoi from Motorcycle having Registration No.UP-30-AF-7710 being driven by its driver rashly and negligently in which claimant-respondent got serious injuries and has become handicapped, considered the evidence of P.W.-1, O.P.W.-1 and O.P.W.-2 and recorded a finding that the accident had occurred on account of rash and negligent driving of the respondent no.2 Ram Sagar i.e. respondent no.3 in the present appeal on 23.04.2017 by Motorcycle having Registration No.UP-30-AF-7710, but failed to consider the pleadings of the claimant-respondent that he was standing and waiting for transport alongwith Desh Raj of his village, when the accident had occurred and the First Information Report was also lodged

mentioning this fact and an affidavit of Desh Raj in evidence (examination-in-chief) was also filed alongwith the affidavit of the claimant-respondent, but he was not produced for cross-examination, whereas he could have been the best independent witness to prove the accident and rash and negligent driving of respondent no.3. On 02.03.2023 an application bearing paper No.30-ga was filed by the appellant-Insurance Company for summoning the paper book of Criminal Case relating to the claim petition, which was taken on record. On 10.03.2023 two applications were moved by the appellant-Insurance Company.

11. The learned Tribunal, by means of the order dated 02.03.2023, fixed the case for defence evidence, if any, and arguments on 10.03.2023. Paper No.31-ga was moved under Section 169 of the M.V.Act for providing the photocopy of the documents relating to treatment filed by the claimant-respondent on 20.02.2023 and Paper No.34-ga for summoning Desh Raj alleging therein that the evidence of Desh Raj as witness has been filed, but he has not been produced for cross-examination and the claimant-respondent got his evidence recorded and closed on 15.02.2023, therefore, the claimant-respondent may be directed to produce Desh Raj for his cross-examination. On the paper No.31-ga, the Tribunal ordered to 'keep on file' and on paper No.34-ga ordered to 'keep on file only'. Though the Tribunal taken all the aforesaid three applications on record, but without passing any order thereon, passed the impugned judgment and award on 10.03.2023 itself.

12. The learned Tribunal passed the impugned judgment and award without considering that the First Information

Report was lodged against the vehicle No.UP-30-AJ-7710, but the claim petition has been filed against the vehicle No.UP-30-AF-7710 and final report has been filed on the ground of non involvement of vehicle No.UP-30-AJ-7710 and that no correct information of the vehicle involved in the accident could be obtained and it is not traceable in future and the vehicle which was named in the First Information Report was purchased subsequent to the accident, therefore, though it is apparent that the said vehicle could not have been involved in the accident, but whether the other vehicle was involved in the accident or not, as the number of the same was corrected subsequently and there were discrepancies in pleadings and evidence of claimant-respondent in regard to accident, has not been considered appropriately.

13. The learned Tribunal also failed to consider specific pleading of the claimant-respondent that Desh Raj of his village was with him at the time of accident and his evidence as witness was also filed by the claimant-respondent alongwith his evidence, but he has not been produced for cross-examination, whereas he was a material eye witness of the accident as he was present alongwith the claimant-respondent at the time of accident and when his evidence was filed he should also have been produced for cross-examination. He has admitted in his affidavit filed on record that he was present on the spot of accident alongwith the claimant-respondent. It was also required to be considered as to why he has not been produced for cross-examination.

14. The Hon'ble Supreme Court, in the case of **Gopal Krishnaji Ketkar Versus Mohamed Haji Latif and others; 1968 AIR SC 1413/1968 SCC OnLine SC**

63, has held that if a party, even if the burden of proof does not lie on him/her, withholds important evidence in his possession which can throw light on the facts in issue, the adverse inference may be drawn by the court.

15. The learned Tribunal also failed to consider that the claimant-respondent though lodged the First Information Report stating that Desh Raj was present with him on the spot of accident, pleaded the same in the claim petition and also filed an affidavit of Desh Raj, who admitted this fact, but he in his evidence denied. He stated in his evidence in cross-examination that he was coming back alone from Singuwamau on the date of accident. He also failed to tell the names of the in-laws of his brother, where he stated to have gone. He also stated that he had given the information of the accident to the Police Station on 23.08.2024 and he had not given any application to the Superintendent of Police, Hardoi and the First Information Report was lodged on the information given by him at the Police Station, whereas the documents placed on record by the claimant-respondent himself indicate that the application was given by the claimant-respondent to the Superintendent of Police, Hardoi on 25.08.2017, on the basis of which the First Information Report was lodged, which is mentioned in the First Information Report also. The application for correction of the number of the vehicle was also given to the Superintendent of Police, Hardoi, which is referred in final report.

16. The aforesaid facts were required to be examined by the Tribunal under the facts and circumstances of the case because the accident was denied by the owner and driver. They adduced

evidence to the effect that the vehicle was being driven in their village on the date of accident, though they have specifically not stated that at the time of the accident the vehicle was not at the place of accident, but there are several discrepancies in the pleadings and evidence adduced by the claimant-respondent, which were required to be inquired by the Tribunal in inquiry under Section 168 of the M.V.Act. Section 168 of the M.V.Act provides that on receipt of an application for compensation made under Section 166, the claims Tribunal shall, after giving notice to the insurer and parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or as the case may be, subject to the provisions of Section 163, and may make an award determining the amount of compensation which appears to it to be just. Section 168 of the M.V.Act is extracted here-in-below:-

“168. Award of the Claims Tribunal. - (1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of [section 163] may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

[***]

(2) The Claims Tribunal shall arrange to deliver copies of the award to

the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.”

17. In view of above the Tribunal has to hold an inquiry into the claim before passing an award. Section 169 of the M.V.Act provides the procedure and powers of claims tribunal, which is extracted here-in-below:-

“169. Procedure and powers of Claims Tribunals. - (1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

[(4) For the purpose of enforcement of its award, the Claims

Tribunal shall also have all the powers of a Civil Court in the execution of a decree under the Code of Civil Procedure, 1908, as if the award were a decree for the payment of money passed by such court in a civil suit.]”

18. In view of aforesaid Section 169 of the M.V.Act the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. Sub-Section (2) of Section 169 provides that the Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed and it shall be deemed to be a Civil Court. Thus the Claims Tribunal has to hold the inquiry following the summary procedure to ascertain the truth to be just. It is true that the claim petition under the M.V.Act has to be decided on the preponderance of probabilities and the strict proof beyond doubt as required under the Criminal Cases is not required but when discrepancies as above were pointed out before the Tribunal and an application was also moved by the appellant for summoning the eye witness for cross-examination, whose evidence could have been material to clarify the discrepancies, the same was required to be inquired by the Tribunal or adverse inference could have been drawn.

19. It is noticed that the application for summoning the file of the criminal case, providing the copies of the evidence on record and the witness for cross-examination were moved on the date of evidence, therefore, without deciding the same the Tribunal could not have

proceeded to decide the claim petition on the very same date.

20. In view of above this court is of the view that the Tribunal has failed to make an inquiry as provided under the M.V.Act and has also passed the impugned judgment and award without affording sufficient opportunity to the appellant by not deciding the applications filed by him.

21. The Delhi High Court, in the case of **Kuldeep Singn Bawa and others Versus Tika Ram and others; 2009 SCC OnLine Del. 4293**, has held that Section 168 of the M.V.Act casts a duty on the learned Tribunal to conduct an inquiry in a meaningful manner. The relevant paragraph 5 is extracted here-in-below:-

22. Similar view has been taken by the Punjab and Haryana High Court, in the case of **Bhagat Singh Versus Jai Bhagwan and others; 2011 SCC OnLine P&H 12472** and the Delhi High Court, in the case of **Mayur Arora Versus Amit alias Pange & others; 2011 (1) TAC 878 (Del.)**.

23. In view of above and considering the overall facts and circumstances of the case, this court is of the view that the learned Tribunal has not only failed to make inquiry as required under Section 168 of the M.V.Act, but also failed to given sufficient opportunity to the appellant by not considering and disposing of its applications before passing the impugned judgment and award, therefore the same is liable to be set aside with the direction to the Tribunal to consider and decide the case afresh in accordance with law and in the light of the observations made here-in-above in this order.

24. With the aforesaid the appeal is **partly allowed**. The impugned judgment and order dated 10.03.2023 and award dated 13.03.2023 passed in Motor Accident Claim Petition No.287 of 2017; Aman Kumar Versus Arun Kumar and others by the Motor Accident Claims Tribunal, Hardoi is hereby set aside. The matter is remitted back to the concerned Tribunal to decide the claim petition afresh in the light of the above observations/directions.

25. Since the matter is of the year 2017, this court deems it appropriate to direct to the Tribunal to decide the claim petition afresh expeditiously and preferably within a period of four months from the date fixed before the Tribunal in this order for appearance of the parties without granting unnecessary adjournment to either of the parties.

26. The parties shall appear before the concerned Tribunal on 24th of March, 2025.

27. The statutory deposit made before this court and any other amount under any order passed by this court shall be remitted to the concerned Tribunal forthwith and in any case within a period of four weeks from today, the disbursement of which shall abide by the fresh decision taken by the Tribunal.

(2025) 3 ILRA 38
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 11.03.2025

BEFORE

THE HON'BLE VIVEK CHAUDHARY, J.
THE HON'BLE OM PRAKASH SHUKLA, J.

First Appeal No. 27 of 2018

Khajanchi **...Appellant**
Versus
Preete **...Respondent**

Counsel for the Appellant:

Umesh Chandra Saxena, Santosh Kumar Maurya

Counsel for the Respondent:

Sanjay Kumar Patel (S.K.), Shrawan Kumar Verma)

Family Law — Hindu Marriage Act, 1955 - Sections 13 & 13B — Divorce — Appeal against dismissal of divorce petition by Family Court — Long separation and absence of cohabitation — Settlement arrived at before Mediation and Conciliation Centre — Payment of permanent alimony completed — All pending litigations agreed to be withdrawn — No further claims to be raised — Code of Civil Procedure, 1908 — Section 89(2)(d), Order XXIII Rule 3 — Mediation — Court empowered to pass decree based on voluntary and lawful mediated settlement — Satisfaction of statutory requirements under CPC and Mediation Rules — Decree of divorce rightly passed on basis of compromise- U.P. Civil Procedure Mediation Rules, 2009 — Rule 26 — Settlement recorded by Mediation Centre found to be voluntary and non-collusive — Court satisfied before passing decree-Held, decree of divorce by mutual consent granted in terms of Settlement Agreement — Appeal allowed. (Paras 10 to 14)

HELD:

In this regard, this Court is guided by Section 89(2)(d) of the Code of Civil Procedure, 1908, which St.s that where a dispute has been referred for mediation, the mediator will assist the parties in reaching a settlement, and if a settlement is arrived at, the Court may pass a decree in accordance with its terms. This ensures that mediated settlements have legal enforceability and enables courts to grant decrees based on mutually agreed terms,

thereby promoting amicable dispute resolution.... (para 10)

Additionally, Rule 26 of the U.P. Civil Procedure Mediation Rules, 2009, mandates that the Court ensure the settlement is not collusive and has been arrived at voluntarily.... (Para 11)

In the present case, both parties have amicably resolved and settled all pending cases and consideration has also been exchanged between them as per the Settlement Agreement dated 07.04.2022, executed before the Mediation and Conciliation Centre of this Court. Upon perusal of the said agreement and after considering the submissions made by the learned counsels for the parties, this Court is satisfied that the settlement is bonafide and voluntary. The only thing now remaining is the passing of a decree of divorce between the parties. (Para 12)

In this regard, this Court is also guided by Order XXIII Rule 3 of the Code of Civil Procedure, 1908 which allows compromise of suits, provided that such compromise is in writing and signed by the parties. It is evident from the records of the case before this Court that the Settlement Agreement dated 07.04.2022 fulfills these requirements and has been entered into voluntarily by the parties. As per this provision, the Court is bound to record the agreement and pass a decree in accordance with it.... (Para 13)

Since the settlement is bona fide and has been acted upon by both parties, this Court, in the exercise of its powers under Order XXIII Rule 3 of the Code of Civil Procedure, 1908, is competent to pass a decree in terms of the settlement, even beyond the scope of the original suit. Furthermore, as the proceedings arise from the Family Court, this Court is also empowered to grant a decree of divorce under Section 13B of the Hindu Marriage Act, 1955, in light of the settlement, as recognized under Order XXIII Rule 3 of Code, 1908. (Para 14)

Appeal allowed. (E-14)

(Delivered by Hon'ble Vivek Chaudhary, J.
&
Hon'ble Om Prakash Shukla, J.)

(1) Heard Sri Dev Prakash Srivastava, Advocate holding brief of Sri Umesh Chandra Saxena, learned counsel for the appellant and Sri Pankaj Kumar Sahu, Advocate holding brief of Sri Shrawan Kumar Verma, learned counsel for the respondent as well as perused the record.

(2) The instant First Appeal under Section 19(1) of the Family Courts Act, 1984 arises out of judgment and order dated 13.02.2018 passed by learned Family Court/Additional District and Sessions Judge/F.T.C. Lakhimpur Kheri in H.M. Case No.61 of 2013 (Khajanchi Vs. Preete), whereby the suit for Divorce under Section 13 of the Hindu Marriage Act preferred by the appellant was dismissed.

(3) We have heard the learned counsel for both parties and have carefully reviewed the records. Brief facts of the present case are that in the year 2006, marriage between appellant/Khajanchi and respondent/Preete was solemnized as per Hindu Rites and Rituals. Shortly after the marriage, the respondent began frequently visiting and staying at her parental home. The appellant contended that the respondent failed to fulfill her marital duties and had refused to cohabit with him due to health reason.

(4) Subsequently, the matrimonial relationship between the parties became strained. On 12.01.2013, the respondent left the matrimonial home and has since been residing with her parents. Despite the appellant's repeated efforts to reconcile and provide support, the respondent chose to remain absent from the matrimonial home, prompting the appellant to file for divorce.

(5) The appellant's suit for divorce, registered as H.M. Case No. 61 of 2013, was on the ground that the parties had been living separately for a prolonged period, and that the respondent had refused to fulfill her marital duties. However, the learned Family Court dismissed the divorce petition by its order dated 13.02.2018, finding that the grounds for divorce were not substantiated.

(6) The appellant, aggrieved by the dismissal order dated 13.02.2018, has preferred this First Appeal seeking relief against the Family Court's decision.

(7) On 20.09.2019, the matter was referred to the Mediation and Conciliation Centre of this Court.

(8) In pursuance of the aforesaid order dated 20.09.2019, both the parties appeared before the Mediation and Conciliation Centre of this Court for amicable settlement of their dispute. The learned Mediator has sent a report dated 07.04.2022 along with agreement between the parties, stating that the mediation proceedings have been completed and an agreement is reached between the parties which is enclosed. The relevant portion of the agreement is being quoted hereunder:-

"The following settlement has been arrived at between the Parties hereto:

A) That both the parties have agreed to resolve their dispute by way of one time settlement which is quantified for Rs. 10,50,000/- (Rupees Ten Lakh Fifty Thousand Only) as mutually agreed in lieu of permanent alimony to be paid by Mr. Khajanchi (Husband/First Party) to Ms. Preete (Wife/Second Party).

B) That both the parties have agreed that they shall not raise any claim of any sort against each other in future in respect of any right arising out of the marriage which is being dissolved through this settlement.

C) That out of the entire amount of Rs.10,50,000/- (Rupees Ten Lakh Fifty Thousand Only), a sum of Rs. 5,25,000/- (Rupees Five Lakh Twenty Five Thousand only) has been received by Ms. Preete (Wife/ Second Party) by way of a Demand Draft bearing no. 000076 dated 22.03.2022 issued in the name of Priti Devi (name is as per passbook) from AXIS BANK Branch at Bhandsaria Kher UP on 31.03.2022 and rest of the amount of Rs. 5,25,000/- (Rupees Five Lakh Twenty Five Thousand only) is paid today i.e. 07.04.2022 by the First Party to the Second Party by way of Demand Draft bearing no. 000077 dated 05.04.2022 issued in the name of Priti Devi from AXIS BANK, Branch at Bhandsaria Kher UP.

D) That the Second Party has agreed to get the marriage dissolved in the light of this agreement so mutually arrived at between the parties.

E) That both the parties have agreed to withdraw/not press/to get decided all the cases filed against each other in terms of present agreement, the details of which are as under:

1. Crl. Case No. 639 of 2018 U/S 125 Cr. P. C. (Preete Vs. Khajanchi) pending before Addll. Principal Judge, Family Court, Lakhimpur Kheri.

Besides the above if any other case is pending or filed between both the parties the same shall be withdrawn by either of the concerned parties.

\F) That it is also agreed between the parties that neither they themselves nor any member of their respective families shall institute any malicious prosecution, in

the form of any criminal or civil proceedings against each other, or any of their relative or family members, in future in respect to the present dispute or any matter incidental there to and if any proceeding has already been initiated the same would stand disposed off in terms of this Settlement Agreement.

G) That both the parties understand, agree and further bind themselves that if either of the parties rescinds or does not follow the conditions stipulated herein above, such act shall entail for appropriate legal action.

By signing this agreement the parties hereto state that they have no further claims or demands against each other with respect to First Appeal No. 27 of 2018 (Khajanchi Vs. Preete) and all disputes and difference in this regard have been amicably settled by the parties hereto through the process of Conciliation/ Mediation."

(9) In light of the aforementioned facts, learned counsel for the parties, after consulting their respective clients, submit that the present case may be disposed of in terms of the compromise dated 07.04.2022, referred to as the "Settlement Agreement," which was duly executed before the Mediation and Conciliation Centre of this Court. They further stated that rest of the terms of the compromise are already complied with by the parties.

(10) In this regard, this Court is guided by Section 89(2)(d) of the Code of Civil Procedure, 1908, which states that where a dispute has been referred for mediation, the mediator will assist the parties in reaching a settlement, and if a settlement is arrived at, the Court may pass a decree in accordance with its terms. This ensures that mediated settlements have

legal enforceability and enables courts to grant decrees based on mutually agreed terms, thereby promoting amicable dispute resolution. The relevant provision is reproduced below:

"Section 89. Settlement of disputes outside the Court:

(2) Where a dispute has been referred- (d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed."

(11) Additionally, Rule 26 of the U.P. Civil Procedure Mediation Rules, 2009, mandates that the Court ensure the settlement is not collusive and has been arrived at voluntarily. The relevant provision is reproduced below:

"U.P. Civil Procedure Mediation Rules, 2009

Rule 26 . Court to fix a date for recording settlement and passing decree: -
On the parties appearing before the Court on the date fixed by the mediator, or such other day, not being beyond seven days from the date fixed by the mediator, the Court concerned shall hear the parties and if it is satisfied that the parties have settled their disputes voluntarily and that the settlement is not collusive, then it shall pass a decree in accordance with the settlement so recorded, if the settlement disposes of all the issues in the suit.

(i) If the settlement disposes of only certain issues arising in the suit or proceeding, the Court shall record the settlement in respect of those issues if they are severable from other issues and if a decree could be passed to the extent of the settlement covered by those issues, then the Court may pass a decree straightaway in accordance with the settlement on those

issues without waiting for a decision of the Court on the other issues which are not settled.

(ii) If the issues are not severable, then in that event, the Court shall wait for a decision of the Court on the other issues, which are not settled.”

(12) In the present case, both parties have amicably resolved and settled all pending cases and consideration has also been exchanged between them as per the Settlement Agreement dated 07.04.2022, executed before the Mediation and Conciliation Centre of this Court. Upon perusal of the said agreement and after considering the submissions made by the learned counsels for the parties, this Court is satisfied that the settlement is bonafide and voluntary. The only thing now remaining is the passing of a decree of divorce between the parties.

(13) In this regard, this Court is also guided by Order XXIII Rule 3 of the Code of Civil Procedure, 1908 which allows compromise of suits, provided that such compromise is in writing and signed by the parties. It is evident from the records of the case before this Court that the Settlement Agreement dated 07.04.2022 fulfills these requirements and has been entered into voluntarily by the parties. As per this provision, the Court is bound to record the agreement and pass a decree in accordance with it. Order XXIII, Rule 3 of the CPC is being reproduced below:

“3. Compromise of suit.- *Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise (in writing and signed by the parties), or where the defendant satisfies the plaintiff in respect of the whole or any*

part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith (so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit).

(14) Since the settlement is bona fide and has been acted upon by both parties, this Court, in the exercise of its powers under Order XXIII Rule 3 of the Code of Civil Procedure, 1908, is competent to pass a decree in terms of the settlement, even beyond the scope of the original suit. Furthermore, as the proceedings arise from the Family Court, this Court is also empowered to grant a decree of divorce under Section 13B of the Hindu Marriage Act, 1955, in light of the settlement, as recognized under Order XXIII Rule 3 of Code, 1908.

(15) As all proceedings between the parties have already been settled and the agreed monetary consideration has been exchanged, the only remaining formality is the granting of a decree in accordance with the Settlement Agreement. Therefore, in the interest of justice and to avoid unnecessarily prolonging the litigation, this Court allows the appeal in terms of the Settlement Agreement dated 07.04.2022.

(16) Accordingly, a decree of divorce by mutual consent under Section 13B of the Hindu Marriage Act, 1955, is granted to the parties as per the terms of the Settlement Agreement dated 07.04.2022 entered into by the parties, executed before the Mediation and Conciliation Centre of this Court. No further claims beyond the agreement shall be entertained between the

parties concerning their
matrimonial relationship.

(17) First Appeal is **allowed** in terms of the above.

(2025) 3 ILRA 43

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 04.03.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE NALIN KUMAR SRIVASTAVA, J.

Habeas Corpus Writ Petition No. 384 of 2024

Kapil Kasana ...Petitioner
Versus
Union of India & Ors. ...Respondents

Counsel for the Petitioner:

Sri Arvind Srivastava, Ms. Katyaini Singh,
Sri Nigamendra Shukla, Sri Pratik Kumar

Counsel for the Respondents:

A.S.G.I., G.A., Sri Prem Narayan Rai

**Criminal Law - National Security Act, 1980
- Section 3 (2) - Indian Penal Code, 1860 -
Sections 147, 148, 149, 302 & 404 -
Against detention order - Due to animosity
of Gram Pradhan election, petitioner along
with other associates committed murder
of brother of informant, by firing upon him
at public place carrying arms - Taking
cognizance, proceedings under NSA
started against all accused persons
including petitioner - Held, in some cases,
detenue has been acquitted whereas in
some cases police found no evidence,
resulted into submission of closure reports
- After getting acquittal in four cases in
2010, no crime committed by detenue up
to 2019, hence for period of 9 years
detenue never indulged in anti-social
activities - Investigating Officer
mentioned about disturbance of law and
order but such St.ments not given by**

informant and eye witnesses - Authority failed to find nexus between alleged offences and order of detention. (Para 14, 23, 26, 27)

Apprehension of D.M. that detainee who was detained in jail, likely to get bail soon and further satisfaction that he may be involved in activities prejudicial to maintenance of public order has no rational basis - Impugned order quashed. (Para 33)

Writ petition allowed. (E-13)

List of Cases cited:

1. Nenavath Bujji Vs The St. of Telangana & ors., 2024 0 Supreme (SC) 265
2. Rameshwar Shaw Vs D.M., Burdwan & anr., 1963 0 Supreme (SC) 221, (Paras 9, 10)
3. Ramesh Yadav Vs D.M., Etah & ors., 1985 0 Supreme (SC) 301
4. Shashi Aggarwal Vs St. of U.P., 1988 LawSuit (SC) 12
5. Veeri Singh Vs U.O.I. & ors., 2016 0 Supreme (All) 714
6. Alijan Mian Vs D.M., Dhanbad, AIR 1983 SC 1130
7. Ramesh Yadav Vs D.M., Etah, AIR 1986 SC 315
8. Pushkar Mukherjee Vs St. of W.B., (1969) 1 SCC 10, (Para 13)
9. Khudiram Das Vs St. of Bengal, (1975) 2 SCC 81, (Para 52)
10. Kamarunnissa Vs U.O.I.& anr. 1990 (27) ACC 621 SC, (Para 13)
11. Yumman Ongbi Lembi Leima Vs St. of Manipur & ors., Criminal Appeal No.26 of 2012 decided on 4.1.2012
12. Vijay Narain Singh Vs St. of Bihar, (1984) 3 SCC 14

13. *Pebam Ningol Mikoi Devi Vs St. of Manipur*, (2010) 9 SCC 618

14. *Arun Ghosh Vs St. of W.B.*, 1970 (3) SCR 288

(Delivered by Hon'ble Nalin Kumar Srivastava, J.)

1. Heard Shri Nigmendra Shukla, learned counsel for the petitioner, Sri Prem Narain Rai, learned counsel for the Union of India and Shri Ajay Kumar Sharma, learned A.G.A. for the State respondents.

2. Present Habeas Corpus Writ Petition under Article 226 of the Constitution of India has been preferred seeking following reliefs:-

"a). issue writ, order or direction in the nature of writ of habeas corpus directing the respondents to set the petitioner at liberty after setting aside the order dated 4.3.2024 (Annexure-1) passed by the respondent no.5, namely, the District Magistrate, Ghaziabad in exercise of his power under Section 3 (2) of National Security Act, 1980.

b) issue such other order or direction which this Hon'ble Court may deem fit and proper in the case.

c). to award the cost to the petitioner."

3. The aforesaid reliefs have been prayed for on the basis of following main grounds :

(i) that the impugned detention order is a non-speaking order and as such not sustainable under law.

(ii) that no subjective satisfaction has been recorded by the District Magistrate, Ghaziabad while passing the impugned detention order.

(iii) that there may be problem of law and order and not public order.

4. The impugned detention order dated 4.3.2024 was passed by the respondent no.5 - District Magistrate, Ghaziabad under Section 3 (2) of the National Security Act, 1980 (in short 'the NSA, 1980').

5. The extracts of case diary including the statements of the witnesses recorded by the Investigating Officer have been appended with the affidavit by the petitioner.

6. It is contended by the learned counsel for the petitioner that the proceedings under the NSA, 1980 were initiated against the petitioner on the basis of F.I.R. dated 23.10.2023 registered at case crime no. 611 of 2023 under Sections 147, 148, 149, 302 and 404 IPC, P.S. Tilamod, District Ghaziabad. The incident alleged in the said F.I.R. was that the brother of the informant was shot on 22.10.2023 at about 8.30 p.m. near his house by nine named and one unknown persons including the present petitioner. In pursuance of that F.I.R. the petitioner was arrested on 24.10.2023 and he is still in jail. Subsequently, charge sheet no. 01/2024 was submitted in the matter on 19.1.2024 for the offences under Sections 147, 148, 149, 302, 404, 120-B, 34, 224, 394, 411, 307 IPC, 7 Criminal Law Amendment Act and 3/25 and 27 of the Arms Act. There were material contradictions in the statement of the wife of the deceased recorded under Section 161 CrPC from that of mentioned in the F.I.R. of this case but the learned trial court discarded the same. It is also submitted that a report was prepared by the S.H.O., P.S. Tilamod, Commissionerate, Ghaziabad on 2.3.2024,

which was forwarded to the respondent no.8 through respondent no.7, recommending action against the petitioner under Section 3(2) of the NSA, 1980. The respondent no.8 enquired into the matter and concurring with the report of respondent no.9 – S.H.O. P.S. Tilamod, recommended detention / action against the petitioner under Section 3(2) of the NSA, 1980. The respondent no.8 in his report picturized the petitioner as an anti-social criminal minded person, who by his criminal acts causes panic, fear and terror in the minds of villagers resultantly affecting the public life adversely hence, to preserve peace in the village and society and for establishment of rule of law the detention of the petitioner under the NSA, 1980 was required, as per the report of respondent no.2, sent to respondent no.5 and subsequently the impugned detention order was passed accordingly. All the concerned authorities recorded almost same findings pertaining to the present petitioner but significantly the District Magistrate, Ghaziabad passed the impugned order dated 4.3.2024 which was a non-speaking order without recording any subjective satisfaction or giving any separate finding on his part which shows the lack of independent application of mind by the District Magistrate, Ghaziabad while passing the impugned detention order.

7. It is further submitted that a representation was made by the petitioner to the District Magistrate, Ghaziabad as well as to the respondent no.1 under Section 14 of the NSA, 1980 on 9.3.2024 respectively through the Jail Superintendent but while rejecting the same, the impugned detention order was confirmed by the authorities vide orders dated 11.3.2024 and 9.4.2024. It is also urged that the impugned order dated 4.3.2024 is based upon the baseless apprehension that the petitioner's release on

bail in case crime no. 611 of 2023 might cause terror in the society and the public order would be affected adversely.

8. It is vehemently submitted that to detain the petitioner on mere apprehension that it might cause threat to public life and order by committing similar criminal acts cannot be the sole ground for the detention of any person under the NSA, 1980. It is also submitted that the opinion expressed by the District Magistrate while passing the impugned order is based upon premises and conjectures only and the said order is totally flimsy and vague.

9. It is further submitted that the present petitioner is having a criminal antecedent of nine cases, which are as follows :

(i) Case Crime No. 611 of 2023, under Sections 147, 148, 149, 307, 402, 120-B, 34 IPC, 7 Criminal Law Amendment Act and 3/25/27 Arms Act, P.S. Tilamod, Commissionerate Ghaziabad.

(ii) Case Crime No. 454 of 2023, under Sections 332, 353, 504, 506 IPC, P.S. Tilamod, Commissionerate Ghaziabad.

(iii) Case Crime No. 505 of 2023, under Sections 323, 504, 506 IPC, P.S. Tilamod, Commissionerate Ghaziabad.

(iv) Case Crime No. 915 of 2019, under Sections 147, 307, 504 IPC, P.S. Loni, Commissionerate Ghaziabad.

(v) Case Crime No. 1094 of 2021, under Sections 420, 34, 467, 468, 471, 511 IPC, P.S. Loni, Commissionerate Ghaziabad.

(vi) Case Crime No. 49 of 2009, under Section 307 IPC, P.S. Sector 58, Commissionerate Gautambudh Nagar.

(vii) Case Crime No. 52 of 2009, under Section 25 Arms Act, P.S. Sector 58, Commissionerate Gautambudh Nagar.

(viii) Case Crime No. 1180 of 2008, under Section 307 IPC, P.S. Sector 58, Commissionerate Gautambudh Nagar.

(ix) Case Crime No. 664 of 2008, under Sections 392, 411 IPC, P.S. Phase 2, Commissionerate Gautambudh Nagar.

10. It is further urged that in the cases mentioned here-in-above, the petitioner is enlarged on bail in cases mentioned at sl. nos. 2 and 3, final reports have been submitted in the cases mentioned at sl. nos. 4 and 5 and in the rest of the cases mentioned at sl. nos. 6 to 9 acquittal orders have been recorded in favour of the petitioner and further the criminal case shown at sl. no.1 is the solitary case wherein the petitioner is detained in jail and the executive authorities have a baseless apprehension that the release of the petitioner on bail in the said case may cause disturbance to the public order. It is also submitted that the detention of the petitioner without any cogent ground in jail is in fact denial of the constitutional right of the petitioner. The impugned order suffers from infirmity and illegality warranting interference by this Court.

11. In support of his submissions, learned counsel for the petitioner has placed reliance upon the following decisions:

(i). Nenavath Bujji vs. The State of Telangana and others, 2024 0 Supreme (SC) 265.

(ii). Rameshwar Shaw vs. District Magistrate, Burdwan and another, 1963 0 Supreme (SC) 221.

(iii). Ramesh Yadav vs. District Magistrate, Etah and others, 1985 0 Supreme (SC) 301.

(iv). Shashi Aggarwal vs. State of Uttar Pradesh, 1988 LawSuit (SC) 12.

(v). Veeri Singh vs. Union of India and others, 2016 0 Supreme (All) 714.

12. Per contra, learned counsel for the Union of India and the learned AGA appearing for the State vehemently submit that the petitioner is a hardened criminal having a long criminal antecedent of criminal cases of serious nature and his act is threat to the society. He is in jail in the aforesaid case crime no. 611 of 2023 under Sections 147, 148, 149, 302, 404, 120-B, 34, 224, 394, 411, 307 IPC, 7 Criminal Law Amendment Act and 3/25 and 27 of the Arms Act. It is also submitted that there is a genuine apprehension to the authorities and more particularly the District Magistrate, Ghaziabad – respondent no.5 that the release of the petitioner on bail in the aforesaid case crime no. 611 of 2023, might cause disturbance in the public life and the public order may be adversely affected. It is further submitted that the District Magistrate, Ghaziabad – respondent no.5 after recording his subjective satisfaction passed the impugned order dated 4.3.2024 for detention of the petitioner under Section 3(2) of the NSA, 1980 and accordingly he was detained in district Jail, Ghaziabad. There is no infirmity, perversity or illegality in the impugned order warranting interference by this Court.

13. We have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned order.

14. The factual matrix, as brought before this Court, in nutshell, is that several criminal cases pertaining to the offences of grievous nature were lodged against the petitioner. He is a man of criminal

character creating terror in the society. Due to the animosity of Gram Pradhan election the petitioner alongwith other associates committed murder of Pramod Kasana @ Lalu, the brother of the informant, by firing upon him at a public place before a large number of people carrying arms and firing of several rounds was made and the law and order and life of ordinary people was endangered and it created a complete mess in the society. Subsequently, some firearms and cartridges were retrieved by the police from other co-accused persons of the said case and proceeding under the NSA, 1980 was also initiated against co-accused Kalu @ Praveen son of Satveer by the District Magistrate, Ghaziabad vide order dated 19.2.2024 and during investigation some other accused persons wanted in the said case crime no. 611 of 2023 were also arrested by the police. Taking cognizance to the aforesaid facts, proceedings under the NSA, 1980 were started against the petitioner and the authorities concerned were under genuine apprehension that the public life might be endangered if he gets bail in the said case.

15. In the backdrop of the aforesaid facts and circumstances, we have to adjudge whether the impugned detention order dated 4.3.2024 passed by the District Magistrate, Ghaziabad is a genuine and legal order or not.

16. To scrutinize the legality of the said impugned order, it is desirable to have a glance upon Section 3(2) of the NSA, 1980 alongwith explanation, which is extracted as below :

“3. Power to make orders detaining certain persons.--(1) The Central Government or the State Government may,--

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, of the security of India, or

(b) if satisfied with respect of any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,

it is necessary so to do, make an order directing that such person be detained.

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

*Explanation.--*For the purposes of this sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the explanation to sub-section (1) of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act."

17. At the very outset, we have to consider whether the impugned order dated

4.3.2024 is a non-speaking order and no subjective satisfaction has been recorded by the District Magistrate, Ghaziabad and in continuation of that it is also to be seen as to whether the grounds shown by the District Magistrate, Ghaziabad while passing the impugned detention order were genuine or not.

18. The detention order dated 4.3.2024 is available on record wherein the District Magistrate, Ghaziabad has mentioned that he is satisfied that to maintain public order it is desirable to pass a detention order against the present petitioner and in view of above, the impugned detention order was passed. A perusal of the record further shows that the District Magistrate, Ghaziabad was having some apprehension that albeit the detainee is in jail in connection with case crime no. 611 of 2023 but there is likelihood of his being released on bail which may further cause a threat to the public order.

19. In view of the above, we have also paid our attention to the criminal history of the petitioner. In the petition itself the criminal antecedents of nine cases of the detainee have been explained. The record of this matter also reflects that out of the said 9 cases, four cases have ended into acquittal of the petitioner whereas in two cases the police after thorough investigation found no evidence against the petitioner and resultantly final reports were submitted by the Investigating Officer. In other two cases, the petitioner is on bail and in a solitary case as case crime no. 611 of 2023 he is detained in jail. The impugned order passed by the District Magistrate, Ghaziabad fails to show his subjective satisfaction as it is nowhere logically explained that the person, who is detained in a solitary criminal case, will certainly be

granted bail and even if he is granted bail in the solitary case wherein he is in jail, how he may be a threat to the public order. The District Magistrate, Ghaziabad without any cogent material has made only a bald statement that there is likelihood of the petitioner being released on bail and the said apprehension is totally flimsy and vague and the impugned detention order is certainly based on premises and conjectures.

20. Reliance has been placed upon **Shashi Aggarwal case (supra)** by the petitioner wherein the Hon'ble Apex Court had an opportunity to deal with the matter and a primary question was raised before the Hon'ble Supreme Court in the form as to whether the detention of detainee would be justified solely on the ground that he was trying to come out on bail and there was enough possibility of his being bailed out and he would then act prejudicially to the interest of the public order. The Hon'ble Apex Court in the aforesaid case also scrutinized the issue that despite being in custody or in jail order against a person could be passed by the authority but there must be material apparently disclosed to the detaining authority which is certainly different in each and every case.

21. The District Magistrate, Ghaziabad in the instant case could not satisfy by the impugned order that what were the compelling reasons which led him to consider that although the detainee is in jail but his preventive detention is still necessary.

22. In the aforesaid case, referring to the decisions in **Alijan Mian vs. District Magistrate, Dhanbad, AIR 1983 SC 1130 and Ramesh Yadav vs. District Magistrate, Etah, AIR 1986 SC 315**, the

Hon'ble Apex Court concluded that what was stressed in the above case is that an apprehension of the detaining authority that the accused if enlarged on bail would again carry on his criminal activities is by itself not sufficient to detain a person under the National Security Act. It was further stressed that merely on the ground that an accused in detention as an under-trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed.

23. It is to be noted that the crime committed by the detainee has no nexus with the order of detention passed by the District Magistrate, Ghaziabad. We find that the impugned order falls short to show as to on what basis the District Magistrate, Ghaziabad recorded his subjective satisfaction for passing of the same. The aforesaid offence registered as case crime no. 611 of 2023 is not such a case where the petitioner had been offensive to the public at large rather it was a case where a particular person is said to be shot dead by the detainee and his associates. The District Magistrate, Ghaziabad absolutely ignored the fact that in some of the cases the detainee has been acquitted by the Court whereas in some cases the police itself found no evidence at all against the detainee and the cases resulted into submission of closure reports. The District Magistrate, Ghaziabad failed to appreciate the fact that after getting acquittal in four cases in the year 2010 in the criminal cases pertaining to the years 2008 and 2009 no crime was committed by the detainee upto the year 2019 when case crime no. 915 of 2019 was registered against him and hence for a period of about 9 years having acquittal orders in his favour the detainee never indulged in any anti-social activities nor provided any threat to the public safety and

order. Paragraph 22 of the affidavit appended with the petition, which explains the criminal antecedent of the detainee, is relevant in this regard. Notably, in paragraph 41 of the counter affidavit dated 29.7.2024 the said facts have not been controverted. There was a big gap between the acquittal orders passed in the year 2010 and in case crime no. 915 of 2019 and if after being acquitted by the competent Court for a period of about 9 years no criminal history accrued to the credit of the detainee and he abstained himself to carry on any criminal activities in the area, the satisfaction of the District Magistrate, Ghaziabad that if the detainee is released on bail he would again involve himself in criminal activities causing threat to the public order, if in any condition, is supposed to be true the bail application had to be strongly opposed by the prosecution and in case bail was granted challenge against that order in the higher forum has to be raised. In our view, the petitioner, who was in jail as an under-trial prisoner, was likely to get bail could never be a good and valid ground and an order of detention merely on the aforesaid ground under the NSA, 1980 should not have been passed by the District Magistrate, Ghaziabad. There is a big difference between the apprehension of the detaining authority and his subjective satisfaction. Undisputably in the instant matter there exists a flimsy apprehension on the part of the District Magistrate, Ghaziabad and the detention order lacks his subjective satisfaction.

24. In **Nenavath Bujji case** (supra), a leading case upon the subject, it was held by the Hon'ble Apex Court that the law is settled that power under any enactment relating to preventive detention has to be exercised with great care, caution and restraint. Referring a decision in in

Pushkar Mukherjee vs. State of West Bengal, (1969) 1 SCC 10, it was so held :

“13.....Does the expression "public order" take in every kind of infraction of order or only some categories thereof. It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act...”

25. Further, the Hon'ble Apex Court referring another decision in **Khudiram Das vs. State of Bengal**, (1975) 2 SCC 81, also held that :

“52.....while examining the "history sheet" of the detenu, this Court had, in express terms, clarified that a generalisation could not be made that the

detenu was in the habit of committing those offences. Merely because the detenu was charged for multiple offences, it could not be said that he was in the habit of committing such offences. Further, habituality of committing offences cannot, in isolation, be taken as a basis of any detention order; rather it has to be tested on the metrics of "public order", as discussed above. Therefore, cases where such habituality has created any "public disorder" could qualify as a ground to order detention.”

26. In the case in hand, the detenue along with his other associates committed murder of the brother of the informant, as alleged, and there is nothing in the entire F.I.R. registered as case crime no. 611 of 2023 that any public disorder was caused by the criminal act committed by the petitioner and his associates. Although the Investigating Officer has recorded in the case diary that when murder of the brother of the informant was committed it affected the law and order situation but the oral statements of witnesses nowhere disclose that the incident of the murder of the brother of the informant in anyway caused public disorder and even the eye witnesses Smt. Sunita, wife of the informant, and Smt. Karuna @ Kunti, wife of the deceased and the informant himself who were also interrogated by the Investigating Officer, stated nowhere that any public disorder was caused following the said crime. Such statements find place in annexure no.6, appended with the affidavit by the petitioner. It is true that the Investigating Officer has mentioned in the case diary regarding the disturbance of law and order as a result of the crime of murder but it has not been explained as to why such statements were not given by the informant and above-mentioned eye witnesses of this

case and it is a serious dent upon the issue of subjective satisfaction on the part of the District Magistrate.

27. In fact the past record of the detinue must have a proximate and live link with the ground of detention and if it is not so such stale material/ case cannot be made a basis for passing a detention order. The District Magistrate although placed reliance on the criminal antecedents of the petitioner but he utterly failed to find out the nexus between the alleged offences and order of detention. He never bothered to make his subjective satisfaction into the allegations and facts disclosed in the report and materials placed by the police and simply passed the impugned order without proper application of independent mind.

28. The detention order further fails to show that how the District Magistrate, Ghaziabad had a reason to believe on the basis of material on record as to how there were all the possibilities of the petitioner being released on bail and further that on being so released he would indulge in the activities prejudicial to the maintenance of public order in all probabilities. It is trite law that the detention of the person concerned in jail does not preclude the authorities from passing an order of detention but such authorities must always apply their mind to the fact that the detinue is already in jail and there exist compelling reasons justifying such detention despite the fact that he was already in jail. It further requires that there must be cogent material before the detaining authority which leads to his subjective satisfaction that in near future the detinue is likely to be released from custody and after his release he would properly indulge in the activities prejudicial to the public order. The offence where for the detinue is in jail may be an issue for

law and order but it is going to affect the maintenance of public order meaning thereby to affect the community and public at large. This element is certainly missing from the impugned order.

29. Hon'ble Supreme Court has laid down the principles as to when a detention order can be passed with regard to a person already in judicial custody in the case of **Kamarunnissa vs. Union of India and another 1990 (27) ACC 621 SC** and in paragraph 13 of the aforesaid case, Hon'ble Supreme Court has held as hereunder:-

"13. From the catena of decisions referred to above, it seems clear to us that even in the case of a person in custody a detention order can validly be passed(1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him(a) that there is real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity; and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in his behalf, such an order can not be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question of before a higher Court."

30. Over the issue in hand, the Hon'ble Apex Court in a leading case **Rameshwar Shaw** (supra) has held as under:

"9. It is also true that in deciding the question as to whether it is necessary to detain a person, the authority has to be satisfied that if the said person is not

detained, he may act in a prejudicial manner, and this conclusion can be reasonably reached by the authority generally in the light of the evidence about the past prejudicial activities of the said person. When evidence is placed before the authority in respect of such past conduct of the person, the authority has to examine the said evidence and decide whether it is necessary to detain the said person in order to prevent him from acting in a prejudicial manner. That is why this Court has held in *Ujagar Singh v. The State of Punjab* and *Jagjit Singh v. The State of Punjab*(1) that the past conduct or antecedent history of a person can be taken into account in making a detention order, and as a matter of fact, it is largely from prior events showing tendencies or inclinations of a man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order.

10. In this connection, it is, however, necessary to bear in mind that the past conduct or antecedent history of the person on which the authority purports to act, should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary. It would, for instance, be irrational to take into account the conduct of the person which took place ten years before the date of his detention and say that even though after the said incident took place nothing is known against the person indicating his tendency to act in a prejudicial manner, even so on the strength of the said incident which is ten years old, the authority is satisfied that his detention is necessary. In other words, where an authority is acting bona fide and considering the question as to whether a person should be detained, he would naturally expect that evidence on

which the said conclusion is ultimately going to rest must be evidence of his past conduct or antecedent history which reasonably and rationally justifies the conclusion that if the said person is not detained, he may indulge in prejudicial activities. We ought to add that it is both inexpedient and undesirable to lay down any inflexible test. The question about the validity of the satisfaction of the authority will have to be considered on the facts of each case. The detention of a person without a trial is a very serious encroachment on his personal freedom, and so, at every stage, all questions in relation to the said detention must be carefully and solemnly considered."

31. In almost similar circumstances, the Hon'ble Apex Court in **Yumman Ongbi Lembi Leima v. State of Manipur and Ors.** (Criminal Appeal No.26 of 2012 decided on 4.1.2012), held that preventive detention is not to punish a person for something he has done but to prevent him from doing it. Only on the apprehension of the detaining authority that after being released on bail, the petitioner - detenu will indulge in similar activities, which will be prejudicial to public order, order under the Act should not ordinarily be passed. The personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order.

32. Further, the Hon'ble Apex Court has cautioned in **Vijay Narain Singh Vs. State of Bihar, (1984) 3 SCC 14** by holding that "the law of preventive detention being a drastic and hard law, must be strictly construed and should not ordinarily be used for clipping the wings of an accused if, criminal prosecution would suffice."

33. In the case in hand the apprehension of the District Magistrate that the detenu who is detained in jail in a case crime no. 611 of 2023 is likely to get bail very soon and further, the satisfaction of the District Magistrate that after being so released on bail he may be involved in any activities prejudicial to the maintenance of public order has no rational basis. Both the elements in the impugned order are having no subjective satisfaction behind them. Subjective satisfaction, as required, must be two fold, i.e. the detaining authority must be satisfied that the person to be detained is likely to act in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of the public order and the authority must be further satisfied that it is necessary to detain the said person in order to prevent him from so doing, as may be gathered from the dictum of law promulgated by the Hon'ble Apex Court in **Pebam Ningol Mikoi Devi v. State of Manipur, (2010) 9 SCC 618**.

34. We have no hesitation to hold that the detaining authority is always under obligation to record his subjective satisfaction on the relevant grounds and if the application of mind is made in a mechanical manner it can never fall in the category of subjective satisfaction of the detaining authority.

35. In the decision of Hon'ble Apex Court in the case of **Arun Ghosh v.**

State of West Bengal, 1970 (3) SCR 288, the question was whether the grounds mentioned in the detention order could be construed to be breach of public order and as such, the detention order could be validly made. The appellant in the said case had molested two respectable young ladies threatened their father's life and assaulted two other individuals. He was detained under Section 3(2) of the Preventive Detention Act, 1950 in order to prevent him from acting prejudicially to the maintenance of public order. It was held by the Hon'ble Apex Court that the question whether a man has only committed a breach of law and order, or has acted in a manner likely to cause a disturbance of the public order, is a question of degree and the extent of the reach of the act upon society. The test is: does it lead to a disturbance of the even tempo of the life of the community so as to amount to a disturbance of the public order, or, does it affect merely an individual without affecting the tranquillity of society. Therefore, it could not be said to amount to an apprehension or breach of public order, and hence, he was entitled to be released. On the given subject, the decision in **Veeri Singh case** (supra) also helps the case of the petitioner.

36. From the above, we find that the detaining authority for the ground of detention has mentioned two grounds, firstly, that the detenu is about to get bail in case crime no. 611 of 2023 wherein he is already in jail and secondly, there was possibility of detenu indulging in similar activities prejudicial to the maintenance of public order on such release from jail. However, the detaining authority has failed to record his subjective satisfaction in the impugned order that there was real possibility of his being released on bail and

38. The present petition is **allowed** and the petitioner/ detenu is ordered to be set at liberty by the respondents forthwith unless required in connection with any other case.

(2025) 3 ILRA 54
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.03.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI J.

Civil Misc. Review Application No. 33 of 2025
In Civil Misc. Writ Petition No. 3191 of 2019

Adeel Ahmad Khan ...Petitioner
Versus
State of U.P. & Ors. ...Opposite Parties

Counsel for the Petitioner:

Sri Kushmondeya Shahi, Sri Tanuj Shahi

Counsel for the Opposite Parties:

Sri Arvind Prabodh Dubey, C.S.C.

A. Civil Law-Civil Procedure Code,1908-Order XLVII Rule 1(a)-The review application filed by the petitioner was dismissed on the ground of maintainability-The court held that since the petitioner had already availed the appellate remedy by filing a Special Appeal and got it dismissed as withdrawn without seeking liberty to file a review, the review application was not maintainable in law under Order XLVII Rule 1(a) CPC-The court relied on the Supreme court's rulings in Thungabhadra Industries, Kunhayammed, and Khoday Distilleries, and held that invoking appellate jurisdiction bars a subsequent review.(Para 1 to 13)

The review application is dismissed. (E-6)

List of Cases cited:

1. Thungabhadra Industries Ltd. Vs Govt. of A.P. (1964) AIR SC 1372,
2. Kunhayammed Vs St. of Ker. (2000) 6 SCC 359
3. Khoday Distilleries Ltd. Vs Sri Mahadeshwara Sahakara Karkhane Ltd. (2019) 4 SCC 376,

(Delivered by Hon'ble Subhash Vidyarthi, J.)

C.M. Application No.NIL of 2025
(Application for Condonation of Delay in
filing the Review Application):

1. The review application has been filed with some delay. The review application is accompanied with an application seeking condonation of delay supported by an affidavit wherein filing of a Special Appeal is said to be the cause of delay in filing the review application. Adopting a liberal approach, the application for condonation of delay is allowed and the delay in filing the review application is condoned.

Order on Review Application:

2. The instant application has been filed seeking review of judgment and order dated 03.07.2024, passed in Writ-A No.3191 of 2019.

3. The review applicant had filed a Special Appeal Defective No.629 of 2024 against the judgment and order dated 03.07.2024, passed by this court, which is sought to be reviewed. The Special Appeal was filed after expiry of the period of limitation alongwith an application for condonation of delay in filing the Special Appeal. The application for condonation of delay was allowed and the delay in filing the Special Appeal was condoned by means of an order dated 08.01.2025. After condonation of delay in filing the Special Appeal, the learned counsel for the appellant prayed that the Special Appeal be dismissed as withdrawn and the Special Appeal was accordingly dismissed as withdrawn.

4. Neither the learned counsel for the appellant had sought liberty to file an

application for review of the order nor had the Court granted such a liberty to him while dismissing his Special Appeal.

5. Order XLVII, Rule 1 (a) C.P.C. provides that any person aggrieved by an order from which an appeal is allowed but from which no appeal was preferred, may file an application seeking review of the order. Although the provisions of Code of Civil Procedure do not in terms apply to the writ proceedings, the basic principles of civil procedure are applicable to writ proceedings also.

6. The learned counsel for the review applicant has relied upon the following judgments:-

(i) Thakur Singh Vs. Dinanath Sah: 1937 SCC Online Pat 73;

(ii) Badrunnisha Mohammad Sikadar Vs. Keshiben Jethalal Parmar & anr.:2000 SCC Online Guj 535;

(iii) Kunhayammed and others Vs. State of Kerala and another: (2000) 6 SCC 359;

(iv) Kanoria Industries Limited and ors. Vs. Union of India and others: 2017 SCC OnLine Del 7215; and

(v) Khoday Distilleries Limited Vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited: (2019) 4 SCC 376.

7. In **Thungabhadra Industries Ltd. v. Govt. of A.P.:** AIR 1964 SC 1372, the Hon'ble Supreme Court held that: -

“Order 47 Rule 1(1) of the Civil Procedure Code permits an application for review being filed “from a decree or order from which an appeal is allowed but from which no appeal has been preferred”. ...The crucial date for determining whether or not the terms of Order 47. Rule 1(1) are

satisfied is the date when the application for review is filed. If on that date no appeal has been filed it is competent for the Court hearing the petition for review to dispose of the application on the merits notwithstanding the pendency of the appeal, subject only to this, that if before the application for review is finally decided the appeal itself has been disposed of, the jurisdiction of the court hearing the review petition would come to an end."

8. The judgment in the case of **Thungabhadra Industries Ltd.** was followed in **Kunhayammed v. State of Kerala: (2000) 6 SCC 359**, wherein the Hon'ble Supreme Court considered the maintainability of a review application after filing of a Special Leave Petition in light of the provision contained in Order XLVII, Rule 1 (a) C.P.C. and drew the following conclusions: -

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of

jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the

order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vi) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC.”

(Emphasis added)

9. In **Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.**: (2019) 4 SCC 376, the Hon’ble Supreme Court again discussed the point and after referring to various precedents, held as follows: -

“26. From a cumulative reading of the various judgments, we sum up the legal position as under:

26.1. The conclusions rendered by the three-Judge Bench of this Court in Kunhayammed and summed up in para 44 are affirmed and reiterated.

26.2. We reiterate the conclusions relevant for these cases as under :

“(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its

discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC.”

(Emphasis added)

10. As there are numerous authoritative pronouncements of the Hon’ble Supreme Court on the point of

maintainability of a review application after dismissal of an appeal, there is no need to refer to the judgments of other High Courts relied upon by the learned counsel for the petitioner.

11. In the present case, the petitioner had filed a Special Appeal, in which no leave of the Court is required. The petitioner had invoked the appellate jurisdiction of this Court and the delay in filing the Special Appeal had been condoned by a Division Bench of this Court, whereafter the appeal became competent to be decided on its merits. It was thereafter that the appellant got the appeal dismissed as withdrawn, without seeking leave to file a review application. Thus, the petitioner had invoked the appellate jurisdiction of the Division Bench and thereafter he got the Special Appeal dismissed.

12. The review application filed after filing and dismissal of the Special Appeal without granting leave to the petitioner to file a review application, cannot be entertained by this Court in view of the principle incorporated in Order XLVII Rule 1 (a) C.P.C. and in view of the law laid down by the Hon'ble Supreme Court in **Thungabhadra Industries Ltd., Kunhayammed and Khoday Distilleries Ltd. (Supra)**. Entertaining a review application after the petitioner could not get success in Special Appeal, would be subversive to judicial discipline.

13. In view of the aforesaid discussion, the review application is **dismissed**.

(2025) 3 ILRA 58

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: LUCKNOW 12.03.2025

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

Matters Under Article 227 No. 1133 of 2025

**M/S Durga Travels & Ors. ...Petitioners
Versus
Debts Recovery Tribunal, Lko. & Ors.
...Respondents**

Counsel for the Petitioners:

Ashish Chaturvedi, Manoj Kumar Dwivedi,
Vandana Singh

Counsel for the Respondents:

Abhishek Khare, Parul Sharma, Shivansh
Shukla

Manner in which the possession has been taken violates the rights of the petitioners vested by virtue of Article 300A of the Constitution of India- was contrary to the mandate of Section 14 of the Act-Writ petition maintainable- directions issued.

W.P. allowed. (E-9)

List of Cases cited:

1. ICICI Bank Ltd. Vs Prakash Kaur & ors.; (2007) 2 SCC 711
2. CELIR LLP Vs Bafna Motors (Mumbai) Pvt. Ltd. & ors.; (2024) 2 SCC 1
3. PHR Invent Educational Society Vs UCO Bank & ors.: 2024 SCC OnLine SC 528
4. United Bank of India Vs Satyawati Tondon: (2010) 8 SCC 110.
5. NKGSB Co-operative Bank Ltd. Vs Subir Chakravarty & ors.: (2022) 10 SCC 286

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. Heard Sri Manoj Kumar Dwivedi and Sri Ashish Chaturvedi, learned Counsel for the petitioner as well as Sri Abhishek

Khare, Ms. Parul Sharma, Sri Shivansh Shukla and Sri Navneet Yadav, learned Counsel for the respondents.

2. The present petition has been argued by the petitioners alleging that the manner in which the possession has been taken violates the rights of the petitioners, which are vested by virtue of Article 300A of the Constitution of India. It was further alleged that the manner in which the possession was taken, was contrary to the mandate of Section 14 of The Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 (hereinafter referred to as “the SARFAESI Act”) and in view of violation of the constitutional and statutory rights, the petitioners have approached this Court.

3. The facts as arises from the present petition are that the petitioner no.1 had taken a loan for purchasing of school buses sometime in the year 2015 and the petitioners no.2 to 4 were the guarantors to the said loan. It was argued that there was a default in payment of the outstanding amount as such, the loan was classified as Non-Performing Asset (NPA) and the Bank issued a notice on 29.10.2020 under Section 13(2) of the SARFAESI Act. Subsequently, the respondent no.3-Bank, assigned its rights to the respondent no.2, which is a Assets Reconstruction Company. It also appears from the record that the notices under Section 13(4) were also issued and thereafter, an application was filed under Section 14 of the SARFAESI Act before the Additional District Magistrate (ADM), Gautambudh Nagar for taking possession of the property.

4. The ADM, in terms of the order dated 21.04.2023 (Annexure-1 to the writ

petition), directed the respondent no.2 for taking possession of the property in question. It was also noticed in the said order that in case, there was any order passed by any court contrary to the said order, the order shall also come to an end. It was also directed that the respondent no.2 can take the actual possession of the property in question with the help of police authorities. The order was sent to the Additional Commissioner of Police for taking the effective steps for implementation of the order. It was also directed that the Bank and the Police, prior to taking possession would give reasonable notice to the occupiers so that they can shift their goods elsewhere. The minimum notice prescribed was 48 hours upto one week in writing. It was also observed that at the time of taking possession, independent witnesses and an Officer appointed by the Police Commissioner shall be present. The petitioners challenged the said order dated 21.04.2023 by filing a Securitisation Application No.360 of 2023, on which, an order came to be passed disposing off the interim relief application holding that in view of the observations made by the Division Bench of High Court in Writ-C No.22594 of 2022, the ADM/ CMM (Chief Metropolitan Magistrate) was directed to issue at least 15 days prior notice before taking physical possession. The respondents were granted time to file objection.

5. It also appears from the record that certain directions were issued by the DRT for OTS proposal, which according to the petitioners was availed by depositing an amount of Rs.27/- lac, however, nothing appears to have transpired beyond that. Simultaneously, on 05.12.2023, a notice was issued for taking physical possession of the property in dispute on 27.12.2023 by the respondent no.2.

6. It is argued by the Counsel for the petitioners that no notice as was directed by the DRT to be given by the CMM/ADM was ever served upon the petitioners. It is stated that on 25.02.2025, the recovery agents of the respondent no.2 came and took the forceful possession of the property in question. It is argued that no Government Official of the ADM Office was present. It is stated that the muscleman of the respondent no.2 broke open the main gate and allegations of abuse etc. are also levelled. In sum and substance, it is argued that the manner in taking possession is neither sanctioned by law under Section 14 of the SARFAESI Act nor was it in consonance with the directions given by the DRT and thus clearly the rights of the petitioners under Article 300A of the Constitution of India stood violated. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of **ICICI Bank Ltd. Vs Prakash Kaur and others; (2007) 2 SCC 711.**

7. In the light of the said submissions, this Court had called for a report from the police authorities through the Standing Counsel and from the ADM, and this Court had appointed a Court Commissioner in view of the allegations that even the essentials such as medicines, books etc. were lying in lock and were not accessible to the petitioners.

8. In terms of the abovesaid directions, the Court Commissioner has submitted his report, the learned Standing Counsel has forwarded the instructions received from the police authorities and an affidavit has also been filed by ADM. A short counter affidavit has been filed on behalf of the respondent no.2. On the basis of the short counter affidavit, it has been argued that the petitioners as guarantors were liable to pay

the outstanding loan amount. The petitioner had earlier approached the DRT by filing an securitisation appeal against the order passed under Section 14, as such, the present writ petition is not maintainable in view of the judgment of the Hon'ble Supreme Court in the case of **CELIR LLP vs Bafna Motors (Mumbai) Private Limited and others; (2024) 2 SCC 1** and in the case of **PHR Invent Educational Society vs UCO Bank and Others: 2024 SCC OnLine SC 528** and the petitioners should be relegated to avail the remedy prescribed under the statute.

9. It is further argued by the Counsel for the respondents that after the order was passed under Section 14, the respondent no.2 took the physical possession of the property with the assistance of the police officials as per the law. It is further argued that the respondent no.2 is not a 'State' within the meaning of Article 12 of the Constitution of India and therefore, the writ should not lie against him. With regard to the OTS, it is stated that the OTS was not acceptable in the form it was submitted. He thus argues that the writ petition filed is liable to be dismissed. Reliance is also placed upon the judgment of the Hon'ble Supreme Court in the case of **United Bank of India vs Satyawati Tondon: (2010) 8 SCC 110.** The other allegations with regard to force being used are denied. Interestingly, the affidavit filed on behalf of the respondent no.2 has been sworn by one Yogesh Srivastava, who is in private job serving as authorized representative of respondent no.2 and claims that the Board resolution has been passed in favour of the deponent which is on record as Annexure-CA-1.

10. The personal affidavit filed by ADM through the Standing Counsel indicates that the ADM had passed an order on 21.04.2023 under Section 14 of the

SARFAESI Act. In terms of the said order, the Deputy Commissioner of Police, Gautam Budh Nagar had to execute the said order after nominating a suitable police officer to whom a letter was written on 06.03.2025.

11. After passing of the interim order by this Court, a report was sought from the police officer. In terms of the said report, it was stated that the Advocate of the respondent no.2-Company had served a legal notice on petitioner no.1 and after the notice was served, 5-6 officials of the respondent-Bank contacted the Police Station Sector 39 Noida and Sub-Inspector, Sachin Tomar, Chauki In-charge Sector 41; Sub-Inspector Yashwant Singh; Lady Sub-Inspector Priya; Constable Sudhir and Lady Constable Anjali were sent in the presence of the officials of the company along with videographer to the immovable property wherein, the proceedings were conducted. It is further argued that the property consists of three stories house, on which, ground floor was taken in possession but in view of the request made by the occupant, in view of the Board Examination of the child, two days time were granted and the possession of the first floor was not taken. The said Officer, who has sworn the affidavit, also states that he was not present at the site when the possession was taken. It is also stated that in view of the Board Examination, half of the first floor portion was not taken.

12. The report of the Court Commissioner has been filed wherein after a visit, he reported that goods belonging to the petitioners are lying inside the premises when the Court Commissioner visited the premises. At the time of inspection, some goods were taken by the petitioners for their use. It is stated that lock with seal of

the respondent no.2 were found on the locks and some locks were not sealed. It is stated that in terms of the direction issued, the necessary medicines and medical equipments belonging to the father of the petitioner and some medicines lying on the first floor were handed over to the petitioner and some books were handed over to the children of the petitioners.

13. In the instructions submitted by the learned Standing Counsel across the Bar that a letter of the respondent no.2 was received on 19.05.2024 in the office of the Additional Commissioner of Police, Noida and on the said, the officers as noted were sent. It was stated that they were also paid, one day's salary through the respondent no.2. The factum with regard to the possession was also disclosed.

14. In the light of the pleadings and the facts as recorded above, the first issue to be decided is "*whether the writ petition would lie or not as argued by the Counsel for the respondent*"?

15. In view of the law laid down by Hon'ble Supreme Court that generally with regard to the steps taken under the SARFAESI Act by the creditor, a remedy is prescribed under the SARFAESI Act also. The Hon'ble Supreme Court in the case of *CELIR LLP vs Bafna Motors (Supra)* had noticed the observations made by the Hon'ble Supreme Court in the case of *United Bank of India vs Satyawati Tondon (Supra)*, wherein, it was observed that the acts provides for a comprehensive procedure and also for redressal of the grievances by the *quasi judicial* bodies and the court should insist upon availing the said remedy. It was also observed that although under Article 226 of the Constitution of India, the High Court has

wide powers for issuance of writs for enforcement of any of the rights conferred by Part-III or for any other purpose, however, a self restraint should be observed by the High Court while exercising power under Article 226 of the Constitution of India. It was also observed that although the exhaustion of alternative remedy is a rule of discretion, the same should be exercised cautiously. The Hon'ble Supreme Court also noticed the law with regard to the alternative remedy in the cases and the conclusions as under were recorded:

"110. We summarise our final conclusion as under:

110.1. The High Court was not justified in exercising its writ jurisdiction under Article 226 of the Constitution more particularly when the borrowers had already availed the alternative remedy available to them under Section 17 of the SARFAESI Act.

110.2. The confirmation of sale by the Bank under Rule 9(2) of the 2002 Rules invests the successful auction-purchaser with a vested right to obtain a certificate of sale of the immovable property in the form given in Appendix V to the Rules i.e. in accordance with Rule 9(6) of the Security Interest (Enforcement) Rules, 2002.

110.3. In accordance with the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. In other words, the borrower's right of redemption did not stand terminated on the date of the auction-sale of the secured asset itself and remained alive till the transfer was completed in the favour of the auction-purchaser, by registration of the sale certificate and delivery of possession of the secured asset. However, the amended

provisions of Section 13(8) of the SARFAESI Act, make it clear that the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the 2002 Rules. In effect, the right of redemption available to the borrower under the present statutory regime is drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the 2002 Rules and not till the completion of the sale or transfer of the secured asset in favour of the auction-purchaser.

110.4. The Bank after having confirmed the sale under Rule 9(2) of the 2002 Rules could not have withheld the sale certificate under Rule 9(6) of the 2002 Rules, and entered into a private arrangement with a borrower.

110.5. The High Court under Article 226 of the Constitution could not have applied equitable considerations to overreach the outcome contemplated by the statutory auction process prescribed under the SARFAESI Act.

110.6. The two decisions of the Telangana High Court in Concern Readymix and Amme Srisailam do not lay down the correct position of law. In the same way, the decision of the Punjab and Haryana High Court in Pal Alloys & Metal India (P) Ltd. Vs Allahabad Bank: 2021 SCC OnLine P&H 2733 also does not lay down the correct position of law.

110.7. The decision of the Andhra Pradesh High Court in Sri Sai Annadhatha Polymers vs Canara Bank: 2018 SCC OnLine Hyd 178 and the decision of the Telangana High Court in K.V.V. Prasad Rao Gupta vs SBI 2021 SCC OnLine TS 328 lay down the correct position of law while interpreting the amended Section 13(8) of the SARFAESI Act"

16. It is also essential to notice at this stage, the law with regard to the manner of taking possession as prescribed under Section 14 came for consideration before the Hon'ble Supreme Court in the case of ***NKGSB Co-operative Bank Limited vs Subir Chakravarty and others: (2022) 10 SCC 286***, in which, the Hon'ble Supreme Court confronted with the question as to whether the physical possession in terms of the order under Section 14 can be taken by an Advocate Commissioner appointed under Section 14 or not. In view of the language contained in Section 14(1-A) of the SARFAESI Act, the Hon'ble Supreme Court noticing the different views taken by the High Courts held that an advocate has to be regarded as an Officer of the Court and thus subordinate to CMM/ DM for the purpose of Section 14 (1-A) of the SARFAESI Act. The Hon'ble Supreme Court applied the test of '*functional subordination*' to hold that an advocate was subordinate to the CMM/ DM, being an officer of the court. In the light of the said two judgments, it is also essential to note the mandate of Section 14 along with Section 14(1-A) of the SARFAESI Act, which are as under:

“14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.—

(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate

within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him—

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor:

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that—

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets within a period of thirty days from the date of application:

Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,—

*(i) to take possession of such assets and documents relating thereto; and
(ii) to forward such assets and documents to the secured creditor.*

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate or any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of this section shall be called in question in any court or before any authority."

17. On a plain reading of the abovesaid two provisions, it is clear that Section 14 empowers the District Magistrate or the Chief Metropolitan Magistrate to take possession of the property concerned. Section 14(1-A) further empowers the District Magistrate or the Chief Metropolitan Magistrate to "authorized any Officer subordinate to him" to take possession of the said assets and thereafter to forward such assets to the secured creditor. Thus, in terms of the mandate of Section 14 (1-A), it is clear that the District Magistrate or the Chief Metropolitan Magistrate can either take the possession himself or can authorize any officer subordinate to him.

18. In the present case, admittedly, the ADM did not take the possession himself and delegated the Additional Commissioner of Police with a further power to delegate it to a Police Officer for taking the possession. The question that arises "whether the Additional Commissioner of Police is an officer

subordinate to the District Magistrate and whether, the District Magistrate was within his power further allow the delegation of powers by the Additional Commissioner of Police or not". There is no material on record by either of the parties to suggest or argue that the Additional Commissioner of Police, can be termed as an officer subordinate to the Additional District Magistrate, even if the functional subordination test is accepted for interpreting Section 14(1-A) as held by the Hon'ble Supreme Court in the case of *NKGSB Co-operative Bank Limited (Supra)*.

19. Admittedly as per the pleadings, the possession of immovable property (mortgaged) was taken by an Officer who was delegated the authority by the Additional Commissioner of Police and the officer delegated by him are neither functionally subordinate to the Additional District Magistrate nor can be termed as an officer of the court. In addition, the petitioners were also deprived of their possession over movable assets (which were not hypothecated/ mortgaged).

20. As, the possession of immovable and movable assets have been taken contrary to the mandatory provisions, I have no hesitation in holding that the remedy of issuance of a writ court be available as *prima facie*, there was a violation of the rights vested by virtue of Article 300A of the Constitution of India, which have been on the face of it not followed and thus a writ petition would lie. Thus, this conclusion deals with the argument of the Counsel for the respondents that a writ would not lie.

21. Another aspect to be observed in the matter that even the directions of the

ADM in its order dated 21.04.2023 were not complied, as no notice was ever served to the guarantors i.e. the petitioners no.2 and 4. The notice admittedly was served only on the petitioner no.1, thus, the intent of the order dated 21.04.2023 of giving prior notice so that the goods can be removed well in time, was also not observed. It is also to be noticed that the directions given by the DRT in its order dated 12.05.2023 directing the ADM to issue at least 15 days prior notice before taking possession have also not observed in the present case.

22. In view of the infirmities as noticed above, clearly there is a infraction of the rights guaranteed under Article 300A of the Constitution of India, the manner of taking the possession is not in accordance with the mandate of Section 14 (1-A) of the SARFAESI Act and taking of possession of movable assets was without any authority of law, thus, I have no hesitation in holding that the manner in which the possession was taken, was contrary to law.

23. As regards the submission of the Counsel for the respondents that a writ would not lie as it is not a "State" within the meaning of Article 12 of the Constitution of India, the said argument merits rejection for the sole reason that in the present case, the possession of the immovable and the movable assets have been taken by the Government Authorities and thus a writ would lie.

24. Needless to emphasize that the Hon'ble Supreme Court in the case of *ICICI Bank Ltd. Vs Prakash Kaur (Supra)* has emphasized that any violation of the supremacy of rule of law has to be deprecated, the procedure prescribed under law should be scrupulously followed which

has not been done in the present case. Thus, the present writ petition deserves to be allowed and is accordingly **allowed**.

25. However, the respondent no.2 would be at liberty to take possession in accordance with law strictly in terms of the mandate of Section 14 (1-A) of the SARFAESI Act. The ADM shall ensure that the possession should be taken strictly in terms of the mandate of Section 14 (1-A) of the SARFAESI Act.

(2025) 3 ILRA 66
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 27.03.2025

BEFORE

THE HON'BLE SAURABH LAVANIA, J.

Matters Under Article 227 No. 1667 of 2025

Kanti Devi **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Counsel for the Petitioner:

Gyanendra Pathak, Abhishek Srivastav,
 Adarsh Kumar Tripathi

Counsel for the Respondents:

C.S.C.

Civil Law-The Constitution of India, 1950-Article 227 - The Uttar Pradesh Land Revenue Code, 2006-Sections 80 & 82-The impugned order in utter mechanic manner as also without application of mind and without taking note of the specific provisions related to the issue involved before it--- The application preferred under Section 80 of the Code can be allowed or rejected after taking note of the conditions indicated in the statutory provisions including the conditions indicated under Sub-Section (4), (7) and (8) of Section 80 of Code and the permission so granted can be cancelled only in terms of Section 82 of the Code and all

these aspects ought to have been taken note of by the opposite party no.2 who failed to take note of the same-Impugned order set aside/quashed. **(Para 6-8)**

Petition allowed. (E-15)

(Delivered by Hon'ble Saurabh Lavania, J.)

1. Heard learned counsel for the petitioner, Shri Hemant Kumar Pandey, learned State Counsel and perused the material available on record.

2. By means of the present petition, the petitioner has assailed the order dated 23.07.2024 passed by Sub-Divisional Magistrate- Bahraich to the extent of condition(s) imposed therein while exercising power under Section 80 of U.P. Land Revenue Code, 2006 (in short 'Code') in the case registered as Computerized Case No.T802024028697, instituted by the petitioner- Kanti Devi.

The operative portion of the order dated 23.07.2024 reads as under.

"अतः तहसीलदार सदर बहराइच की जांच आख्या दिनांकित 09-07-2024 तथा पत्रावलित अभिलेखों के परीक्षणोपरान्त ग्राम अमीनपुरनगरौर परगना तहसील व जिला बहराइच खाता संख्या 146 गाटा संख्या 145 रक्बा 0.532हे० में से 0.266हे० भूमि में आवेदिका कान्ती देवी पुत्री जुग्गी लाल पत्नी विद्याराम निवासी खुटेहना हाल पता नगरौर परगना तहसील व जनपद बहराइच का नाम संयुक्त रूप से सक्रमणीय भूमिधर दर्ज है, की भूमि को उ० प्र० राजस्व संहिता 2006 की धारा 80(2) अस्सी (दो) के अन्तर्गत गैर-कृषिक घोषित किया जाता है। यह आदेश किसी प्रकार के मुआवजा धनराशि निर्धारण / अन्तरण के लिए प्रभावी नहीं होगा। तथ्यों को छिपाकर यदि आदेश प्राप्त किया जाता है तो स्वतः शून्य होगा। आदेश की एक प्रति तहसीलदार सदर बहराइच को आवश्यक कार्यवाही हेतु भेजी जाये। बाद आवश्यक कार्यवाही पत्रावली संग्रहीत हो।"

3. The underline portion of operative portion of order dated

23.07.2024, quoted above, is in issue before this Court as also was the issue before the opposite party no.2 -Additional Commissioner, (Administration), Devi Patan Division Gonda, who passed the impugned order dated 05.03.2025 in the case instituted under Section 210 of Code 2006 registered as Revision/Case No.1305 of 2024; Computerized Case No.C202408000001305 (Kanti Devi Vs. State of U.P.). Relevant portion of the same is extracted hereinunder :-

"निगरानीकर्ता के विद्वान अधिवक्ता द्वारा अपने मौखिक तर्क में, निगरानी में कहे गये कथनों को आधार बनाते हुए निगरानी को स्वीकार किये जाने तथा अवर न्यायालय द्वारा पारित प्रश्नगत आदेश दिनांक 23.07.2024 में अंश "यह आदेश किसी प्रकार की मुआवजा धनराशि/अन्तरण के लिए प्रभावी नहीं होगा। तथ्यों को छिपाकर यदि आदेश प्राप्त किया जाता है तो स्वतः शून्य होगा।" को निरस्त करते हुए, शेष आदेश को यथावत रखे जाने पर बल दिया गया।

दूसरी ओर मण्डलीय शासकीय अधिवक्ता (राजस्व) द्वारा अपने मौखिक / लिखित बहस में यह कहा गया निगरानीकर्ता के आवेदन पर, जाँच प्रक्रिया में आख्या दिनांकित 09.07.2024 तहसीलदार सदर बहराइच में धारा-80 (2) के तहत अकृषिक घोषित करने हेतु आख्या प्रेषित होकर उप जिलाधिकारी सदर बहराइच द्वारा आलोच्य आदेश दिनांक 23.07.2024 पारित है। अवर न्यायालय द्वारा उ०प्र०राजस्व संहिता 2006 के प्राविधान धारा-80(2) के तहत आलोच्य आदेश पारित किया है, जो विधिसंगत व न्यायसंगत है। अंत में शासकीय अधिवक्ता द्वारा निगरानी को बलहीन कहते हुए निरस्त किये जाने पर बल दिया गया।

उभयपक्ष के विद्वान अधिवक्तागण के तर्कों को सुनने तथा निगरानी न्यायालय व अवर न्यायालय की पत्रावली पर उपलब्ध अभिलेखों के अवलोकन से स्पष्ट है कि अपर न्यायालय द्वारा आवेदक द्वारा प्रस्तुत किये गये प्रार्थनापत्र पर, तहसीलदार बहराइच द्वारा प्रस्तुत की गयी जाँच आख्या दिनांकित 09.07.2024 व पत्रावली पर उपलब्ध अभिलेखों के परिक्षणोपरान्त प्रश्नगत आदेश दिनांक 23.07.2024 पारित किया गया है। प्रश्नगत आदेश निगरानीकर्ता के पक्ष में है। अवर न्यायालय द्वारा प्रश्नगत आदेश पारित करने में किसी क्षेत्राधिकार का उल्लंघन नहीं किया है। निगरानीकर्ता द्वारा प्रस्तुत की गयी निगरानी बलहीन है, जो निरस्त किये जाने योग्य है।

अतः उपरोक्त विवेचना के आधार पर प्रस्तुत निगरानी बलहीन होने के कारण निरस्त की जाती है। निगरानी में यदि कोई स्थगनादेश पारित है, तो उसे वापस लिया जाता है। आदेश की प्रति के साथ अवर न्यायालय की पत्रावली वापस भेजी जाये। इस न्यायालय की पत्रावली बाद आवश्यक कार्यवाही दाखिल दफ्तर की जाये।

दिनांक:-05.03.2025

(कमलेश चन्द्र),

अपर आयुक्त (प्रशासन),

देवीपाटन मण्डल, गोण्डा।

उपरोक्त आदेश आज मेरे द्वारा हस्ताक्षरित व दिनांकित करके, खुले न्यायालय में उद्घोषित किया गया।

दिनांक:-05.03.2025

(कमलेश चन्द्र),

अपर आयुक्त (प्रशासन),

देवीपाटन मण्डल, गोण्डा।"

4. Considered the submissions advanced by learned counsel for the parties, based upon the relevant provisions of the Code and perused the impugned order.

5. In order to decide the controversy/issue involved in the present petition this Court finds it appropriate to take note of hindi and english version of concerned Section(s) of the Code, and U.P. Revenue Code Rules, 2016 (in short 'Rules') which are as under.

Concerned Section(s)	
Section 79. Right of Bhumidhars to exclusive possession (1) A bhumidhar with transferable rights shall, subject to the provision of this Code, have the right to exclusive possession of all land of which he is such a bhumidhar and to use it for any purpose whatsoever. (2) a bhumidhar with non transferable rights shall, subject to the provisions of this Code, have the right to exclusive possession of all land of which he is such a	धारा 79. अनन्य कब्जा के लिये भूमिधरों को अधिकार (1) संक्रमणीय अधिकार वाले भूमिधर को इस संहिता के उपबन्धों के अधीन रहते हुए उस समस्त भूमि पर जिसका वह ऐसा भूमिधर है, अनन्य कब्जा का और किसी भी प्रयोजन के लिये उसका उपयोग करने का अधिकार होगा। (2) असंक्रमणीय अधिकार वाले भूमिधर को इस संहिता के उपबन्धों के अधीन रहते हुए उस समस्त भूमि पर जिसका वह ऐसा भूमिधर है, अनन्य कब्जा का और कृषि से सम्बन्धित किसी प्रयोजन के लिये ऐसी भूमि का उपयोग करने का अधिकार होगा। धारा 80. औद्योगिक, वाणिज्यिक या आवासीय प्रयोजनों के लिये जोत का

bhumidhar, and to use such land for any purpose connected with agriculture.

Section 80. Use of holding for Industrial, Commercial or Residential purposes.-

(1) Where a bhumidhar with transferable rights uses his holding or part thereof, for industrial, commercial or residential purposes, the Sub-Divisional Officer may, suo motu or on an application moved by such bhumidhar, after making such enquiry as may be prescribed, either make a declaration that the land is being used for the purpose not connected with agriculture or reject the application. The Sub-Divisional Officer shall take a decision on the application within forty five working days from the date of receipt of the application. In case the application is rejected, the Sub-Divisional Officer shall state the reasons in writing for such rejection and inform the application of his decision.

[Provided that if the application for declaration is accompanied with the prescribed fee and in case of joint holding, no objection of co-tenure holders is attached in case of co-tenure holder and if the declaration is not made by the Sub-Divisional Officer with forty-five days as aforesaid, then the declaration shall be deemed to have been made. Tehsildar will make a record of it in the revenue records, with the comment "subject to the order of the Sub-Divisional Officer". If any affected party wants to file an objection in relation to the said declaration, it may file an objection in the competent court.]

(2) Where a bhumidhar

उपयोग

(1) जहाँ संक्रमणीय अधिकारों वाला कोई भूमिधर, अपनी जोत या उसके आंशिक भाग का उपयोग औद्योगिक, वाणिज्यिक या आवासीय प्रयोजनों के लिए करता है, वहाँ उपजिलाधिकारी स्वप्रेरणा से या ऐसे भूमिधर द्वारा आवेदन किये जाने पर यथा विहित जांच करने के पश्चात् या तो कोई घोषणा कर सकता है कि उक्त भूमि का प्रयोग कृषि से भिन्न प्रयोजन के लिए किया जा रहा है या वह आवेदन को अस्वीकृत कर सकता है। उपजिलाधिकारी आवेदन प्राप्त किये जाने के दिनांक से पैंतालीस कार्य दिवसों के भीतर आवेदन पर विनिश्चय करेगा। यदि आवेदन अस्वीकृत कर दिया जाता है तो उपजिलाधिकारी ऐसी अस्वीकृति के लिखित कारणों को उल्लिखित करेगा और आवेदक को अपने विनिश्चय की सूचना देगा; परन्तु यह कि यदि घोषणा करने के आवेदन के साथ विहित शुल्क संलग्न हो तथा संयुक्त जोत होने के मामले में सह-भू-धृति धारकों की अनापत्ति सह-भू-धृति धारक होने की स्थिति में संलग्न हो और यदि उपजिलाधिकारी द्वारा यथापूर्वोक्त पैंतालीस दिन के भीतर घोषणा नहीं की जाती है तो घोषणा की गयी समझी जायेगी और तहसीलदार "उपजिलाधिकारी के आदेश अध्वधीन" टिप्पणी सहित राजस्व अभिलेखों में अभिलिखित करेगा।

यदि कोई प्रभावित पक्षकार उक्त घोषणा के सम्बन्ध में कोई आपत्ति दाखिल करना चाहे, तो वह सक्षम न्यायालय में आपत्ति दाखिल कर सकता है।]

(2) जहाँ संक्रमणीय अधिकारों वाला कोई भूमिधर अपनी जोत या उसके आंशिक भाग का भविष्य में औद्योगिक, वाणिज्यिक या आवासीय प्रयोजनों के लिए उपयोग करने का प्रस्ताव करता है, वहाँ ऐसे भूमिधर द्वारा आवेदन किये जाने पर उपजिलाधिकारी, यथाविहित रूप में जांच करने के पश्चात् आवेदन प्राप्त किये जाने के दिनांक से पैंतालीस कार्य दिवस के भीतर या तो यह घोषणा कर सकता है कि उक्त भूमि का प्रयोग कृषि से भिन्न प्रयोजन के लिए किया जा सकता है या वह आवेदन अस्वीकृत कर सकता है। यदि आवेदन अस्वीकृत किया जाता है तो उपजिलाधिकारी को ऐसी अस्वीकृति के लिखित कारणों का उल्लेख करना होगा और आवेदक को अपने विनिश्चय की सूचना देनी होगी;

परन्तु यह और कि यदि भूमिधर, इस उपधारा के अधीन घोषणा के दिनांक से पांच वर्ष की अवधि के भीतर प्रस्तावित गैर कृषि सम्बन्धी गतिविधि प्रारम्भ करने में विफल रहता है तो उपधारा (2) के अधीन जोत या उसके आंशिक भाग की घोषणा व्यपगत हो जायेगी ;

परन्तु यह और कि इस उपधारा के अधीन घोषणा, भू-उपयोग परिवर्तन की कोटि में नहीं

with transferable rights proposes to use in future his holding or part thereof, for industrial, commercial or residential purposes, the Sub-Divisional Officer may on an application moved by such bhumidhar, after making such enquiry as may be prescribed, either make a declaration that the land may be used for the purpose not connected with agriculture or reject the application, within forty five working days from the date of receipt of the application. In case the application is rejected, the Sub-Divisional Officer shall state the reasons in writing of such rejection and inform the applicant of his decision:

Provided further that if the bhumidhar fails to start the proposed non-agricultural activity within a period of five years from the date of declaration under this sub-section, then the declaration under sub-section (2) for the holding or part thereof shall lapse: Provided also that a declaration under this sub-section shall not amount to change of land use and the land shall continue to be treated as agricultural land only. However, the bhumidhar shall be entitled to obtain loan and other necessary permissions, clearances etc. for the activity or project, proposed on the holding or part thereof, for which declaration under this sub-section has been obtained.

(3) A bhumidhar possessing declaration under sub-section (2) for his holding or part thereof, may apply to Sub-Divisional Officer for converting declaration under sub-section (2) to a declaration under sub-section (1), after completion of construction

होगी और उक्त भूमि निरन्तर कृषि भूमि के रूप में ही समझी जायेगी। तथापि, भूमिधर, ऐसी जोत या उसके आंशिक भाग, जिसके लिए इस उपधारा के अधीन घोषणा प्राप्त की गयी हो, पर प्रस्तावित गतिविधि अथवा परियोजना के लिए ऋण और अन्य आवश्यक अनुज्ञाप, समाशोधन आदि प्राप्त करने का हकदार होगा;

(3) अपनी जोत या उसके आंशिक भाग के लिए उपधारा (2) के अधीन घोषणा धारण करने वाला कोई भूमिधर, उपधारा (2) के अधीन घोषणा पांच वर्ष की अवधि के भीतर निर्माण क्रिया-कलाप पूर्ण कर लेने या प्रस्तावित गैर कृषि क्रिया-कलाप प्रारम्भ करने के पश्चात् उपधारा (2) की घोषणा को उपधारा (1) की घोषणा से आच्छादित करने के लिए उपजिलाधिकारी के समक्ष आवेदन कर सकता है। ऐसा कोई आवेदन प्राप्त किये जाने पर, उपजिलाधिकारी यथा आवश्यक जाँच करने के पश्चात् आवेदन प्राप्त किये जाने के दिनांक से 15 दिन की अवधि के भीतर आवेदन स्वीकृत करेगा या अस्वीकृत करेगा। अस्वीकृति की स्थिति में उसे ऐसी अस्वीकृति के कारणों को लिखित रूप में अभिलिखित करना होगा;

परन्तु यह कि उपधारा (2) के अधीन घोषणा का, उपधारा (1) के अधीन घोषणा में संपरिवर्तन के लिए भूमिधर पूर्व में उपधारा (2) के अधीन घोषणा के लिए अपने द्वारा पहले ही भुगतान की गई धनराशि का समायोजन करने के पश्चात् प्रचलित सर्किल दर पर आगणित संदेय शुल्क की मात्र अवशेष धनराशि का भुगतान करने के लिए उत्तरदायी होगा;

(4) उपधारा (1) या (2) के अधीन घोषणा के लिए भूमिधरी भूमि में अविभाजित हित रखने वाले किसी सह-भूमिधर द्वारा किया गया कोई आवेदन तब तक पोषणीय नहीं होगा जब तक कि ऐसी भूमिधरी भूमि के समस्त सह-भूमिधरों द्वारा आवेदन नहीं किया जाता है। यदि कोई एक सह-भूमिधर, संयुक्त हित की भूमि में से अपने अंश की घोषणा कराना चाहता है तो ऐसा आवेदन, भूमि में सह-भूमिधरों के अपने-अपने अंशों का विभाजन विधि के उपबन्धों के अनुसार किये जाने के पश्चात् ही ग्रहण किया जायेगा;

(5) उपधारा (1) या उपधारा (2) के अधीन घोषणा के लिए आवेदन में ऐसे विवरण अंतर्विष्ट होंगे और उक्त आवेदन ऐसी रीति से किया जायेगा जैसा कि विहित किया जाए;

(6) जहाँ उपधारा (1) या (2) के अधीन आवेदन जोत के किसी आंशिक भाग के सम्बन्ध में किया जाता है, वहाँ उपजिलाधिकारी विहित रीति से ऐसे आंशिक भाग का सीमांकन ऐसी घोषणा के प्रयोजन के

activity or start of the proposed non-agricultural activity, within a period of five years from declaration under sub-section (2). On receipt of such an application, the Sub-Divisional Officer, after making such enquiry as necessary, shall approve or reject the application within a period of 15 days from the receipt of the application. In case of rejection, he shall record in writing the reasons for such rejection: Provided that for conversion of declaration under sub-section (2) to a declaration under sub-section (1), the bhumidhar shall be liable to pay only the balance amount of fee payable, calculated at prevailing circle rate, after adjusting the amount already paid by him for declaration under sub-section (2) earlier.

(4) No application for a declaration under sub-section (1) or (2), moved by any co-bhumidhar having undivided interest in bhumidhari land shall be maintainable, unless application is moved by all the co-bhumidhars of such bhumidhari land. In case only one of the co-bhumidhar wants to get a declaration for his share in the land with joint interest, then such an application shall be entertained only after the respective shares of the co-bhumidhars in the land have been divided in accordance with the provisions of law.

(5) The application for declaration under sub-section (1) or sub-section (2) shall contain such particulars and shall be made in such manner as may be prescribed.

(6) Where the application under sub-section (1) or sub-section (2) is made in respect of a part of the

लिए कर सकता है;

(7) इस धारा के अधीन कोई घोषणा, उपजिलाधिकारी द्वारा नहीं की जा सकती है, यदि उसका यह समाधान हो जाये कि भूमि या उसके आंशिक भाग का उपयोग, ऐसे प्रयोजन के लिए किया जा रहा है या किया जाना प्रस्तावित है, जिसके कारण लोक उपताप होना या लोक व्यवस्था, लोक स्वास्थ्य, सुरक्षा या सुविधा पर प्रतिकूल प्रभाव पड़ना सम्भावित हो या जो महायोजना में प्रस्तावित उपयोगों के विरुद्ध हो;

(8) यदि भूमि या उसका आंशिक भाग, जिसके लिए इस धारा के अधीन घोषणा की अपेक्षा की जा रही हो, किसी नगरीय या औद्योगिक विकास प्राधिकरण के अधीन अधिसूचित क्षेत्र के अन्तर्गत आता है तो सम्बन्धित विकास प्राधिकरण की पूर्व अनुज्ञा आज्ञापक होगी;

(9) राज्य सरकार इस धारा के अधीन घोषणा के लिए शुल्क-मान नियत कर सकती है और भिन्न-भिन्न शुल्क भिन्न-भिन्न प्रयोजनों के लिए नियत किये जा सकते हैं; परन्तु यह कि यदि आवेदक जोत या उसके आंशिक भाग का उपयोग अपने निजी आवासीय प्रयोजन के लिए करता है तो इस धारा के अधीन घोषणा के लिए कोई शुल्क प्रभारित नहीं किया जायेगा।

81 घोषणा का परिणाम - जहाँ 1 [धारा 80 की उपधारा (1)] के अधीन घोषणा की जाय वहाँ ऐसे जोत या उससे सम्बन्धित भाग के सम्बन्ध में निम्नलिखित परिणाम होंगे -

(क) भूमि के अन्तर्गत के सम्बन्ध में इस अध्याय के द्वारा या अधीन आरोपित सभी निबन्धन संक्रमणीय अधिकारों वाले भूमिधर के लिए लागू नहीं रह जायेंगे;

(ख) अध्याय ग्यारह में किसी बात के होते हुए भी उक्त घोषणा के दिनांक के अनुगामी कृषि वर्ष के प्रारम्भ के दिनांक से ऐसी भूमि भू-राजस्व के भुगतान से मुक्त होगी;

(ग) भूमिधर, न्यागमन के विषय में उस वैयक्तिक विधि से नियन्त्रित होगा जिसके वह अधीन है।

82. घोषणा का रद्द किया जाना

(1) जब कभी किसी ऐसी जोत या उसके भाग, जिसके सम्बन्ध में पारा 80 के अधीन घोषणा की गयी है, 2 कृषि से सम्बन्धित किसी प्रयोजन के लिए उपयोग किया जाता है तब उप जिलाधिकारी व प्रेरणा से या इस निमित्त आवेदन दिये जाने पर ऐसी जाँच करने के पश्चात्, जैसी विहित की जाय, ऐसी घोषणा की रद्द कर सकता है।

(2) जहाँ उपधारा (1) के अधीन कोई घोषणा रद्द की जाय वहाँ जोत या उससे सम्बन्धित भाग के सम्बन्ध में निम्नलिखित परिणाम सुनिश्चित किये जायेंगे अर्थात्-

(क) जोत या उसका भाग अन्तर्गत और

holding, the Sub-Divisional Officer may, in the manner prescribed, demarcate such part for purposes of such declaration.

(7) No declaration under this section shall be made by the Sub-Divisional Officer, if he is satisfied that the land or part thereof is being used or is proposed to be used for a purpose which is likely to cause a public nuisance or to affect adversely public order, public health, safety or convenience or which is against the uses proposed in the master plan.

(8) In case the land or part thereof for which a declaration under this section is being sought falls within the area notified under any Urban or Industrial Development Authority, then prior permission of the concerned Development Authority shall be mandatory.

(9) The State Government may fix the scale of fees for declaration under this section and different fees may be fixed for different purposes:

Provided that if the applicant uses the holding or part thereof, for his own residential purpose, no fee shall be charged for the declaration under this section.]

81. Consequences of declaration- Where a declaration has been made under [sub-section (1) of Section 80], the following consequences shall, in respect of such holding or part to which it relates ensue

(a) all restrictions imposed by or under this Chapter in respect of transfer of land shall cease to apply to the Bhumidhar with transferable rights

(b) notwithstanding anything contained in Chapter XI, the land shall,

न्यागमन के विषय में इस अध्याय के द्वारा या अधीन आरोपित सभी निबन्धनों के अधीन हो जायेगा,

(ख) जोत या उसके भाग का उस कृषि वर्ष के, जिसमें घोषणा को रद्द करने का आदेश दिया जाय, प्रारम्भ के दिनांक से भू-राजस्व का भुगतान किया जायेगा:

परन्तु जब तक इस संहिता के उपबन्धों के अनुसार ऐसी जोत या भाग का कोई भूराजस्व पुनर्निर्धारित न किया जाय तब तक धारा 80 के अधीन घोषणा किये जाने के पूर्व ऐसी जोत या उसके भाग के सम्बन्ध में देय या देय समझे गये भू-राजस्व की ऐसी जोत या भाग के सम्बन्ध में देय भू-राजस्व समझा जायेगा;

(ग) जहाँ भूमि किसी संविदा या पट्टा के आधार पर उसके भूमिधर से भिन्न किसी व्यक्ति के कब्जे में हो और ऐसी संविदा या पट्टा के निबन्धन इस संहिता के उपबन्धों से असंगत हो, वहाँ ऐसी संविदा या पट्टा, ऐसी असंगति की सीमा तक शून्य हो जायेगा और कब्जाधारी व्यक्ति को भूमिधर के बाद पर बेदखल किया जा सकेगा :

परन्तु घोषणा के रद्द किये जाने के दिनांक को विद्यमान भूमि-बन्धक को ऐसी भूमि पर देय एवं प्रतिभूति धनराशि के लिए दृष्टि बन्धक द्वारा प्रतिस्थापित समझा जायेगा जिसकी व्याज की दर ऐसी होगी जैसी विहित की जाय।

83. घोषणा या रद्दकरण को अभिलिखित किया जाना-

धारा 80 के अधीन प्रत्येक घोषणा को या धारा 82 के अधीन रद्दकरण को अधिकार अभिलेखों में यथाविहित रीति से अभिलिखित किया जायेगा और धारा 80 के अधीन घोषणा के बाद भी अन्तरण या उत्तराधिकार के आधार पर विहित रीति से नामान्तरण आदेश पारित किया जायेगा।]

with effect from the commencement of the agricultural year following the date of declaration, be exempted from payment of land revenue (c) the Bhumidhar shall, in the matter of devolution be governed by the personal law to which he is subject. 82. Cancellation of declaration. (1) Whenever any holding or part thereof in respect of which a declaration has been made under Section 80 is used for [any purpose connected with agriculture,] [Substituted 'any purpose other than a purpose connected with agriculture,' by U.P. Act No. 4 of 2016, dated 11.3.2016.] the Sub-Divisional Officer may, of his own motion or on an application made in that behalf and after making such inquiry as may be prescribed, cancel such declaration. (2)Where a declaration is cancelled under sub-section (1) the following consequences shall in respect of the holding or part to which it relates ensue namely : - (a) the holding or part shall become subject to all restrictions imposed by or under this Chapter in matters of transfer and devolution. (b) the holding or part shall become liable to payment of land revenue with effect from the commencement of the agricultural year in which the order for cancellation of the declaration is made : Provided that until any land revenue is reassessed on such holding or part in accordance with the provisions of this Code, the land revenue payable or deemed to be payable in respect of such holding or part before the grant of declaration under Section	80 shall be deemed to be the land revenue payable in respect of such holding or part, (c) where the land is in possession of any person other than the bhumidhar thereof on the basis of a contract or lease, and the terms of such contract or lease are inconsistent with the provisions of this Code, such contract or lease shall to the extent of the inconsistency, become void and the person in possession shall be liable to ejectment on the suit of the bhumidhar : Provided that a mortgage with possession existing on the date of the cancellation of the declaration shall, to the extent of the amount due and secured on such land, be deemed to be substituted by a simple mortgage carrying such rates of interest as may be prescribed; 83. Recording of declaration or cancellation. Every declaration under Section 80 or cancellation under Section 82 shall be recorded in Record of Rights in the manner as may be prescribed and, even after declaration under Section 80, the mutation order on the basis of transfer or succession shall be passed in the manner prescribed.

Concerned Rule(s)	
Rule 85. Application for declaration [Section 80]- (1) A bhumidhar with transferable rights using his holding or any part thereof for a purpose not connected with agriculture may apply to the Sub-Divisional Officer for a declaration under Section 80(1) in R.C. Form-25. (2) The applicant shall pay the required amount of	85. उद्धोषणा के लिए आवेदन [धारा 80] (1) संक्रमणीय अधिकार वाला भूमिधर जो अपने जोत या उसके किसी भाग के उपयोग कृषि से जुड़े हुये कार्यों में नहीं कर रहा है तो वह सहिता की धारा 80 (1) के अन्तर्गत आर० सी० प्रपत्र 25 में उपजिलाधिकारी को उसकी उद्धोषणा हेतु आवेदन कर सकता है। (2) आवेदक उद्धोषणा शुल्क की आवश्यक रकम जमा करेगा जो कि सम्बन्धित जिले के कलेक्टर द्वारा कृषि प्रयोजन के लिये निर्धारित सर्किल रेट के अनुसार आगणित

declaration fee which shall be one percent of the amount calculated as per the circle rate for agricultural purpose fixed by Collector of the district concerned or as per the rate fixed by State Government from time to time.

(3) On receipt of the application under sub-rule (1), the Sub-Divisional Officer may cause an inquiry to be made through a revenue officer not below the rank of a Revenue Inspector for the purpose of satisfying himself that the holding or part thereof is really being used for a non-agricultural purpose. The concerned officer shall, after spot verification submit his report to the Sub-Divisional Officer indicating the purpose for which the holding or part thereof is being actually used.

Rule 86. Notice to the bhumidhar [Section 80].- Where the proceedings under Section 80(1) has been initiated by the Sub-Divisional Officer on his own motion, he shall issue notice to the bhumidhar concerned, and the inquiry referred to in rule 85 (3) shall be held after the reply, if any, of the bhumidhar is submitted.

Rule 87. Grant of declaration [Section 80].- If after scrutinizing the report of the revenue officer, the Sub-Divisional Officer is satisfied

(a) that the entire holding is being used for a purpose not connected with agriculture; and

(b) that the conditions specified in Section 80(4) are complied with, he may make a declaration under Section 80(1), in respect of such holding.

Rule 88. Apportionment of Land Revenue [Section 80].-(1) If only a part of the holding is being used by a

रकम का एक प्रतिशत अथवा समय-समय पर राज्य सरकार द्वारा नियत दर के अनुसार होगा।

(3) उपनियम (1) के अन्तर्गत यदि उपजिलाधिकारी को आवेदन प्राप्त होता है तो वह राजस्व अधिकारी जो राजस्व निरीक्षक के पद से नीचे का नहीं होगा, से अपना यह समाधान करने के लिये जांच करायेगा कि उस सम्पूर्ण जोत अथवा उसके किसी भाग पर कृषि से जुड़ा हुआ कोई कार्य नहीं हो रहा है। सम्बन्धित राजस्व अधिकारी मौका मुआईना कर यह आख्या उपजिलाधिकारी को प्रस्तुत करेगा कि जोत अथवा उसका भाग वास्तव में किस प्रयोजन के लिये प्रयोग में लाया जा रहा है।

86. भूमिधर को सूचना [धारा 80] - जब धारा 80 (1) के अन्तर्गत कार्यवाही उपजिलाधिकारी द्वारा स्वप्रेरणा से प्रारम्भ की गयी हो वहाँ, वह सम्बन्धित भूमिधर को नोटिस देगा और भूमिधर द्वारा उस नोटिस के जवाब, यदि कोई हो, दिये जाने के पश्चात् नियम 85 (3) के अन्तर्गत जांच कर आख्या प्रस्तुत की जायेगी।

87. घोषणा का किया जाना [धारा 80] - यदि राजस्व अधिकारी की आख्या की परीक्षण करने के बाद उपजिलाधिकारी का यह समाधान हो जाता है कि :

(क) सम्पूर्ण जोत पर कृषि से सम्बन्धित कार्य नहीं हो रहा है; और

(ख) धारा 80 (4) में उल्लिखित शर्तें पूरी हो रही हैं तब वह धारा 80 (1) के अन्तर्गत ऐसी जोत के सम्बन्ध में उद्घोषणा करेगा।

88. भू-राजस्व का विभाजन [धारा 80] - (1) यदि संक्रमणीय अधिकार वाले भूमिधर द्वारा अपनी जोत के केवल किसी भाग का प्रयोग कृषि से भिन्न प्रयोजन के लिये किया जा रहा है और उपजिलाधिकारी का यह समाधान हो जाता है कि धारा 80 (1) के द्वितीय परन्तुक के उपबन्धों का उल्लंघन नहीं है, तो वह केवल ऐसे भाग के सम्बन्ध में उद्घोषणा कर सकेगा, बशर्ते कि नियम 22 के उपनियम (2) के अनुसार विभाजन का खर्च ऐसी घोषणा के पहले भूमिधर द्वारा जमा कर दी गयी हो।

(2) जहाँ उपजिलाधिकारी जोत के किसी भाग के सम्बन्ध में घोषणा के लिये स्वप्रेरणा से कार्यवाही करता है वहाँ ऐसे सीमांकन का खर्च उपजिलाधिकारी द्वारा भू-राजस्व के बकाये की भाँति वसूला जायेगा।

(3) उपनियम (1) अथवा उपनियम (2) के अन्तर्गत घोषणा के प्रत्येक प्रकरण में विद्यमान सर्वे मानचित्र के आधार पर सीमांकन किया जायेगा और उपजिलाधिकारी ऐसे भूमिधर द्वारा देय भू-राजस्व का विभाजन करेगा।

(4) उपजिलाधिकारी आवेदन के दर्ज किये

bhumidhar with transferable rights for a non- agricultural purpose, and the Sub-Divisional Officer is satisfied that the provisions of the second proviso to Section 80(1) have not been contravened, he may make a declaration only with respect of such part, provided that the cost of demarcation as per sub-rule (2) of the rule 22 is deposited by the bhumidhar before such declaration.

(2) Where the proceeding for declaration in respect of a part of the holding is initiated by the Sub-Divisional Officer suo motu, the cost of such demarcation shall be recovered by the Sub-Divisional Officer as arrears of land revenue.

(3) In every case of declaration under sub-rule (1) or sub-rule (2), the demarcation shall be made on the basis of the existing survey map, and the Sub-Divisional Officer shall apportion the land revenue payable by such bhumidhar.

(4) The Sub-Divisional Officer shall make an endeavour to conclude the proceeding for declaration under sub-section (1) of Section 80 within the period of 45 days from the date of registration of the application and if the proceeding is not concluded within such period the reasons for the same shall be recorded.

Rule 89. Cancellation of declaration (Section 82)-

Where any holding or any part thereof has been the subject matter of declaration under Section 80 of the Code or Section 143 of the U. P. Zamindari Abolition and Land Reforms Act. 1950, and such holding or part is again used for a purpose connected with agriculture, necessary application for cancellation of such

जाने के दिनांक से पैतालीस दिनों की अवधि के अन्दर धारा 80 की उपधारा (1) के अन्तर्गत उद्घोषणा की कार्यवाही को पूर्ण करने का प्रयास करेगा और यदि कार्यवाही ऐसी अवधि के अन्दर पूर्ण नहीं की जाती है तो उसका कारण अभिलिखित किया जायेगा।

89. उद्घोषणा का निरस्तीकरण [धारा 82] - जहाँ कि किसी जोत या उसके किसी भाग को उद्घोषणा, धारा ३० तथा पुराने ३० प्र० जमींदारी विन्यास एवं भूमि व्यवस्था अधिनियम, 1950 की धारा 143 को गई है, उस जोत अथवा उसके किसी भाग पर पुनः कृषि से सम्बन्धित कार्य शुरू कर दिया जाता है तो, धारा 82 के अन्तर्गत उद्घोषणा को रद्द किये जाने हेतु आवश्यक आवेदन आ० सी० प्रपत्र 26 में प्रस्तुत किया जा सकता है।

90. निरस्तीकरण के पूर्व जांच [धारा 82] - नियम 89 के अन्तर्गत आवेदन प्राप्त होने पर, उपजिलाधिकारी धारा 82 के अनुसार उद्घोषणा निरस्त करने के पहले जांच करेगा और नियम 85 लगायत 88 में दो गयी प्रक्रिया का पालन करेगा।

91. उद्घोषणा एवं निरस्तीकरण का ढंग [धारा 83]- (1) धारा 80 के अन्तर्गत की गयी एवं धारा 82 के अन्तर्गत रद्द की गयी प्रत्येक घोषणा उप खण्ड अधिकारी द्वारा सम्यक रूप से हस्ताक्षरित को जाएगी और उस पर उनके न्यायालय को मुहर लगी होगी तथा निम्न विशिष्टियों से युक्त होगी:

(क) धारा जिसके अन्तर्गत की गयी हो।

(ख) भू-खण्ड की संख्या तथा क्षेत्रफल जिसके सम्बन्ध में किया गया हो।

(ग) प्रश्नगत भू-खण्डों का भू-राजस्व, यदि कोई हो, तो।

(घ) ग्राम, तहसील एवं जिले का नाम जिसमें भू-खण्ड स्थित है।

(ङ) भूमिधर का नाम, पितृनाम तथा पता जिसके पक्ष में घोषणा हुई है।

(च) घोषणा का दिनांक।

(2) रजिस्ट्रेशन एक्ट, 1908 के अन्तर्गत ऐसी घोषणा को पंजीकृत करना जरूरी नहीं होगा, परन्तु उसे अधिकार अभिलेख में अभिलिखित करना होगा।

92. ब्याज दर [धारा 82] - जब कच्चे के साथ बंधक को धारा 82 (2) के खण्ड (ग) के परन्तुक के अन्तर्गत सामान्य बंधक से प्रतिस्थापित किया जाता है तो ऐसा सामान्य बंधक चार प्रतिशत प्रति वर्ष की दर से ब्याज वहन करेगा।

93. उद्घोषणा अथवा निरस्तीकरण का दर्ज किया जाना [धारा 83] - धारा 80 के अन्तर्गत प्रत्येक घोषणा अथवा धारा 82 के अन्तर्गत निरस्तीकरण को अधिकार अभिलेख में दर्ज किया जायेगा और धारा 80 के अन्तर्गत घोषणा के बाद भी अन्तरण

declaration under Section 82 may be submitted to the Sub-Divisional Officer in R.C. Form-26. Rule 90. Inquiry before cancellation (Section 82).- On receipt of the application under Rule 89, the Sub-Divisional Officer shall make an inquiry and follow the procedure laid down in Rules 85 to 88 before the declaration is cancelled in accordance with Section 82. Rule 91. Mode of declaration and cancellation (Section 83).- (1) Every declaration made under Section 80 and cancellation thereof under Section 82 shall be duly signed by the Sub-Divisional Officer and shall bear the seal of his court and shall contain the following particulars (a) Section under which it was made (b) Number and area of the plot in respect of which it was made. (c) The land revenue, if any, on the plots in question. (d) Name of the village and Tahal and district where the plot was situate (e) Name, parentage and address of the bhumidhar in whose favour the declaration was made The date of the declaration (2) Such a declaration need not be registered under the Registration Act. 1908, but the same shall be recorded in the record of rights Rule 92. Rate of interest (Section 82).-When a mortgage with possession is substituted by a simple mortgage under the proviso to Clause (c) of Section 82 (2). then such simple mortgage shall carry interest at the rate of 4 percent per annum. Rule 93. Recording of declaration or cancellation (Section 83).- Every declaration under Section 80 or cancellation	अथवा उत्तराधिकार के आधार पर नामांतरण आदेश इस नियमावली के अध्याय पांच में विहित रीति से पारित किया जायेगा।	under Section 82 shall be recorded in Record of Rights and even after declaration under Section 80, the mutation order on the basis of transfer or succession shall be passed in the manner prescribed in Chapter V of these rules.	

6. Upon due consideration of the above quoted statutory proviso, this Court finds that interference in the matter is required. It is for the following reasons:-

(i) The condition(s) as imposed in the order dated 23.07.2024, referred above, could not have been imposed as the statutory provisions, quoted above, do not provide such power and the conditions which can be indicated while passing the order in exercise of power under Section 80 of the Code can be deduced from Sub-Section 2 and Sub-Section 7 of Section 80 of the Code.

(ii) The opposite party no.2 passed the order in utter mechanical manner as also without application of mind and without taking note of the specific provisions, quoted above, related to the issue involved before it. Though he was under obligation to take note of the same and pass appropriate order while affirming or modifying the order dated 23.07.2024.

(iii) The application preferred under Section 80 of the Code can be allowed or rejected after taking note of the conditions indicated in the statutory provisions including the conditions indicated under Sub-Section (4), (7) and (8) of Section 80 of Code and the permission so granted can be cancelled only in terms of Section 82 of the Code and all these aspects ought to have been taken note of by the opposite party no.2 who failed to take note of the same and accordingly, this

Court finds that the opposite party no.2 failed to discharge the statutory obligation.

7. Accordingly, the order dated 05.03.2025 is set aside/quashed to the extent aforesaid. The petition is thus **allowed**. No order as to costs.

8. The Court records the valuable assistance given by Ms. Urmish Shankar, Research Associate, attached with me in drafting this judgment.

(2025) 3 ILRA 73
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.03.2025

BEFORE

THE HON'BLE ANISH KUMAR GUPTA, J.

Matters Under Article 227 No. 4173 of 2018
 (Criminal)
 Connected with
 Application U/S 482 No. 2701 of 2019

Yogeshwar Raj Nagar & Anr. ...Petitioners
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Petitioners:

Ms. Abhilasha Singh, Sri Ashutosh yadav,
 Sri Manoj Kumar Rajvanshi, Sri Shyam Lal,
 Sri Yadvesh Yadav

Counsel for the Respondents:

G.A., Sri Lallan Prasad Yadav, Sri Nagesh Kumar, Sri Vimlendu Tripathi

Criminal Law – Constitution of India, 1950 – Article 20 & 227 – Indian Penal Code, 1860 - Sections 406, 420, 465, 471 & 506 – Criminal Procedure Code, 1973 – Section 468 & 482 - The dispute over the management of a society and an educational institution led to multiple legal proceedings – a complaint case - an FIR was filed in 2005 - but after

investigation, the police submitted a final report in 2006 due to insufficient evidence – final report was accepted by the trial court in 2012 - In 2017, the opposite party filed another complaint against petitioner based on the same facts - leading to summoning orders – criminal revision – dismissed – instant writ u/Article 227 - additionally, after a six-year delay, opposite party no. 2 contested the acceptance of the final report through an Application U/s 482, with no justification for the delay - both cases arise from the same cause of action and are decided through a common judgment - court finds that, - (i) the dispute primarily pertains to the management of a society and educational institution, which is of a civil nature but, attempts to give it a criminal colour were deemed inappropriate, - (ii) to prove an offense under Section 406 IPC, entrustment is necessary, which wasn't shown in this case, - (iii) The summoning order was vague and lacked proper reasoning, - (iv) Filing a second complaint on the same set of facts after a significant delay was deemed unwarranted and hit by Section 468 CrPC – (v) before summoning someone, the court must carefully check if there are valid grounds to proceed, which wasn't done here – held, - trial court has erred in entertaining the second complaint and further the order impugned is very cryptic order, whereby the applicant have been summoned, therefore, the same is not sustainable – accordingly, the writ petition under Article 227 is allowed - and - the application under Section 482 CrPC is dismissed due to delay and lack of merit. (Para – 27, 28, 30, 36, 37, 38)

Writ petition Allowed & Application Dismissed. (E-11)

List of Cases cited:

1. Lalan Kumar Singh & ors. Vs St. of Mah.: 2022 SCC OnLine SC 1383,
2. Delhi Race Club Ltd. Vs St. of U.P.: (2024) 10 SCC 690,
3. Mahboob & ors. Vs St. of U.P. & anr.: 2016 SCC OnLine All 4468,
4. Bhagirath Kanoria & ors. Vs St. of M.P.: (1984) 4 SCC 222,

5. Krishna Bhattacharjee Vs Sarthi Choudhary: (2016) 2 SCC 705,

6. Balram Singh Vs Sukhwant Kaur & anr.: 1991 SCC OnLine P&H 37,

7. Shailesh Tripathi & ors. Vs St. of U.P. & anr. (Application U/s 482 Cr.P.C. No. 12792 of 2015),

8. Pramatha Nath Talukdar Vs Saroj Ranjan Sarkar, 1961 SCC OnLine SC 155,

9. Shivshankar Singh Vs St. of Bihar, (2012) 1 SCC 130,

10. Jatinder Singh Vs Ranjit Kaur, (2001) 2 SCC 570,

11. Subrata Choudhury Vs St. of Assam, 2024 SCC OnLine SC 3126,

12. Dwarka Nath Mandal Vs Beni Madhas Banerjee: ILR1901 28 Kolkata 652,

13. Bindeshwari Prasad Singh Vs Kali Singh: (1977) 1 SCC 57.

(Delivered by Hon'ble Anish Kumar Gupta, J.)

1. Heard Sri Ashutosh Yadav, learned counsel for the petitioners, Sri Vimlendu Tripathi, learned counsel for the opposite party no. 2 and learned A.G.A. for the State.

2. Both the aforesaid cases are arising out of the same cause of action and facts of both the cases are similar to each other. In view thereof, both the cases are being decided by this common judgement.

3. The writ petition under Article 227 of the Constitution of India has been filed by the petitioners seeking quashing of the order dated 28.04.2018 passed by the Additional Sessions Judge, Court No.5, Bulandshahar in Criminal Revision No. 2 of 2018 (Yogeshwar Raj Nagar and

Another vs. State of U.P. and Another) as well as the order dated 06.10.2017 passed by the Additional Chief Judicial Magistrate, Court No. 3, Bulandshahar, in Complaint Case No. 536 of 2017 (Shailja vs. Yogeshwar) under Section 406 of I.P.C. Vide order dated 06.10.2017, the petitioners were summoned for the offence under Section 406 I.P.C. in the aforesaid complaint case filed by the opposite party no. 2 against which a criminal revision was preferred by the petitioner which was also dismissed vide order dated 28.04.2018.

4. The application under Section 482 Cr.P.C., has been filed by the applicant- Smt. Shailja Nagar, who is the opposite party no. 2 in the writ petition seeking quashing of the order dated 22.11.2012, passed by the Chief Judicial Magistrate, Bulandshahar, in Misc. Case (Final Report) No. 679 of 2007 (Smt. Shailja Nagar and Others) arising out of Case Crime No. 33 of 2005 under Sections 406, 420, 465, 476 and 506 I.P.C., Police Station-Sikandarabad, District-Bulandshahar, whereby the Final Report submitted by the Investigation Officer has been accepted.

5. The brief facts of the case are that the petitioner no.1 and the husband of the opposite party no. 2 are the real brothers. The father of the petitioner no.1 and the husband of the opposite party no. 2 had established a Society known as '*Spring Dale Academy*' at Railway Colony Road, Sikandrabad, District- Bulandshahar, with an aim and object to impart education by establishing a reputed public school. In pursuance of the object of establishment of Society, the school was duly established and affiliated to the CBSE Board. The father of petitioner no. 1 had executed a *Will* on 06.03.2003 in favour of petitioner

no. 1 and another Will on 10.03.2003 and subsequent thereto, he had died on 17.03.2003. Thereafter, the name of the said Society was changed as '*Rajbala Spring Dale Academy*'.

6. After the death of Major Deshraj Singh, father of the petitioner no. 1, there arose a dispute with regard to the management and affairs of the said Society and the school, which was established by the Society. It appears that the management of the Society was taken over by the petitioner no. 1. Aggrieved by the same various proceedings were initiated by the opposite party no. 2 including the registration of the First Information Report being Case Crime No. C-33 of 2005 on 03.09.2005 under Sections 406, 420, 465, 468, 471 and 506 I.P.C. at Police Station- Sikandrabad, District- Bulandshahr.

7. Investigation of the aforesaid F.I.R. was concluded and thereafter a Charge-Sheet No. 226 of 2006 dated 27.06.2006 was submitted. Thereupon, an order for further investigation was passed. After the further investigation and on the basis of statements of witnesses and verification of documents, sufficient evidence was not found against the accused persons. Thereupon, the Final Report was submitted. Against the Final Report, the opposite party no. 2 had submitted a protest petition. After submission of the protest petition and despite opportunity granted, opposite party no. 2 failed to appear before the Court. Accordingly, by an ex-parte order dated 22.11.2012 the Final Report was accepted by the Court. Thereupon, various other disputes continued between the parties. However, the opposite party no. 2 did not choose to challenge the said order dated 22.11.2012 for sufficiently long time.

8. Subsequently, the opposite party no. 2 filed a Complaint Case No. 536 of

2017 (Shailja vs. Yogeshwar) on identical facts claiming therein that the order dated 22.11.2012 was passed accepting the Final Report without any knowledge to the opposite party no. 2. In the aforesaid complaint the prayer was made that by taking into consideration the facts of Case Crime No. C-33 of 2005 on 03.09.2005 under Sections 406, 420, 465, 468, 471 and 506 I.P.C. at Police Station- Sikandrabad, District- Bulandshahr and the investigation report submitted in the said case after recording the statements of witnesses, the petitioners be punished.

9. After recording the statements of witnesses under Sections 202 Cr.P.C. learned Additional Chief Judicial Magistrate vide order dated 06.10.2017 summoned the petitioners herein under Section 406 I.P.C. Against which Criminal Revision No. 2 of 2018 was filed by the petitioners, which was also dismissed. Being aggrieved by the said order, the instant criminal misc. writ petition has been filed by the petitioners. After filing of the aforesaid writ petition the opposite party no. 2 has also filled an application under Section 482 Cr.P.C. seeking quashing of the order dated 22.11.2012 passed by the Chief Judicial Magistrate, Bulandshahr in Misc. Case Crime No. 679 of 2007 arising out of Case Crime No. C-33 of 2005 under Sections 406, 420, 465, 468, 471 and 506 I.P.C. after a delay of about 6 years. In the entire application under Section 482 Cr.P.C. filed by the opposite party no. 2, no explanation has been offered for delay of about six years in approaching this Court for quashing of the order dated 22.11.2012.

10. Learned counsel for the petitioners has submitted that in the instant case the petitioners have been summoned for the offence under Section 406 I.P.C. on

a complaint which was filed in the year, 2017 for the same cause of action for which the criminal proceedings initiated by the opposite party no. 2, were concluded by order dated 22.11.2012, whereby the Final Report was accepted by the trial court. The opposite party no. 2 was fully aware about the proceedings as continuously various other litigations were pending between the parties with regard to management of affairs of the Society and the opposite party no. 2 was continuously contesting those cases. Therefore, for the offence under Section 406 I.P.C., the cognizance ought not to have been taken by the learned Magistrate, vide order dated 06.10.2017, as the same is barred under Section 468 Cr.P.C. and the maximum punishment for the offence under Section 406 I.P.C. is 3 years and the cause of action for the same has arisen in the year, 2005 itself and the complaint has been lodged by the opposite party no. 2 after 12 years from initial cause of action for which the F.I.R. was lodged, which has been concluded against the opposite party no. 2 on 22.11.2012. Even from that point of time the complaint filed by the opposite party no. 2 is delayed by 6 years. Therefore, by no stretch of imagination the cognizance can be taken by the Magistrate in view of the prohibition under Section 468 Cr.P.C. Learned counsel for the petitioner further submits that for the same cause of action the prosecution of the petitioners has finally been concluded by accepting the Final Report on 22.11.2012. Thus, filing of complaint that too after 6 years for the same cause of action amounts to double jeopardy which is hit by Article 20 of the Constitution of India.

11. Learned counsel for the petitioner further submits that the order dated 06.10.2017 passed by the learned Magistrate,

summoning the petitioners herein is a cryptic order and cannot be sustained in law as the same has been passed without assigning any reason or without considering the material available on record. In view thereof, learned counsel for the petitioners seeks quashing of the order dated 06.10.2017 passed by the Additional Chief Judicial Magistrate as well as the order dated 28.04.2018 passed by the Revisional Court.

12. Learned counsel for the petitioners further submits that the entire controversy between the parties is with regard to management of affairs of the Society and the school and the petitioners claim right on the basis of the *Will* executed by the father of the petitioner in his favour exclusively whereas the opposite party no. 2 claims right on the basis of subsequent Will to manage the affairs of the Society. Therefore, the dispute between the parties is purely of a civil nature and the instant proceedings were initiated with intent to give criminal colour to a civil dispute, to create pressure with *mala fide* intentions.

13. Learned counsel for the petitioner further submits that for constituting the offence under Section 406 I.P.C., there must be some entrustment on the part of the complainant and in the instant case there is no such allegation that any entrustment was made by the opposite party no. 2. Even the offence under Section 406 I.P.C., is not made out against the petitioners for want of entrustment. The dispute is only with regard to succession of the right to manage the society. Therefore, the courts below have failed to appreciate the facts and circumstances of the instant case in its true perspective.

14. In support of his submissions learned counsel for the petitioners has

relied upon judgements of the Apex Court passed in ***Lalan Kumar Singh and Others vs. State of Maharashtra: 2022 SCC OnLine SC 1383, Delhi Race Club Ltd. vs. State of U.P. : (2024) 10 SCC 690*** and also upon the judgement of this Court at Lucknow Bench in ***Mahboob and Others vs. State of U.P. and Another : 2016 SCC OnLine All 4468***

15. Learned counsel for the petitioner has further submitted that summoning of the persons for a criminal offence is a very serious matter and it should not be done in a mechanical manner. Application of mind must reflect in the order summoning the accused.

16. Per contra, learned counsel for the opposite party no.2 relying upon the judgements of the Apex Court in ***Bhagirath Kanoria and Others vs. State of M.P. : (1984) 4 SCC 222, Krishna Bhattacharjee vs. Sarthi Choudhary: (2016) 2 SCC 705***, judgment of the Punjab and Haryana High Court in ***Balram Singh vs. Sukhwant Kaur and Another : 1991 SCC OnLine P&H 37***, judgements of this Court in ***Shailesh Tripathi and 5 Others vs. State of U.P. and Another (Application under Section 482 Cr.P.C. No. 12792 of 2015)*** submits that the offence under Section 406 I.P.C., is a continuous offence.

17. Learned counsel for the opposite party no. 2 further submits that the order dated 22.11.2012 was passed by Chief Judicial Magistrate- Bulandshahar, without giving any opportunity to the petitioners herein and she was not aware about the conclusion of the proceedings whereby the protest petition filed by the opposite party no. 2 was rejected and the Final Report was accepted. Learned counsel for the opposite party no. 2 further

submits that the offence under Section 406 I.P.C. is a continuous offence by the petitioners, as they were continuously carrying on the affairs of the management of the Society and the school despite their right to manage the affairs of the Society was rejected upto the Apex Court on various proceedings initiated by both the parties. Since, it is an offence of continuing nature the opposite party no. 2 had every right to file the complaint case and therefore, the provisions of Section 468 Cr.P.C. would not attract in the instant case.

18. Learned counsel for the opposite party no.2 has further submitted that the complaint case is maintainable even after the acceptance of the final report in the police case.. He has relied upon the judgement of ***Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, 1961 SCC OnLine SC 155, Shivshankar Singh v. State of Bihar, (2012) 1 SCC 130, Jatinder Singh v. Ranjit Kaur, (2001) 2 SCC 570 and Subrata Choudhury v. State of Assam, 2024 SCC OnLine SC 3126***.

19. Having heard the rival submissions made by both parties this Court has carefully gone through the record of the case.

20. The first issue for consideration is whether a complaint would lie after acceptance of the Final Report in a police case on the same cause of action. A submission of final report exonerating the accused persons named in the F.I.R. on a protest petition filed by a person, disputing the findings recorded by the Investigation Officer in its final report when the same is decided against the complainant, who has filed the protest petition and the final report is accepted. Generally, the second

complaint on the same cause of action and the same material ought not to have been entertained, though, there is no specific bar for filing the second complaint. The Apex Court in *Pramatha Nath Talukdar (supra)*, has observed as under:

“50. Under the Code of Criminal Procedure the subject of “Complaints to Magistrates” is dealt with in Chapter 16 of the Code of Criminal Procedure. The provisions relevant for the purpose of this case are Sections 200, 202 and 203. Section 200 deals with examination of complainants and Sections 202, 203 and 204 with the powers of the Magistrate in regard to the dismissal of complaint or the issuing of process. The scope and extent of Sections 202 and 203 were laid down in *Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker*. The scope of enquiry under Section 202 is limited to finding out the truth or otherwise of the complaint in order to determine whether process should issue or not and Section 203 lays down what materials are to be considered for the purpose. Under Section 203 Criminal Procedure Code the judgment which the Magistrate has to form must be based on the statements of the complainant and of his witnesses and the result of the investigation or enquiry if any. He must apply his mind to the materials and form his judgment whether or not there is sufficient ground for proceeding. Therefore if he has not misdirected himself as to the scope of the enquiry made under Section 202, of the Criminal Procedure Code, and has judicially applied his mind to the material before him and then proceeds to make his order it cannot be said that he has acted erroneously. An order of dismissal under Section 203, of the Criminal Procedure Code, is, **however, no bar to the entertainment of a second complaint on**

the same facts but it will be entertained only in exceptional circumstances, e.g., where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings, have been adduced. It cannot be said to be in the interests of justice that after a decision has been given against the complainant upon a full consideration of his case, he or any other person should be given another opportunity to have his complaint enquired into. Allah Ditto v. Karam Baksh Ram Narain Chaubey v. Panachand Jain; Hansabai v. Ananda Doraisami v. Subramania. In regard to the adducing of new facts for the bringing of a fresh complaint the Special Bench in the judgment under appeal did not accept the view of the Bombay High Court or the Patna High Court in the cases above quoted and adopted the opinion of Maclean, C.J. in *Queen Empress v. Dolegobinda Das* affirmed by a Full Bench in *Dwarka Nath Mandal v. Benimadhas Banerji*. It held therefore that a fresh complaint can be entertained where there is manifest error, or manifest miscarriage of justice in the previous order or when fresh evidence is forthcoming.”

21. In the Full Bench Judgement of Kolkata High Court in *Dwarka Nath Mandal vs. Beni Madhas Banerjee: ILR1901 28 Kolkata 652*, it was held that a fresh complaint can be entertained where there is a manifest error or manifest miscarriage of justice in the previous order or fresh evidence available is forthcoming.

22. Relying upon the aforesaid judgement in *Pramatha Nath Talukdar*

(*supra*), the Apex Court in ***Bindeshwari Prasad Singh v. Kali Singh : (1977) 1 SCC 57*** has held that the second complaint can lie only on fresh facts or even on the previous facts only if a special case is made out.

23. In ***Mahesh Chand (supra)***, the Apex Court has held as under:

“19. Keeping in view the settled legal principles, we are of the opinion that the High Court was not correct in holding that the second complaint was completely barred. It is settled law that there is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reasons, the Magistrate under Section 204 CrPC may take cognizance of an offence and issue process if there is sufficient ground for proceeding. As held in Pramatha Nath Talukdar case [AIR 1962 SC 876 : 1962 Supp (2) SCR 297 : (1962) 1 Cri LJ 770] second complaint could be dismissed after a decision has been given against the complainant in previous matter upon a full consideration of his case. Further, second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced. In the facts and circumstances of this case, the matter, therefore, should have been remitted back to the learned Magistrate for the purpose of arriving at a finding as to whether any case for cognizance of the alleged offence had been made out or not.”

24. In ***Shivshankar Singh (supra)***, the Apex Court has held as under:

“18. Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, the second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit.

19. The protest petition can always be treated as a complaint and proceeded with in terms of Chapter XV CrPC. Therefore, in case there is no bar to entertain a second complaint on the same facts, in exceptional circumstances, the second protest petition can also similarly be entertained only under exceptional circumstances. In case the first protest petition has been filed without furnishing the full facts/particulars necessary to decide the case, and prior to its entertainment by the court, a fresh protest petition is filed giving full details, we fail to understand as to why it should not be maintainable.”

25. In ***Jatinder Singh (supra)***, the Apex Court has observed as under:

“9. There is no provision in the Code or in any other statute which debars a complainant from preferring a second complaint on the same allegations if the first complaint did not result in a conviction or acquittal or even discharge. Section 300 of the Code, which debars a

second trial, has taken care to explain that “the dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section”. However, when a Magistrate conducts an inquiry under Section 202 of the Code and dismisses the complaint on merits, a second complaint on the same facts cannot be made unless there are very exceptional circumstances. Even so, a second complaint is permissible depending upon how the complaint happened to be dismissed at the first instance.”

26. In *Subrata Choudhury (supra)*, the Apex Court has held as under:

“10. As noted at the outset, the question of law raised before and decided by the High Court was whether after the acceptance of the Final Report filed under Section 173, Cr. P.C., upon considering the written objection/protest petition and hearing the complainant, a fresh complaint on the same set of facts is maintainable or not. There can be no two views as relates the position that there can be no blanket bar for filing a second complaint on the same set of facts. We will deal with the moot question and the aforesaid position a little later.

23. In view of the plethora of decisions, there can be no doubt that even when Final Report filed after investigation based on the FIR registered pursuant to the receipt of complaint forwarded by a Court for investigation under Section 156 (3) of the Cr. P.C., is accepted and protest petition thereto is rejected, the Magistrate can still take cognizance upon a second complaint or second protest petition, on the same or similar allegations or facts. But this position is subject to conditions.”

27. Thus, from the aforesaid judgements it is crystal clear that even after

the acceptance of the Final Report and rejection of the protest petition it is open for the Magistrate to take cognizance upon a second complaint or the second protest petition, however, this position is subject to the condition that there is subsequent discovery of new facts or there is manifest error or manifest miscarriage of justice. Thus, though there is no absolute bar in taking cognizance on the second complaint but the same could be done only in exceptional circumstances and not in a routine manner. There has to be very exceptional circumstances for entertaining and taking cognizance on the second complaint.

28. In the instant case, from the perusal of the F.I.R., final report, protest petition and the second complaint, it is apparent that there is no special or exceptional circumstances, which give a subsequent cause of action to the complainant to file the complaint rather the protest petition was rejected in the year, 2012 and Final Report was accepted and the instant complaint has been filed in the year, 2017 after a delay of more than five years without there being any explanation for the same. Not even a single new circumstances has been pointed, while filing the complaint after five years for the same cause of action. Thus, in the facts and circumstances of the case this Court is of the view that the second complaint ought not to have been entertained in the instant case without there being any special circumstances warranting, taking cognizance on the second complaint on the same facts.

29. Next question which has been argued in the instant case is, since the offence under Section 406 I.P.C. is a continuous offence, therefore, the delay in

filing the second complaint on the part of the complainant would not be fatal to the complainant. Thus, the said complaint is maintainable. Section 406 I.P.C. reads as under:

"Section 406 Punishment for criminal breach of trust- Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

30. The basic requirement for attracting the offence under Section 406 I.P.C. is that there should be an entrustment on the part of the complainant with the accused persons. In the instant case, there is a dispute with regard to the management of the society and the educational institution. Both the parties are claiming their right to manage the institutions on the basis of succession. Thus, in the facts of the case there can't be any entrustment by either of the parties in favour of another. There was continuous civil dispute, which was contested by both the parties with regard to management of institution continuously upto the Apex Court. Thus, it was purely a dispute of civil nature with regard to management of the institution and the society. By filing the F.I.R. in the instant complaint case the criminal colour is being given by the complainant to the civil dispute with oblique motive of creating undue pressure on the petitioners herein. Even, if offence under Section 406 I.P.C. is considered to be a continuous offence, the same would not be attracted in the facts of the instant case. Therefore, in the considered opinion of this Court that issue is not required to be gone into.

31. The prosecution initiated by the opposite party no. 2 had resulted in

submission of the Final Report, which was duly accepted in accordance with law by the competent court vide order 22.11.2012. The said order has been challenged by the opposite party no. 2 by filing the Application under Section 482 Cr.P.C. after more than 6 years, without even adverting any facts with regard to delay in filing the instant application after such a long delay.

32. So far as the instant petition under Article 227 of the Constitution of India filed by the petitioners is concerned, in the instant case the complaint has been filed by the opposite party no. 2 after more than 12 years of the commission of the offence. In the instant case there is no document to show any entrustment on the part of the opposite party no. 2 in favour of the petitioners. Therefore, *prima facie* under Section 406 I.P.C. cannot be said to have been made out against the petitioners herein. Further, the prosecution initiated by lodging F.I.R. by the opposite party no. 2 has already been concluded by order dated 22.11.2012 and thereafter, after a gap of more than 6 years the instant complaint has been filed, which is again hit by Section 468 Cr.P.C., as the maximum punishment for the offence under Section 406 I.P.C. is three years. The complaint has been lodged after full knowledge of the facts of the case to the opposite party no. 2 after gap of six years.

33. The next question for consideration is whether a court can pass the summoning order mechanically, without adverting to the facts of the case. In **Lalan Kumar Singh (supra)**, the following observations have been made by the Apex Court, which reads as under:

"38. The order of issuance of process is not an empty formality. The

Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus:

“51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. It is these words which amply

suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.”

34. In *Delhi Race Club Ltd. (supra)*, the following observations has been made by the Apex Court, which reads as under:

“23. This Court has time and again reminded that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. [See : Pepsi Foods Ltd. v.

Special Judicial Magistrate [Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] .]

31. In *Mehmood Ul Rehman v. Khazir Mohammad Tunda [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124]* , this Court held thus : (SCC p. 430, para 22)

“22. ... The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. ... In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction. ... To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.”

32. The principle of law discernible from the aforesaid decision is that issuance of summons is a serious matter and, therefore, should not be done mechanically and it should be done only

upon satisfaction on the ground for proceeding further in the matter against a person concerned based on the materials collected during the inquiry.

33. In the aforesaid circumstances, the next question to be considered is whether a summons issued by a Magistrate can be interfered with in exercise of the power under Section 482CrPC. In the decisions in *Bhushan Kumar v. State (NCT of Delhi) [Bhushan Kumar v. State (NCT of Delhi), (2012) 5 SCC 424 : (2012) 2 SCC (Cri) 872]* and *Pepsi Foods [Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400]* , this Court held that a petition filed under Section 482 CrPC, for quashing an order summoning the accused is maintainable. There cannot be any doubt that once it is held that sine qua non for exercise of the power to issue summons is the subjective satisfaction “on the ground for proceeding further” while exercising the power to consider the legality of a summons issued by a Magistrate, certainly it is the duty of the Court to look into the question as to whether the learned Magistrate had applied his mind to form an opinion as to the existence of sufficient ground for proceeding further and in that regard to issue summons to face the trial for the offence concerned. In this context, we think it appropriate to state that one should understand that “taking cognizance”, empowered under Section 190CrPC, and “issuing process”, empowered under Section 204CrPC, are different and distinct. [See the decision in *Sunil Bharti Mittal v. CBI [Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687]*].”

35. In the judgement of *Mahboob (supra)*, this Court has observed as under:

“11) In the present case, the learned Magistrate has not conducted any inquiry so as to satisfy himself that the allegations in the complaint constitute an offence and when considered alongwith the statements recorded and the result of such inquiry. There is ground for proceedings against the petitioners under Section 204 CrPC. There is nothing on record to show that the learned Magistrate has applied his mind to arrive at a prima facie conclusion. It must be recalled that summoning of accused to appear the criminal court is a serious matter affecting the dignity self-respect and image in the society. A process of criminal court cannot be made a weapon of harassment.

(12) Learned Magistrate has passed a very cryptic order simply by saying that the statement of complainant as well as witnesses recorded under Sections 200 and 202 CrPC are perused and accused are summoned such order per se itself illegal which could not stand the test of law.”

36. Thus, from the aforesaid judgements it is categorically clear that summoning of a person is a very serious matter and ought not to have been done in a routine manner. Before summoning the Magistrate must satisfy himself that there are sufficient grounds for proceeding against the person and summoning cannot be permitted to be done by a cryptic order, which do not reflect the application of mind of learned Magistrate.

37. Thus, from the perusal of the impugned order dated 06.10.2017, passed by learned Magistrate summoning the petitioners herein it is apparent that the same is a cryptic order and has been passed without categorically recording his satisfaction and assigning any reason or its satisfaction whether the offence under Section 406 is made out. Since, in the previous F.I.R. filed by the opposite party no.2 a Final Report was

submitted which was protested by the opposite party no.2, which was rejected by the court concerned and after delay of more than five years, the instant complaint has been filed on the same set of facts without there being any special circumstances warranting the second complaint to be entertained. Therefore, in the considered opinion of this Court, the trial court has erred in entertaining the second complaint and further the order impugned is a very cryptic order, whereby the applicants have been summoned. Therefore, the same is not sustainable in law and the same is accordantly **set-aside**. Consequently, the order passed by Revisional Court is also **set-aside**.

38. The petition under Article 227 is **allowed** accordingly.

39. In view of the facts and circumstances, since the application under Section 482 Cr.P.C. has been filed with delay of more than six years without their being any explanation for the same and further as already held in the considered opinion of this Court the complainant is trying to give criminal colour to the civil dispute between the parties. In view thereof, the Application under Section 482 Cr.P.C. is **dismissed**.

(2025) 3 ILRA 84
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.03.2025

BEFORE

THE HON'BLE NEERAJ TIWARI, J.

Matters Under Article 227 No. 8117 of 2024
 (Civil)

Raj Kumar Chaturvedi **...Petitioner**
Versus
U.P. Awas Evam Vikas Parishad & Ors.
...Respondents

Counsel for the Petitioner:

Sri Rahul Sahai

Counsel for the Respondents:

Sri Krishna Mohan Garg, Sri Nipun Singh,
Sri Saurabh Pandey, Ms. Surabhi Pandey,
Sri Suresh Chandra Pandey

**Civil Law-The Constitution of India, 1950-
Article 227 -The Code of Civil Procedure,
1908-Section 107, Order 6 Rule 17---**

Once the amendment application has been rejected and the same had not been challenged, petitioner cannot be given liberty to bring very same facts again after some time by filing new application. In fact such act of petitioner is barred by the Principle of res judicata---Court has rightly rejected the amendment application by the impugned order---The appellate Court has ample power to take additional evidence or to require such evidence to be taken, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction---no illegality in the impugned order. **(Para 11, 15 & 16)**

Petition dismissed. (E-15)

List of Cases cited:

1. Ashok Kumar Srivastava Vs National Insurance Co. Ltd. & ors., AIR 1998 Supreme Court 2046

2. B. V. Nagesh & anr. Vs H. V. Sreenivasa Murthy, (2010) 13 SCC 530

(Delivered by Hon'ble Neeraj Tiwari, J.)

1. Heard Sri Rahul Sahai, learned counsel for the petitioner, Sri K. M. Garg, learned counsel for the respondent nos. 3/1, 3/3 & 3/5, Sri S. C. Pandey, learned counsel for the respondent no. 3/2 and Sri Saurabh Pandey, learned counsel for the respondent nos. 3/4/1 to 3/4/7.

2. Present petition has been filed seeking for the following reliefs:-

“ I. Issue a suitable order or direction for setting aside the impugned judgment/order dated 17.05.2024 passed by Additional District Judge Court No. 10, Mathura in Civil Appeal No. 40 of 2010 (Raj Kumar Chaturvedi and others Vs. U.P. Awam Vikas Parishad and others).

II. Issue a suitable order or direction to allow the amendment application 114 ka or in the alternative to set-aside the judgment/order dated 20.07.2018, 02.02.2019 and 27.01.2019 passed by the Additional District Judge, Court No. 8, Mathura & Additional District Judge/Special Judge, Court No. 4, Mathura respectively.”

3. Learned counsel for the petitioner submitted that earlier land was acquired by respondent No. 1 and suit no. 16 of 1988 for declaration and permanent injunction has been filed. Brief facts of the case are that land was acquired by respondent no.1 but later on the said proceeding has been dropped vide notification dated 07.07.2005. Later on, the said notification was recalled by the respondent no.1 by another notification dated 25.04.2008. Aggrieved that petitioner had preferred a writ petition before this Court being C.M.W.P. No.529 of 2009 which was allowed vide order dated 31.08.2010. During pendency of the aforesaid petition, the suit of the plaintiff/petitioner was itself decided vide judgement/decreed dated 30.03.2010. Being aggrieved, the petitioner has preferred Civil Appeal No. 40 of 2010 before District Judge, Mathura. During pendency of the appeal as the writ petition filed earlier was allowed, petitioner has moved two amendment applications numbered as 65

Ka and 67 Kha which are based upon the judgement of the High Court dated 31.08.2010. The said amendment applications were rejected vide order dated 20.07.2018 with the finding that judgement of High Court shall be considered while deciding the appeal.

4. He next submitted that in between the respondent no.1 has filed S.L.P. © Nos. 34271 of 2010 and 34090 of 2010 which was disposed of permitting the appellant to seek a recall/review application against the order dated 31.08.2010. The recall application was filed for recalling of the order dated 31.08.2010 which was rejected by this Court vide order dated 07.04.2017. Against that respondent no.1 has filed Civil Appeal No.3025-3026 of 2022 before Hon'ble Apex Court which was dismissed vide order dated 20.04.2022.

5. He next submitted that at this stage petitioner has preferred amendment application to incorporate the above developments in the plaint, which has been rejected vide impugned order dated 17.05.2024 on the ground that earlier also the similar nature of amendment application had already been dismissed by this Court. He next submitted that in light of new development by the order of this Court as well as Hon'ble Apex court, fact are necessary to be incorporated. Therefore, the amendment application must have been allowed and for that delay cannot be a ground. So far as, the order dated 20.07.2018 is concerned, the delay cannot be a ground in case some development has taken place before the High Court. He next submitted that though legal situation at the stage of rejection of first amendment application vide order dated 20.07.2018 is the same but factual aspect has been changed and the same must have been

brought on record. He next submitted that as the suit was decided in light of the notification dated 25.04.2008 giving rights to the private respondents, re-appreciation of amendment is required. Therefore, impugned orders are liable to be set aside.

6. Per contra, Sri K. M. Garg, learned counsel for the respondent nos. 3/1, 3/3 submitted that order dated 20.07.2018 has never been challenged rather petitioner has filed application 83 Ga and 84 Ga alongwith affidavit for recalling the order dated 20.07.2018 which was rejected vide order dated 02.02.2019. Thereafter, he has filed amendment application 87 Ka and 89 Ka for amending the memo of appeal which was also rejected vide order dated 27.01.2019. The aforesaid orders passed in the applications bearing nos. 65 Ka, 67 Ka, 87 Ka and 89 Ka have never been challenged before the High Court. He firmly submitted that in light of Section 96 C.P.C., petitioner has remedy to challenge the said orders in the second appeal. He also pointed out that while rejecting the first amendment application 65 Ka trial Court has clearly held that order of High Court shall be considered at the time of disposal of the appeal. Therefore, there is no occasion for allowing the amendment application. In light of Section 107 and 96 C.P.C., appellate Court is having all power and it may records its independent finding while deciding the appeal. Therefore, in case of new development, appellate Court may re-appreciate the evidence and give its own finding. In support of his contention, he has relied upon the judgment of Hon'ble Apex Court passed in ***B. V. Nagesh and Another Vs. H. V. Sreenivasa Murthy, (2010) 13 SCC 530.***

7. He also pointed out that as the issues involved in first amendment

application 65 Ka and 67 ka are the same which is in the present amendment application 114 ka, therefore, it is barred by issue estoppel. Therefore, Court has rightly rejected the application.

8. I have considered the submissions made by learned counsel for the parties and perused the record, provisions of law as well as judgement relied upon.

9. From perusal of record, undisputed facts of the case are that during pendency of Suit No. 16 of 1988 for declaration of permanent injunction, land in dispute earlier acquired by respondent no.1 has been dropped vide notification dated 07.07.2005, but later on said notification was recalled by respondent no.1 vide another notification dated 25.04.2008.

10. Being aggrieved, petitioner preferred writ petition i.e. C.M.W.P. No. 529 of 2009 which was allowed vide order dated 31.08.2010. During pendency of petition the Suit No. 16 of 1988 was decided vide judgment and decree dated 30.03.2010. Against that petitioner has preferred Civil Appeal No. 40 of 2000 before District Judge, Mathura as C.M.W.P. No. 529 of 2009 which was allowed vide order dated 31.08.2010. During pendency of appeal, petitioner has moved two amendment applications numbered as 65 Ka and 65 Kha. In light of judgement of High Court dated 31.08.2010, both the amendment applications have been rejected vide order dated 20.07.2018 with the finding that judgement of High Court shall be considered while deciding the appeal. In between respondent no.1 has filed S.L.P. Nos. 34271 of 2010 and 34090 of 2010, which was dismissed with permission to move recall/review application against High Court order dated 31.08.2010.

Recall application was filed to recall the order dated 31.08.2010 which was rejected by this Court vide order dated 04.07.2017. Against that respondent no.1 has preferred Civil Appeal No. 3025-3026 of 2022 before Apex Court which has also been dismissed. At this stage, again the amendment applications in question have been filed to bring the facts on record, which have been rejected vide impugned order dated 17.05.2024 on the ground that earlier also similar nature of amendment application had already been dismissed by this Court. The only issue for the Court as to whether after dismissal of S.L.P., Civil Appeal No. 3025-3026 of 2022, amendment applications may have been allowed or not.

11. There is no dispute on the point that to bring the new facts after dismissal of writ petition vide judgment and order dated 31.08.2010, amendment application was filed which was rejected with the observation that aforesaid facts might be seen by the Apex Court while taking final decision. Now in second litigation after dismissal of Civil Appeal No. 3025-3026 of 2022, there is no new fact except to bring the very same facts before this Court which came into picture after allowing the C.M.W.P. No. 529 of 2009 vide order dated 31.08.2010. Therefore, once earlier the amendment application has been rejected vide order dated 20.07.2018 and had not been challenged, petitioner cannot be given liberty to bring very same facts again after some time by filing new application. In fact such act of petitioner is barred by the Principle of res judicata, therefore, Court has rightly rejected the amendment application by the impugned order.

12. This issue has also been considered by the Apex Court in the matter of **Ashok Kumar Srivastava Vs. National Insurance Co. Ltd. And others, AIR 1998**

Supreme Court 2046. The relevant paragraph nos. 14 and 15 are being quoted as under:-

“14. Though the said explanation may not stricto sensu apply to the trial stage, the principle couched in it must gain application thereto. It is immaterial that the writ petition was filed only subsequently because the findings made therein became final as no appeal was filed against the judgement. The basic idea in the rule of res judicata has sprouted from the maxim “nemo debet bis vexari pro una at eadem causa” (no man should be vexed twice over for the same cause). In Y. B. Patil V. Y. L. Patil, (1976) 4 SCC 66: (AIR 1977 SC 392), a three-judge Bench of this Court considered the effect of a decision rendered in a writ petition at subsequent stages of the same lis. It held: “The principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be finding at the subsequent stage of that proceeding.

15. Thus, the legal position is clear and the respondent cannot now re-agitate the question regarding maintainability of the suit under Section 34 of the Act. However, learned counsel adopted an alternative contention before us that the suit is in effect one for specific enforcement of a contract and such a suit is not conceived under Section 14 of the Act and hence it is not maintainable. According to the learned counsel, the reliefs claimed in the suit, if granted, would result in specific enforcement of a contract of employment. Section 14 (1) (a) of the Act makes it clear that a contract of employment is not specifically enforceable since non performance of it can be

compensated by money, contended the counsel.”

13. As per Section 107 of C.P.C., appellate Court is having all power to take additional evidence. Section 107 C.P.C. is being quoted here-in-below-

“107. Powers of Appellate Court- (1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power- (a) to determine a case finally; (b) to remand a case; (c) to frame issues and refer them for trial; (d) to take additional evidence or to require such evidence to be taken. (2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.”

14. Power of Appellate Court also considered by the Apex Court in the matter of **B. V. Nagesh and Another Vs. H. V. Sreenivasa Murthy, (2010) 13 SCC 530** and Apex Court has held that while deciding the appeal it is duty of the High Court to deal with all the issues and evidence led by the parties before recording finding. Relevant paragraph nos.3 and 4 are being quoted here-in-below-

“3. How the regular first appeal is to be disposed of by the appellate Court/High Court has been considered by this Court in various decisions. Order 41 of C.P.C. deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate Court shall state:

(a) the points for determination;

(b) the decision thereon;

(c) reasons for the decision; and

—

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for re-hearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put-forth and pressed by the parties for decision of the appellate Court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings.”

15. From perusal of 107 C.P.C. as well as judgment of Hon’ble Apex Court in **B. V. Nagesh(Supra)**, it is apparent that appellate Court has ample power to take additional evidence or to require such evidence to be taken, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction. Therefore, there is no illegality in the impugned order dated 17.05.2024.

16. Therefore, in light of facts of the case, provisions of CPC and law laid down by the Hon’ble Apex Court in **B. V.**

Nagesh(Supra), I found no infirmity in the impugned order dated 17.05.2024. Petition lacks merits and is accordingly, **dismissed**.

17. No order as to costs.

(2025) 3 ILRA 89
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.03.2025

BEFORE

THE HON’BLE PIYUSH AGRAWAL, J.

Matters Under Article 227 No. 8387 of 2024

M/s LR Print Solutions ...Petitioner
Versus
M/s Exflo Sanitation Pvt. Ltd. & Ors.
...Respondents

Counsel for the Petitioner:

Mr. Abhishek Kumar, Mr. Ishwar Kumar Upadhyay

Counsel for the Respondents:

Mr. Ishir Sripat

Civil Law-The Constitution of India, 1950-Article 227 - The Arbitration & Conciliation Act, 1996-Sections 34 & 37- Payment of mesne profit for not complying the award in its letter and spirit- Petitioner has not vacated the premises in question within 30 days from the date of passing the award and further the petitioner has not brought any material on record to show that the award was stayed by any of the competent Court--- The arbitral award was not stayed or any material was brought on record otherwise and ultimately the award has been affirmed by the Apex Court and no proceedings are pending thereafter---the contesting respondent no. 1 is entitled for mesne profits as the award was not complied with in its letter and spirit. **(Para 22 & 25)**

Petition lacks merit, dismissed. (E-15)

List of Cases cited:

1. M/s Shree Vishnu Constructions. Vs The Engineer in Chief Military Engineering Services & ors., 2023 8 SCC 329

2. U.O.I.& ors. Vs M/s Banwari Lal and sons (P) Ltd. AIR 2004 Supreme Court 1983

3. Small Scale Industrial Manufactures Association (Reg.) Vs U.O.I.& ors., (2021) 8 SCC 511.

4. Board of Control for Cricket in India Vs Kochi Cricket Pvt. Ltd. & ors. (2018) 6 SCC 287;

5. Hindustan Construction Co. Ltd.& ors. Vs U.O.I.& ors., AIR 2020 SC 122;

6. St. of Rajasthan & ors. Vs J.K. Synthetics Ltd. & ors., (2011) 2 SCC 518

(Delivered by Hon'ble Piyush Agrawal, J.)

1. Heard Mr. Abhishek Kumar along with Mr. Ishwar Kumar Upadhyay, learned counsel for the petitioner; Mr. Rahul Sripat, learned Senior Advocate assisted by Mr. Ishir Sripat, learned counsel for the respondents.

2. The petition u/a 227 has been filed for quashing the order dated 24.6.2024 passed by the Executing Court / Commercial Court No. 2, District Gautam Buddh Nagar in Execution Case No. 108 of 2021.

3. Brief facts as stated in the writ petition are that the petitioner is tenant of the industrial plot no. C – 156, Sector 10, NOIDA (area 114 Sq. Meter) (ground floor of the building), since the date of execution of tenancy agreement dated 1.7.2008 at the rate of Rs. 8000/- per month. The agreement was unregistered for a period of 11 months for manufacturing purpose which continued even after expiry of the period. There was a dispute between the plaintiff -petitioner and defendant

respondent no. 1 with regard to the payment of rent, therefore, respondent no. 1 has filed a S.C.C. Case no. 19 of 2011 for ejection of the petitioner. In the said suit, the petitioner has filed an application for rejection of plaint under Order 7 Rule 11 CPC on the ground that since there is an arbitration clause in the rent agreement between the parties, as such, the dispute is required to be decided by the Arbitrator alone and the Court has no jurisdiction in the matter. The said application has been objected by respondent no. 1, however, the Additional Sessions Judge vide order dated 19.9.2015 has rejected the plaint of the respondent. Thereafter, respondent no. 1 has filed Arbitration petition before the sole Arbitrator for the same relief in which the petitioner has filed written statement. Thereafter, the Arbitrator has allowed the claim of the respondent no. 1 vide award dated 19.7.2017, against which the petitioner has filed an objection under Section 34 of the Arbitration and Conciliation Act, 1996 before the Commercial Court, Gautam Buddha Nagar. The said objection under Section 34 was rejected vide order dated 30.6.2022. Being aggrieved to the said order, the petitioner has filed Arbitration Appeal Defective no. 46 of 2022, under Section 37 of the Act before this Court, which was rejected vide order dated 6.12.2022. Thereafter the petitioner has approached the Apex Court in Special Leave Petition, which was also dismissed. During pendency of the objection filed by petitioner under Section 34 of the Act, respondent no. 1 has sold the property in question to respondent no. 2 vide registered sale deed dated 5.3.2021 against which Suit No. 342 of 2021 was filed by the petitioner before the Civil Judge (Sr. Division), Gautam Buddha Nagar for cancellation of sale deed dated 5.3.2021, which was rejected vide order

dated 29.5.2023. The said order has been challenged by the petitioner before this Court in First Appeal No. 1000 of 2023, which was admitted on 10.4.2024. In the Execution Case No. 108 of 2021, the decree holder moved an application on 3.4.2024, which was objected by the petitioner but the court below has allowed the application bearing paper no. 89 Ga filed by the contesting respondent by the impugned order dated 24.6.2024 and judgement debtor/ petitioner was directed to make payment of Rs. 8,58,795/-. Hence the present petition.

4. Learned counsel for the petitioner submits that the award dated 19.7.2017 contemplate that if the same was not complied within 30 days then the petitioner would be liable to pay Rs. 15 thousand as mesne profits to the claimant/respondent no. 1 with compound interest @ 10 % from 20.8.2017 till handing over of the possession. He further submits that the application under Section 34 of the Arbitration Act is filed within time , the award would be deemed to be stayed and the petitioner was not obliged to comply with the direction of the award. He further submits that once the award is not operative, there is no question of mesne profits to be paid by the petitioner to respondent no. 1. He further submits that once by operation of law, the award was stayed merely on filing of the application under Section 34 of the Arbitration Act, there is no liability upon the petitioner for making payment of the amount of mesne profits. He further submits that by the impugned order, the Court has not considered the matter in a proper prospective, therefore, it is liable to be set aside. He further submits that the court below has wrongly calculated the amount for payment for the period of December

2020 to March 2021 as the payment of said period is already made by the petitioner. He prays for allowing the present petition.

5. In support of his argument, learned counsel for the petitioner has relied upon the following judgements:-

(i) **M/s Shree Vishnu Constructions. Vs. The Engineer in Chief Military Engineering Services and others**, 2023 8 SCC 329;

(ii) **Union of India and others Vs. M/s Banwari Lal and sons (P) Ltd.** AIR 2004 Supreme Court 1983;

(iii) **Small Scale Industrial Manufactures Association (Reg.) Vs. Union of India and others**, (2021) 8 SCC 511.

6. *Per contra*, Mr. Rahul Sripat, learned Senior Counsel submits that the impugned order has been passed in accordance with law, therefore, no interference is warranted. He further submits that award dated 19.7.2017 clearly provides for payment of mesne profits and penal interest in case of non compliance. It is admitted fact that petitioner did not vacate the premises till April 2024, therefore, as per the award, the petitioner was duty bound to make payment of mesne profits along with interest. He further submits that the award dated 19.7.2017 has attained finality and at no stage, the said award was stayed by any of the competent Court and further no proceeding against the same is pending in any of the court of law.

7. He further submits that the petitioner has instituted the application under Section 34 of the Act in the year 2017 but has not brought any material on record to show that the interim order was granted in its favour, therefore, it is

incorrect to say on the part of the petitioner that merely filing of the application under Section 34 of the Act, automatic stay was deemed in favour of the petitioner.

8. In order to buttress his submission, learned Senior Counsel further submits that in the year 2015, the Arbitration Act has been amended and admittedly, the present proceedings under Section 34 was initiated by the petitioner in the year 2017, therefore, merely filing of the application under Section 34 of the Arbitration Act, no automatic stay can be deemed in favour of the petitioner.

9. In support of his submission, learned Senior Counsel for the respondent has relied upon the following judgement:-

(i) **Board of Control for Cricket in India Vs. Kochi Cricket Pvt. Ltd. and others** (2018) 6 SCC 287;

(ii) **Hindustan Construction Company Limited and others Vs. Union of India and others**, AIR 2020 SC 122;

(iii) **State of Rajasthan and others Vs. J.K. Synthetics Ltd. and others**, (2011) 2 SCC 518.

10. He further submits that in the case of **Hindustan Construction Company Limited (supra)** the Apex Court has categorically held that no automatic stay of the award would lie merely filing of an application under Section 34 of the Arbitration Act.

11. Learned Senior Counsel further submits that the executing court has rightly computed the mesne profits with interest and it is not open for the petitioner at this stage to challenge the grant of penal interest in favour of respondent vide award dated 19.7.2017 as the award has attained finality up to the stage

of Hon'ble the Supreme Court. He prays for dismissal of the present writ petition.

12. After hearing learned counsel for the parties, the Court has perused the records.

13. It is admitted between the parties that the award has been passed on 19.7.2017, in which the petitioner was directed to vacate the premises in question and hand over the peaceful possession within 30 days from the date of passing the award, failing which the respondent -claimant shall be entitled not only for the rent but also the mesne profits along with interest. It is also not in dispute that against the said award, the petitioner has filed an application under Section 34 of the Act in the year 2017. It is also not in dispute that the possession as per the direction of the award was handed over in the month of April 2024.

14. The argument was raised by the counsel for the petitioner that mere filing of the application under Section 34 of the Act, the arbitral award was stayed, therefore, no default has been committed by the petitioner which entitles respondent no. 1 to claim mesne profits. But the record reveals that application under Section 34 of the Act was filed by the petitioner in the year 2017 and Section 34 of the Arbitration Act was amended with effect from 23.10.2015. Section 34 of the Act is considered to be Court proceedings and amendment made therein will apply prospectively as held by the Apex Court in the case of **Board of Control for Cricket in India (supra)** and same was further clarified in the case of **Shree Vishnu Constructions (supra)**.

15. The relevant para of the judgement passed by the Apex Court in the case of **Board of Control for Cricket in India (supra)** are quoted hereunder:-

“25. That the expression “the arbitral proceedings” refers to proceedings before an arbitral tribunal is clear from the heading of Chapter V of the 1996 Act, which reads as follows:

“Conduct of Arbitral Proceedings”

The entire chapter consists of Sections 18 to 27 dealing with the conduct of arbitral proceedings before an arbitral tribunal. What is also important to notice is that these proceedings alone are referred to, the expression “to” as contrasted with the expression “in relation to” making this clear. Also, the reference to Section 21 of the 1996 Act, which appears in Chapter V, and which speaks of the arbitral proceedings commencing on the date on which a request for a dispute to be referred to arbitration is received by the respondent, would also make it clear that it is these proceedings, and no others, that form the subject matter of the first part of Section 26. Also, since the conduct of arbitral proceedings is largely procedural in nature, parties may “otherwise agree” and apply the Amendment Act to arbitral proceedings that have commenced before the Amendment Act came into force. In stark contrast to the first part of Section 26 is the second part, where the Amendment Act is made applicable “in relation to” arbitral proceedings which commenced on or after the date of commencement of the Amendment Act. What is conspicuous by its absence in the second part is any reference to Section 21 of the 1996 Act. Whereas the first part refers only to arbitral proceedings before an arbitral tribunal, the second part refers to Court proceedings “in relation to” arbitral proceedings, and it is the commencement of these Court proceedings that is referred to in the second part of Section 26, as the words “in relation to” the arbitral proceedings” in

the second part are not controlled by the application of Section 21 of the 1996 Act.

Section 26, therefore, bifurcates proceedings, as has been stated above, with a great degree of clarity, into two sets of proceedings – arbitral proceedings themselves, and Court proceedings in relation thereto. The reason why the first part of Section 26 is couched in negative form is only to state that the Amendment Act will apply even to arbitral proceedings commenced before the amendment if parties otherwise agree. If the first part of Section 26 were couched in positive language (like the second part), it would have been necessary to add a proviso stating that the Amendment Act would apply even to arbitral proceedings commenced before the amendment if the parties agree. In either case, the intention of the legislature remains the same, the negative form conveying exactly what could have been stated positively, with the necessary proviso. Obviously, “arbitral proceedings” having been subsumed in the first part cannot re-appear in the second part, and the expression “in relation to arbitral proceedings” would, therefore, apply only to Court proceedings which relate to the arbitral proceedings. The scheme of Section 26 is thus clear: that the Amendment Act is prospective in nature, and will apply to those arbitral proceedings that are commenced, as understood by Section 21 of the principal Act, on or after the Amendment Act, and to Court proceedings which have commenced on or after the Amendment Act came into force.

....

43. The matter can also be looked at from a slightly different angle. Section 36, prior to the Amendment Act, 74 is only a clog on the right of the decree holder, who cannot execute the award in

his favour, unless the conditions of this section are met. This does not mean that there is a corresponding right in the judgment debtor to stay the execution of such an award. Learned counsel on behalf of the Appellants have, however, argued that a substantive change has been made in the award, which became an executable decree only after the Section 34 proceedings were over, but which is now made executable as if it was a decree with immediate effect, and that this change would, therefore, take away a vested right or accrued privilege in favour of the Respondents. It has been argued, relying upon a number of judgments, that since Section 36 is a part of the enforcement process of awards, there is a vested right or at least a privilege accrued in favour of the Appellants in the unamended 1996 Act applying insofar as arbitral proceedings and court proceedings in relation thereto have commenced, prior to the commencement of the Amendment Act. The very judgment strongly relied upon by senior counsel for the appellants, namely Garikapati Veeraya (*supra*), itself states in proposition (v) at page 515, that the vested right of appeal can be taken away only by a subsequent enactment, if it so provides specifically or by necessary intendment and not otherwise. We have already held that Section 26 does specifically provide that the court proceedings in relation to arbitral proceedings, being independent from arbitral proceedings, would not be viewed as a continuation of arbitral proceedings, but would be viewed separately. This being the case, it is unnecessary to refer to judgments such as *Union of India v. A.L. Rallia Ram*, (1964) 3 SCR 164 and *NBCC Ltd. v. J.G. Engineering (P) Ltd.*, (2010) 2 SCC 385, which state that a Section 34 proceeding is a supervisory and not an appellate proceeding. Snehadeep

Structures (P) Ltd. v. Maharashtra Small-Scale Industries Development Corpn. Ltd., (2010) 3 SCC 34 at 47-49, which was cited for the purpose of stating that a Section 34 proceeding could be regarded as an “appeal” within the meaning of Section 7 of the Interest on Delayed Payments To Small Scale and Ancillary Industrial Undertakings Act, 1993, is obviously distinguishable on the ground that it pertains to the said expression appearing in a beneficial enactment, whose object would be defeated if the word “appeal” did not include a Section 34 application. This is made clear by the aforesaid judgment itself as follows:

“36. On a perusal of the plethora of decisions aforementioned, we are of the view that “appeal” is a term that carries a wide range of connotations with it and that appellate jurisdiction can be exercised in a variety of forms. It is not necessary that the exercise of appellate jurisdiction will always involve re-agitation of entire matrix of facts and law. We have already seen in *Abhayankar* [(1969) 2 SCC 74] that even an order passed by virtue of limited power of revision under Section 115 of the Code is treated as an exercise of appellate jurisdiction, though under that provision, the Court cannot go into the questions of facts. Given the weight of authorities in favour of giving such a wide meaning to the term “appeal”, we are constrained to disagree with the contention of the learned counsel for the respondent Corporation that appeal shall mean only a challenge to a decree or order where the entire matrix of law and fact can be re-agitated with respect to the impugned order/decreed. There is no quarrel that Section 34 envisages only limited grounds of challenge to an award; however, we see no reason why that alone should take out an application under Section 34 outside the

ambit of an appeal especially when even a power of revision is treated as an exercise of appellate jurisdiction by this Court and the Privy Council.

40. It may be noted that Section 6(1) empowers the buyer to obtain the due payment by way of any proceedings. Thus the proceedings that the buyer can resort to, no doubt, includes arbitration as well. It is pertinent to note that as opposed to Section 6(2), Section 6(1) does not state that in case the parties choose to resort to arbitration, the proceedings in pursuance thereof will be governed by the Arbitration Act. Hence, the right context in which the meaning of the term “appeal” should be interpreted is the Interest Act itself. The meaning of this term under the Arbitration Act or the Code of Civil Procedure would have been relevant if the Interest Act had made a reference to them. For this very reason, we also do not find it relevant that the Arbitration Act deals with applications and appeals in two different chapters. We are concerned with the meaning of the term “appeal” in the Interest Act, and not in the Arbitration Act.”

46. In 2004, this Court’s Judgment in National Aluminium Company (supra) had recommended that Section 36 be substituted, as it defeats the very objective of the alternative dispute resolution system, and that the Section should be amended at the earliest to bring about the required change in law. It would be clear that looking at the practical aspect and the nature of rights presently involved, and the sheer unfairness of the unamended provision, which granted an automatic stay to execution of an award before the enforcement process of Section 34 was over (and which stay could last for a number of years) without having to look at the facts of each case, it is clear that Section 36 as

amended should apply to Section 34 applications filed before the commencement of the Amendment Act also for the aforesaid reasons.”

16. The relevant para of the judgement passed by the Hon’ble the Apex Court in the case of **Shree Vishnu Constructions (supra)** is quoted hereunder:-

9.1 The submission on behalf of the appellant, as above, cannot be accepted for the simple reason that this Court in the case of BCCI (supra) was considering the court proceedings under sections 34 and 36. To that, this Court interpreted section 26 in paragraphs 37 to 39, reproduced hereinabove, and held that the Amendment Act is prospective in nature, and will apply to those arbitral proceedings that are commenced as understood by section 21 of the principal Act, on or after the Amendment Act, 2015 and to court proceedings which have commenced on or after the Amendment Act, 2015 came into force. Therefore, any observations made by this Court in paragraphs 37 to 39 in the case of BCCI (supra) shall be understood and construed with respect to court proceedings which have commenced on or after the Amendment Act coming into force, namely, the proceedings under sections 34 & 36. Therefore, the decisions of this Court in the cases of Parmar Constructions Company (supra) and Pardeep Vinod Construction Company (supra) cannot be said to be per incuriam and/or in conflict with the decision of this Court in the case of BCCI (supra). As observed hereinabove, in the case of Parmar Constructions Company (supra) which is directly on the point, it is Civil Appeal No. 3461 of 2023 Page 40 of 42 specifically observed and held that the 2015 Amendment Act, which

came into force w.e.f. 23.10.2015 shall not apply to the arbitral proceedings which are commenced in accordance with the provisions of section 21 of the principal Act, 1996 before the coming into force the 2015 Amendment Act, unless parties otherwise agree (para 27). Similar view has been expressed in the case of S.P. Singla Constructions Private Limited (supra).

(Emphasis supplied by this Court)

17. In the aforesaid judgement, Hon'ble the Supreme Court has categorically held that the proceedings under Section 34 and 36 of the Arbitration Act are Court proceedings and any proceeding commenced after the amendment came into force, will be prospective in nature.

18. In the present case, the application under Section 34 of the Arbitration Act was filed by the petitioner in the year 2017, which is much after the enforcement of the amended Act in the year 2015, therefore, the argument of the counsel for the petitioner that merely on filing of the application under Section 34 of the Arbitration Act, against the award in question was automatically stayed, is misplaced and cannot be accepted.

19. Further, Hon'ble the Apex Court in the case of **Hindustan Construction Company Limited (supra)** after has taken note of its earlier judgement passed in the case of Board of Control for Cricket in India (supra) has categorically held that no automatic stay of the award would lie just because of filing an appeal under Section 34 of the Arbitration Act.

20. The other argument raised by the counsel for the petitioner after relying

upon the judgement of the Apex Court in the case of Small Scale Industrial Manufactures Association (supra) that since there was no default on the part of the petitioner, the mesne profits ought not to have been granted.

21. On perusal of the aforesaid judgement, it appears that the said judgement was entirely based upon the facts of that case as the same was related to the economic policies framed by the Union Government, but the facts of the case in hand are entirely different. The petitioner has not hand over the possession within 30 days as per the award dated 19.7.2017, or award was stayed or set aside by the competent Court, therefore, the benefit of the said judgement cannot be accorded in favour of the petitioner.

22. Admittedly, the petitioner has not vacated the premises in question within 30 days from the date of passing the award and further the petitioner has not brought any material on record to show that the award was stayed by any of the competent Court, therefore, the contesting respondent no. 1 is entitled for mesne profits.

23. Hon'ble the Apex Court in the case of State of Rajasthan Vs. J.K. Synthetics Ltd. (supra) has held as under :

14. The contesting respondents filed the second round of writ petitions before the High Court challenging the demand for interest and the validity of Rule 64A, on two grounds : that Rule 64-A was invalid; that the rate of interest was excessive. The learned Single Judge negatived the first contention in view of the decision of this South Eastern Coalfields. He however accepted the second contention and restricted the rate of interest to 12% per

annum. The contesting respondents have not challenged the order of the High Court holding that they are liable to pay interest at 12% per annum. They have in fact paid the interest at such rate. Before us, one of the contentions urged to resist the claim of the State for increase in the rate of interest, is with reference to the fundamental question about the liability itself. It was submitted that they were not liable to pay interest on the increase in royalty amount, in view of their challenge to the increase and order of interim stay of the High Court. It was submitted by the contesting respondents, that even if the writ petitions challenging the notification dated 17.2.1992 revising the royalty rate were ultimately dismissed, in the absence of any specific direction by the High Court to pay interest on the difference in royalty amount, they were not liable to pay any interest during the period of operation of stay. This question is no longer *res integra*. We may refer to 11 the decisions of this Court that have categorically laid down about the liability to pay interest for the period of stay when the stay is ultimately vacated.

15. In *Kanoria Chemicals and Industries Ltd. vs. UP State Electricity Board* - 1997 (5) SCC 772, this Court held that grant of stay of a notification revising the electricity charges does not have the effect of relieving the consumer of its obligation to pay interest (or late payment surcharge) on the amount withheld by them by reason of the interim stay, if and when the writ petitions are dismissed ultimately. The said principle was based on the following reasoning :

"Holding otherwise would mean that even though the Electricity Board, which was the respondent in the writ petitions succeeded therein, is yet deprived of the late payment surcharge which is due to it under the tariff rules/regulations. It

would be a case where the Board suffers prejudice on account of the orders of the court and for no fault of its. It succeeds in the writ petition and yet loses. The consumer files the writ petition, obtains stay of operation of the Notification revising the rates and fails in his attack upon the validity of the Notification and yet he is relieved of the obligation to pay the late payment surcharge for the period of stay, which he is liable to pay according to the statutory terms and conditions of supply - which terms and conditions indeed form part of the contract of supply entered into by him with the Board. We do not think that any such unfair and inequitable proposition can be sustained in law..... It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding comes to an end with the dismissal of the substantive proceeding and that it is the duty of the court in such a case to put the parties in the same position they would have been but for the interim orders of the court. Any other view would result in the act or order of the court prejudicing a party (Board in this case) for no fault of its and would also mean rewarding a writ petitioner in spite of his failure. We do not think that any such unjust consequence can be countenanced by the courts. As a matter of fact, the contention of the consumers herein, extended logically should mean that even the enhanced rates are also not payable for the period covered by the order of stay because the operation of the very notification revising/enhancing the tariff rates was stayed. Mercifully, no such argument was urged by the appellants. It is understandable how the enhanced rates can be said to be payable but not the late payment surcharge thereon, when both the enhancement and the late payment surcharge are provided by the same

Notification - the operation of which was stayed."

24. The Apex Court in the aforesaid judgement has categorically held that after dismissal of the writ petition, the consumer is liable to pay interest even during period of interim order which entitle the consumer to withhold the amount.

25. The case in hand, the arbitral award dated 19.7.2017 was not stayed or any material was brought on record otherwise and ultimately the award dated 19.7.2017 has been affirmed by the Apex Court and no proceedings are pending thereafter. Thus, in view of the aforesaid facts, the contesting respondent no. 1 is entitled for mesne profits as the award dated 19.7.2017 was not complied with in its letter and spirit.

26. In view of the aforesaid discussions as well as law laid down by the Apex Court as referred herein above, no interference is called for by this Court in the impugned order.

27. The petition lacks merit and same is dismissed accordingly.

(2025) 3 ILRA 98

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 21.03.2025 &

26.03.2025

BEFORE

THE HON'BLE ROHIT RANJAN AGARWAL, J.

Matters Under Article 227 No. 10194 of 2024
(Civil)

Govind Ram Pandey & Anr. ...Petitioners
Versus

Nutan Prakash & Ors. ...Respondents

Counsel for the Petitioners:

Sri Ravi Shanker Pathak, Sri Siddharth Niranjana, Sri Yadvendra Pai Pandey, Sri Dharam Pal Singh (sr. Adv.)

Counsel for the Respondents:

Ms. Ananya Pandey, Sri Ashish Kumar Dubey, Sri Durlabh Kumar Pandey, Sri Badri Mani Triparthi, Sri Rahul Sahai, Sri Rakesh Kumar, Sri Yadvendra Rai Pandey, Ms. Nandani Sharma, Sri C.L. Pandey (Sr. Adv.), Sri H.N. Singh (Sr. Adv.)

Civil Law-The Constitution of India, 1950-Article 227 - The Code of Civil Procedure, 1908-Section 94 - Order 40 Rule 1-

Appointment of Receivers and controlling day to day functioning of Sri Thakur Baldeo Ji Maharaj Temple aka Dauji Mandir--- No person shall act as Receiver of the Temple in question and a Seven Member Management Committee be constituted in terms of Agreement dated 02.09.1904---Matter remitted with following directions to learned District Judge (1) Convene a meeting of 734 Pandas/Sevayats of Dauji Temple, who are divided in six Thoks, to be conducted by the senior most Additional District Judge within a month (2) A supplementary agreement would be executed by all 734 members only to the extent that their names are brought on record, without touching upon the terms and conditions laid out in the Agreement dated 02.09.1904 (3) members shall select a person from their respective Thoks to be sent to Committee of Management for managing the affairs of the Temple (4) Management Committee would be constituted in terms of Agreement dated 02.09.1904 and only the new members of 734 families would become part of the supplementary agreement (5) newly constituted Management Committee would look after day to day affairs of the Temple---The District Judge, Mathura, is hereby requested to get the complete inventory prepared of all movable and immovable properties of Dauji Temple, including cash, bank accounts, ornaments etc. immediately, within a period of two days from today. When the management is handed over to newly constituted Committee of Management, the inventory so prepared shall also be passed on. **(Para 61 to 65)** (E-15)

List of Cases cited:

1. Mulji Umershi Shah Vs Paradisia Builders Pvt. Ltd., AIR 1998 Bombay 87
2. S.B. Industries Vs United Bank of India, AIR 1978 189
3. Satyanarayan Banerji & anr. Vs Kalyani Prosad Singh Deo Bahadur & ors., AIR 1945 CAL 387
4. Ram Kumar Pandey Vs Narain Prasad Pandey, Matters under Article 227 No. 1637 of 2018, delivered on 31.08.2018
5. T. Krishnaswamy Chetty Vs C.Thangavelu Chetty & ors. AIR 1955 MAD 430

(Delivered by Hon'ble Rohit Ranjan
Agarwal, J.)

1. Holy city of Mathura is under grip of frivolous temple litigations. Most of them are for appointment of Receivers and controlling day to day functioning.

2. Present litigation hovers around famous Sri Thakur Baldeo Ji Maharaj Temple also known as Dauji Mandir. It is an old temple situated at Baldeo Mahawan, Mathura. History relates back to about 500 years, when it was built/established by one Parampujya Goswami Kalyan Devacharya Ji Maharaj. After his death, his successors managed the affairs of Temple and conducted seva, *puja*, *archana* etc. With passage of time, families of successors increased and by end of 1903, there were 145 families who were looking after the seva and *puja*.

3. Admittedly, on 02.09.1904, a Trustee Nama/Ikrar Nama (*hereinafter called as "Agreement"*) was executed which was registered on 13.09.1904 by family members of 145 families. According to the registered Agreement, 145 family

members were divided into six groups (Thoks). From them, Seven Member Management Committee was appointed which included following persons:-

(i) Nandan son of Chhittar (ii) Jayram son of Hardeo (iii) Jasrath son of Dhaniram (iv) Daniram son of Brajlal (v) Bhagwan son of Banshi (vi) Narayan son of Gordhan Lal and (vii) Ram Prasad son of Thakur Das

4. Paragraph 3 of the Agreement provided that each shareholder continued to perform *puja* and seva on his turn and Committee would only supervise such activities. Paragraph 5 provided that in case of death of any member, or in case he refuses to work, or fails to attend the meeting of the Committee for one year, then another member from his Thok was to be appointed. In case, for three months, no member was appointed then remaining member would appoint a member in his place. Further, in case of dispute between the existing members, a draw of lots would be done before the Deity and a person in whose name the chit is opened would be appointed as the member.

5. The Agreement which was executed on 02.09.1904 and registered on 13.09.1904 is extracted hereasunder for the better appreciation of the case:-

“ बही नं० 4 तरतीबी दस्तावेज 132 मालियत स्टाम्प 15

ट्रस्टीनामा/इकरारनामा

हम कि :-

1-नेतराम व 2- रेवती पिसरान सुखराम व 3- मोरध्वज बल्द रामशरन व 4- दीसा बल्द बट्टी व 5- लोचन बल्द बुद्धी व 6- लज्जा बल्द नारायन व 7-गंगाधर बल्द गोविन्दराम व 8- शिवरतन बल्द टैनी व 9- शंकर बल्द तेजा व 10- रघुवर बल्द जुगला व 11- घसीटा व 12- रामचन्द पिसरान जयराम व 13-

इन्दरजीत बल्द दामोदर व 14- टीकाधर बल्द जयदेव व 15- मोहनलाल व 16- मूली पिसरान धीरजलाल व 17- टोका बल्द जनादन व 18- रामप्रसाद व 19- चिरंजी पिसरान चतुर्भुज व 20- राधाचरन बल्द तोता व 21- बन्शीधर बल्द दयाकिशन व 22- दानीराम व 23- पेमानन्द पिसरान, ब्रिजलाल व 24-राधाचरन व 25- लक्खीराम पिसरान हरफूल व 26- पन्नी बल्द चेती व 27- जोहरी व 28- मूला व 29- खरमर पिसरान केशव व 30- श्रीधर रुल्द किशनलाल व 31 शिवलाल बल्द गोरधन लाल व 32 छीतो व 33- अर्जुन पिसरान बासुदेव व 34- घसीटा बल्द मूलीराम 35- रवलाल पलाल व 36- हरफूल व 37- दीपा व 38- इन्दर पिसरान कमला व 39- परमा व 40- लकूवी व 41- मूला पिसरान सुखदेव व 42- रामचन्द बल्द जैजीराम व 43- जशरथ बल्द धनीराम व 44- मिछल व 45- कुना व 46- चतुरा पिसरान सुखदेव व 47-नन्दन बल्द छीतर व 48- रोशनलाल व 49- टीकाधर पिसरान रामरतन द 50- जसरथ बल्द जयदेव व 51 जयराम बल्द हरदेव व 52 तोता व 53-बंशी व 54--कुण्डा व 55- दुरगा व 56- मैजी पिसरान चुन्नी लाल व 57-रेवती बल्द मुरली व 58- गनपति व 59- शंकर पिसरान तोताराम व 60- मुन्शी व 61- हरचरन व 62- द्वारिका पिसरान धरनीधर व 63 इन्दर व 64 नत्थी पिसरान गंगाधर व 65- बाबू बल्द बंशीराम व 66 छीतो व 57 भद्री व 68-रघुवर पिसरान ठाकुरदास व 69 भिक्को बल्द नत्थी व 70- रामलाल बल्द दूला व 71- मूला बल्द चरंजी व 72- नारायन बल्द राधे व 73- नत्थो बल्द मथुरा व 74 रणछोर बल्द मनमोहन व 75- रोशन लाल व 76- इन्दर व 77- चुन्नीलाल पिसरान चतुर्भुज व 78-नाथूराम व 79- ब्रजबल्लभ पिसरान परसादीलाल व 80- जयदेव व 81-कुन्जबिहारी व 82 श्यामलाल पिसरान जयराम व 83- रामप्रसाद बल्द ठाकुरदास व 84- बंशी व 85- जम्मन पिसरान केवलराम व 86- भगवान बल्द बाबू मुकन्द व 87 गिरधर बल्द रामरतन व 88- मिट्ठी वल्द तीरथा व 89- फूली व 90- ब्रजमोहन पिसरान रनछोर व 91- जयकिशोर व 92- नारायन व 93 धीरजलाल पिसरान गोर्धन लाल व 94-- नन्दन बल्द गोकुलचन्द व 95- नौनिद्धि बल्द इन्द्रजीत व 96- मंगी व 97- केसरी पिसरान रामलाल व 98 गंगाधर व 99- दीपचन्द पिसरान नेतराम व 100 शिवलाल व 101- धूजी पिसरान रघुवर व 102 धनीराम व 103-जीवन व 104- शंकर पिसरान परसादी लाल 105- सावलिया बल्द टीकम व 106- हरचरन बल्द रनछार व 107- भगवान व 108- द्वारिका व 109-ब्रजलाल पिसरान वंशी व 110- डालचन्द बल्द रनछोर व 111- चिरंजीलाल बल्द

हरनाम व 112- मूलो बल्द मोहनीराम व 113- गंगाधर बल्द जसरथ व 114- द्वारिका व 115- छिददा लाल व 116- श्रीदामा पिसरान केदार व 117-कमला बल्द किशनलाल व 118- धीरज लाल बल्द धनी व 119- मूला बल्द मक्खन व 120- खूबी बल्द हरिराम व 121- भोला बल्द मूली व 122- मेवाराम व 123- टीकम व 124- नेकराम पिसरान हरबल्लभ व 125- सोहन बल्द बालमुकुन्द व 126- चिरंजी व 127- गिरवर पिसरान नन्दन व 128- फूली बल्द दामोदर व 129- धूजी बल्द केशवदेव व 130- शिवलाल व 131- वासुदेव पिसरान नन्दन व 132- चिरंजी व 133- राधाचरन पिसरान इन्दर व 134-नाथूराम बल्द वजवंत व 135- काशीराम बल्द हन्डू व 136- धीरज लाल व 137- धनीराम पिसरान भवानी शंकर व 138- नत्थू बल्द नन्दकिशोर व 139-चुन्नी बल्द चतुरी व 140- जयकिशोर व 141- चिरंजी बुल्द बलदेवदास व 142- टीकम पिसरान सेवाराम व 143- विद्याधर बल्द खुशालीराम व 144- रामप्रसाद बल्द गंगाराम व 145- तोता बल्द नन्दन अकवास ब्राह्मण अहिवासी साकिनान कस्बा बलदेव पण्डगान व पुजारीयान श्री ठाकुर बलदेव जी महाराज कस्बा बलदेव परगना महावन जिला मथुरा के हैं। जोकि जुमलाइन्तजाम व महतमाम मन्दिर बलदेव जी उर्फ दाऊजी महाराज बाके दलदेव परगना महावन जिला मथुरा हमेशा से हम और हमारे मुरिस करते रहे हैं और सिवाय हमारे और किसी का दखल व तसर्फ उसमें कभी कुछ नहीं रहा और यह इन्तजाम इस तौर होता आया कि हम पण्डे अपनी तरफ से चन्दअसखास को मुहतमित मुर्कर कर देते हैं व सब कार्यवाही मन्दिर व जायदाद मुताल्लिक मन्दिर की किया करते हैं अब चन्द साल से वाहम हम पण्डगान की नइस्तफाकी रहती है और मोहतमिनान साबिका में से अक्सर फौत हो गये और इस वजह से काम में अवतरी वाके होती है। देहात मुआफी मुताल्लिका मन्दिर का रूपया हमेशा से गोलक मन्दिर में दाखिल हुआ करता था उसकी अदखाल की नौहबत कई साल से आज तक नहीं पहुंची और नजर भेट की आमदनी पेशतर आती थी। वह भी पूरे तौर पर दाखिल मन्दिर ठाकुर जी महाराज नहीं हुई इसमें भी अक्सर दस्तअन्दाजी होती है और बाज बाज किताआत जमीन उफतादा व बंजर जो मिनजुमला आराजी मुआफी की है और एक बाग तखमीनन 27 बीघा ठाकुर जी महाराज है। बाज बाज मकानात व कुन्जाई व वगैराह मुताल्लिका मन्दिर हैं उन पर खिलाफ दस्तूर व रिवाज कदीमाना बेडोल बेतसर्फ जाती अपना कर रखा है और नेज दीगर उमूर मुताल्लिका मन्दिर में सिवाय सेवा पूजा राम भोग के सूत बेइन्तजामीबरपा है लिहाजा हम मिनमुकरान जो बुजुर्ग और कारकुन सरगर्दा अपने अपने खानदान के हैं एक कमेटी इतजामी जिसमें 7 पण्डे मैम्बर होंगे मुर्कार करेते है और जिस तरीके से इन्तखाब मैम्बरान का हुआ है वह तरीका यह है कि

नम्बर 1- कि फिलहाल दो थोक आठ आठ आने

के हैं और एक आठ आना में तीन थोक छटे छटे हिस्से के हैं और दूसरे आठ आना में एक चार आना का और दो थोक दो दो आने के हैं इन छः थोक से एक एक मैम्बर मुन्तखिब किया गया है और इसी तरह आयिन्दा भी मुन्तखिब होगा एक सातवां मैम्बर एक थोक चार आना से जैसा कि अब हुआ है कि मुन्तखिब होगा मगर दूसरी साल आठ आना के थोक में से जिसमें तीन छटे छटे हिस्से के थोक शामिल हैं मुन्तखिब किया जायेगा।

नम्बर 2- इस वक्त इस कमेटी के मैम्बर असखास जैल हैं नन्दन बल्द छीतर, जयराम बल्द हरदेव, जसरथ बल्द धनीराम, दानीराम बल्द ब्रजलाल, भगवान बल्द वंशी, नारायन बल्द गोरधन लाल, रामप्रसाद बल्द ठाकुरदास ।

नम्बर 3- सबकाम मन्दिर मसलन इन्तजाम आमदनी जायदाद मुतालिल्का मन्दिर व जायदाद चढ़ावा हर किस्म व नजर भेट व तर्कर व मौकूफी मुलाजमान व मरम्मत बगैराह मकानाते व करने नालिशात व जबावदेही का इख्तयार कमेटी का होगा मगर अमलदरामद सेवा पूजा व राग भोग ठाकुर जी महाराज जैसा कि आयिन्दा से है बदस्तूर कायम रहेगा और हम लोगों का हिस्सा बदस्तूर कदीम तकसीम है। जाया करेगा वाद खत्म होने साल के माह पूस या माघ जो रूपया मसारिफ राग भोग सेवा पूजा व खैरात व दीगर अखराजात मन्दिर से बचेगा वो वाद वजह करने जर व फण्ड के जिसका जिक्र दफा 12 में है पण्डगान में माफिक दस्तुर के तकसीम हो जाया करेगा और सेवा पूजा भी हस्व अमरदरामद साबिका बदस्तूर से होगी कि हर हिस्सेदार अपनी अपनी बारी से सेवा पूजा इन्तजाम व राग भोग करता रहेगा कमेटी सिर्फ सेवा पूजा की निगराह रहेगी।

नम्बर 4- कमेटी इन्तजामी को लाजिम होगा कि इन्तजाम काम मन्दिर व इमलाफ मन्दिर के वास्ते कबायद मनजब्ता करे और उसकी एक नकल जिस पर दस्तखत जुमला मैम्बरान के होंगे मंजरे आम मन्दिर में उतरान रखें और एक नकल बजरिये हाकिम परगना खिदमत में जनाव साहब कलेक्टर बहादुर भेजें और कबायद मनजब्ता कमेटी के सब मैम्बरान पाबन्द रहेंगे !

नम्बर 5- जब कोई मैम्बर मर जावे या काम करने से इन्कार या गफलत करे या वजह जईफी बगैराह नाकाबिल काम के हो जावे या कोई फेल बददियानती करे या अरकान जरायम संगीन सजायाब हो जावे या अपने मजहब को तरक कर दे या एक साल तक मुताबातिर कमेटी से गैर हाजिर रहे तो वह अपने अहोदे से अलहदा कर दिया जावेगा और उसके बजाय पण्डे वसलाह वाहमी दूसरा शाख्स उसी थोक से नामजद कर दें अगर तीन महीना तक पण्डे नामजद न करें तो वावहू बाकी मैम्बर एक दूसरा मैम्बर कसरतराये से मुर्कर कर देंगे। अगर ताहम मैम्बरान में इत्तफाक न हो या पण्डों ने एक से ज्यादा को नामजद किया हो तो मैम्बरान कमेटी ठाकुर जी महाराज के सामने मजमा आम में चिट्ठी डालकर जिसके नाम की चिट्ठी निकले उसको मुर्कर कर दें।

नम्बर 6- दरसूरत बददियानती या तरक करने मजहब के एक दरखास्त जिस पर सौ पण्डों के दस्तखत होंगे सबूत काफी वास्ते वरखास्तगी के मैम्बर के होगा।

नम्बर 7- मैम्बरान कमेटी मिनजुमला मैम्बरान के एक मैम्बर को मैम्बर मजलिस वास्ते एक साल के मुर्कर करेंगे। जब तक दूसरा मैम्बर मजलिस किसी साल के वास्ते मुर्कर न किया जावे तो मैम्बर मजलिस साबिक मैम्बर मजलिस कमेटी मुतसब्बिर होगा इस साल जसरथ पण्डा मैम्बर मुर्कर हुआ।

नम्बर 8- मामूली तौर पर कमेटी सहमायी हुआ करेगी मगर शर्त जरूरत मैम्बरान कमेटी खास कमेटी भी कर सकती है कार्यवाही कमेटी एक रजिस्टर में तहरीर की जावेगी।

नम्बर 9- इत्तला तारीख कमेटी की मैम्बरान को अमूमन तीन योम पेशतर हो जाया करेगी और कम अज कम तीन मैम्बर जब जमा हो जावे तो काम कमेटी किया जावेगा।

नम्बर 10- अगर किसी अमर की निस्बत मैम्बरान कमेटी के इख्तलाफ होगा तो फैसला कसरत राये से होगा अगर मैम्बरान कमेटी मसावी हो तो मैम्बर मजलिस की राय बराबर दो राये के समझी जावेगी।

नम्बर 11- अगर किसी कमेटी से मैम्बर मजलिस गैर हाजिर हो तो दीगर मैम्बरान हाजिर उस वक्त में से किसी को मैम्बर मजलिस उस कमेटी का मुन्तखिब करेंगे।

नम्बर 12- मैम्बरान कमेटी हिसाब आमदनी व इखराजात का रखेंगे और साल तमाम पर वाद तय होने मसारूफ व इखराजात के नगद रूपया पण्डगान में तकसीम किया जावेगा उसमें अव्वलन यह कार्यवाही होगी कि तीन सौ रूपया कबल तकसीम हमेशा निकाला जावेगा और वह रूपया जमा रहेगा उस रूपयों में से इखराजात गैर मामूली मन्दिर के अगर कोई हो तो किये जावेंगे वरना वह रूपया ऐसी जगह काम में लगाया जावेगा कि जिससे आयन्दा तरक्को व कबायद मन्दिर मुतसबिर हो और उसका हिसाब पूरी तौर पर अलहदा मैम्बरान कमेटी मुतसबिर करते रहेंगे।

नम्बर 13- ट्रस्टीनामा हाजा का नफाद तारीख रजिस्ट्री से मुतसबिर होगा और शरायत मुदरजा ट्रस्टीनामा हाजा और कबायद माखूजा व मुनकिता की पायबन्दी हम और हमारे बुरसा व कायम मुकामान व जानसीनान पर नसलन बाद नसलन लाजिम होगी किसी को किसी वक्त में इतराफ न होगा लिहाजा चन्द कलमा वतरीक ट्रस्टीनामा लिख दिये कि सनद रहे तहरीर तारीख दोयम (2) सितम्बर 1904 ई० वकलम श्यामलाल चौधरी

(दस्तखत) दः तोता (145) दः श्योरतन (8) दः मोरद्वज (3) दः राधाचरन (20) दः रनछोर (74) दः लकीराम (40) दः जैराम (51) दः छीती (66) दः मिंकु (49) दः नन्दन (94) दः धीरजा (136) दः मूला (71) दः बाबूराम (65) दः रघुवर (68) दः रामलाल (70) दः हरचरन (61) दः चुन्नी

(139) द: गोरधनलाल (7) निशानी हरफूल (37) द: इन्दर (36) द: रेवतीशरण (2) द: टीकाधर (49) द: धीरजलाल (118) द: मोहनलाल (15) द: रामचन्द (12) द: नेकसे (14) द: ब्रजबल्लभ (79) द: रोशलाल (75) द: श्यामलाल (82) द: चिरंजी (141) द: कुन्दा (54) द: चिरंजी (111) द: दुर्गा (55) द: गिरवर (127) द: कुन्जबिहारी (21) द: मूलचन्द (41) वासुदेव द: मूला (28) द: नत्थी (62) द: खरमर (29) गवाह डालचन्द बल्लद सुखदेव गवाह गोरधन लाल रामरतन कौम पण्डा साकिन बलदेव गवाह गोरधन लाल गवाह केशवदेव बल्लद नारायण दास कौम बनीया साकिन बलदेव बरवत सराफी

तस्दीक की जाती है कि दस्तावेज हाजा में मुसवा साताक्रेता और मुताल्लिका हैं केदारनाथ सबरजिस्ट्रार नम्बर 132 पर आज तारीख 13 सितम्बर 1904 ई० रजिस्ट्री की गयी

“केदारनाथ सबरजिस्ट्रार”

6. After the execution of the above document, 145 families who were rendering *puja* and *seva* continued for a decade or so, but sometimes in the year 1923, dispute arose in regard to functioning of the Committee of Management. On 17.06.1923, a meeting of 200 Pandas (Sevayats) of Dauji Temple was held and a resolution was passed for removing the Seven Member Management Committee who were not the original appointees of 1904 and they had claimed to be the legal heirs of them. On the same day, Seven Member Committee was nominated by 200 Pandas which included Shivcharan Lal, Shankar Lal, Parshottam Lal, Gopal, Gokul Chandra, Kanhaiya and Devaki Nandan. On 31.10.1923, these seven members filed Original Suit No. 94 of 1923 before Sub Judge, Bahadur, Mathura, District-Agra against Sohan son of Dashrath, Babu son of Bholi, Harnath son of Daniram, Shri Damo son of Ramcharan, Hanslal son of Govardhan Lal, Dhujji son of Bhagwan and Shivcharan son of Nandlal. In the plaint, it was alleged that that as per the registered agreement dated 02.09.1904, Seven Member Committee was constituted which

included Dashrath, Daniram, Nandan, Jairam, Narayan, Bhagwan and Ram Prasad. After the death of members of original Management Committee, no new members were inducted as per the agreement, but their legal heirs and near relatives formed a Committee of Management. In the said suit, relief of declaration for managing the affairs of temple along with relief of permanent injunction restraining the defendants from interfering in peaceful working was sought. The entire plaint of Suit No. 94 of 1923 is extracted hereasunder:-

“बअदालत सब जज बहादुर मथुरा जिला आगरा

मुकदमा दीवानी नम्बर 94/1923

शिवचरन लाल बल्लद नाथूराम व शंकर लाल बल्लद परसादी लाल व परषोत्तम लाल बल्लद टीकम दास, गोपाल बल्लद नेतराम व गोकुल चन्द बल्लद धूजीराम व कन्हैया लाल बल्लद सुखदेव व देवकी नन्दन बल्लद रन्धोर अकवाम ब्राह्मन पण्डा साकिनान कस्बा बलदेव, परगना महावन, जिला मथुरा

मुददईयान

बनाम्

सोहन बल्लद दशरथ व बाबू बल्लद भोली व हरनाथ बल्लद दानीराम व श्री दामो बल्लद रामचरन व हंसलाल बल्लद गोरधन लाल व धूजी बल्लद भगवान व शिवचरन बल्लद नन्दलाल अकवाम ब्राह्मन पण्डा साकिनान कस्बा बलदेव, परगना महावन, जिला मथुरा

मुद्दालय

मुदईयान मजकूर हस्व जैल अर्ज करते हैं :-

1. यह कि बमुकाम कस्या बलदेव, परगना महावन, जिला मथुरा एक नशहूर मन्दिर श्री दाऊजी महाराज का वाकै है और कसीर जायदाद मंकूला व गैर मंकूला और जंर आमदनी मन्दिर की है।

2. यह कि पण्डमान साकिनान कस्बा बलदेव मौरूसी ट्रस्टियान मन्दिर मजकूर के हैं और हमेशा से मन्दिर व जायदाद मुताल्लिका मन्दिर का इन्तजाम करते रहे हैं।

3. यह कि बगरज सहूलियत इन्तजाम त रफे निदा बाहमी सरगर्दा पण्डों की बजरीये इकरानामा मौरखा 2 सितम्बर 1904 एक कमेटी सात अशखास की हस्व शरायत मुन्दरजा इकरानामा 'मजकूर मुकरिर की और अब्बल मेम्बरान कमेटी हस्व

जल करार दी गई। 1. दशरथ, 2. दानीराम, 3. नन्दन, 4. जैराम, 5. नारायण, 6. भगवान, 7. रामपरसाद

4. यह कि मिनजुमला मेम्बरान मुकर्रर शुदा के जो मरता गया उसके बजाय कोई मेम्बर हस्व जाब्ता मुन्दरजी इकरारनामा मजकूर जदीद नेम्बर मुकर्रर नहीं किया गया बल्कि चार बाकी मांदा मेम्बरान के वारिस या सगे सम्बन्धी मेम्बर कर लिया गया। आखिर मेम्बर नन्दन फौत हुआ इस तौर से मुद्दालय नम्बरानी से सात मेम्बरान कमेटी और मुन्तजिम मन्दिर नाजायज तौर से बन बैठे और अब मन्दिर का इंतजाम कर रहे हैं।

5. यह कि मुद्दालय मजकूर और उनके मनकदली इकरारनामा 2 सितम्बर 1904 की शरायत के खिलाफ अमलदरामद करते रहे और मन्दिर का काम मुनासिब और सही तौर पर नहीं चलाया और उन्होंने सदाबरात बन्द कर दिया और मुकर्रिम तादाद गोआन की नहीं रखते न सालाना हिसाब समझाया न पण्डों में रूपया तकसीम किया और कोई बाजाब्ता हिसाब लिखा और व कार्यवाही सही तरह से की गई और इन्तजाम जायदाद मुतालिका मन्दिर का ईमानदारी से नहीं किया और जायदाद मरम्मत तलब की मरम्मत ... करायी और न पूरा रूपया गोलक में जमा किया और अकसर कार्यवाहियाँ ऐसी है जिसमें मन्दिर का रूपया फिजूल खर्च हुआ और जायदाद मन्दिर को नुकसान पहुंचा और दीगर तौर पर मुरतकिब बदनीयती और बद एमालियों की हुई।

6. यह कि बवजह बद इन्तजामी व बददयानती तजेकरा बाला के एक नालिश नम्बर 1/1912 बअदालत साहब जज बहादुर आगरा में हस्थ दफा 92 जाब्ता दीवानी दायर की गयी लेकिन अदालत हाईकोर्ट ने ये तजवीज हुआ कि नालिश मजकूर मिस्ल मामूली नालिश बाहमी मालिक दरमैण्ट की अदालत सब जजी में होना चाहिए।

7. यह कि मुद्दालय और इनके पेशतरों की बद इंतजामी व बद ऐमाली व तजल्लुब से तंग आकर पण्डगान दाऊजी ने बतारीख 17 जून सन् 1923 को एक जलसा मुनककद किया जिसमें करीब दो सौ पण्डगान की राय से मुद्दालय इन्तजाम मन्दिर से बरतरफ व बर्खास्त किये गये और मुद्दईयान मेम्बरान कमेटी मुन्तखिब की गया चुनाचे मुद्दईयान मुस्तहक इन्तजाम मन्दिर है।

8. यह कि मुद्दालय से कहा गया कि वो इन्तजा मन्दिर से बाहर हो और मुददईयान के इन्तजाम मन्दिर में फराहम है लेकिन मुद्दालय परवाह नहीं करते चुनाचे हिजामहत दावा हाजा बतारीख 17 जून 1923 ई० बमुकाम कस्बा वलदेव, परगना महावन, जिला मथुरा अन्दर इलाका अदालत हाजा के पैदा हुआ।

9. यह कि हक दावा बगरज समाअत अदालत हाजा का है और कोर्ट फीस मुबलिंग 5 रूपया इस्तकरार और मुबलिंग 6 रूपया 2 आना बिना पर हुकम इम्ताई मुबलिंग अदा किया गया मेम्बरान मुद्दईयान दाद ख्वाह है।

(अलिफ) इस्तकरार इस अग्र का अदालत से सादिर फरमाया जावे कि मुद्दईयान मुस्तहक इंतजाम मन्दिर व जायदाद मुतालिका मन्दिर के है और मुद्दालय को कोई हक मन्सब व इस्तहकाक इन्तजाम मन्दिर जायदाद मुतालिका मन्दिर का नहीं है।

(बे) हुकम इन्तआई दवामी बनान् मुद्दालय जारी फरमाया जावे कि वह मुद्दईयान के इंतजाम मन्दिर व जायदाद मुतालिका मन्दिर में फराहम न हो।

(लीम) खर्चा मुकदमा मुद्दालय से दिलाया जावे।

मद नं 1 व 2, 3, 4, 5, 6, 7,

बइल्म जाती है और मद 9 को

हस्व मशवरा कानूनी राय के

हुआ इकरार करता हूँ बमुकाम

मथुरा तारीख 31 अक्टूबर सन् 1923”

7. The defendants of Suit No. 94 of 1923 contested the same and filed their written statement on 03.10.1924. In para 3 of written statement, para 3 of plaint was admitted. Para 4 of the plaint was admitted in para 4 of written statement by defendants to the extent that members of Management Committee had died and they were managing the affairs of the temple. The written statement filed by defendants of Suit No. 94 of 1923 is extracted hereasunder:-

“बअदालत सब जजी मथुरा

नम्बर मुकदमा 94सन् 1923

शिवचरन लाल वगैरह बनाम्..... मुददईयान

सोहन वगैरह मुद्दालय

ब्यान तहरीरी मिनजानिव मुद्दालय हस्व

जैल है :-

1. मद: 1 अर्जी दावा तस्लीम है।

2. मद 2 में वे अग्र गलत है. कि हमेशा से जुमला पण्डमान इन्तजाम करते रहे हैं बकाया मजमून तस्लीम है।

3. मद 3 तस्लीम है।

4. मद 4 में साबिक मेम्बरान कमेटी का फौत होना और मुद्दालय का इन्तजाम करना तस्लीम है बाकी मजमून से इंकार है।

5. मद 5 सरासर गलत है:

6. मद 6 में अल्फाज बदइंतजामी व बददयानती गलत व वेजा दर्ज है।

7. मदात 7, 8 9 तस्लीम नहीं है।

उजरात मजीद

8. यह कि माबैन फरीकेन व दीगर पण्डमान मुकदमा नम्बरी 51 सन् 1918 ई० वास्ते दादरसी मुन्दरजा अर्जी दावा व दीगर दावर से दायर हुआ था जो अदालत हाजा से खारिज हुआ और अब बकईया अपील अदालत आलिया हाईकोर्ट में दायर है हस्व दफा 10 जाब्ता दीवानी नालिश होने के तजबीज व समात नहीं हो सकती।

9. यह कि मुद्दालय काबिज मन्दिर व जायदाद मुतालिका भन्दिर है नालिश इस्तकरार व हुकम इन्साती काबिज कायम रहने के नहीं है और जरूरी असखास फरीक मुकदमा नहीं किये गये है।

10. यह कि दावे में दफा 42 कानूनन दादरसी खास गलत है।

11. तईयुन नालिश कम किया गया है और कोर्ट फीस नाकाफी अदा किया गया है।

12. नालिश हाजा में तमादी गलत है।

13. यह कि मुद्दईयान व जुमला पण्डमान अपनी तरजे अमल से मुद्दालय को मैम्बरान तस्लीम करते रहे हैं और अपना हिस्सा तकसीम गोलक से लेते रहे हैं अब उनको मन्सब दारी हांसिल नहीं है।

14. यह कि पेशतर नालिश नम्बरी 101 सन् 1910 ई० खारिज हो चुकी है दावे में दफा 11 जाब्ता दीवानी गलत है।

15. यह कि मुद्दालय बहैसियत अपने-अपने पेशतकन हक के फौत होने पर हस्व शरायत इकरारनामा 2 सितम्बर 1904 बाकायदा मुकर्रर की गयी है। यह ब्यान मुद्दईयान कि मुद्दालय नाजायज तौर से मेम्बरान कमेटी व मुन्तजिम बन बैठे है गलत है।

16. यह कि कोई कमेटी जुमला पण्डमान तजकरा मद 7 अर्जी नालिश नहीं हुई न मुद्दईयान बाजाब्ता मेम्बरान कमेटी मुकर्रर की गई न बमौजूदगी मुद्दालय के मुद्दईयान या और कोई शख्स मेम्बरान कमेटी मुकर्रर हो सकता है।

17. यह कि मुद्दईयान व उनके मिस्तल मद्यून ने अगर पोशीदा तौर पर मुद्दईयान गैर हाजिरी कसीर तादाद पण्डमान जो परदेस गये हुये थे अगर कोई है तो ऐसे जलसे में न मुददईयान मुन्तखिव हो सकते हैं। न उनको हक इन्तजार या नालिश पैदा होता है।

18. यह कि मुद्दालय जमीअत ने खल्फ दरानी शरायत इकरारनामा 2 सितम्बर 1904 ई0 की न बदइंतजामी

बददयानती की, इल्जामात मुन्दरजा मद 5 अर्जी दावा अदावतन गलत लिखायी गयी है।

खास खास इल्जामात का जबाव दिया जाता है

(अलिफ) सदाबरत कभी बन्द नहीं हुआ

(बे) कोई तादाद गट्टों की मुकर्रर नहीं है न मन्दिर के वास्ते गठदू खरीदें जाते हैं।

(जीम) रूपया का हिसाब बराबर समझाया गया और रूपया तकसीम किया गया।

(द) हस्व कायदा कदीम हिसाब रखा जाता है और कार्यवाही कमेटी की जाती है।

(हे) मरम्मत जरूरी करायी जाती है अलावा तरीब हमेशा से ये कायदा रहा है कि मरम्मत के सर्फ के वास्ते जात्रियान से इस्तदुआ की जावे चुनाचे भण्डार मन्दिर से मरम्मत ने कराना और जात्रियान के अतीया की कोशिश करना फेल बदइंतजामी नहीं है।

(वाव) कोई कार्यवाही फिजूल खर्ची या मन्दिर को नुकसान पहुंचाने की नहीं की न अब तक बदऐमाली व बदनीयती हुई।

19. जिन पण्डमान का नाम हिस्सा मन्दिर में उन्होंने असें से ये तरीका इख्तयार कर लिया है कि जात्रियान को मन्दिर में गलत बयानी करके उन पण्डगान को भीक देने पर आमदा करते थे और जो रूपया जात्रियान मन्दिर में चढ़ाव को लाते थे उनसे खुद लेते थे। जो रूपया मालगुजारी याफतनी श्री दाऊजी महाराज उनके हिस्से निकलता था उसको अदा नहीं करते थे। इन्हीं खराबियों को रोकने के वास्ते इकरारनामा मौरखा 2 सितम्बर 1904 ई० तहरीर हुआ।

20. यह कि मुद्दालय बहैसियत व पेशतरून हक मुद्दालय इन खराबियों को दफीया के वास्ते और दाऊजी महाराज के नफे के वास्ते कोशिश करते रहे है कि जो मुद्दईयान व दीगर साथी मुद्दईयान अपना जाती नुकसान समझ कर मुद्दालय को तरह तरह की तकलीफ देने व मुकदमे बाजी करते रहे है, इस वजह से ये मुकदमा दायर किया है।

21. यह कि मुद्दईयान जो खैरख्वाह मन्दिर नहीं है और जिनकी कुल कार्यवाही खुदगर्जी के वास्ते है मुनासिब अशाखास मैम्बरान कमेटी नहीं है।

22. यह कि मुद्दालय साथ मेहनत जानफशाई व दयानत खोरी के इन्तजाम मन्दिर कर रहे है मुस्ताजिब अलैहदगी है बाकायदा अलैहदगी की गई है।

23. यह कि दावा हाजा बराहे नेक नीयती बगरज नफा मन्दिर नहीं किया गया है काबिले डिसमिस है।

24. यह कि मुद्दईयान पैदा नहीं हुये न मुस्तहक दावे के है।

तस्दीक की जाती है कि मदात 1, 2, 3, 4, 5

6, 7 व मद 8 में नासमझी जुज व आखिर मद 13, 9, 11, 22 हक अब्बल व मद 15 व मद 17. 18, 19, 20, 21, 22, 23 का इल्म जाती है और जिस पर मद 8 का चन्द हिस्सा व मद 10, 12. 14 का हक उल खबर व मद 24 का इल्म मशवरा कानूनी के है जिसका सही होना ठकरार करता हूँ सब जजी दस्तावेज की तस्दीक बमुकाम कस्बा बलदेव बतातीख 3 अक्टूबर 24 की गई।"

8. Parties to the suit filed a compromise application on 14.10.1924 wherein Clause 10 provided for one Babu Baldeo Bihari Lal to be the Receiver of the temple and he will be submitting the accounts of the temple in the court. On the basis of the said compromise application, suit was decreed on 15.10.1924. Copy of the compromise application along with order passed therein are extracted hereunder:-

“असल पर स्टाम्प 8 आना व 8 आना

बअदालत सब जजी मथुरा।

नं० मु० 94 सन् 1923 ई०

शिवचरन वगैरा ----- मुद्दईयान

बनाम

सोहनलाल वगैरा -----

मुद्दालायहम

जनाब आली,

वाहम फरीकेन तसफिया हस्ब जैल हो गया उसके मुआफिक डिग्री सादिर फरमायी जावे।

1- जुमला इन्तजाम मन्दिर सुपुर्द बाबू बलदेव बिहारी लाल वकील जो अब तक बतौर सुपरवाईजर काम कर रहे हैं कर दिया जावे और मुद्दालायहम व मुद्दईयान इन्तजाम मन्दिर से दस्तबरदार होते हैं।

2- बाबू बलदेव बिहारी लाल का फर्ज होगा कि मन्दिर के अन्दर जात्रियों से खैरात किसी तौर पर कोई सख्स न तलब करे और न ही दिखावे और न उनके साथ आवे और न उनसे दान ले और न सेवकी मन्दिर में मांगी जावे और न मिश्री निकाली जावे।

3- हर फरीक को इख्तियार होगा कि दरसूत न पाबंदी होने शरायत मजकूरा वाला के वजरिये इजराय डिग्री अदालत हाजा से तामील करा ली जावे।

4- अगर किसी वजह से बाबू बलदेव बिहारी लाल इन्तजाम मन्दिर से सुबुकदोष हो या नाकाबिल इन्तजाम हो जाये तो अदालत को इख्तियार होगा कि उनके बजाय व मशवराह फरीकेन या उनके कायम मुकामान दूसरा मुनासिब सख्स मुकर्रर सीया इजराय में कर दें। मगर अगर फरीकेन आपस में किसी एक खास सख्स की बावत रजामन्द न हो या मशवराह देना न चाहे तो अदालत को इख्तियार होगा कि सख्स मुनासिब को उनके बजाय मुकर्रर कर दें।

5- अगर किसी वजह से इन्तजाम बाबू बलदेव बिहारी लाल साकित हो जावे या कायम न रहे तो अदालत को इख्तियार होगा कि एहकाम मुनासिब बावत इन्तजाम मन्दिर मजकूर किसी फरीक की दरखास्त पर व सीया इजराय सादिर फरमाये।

6- हर फरीक को बाबू बलदेव बिहारी लाल या उनके कायम मुकाम के इन्तजाम के मुताल्लिक शिकायत करने का हक हासिल होगा और अदालत उसके मुताल्लिक जो कुछ इन्तजाम मुनासिब ख्याल फरमावे अमल में लावें।

7- बाबू बलदेव बिहारी लाल की फीस 2000/- दो हजार रूपया सालाना आमदनी मन्दिर से दी जायेगी और उनको अख्तियार होगा कि हर सहमाही पर मु० 500/- पाँच सौ रूपया वसूल कर ले अलावा सफर खर्ची

8- खरचा फरीकेन जिम्मे फरीकेन रहे।

9- जो अपील व अदालत अल आलिया हाईकोर्ट मिनजानिब मुद्दईयान व दीगर असखास दीगर है वह मुकईयान का फर्ज होगा व जहां तक कि उनका ताल्लुक अपील से है वापिस ले ले और अगर वापिस न ले तो दावी मुद्दईयान मय खर्चा डिसमिस होगा और मुद्दालायहम अपना खर्चा मुद्दयान से पावेंगे।

10- बाबू बलदेव बिहारी लाल की हैसियत बतौर रिसीवर के होगी और वह अपना हिसाब हर सहमाही पर अदालत में पेश करेंगे।

11- हद्द मन्दिर वह ही मुततब्बिर होगी जो इस मुकदमा में बयान व वुकलाय फरीकेन में बतलायी गयी है।

फकत तारीख 14 अक्टूबर सन् 1924 ई०

द० अंग्रेजी अपठित 14-10-24

आज इस तसफिया को बाबू टिकनरायन सीनियर वकील मुद्दई व बाबू बसतलाल वकील मुद्दालायहम ने रूबरू अदालत पेश करके और हररूफ बहरूफ सुनकर व समझकर तस्दीक किया 14 अक्टूबर सन् 1924 ई०

In the court of the Sub Judge of Mathura
Present- Pandit Shambhu Nath Dube, M.A.,
LL.B.

Sub Judge

Civil suit No. 94 of 1923

Shiv Charan and others, Plffs
Versus Sohan and other Defdts.

Judgment

This suit, which is one of the several cases fought within the last 12 years or more regarding the temple of Sri Baldeo ji Maharaj situate at the town of Baldeo, is for a declaration that the defdts are not entitle to manage the temple. A perpetual injunction is also prayed for.

The suit was keenly contested in the beginning, but ultimately parties have entered into a compromise which sets at rest the long drawn competition for the management of the temple at least for a considerable time. The compromise does credit to the parties and their legal advisors.

Order

Suit decree in parties of the compromise which shall be entered in the decree costs parties. A copy of the compromise be sent to B. Baldeo Bihari Lal for information and necessary action.

Sd/-

S.N. Dube

Sub Judge 15.10.1924”

9. Since the suit was decreed in terms of compromise on 15.10.1924, Receiver continued to look after the temple of Dauji. After the first Receiver left, the Civil Court at Mathura had been appointing Receivers and the matter on several occasions had travelled to this Court. The sole dispute which was under consideration in various rounds of litigation before the courts was as to who shall continue as the Receiver of Dauji Temple.

10. On 20.02.2019, one Ram Kator Pandey (respondent no. 13) was appointed as Receiver by Additional District Judge, Court No. 5, Mathura in Misc. Case No. 34 of 2014 arising out of Original Suit No. 94 of 1923 for a period of 20.02.2019 to

31.03.2020. The appointment of Ram Kator Pandey had continued since 2019 till complaint was made against him for making embezzlement of the temple property. By order impugned dated 20.07.2024, respondent no. 13 was suspended from receivership and one Kuwar Pal Singh Tomar was appointed as officiating Receiver.

11. Present petition has been filed by two petitioners claiming to be the trustees of Dauji Temple and have arrayed respondent nos. 1 to 12 who are also claiming to be the trustees of the trust in question. While respondent no. 13 is the Receiver appointed in the year 2019, while respondent nos. 14 to 16 are the Sevayats and are neither trustees nor parties in the suit.

12. Both petitioners and respondent nos. 1 to 12 are on the same page and are litigating tooth and nail against the order passed by court below suspending and taking away the power of respondent no. 13, Ram Kator Pandey as Receiver.

13. The entire premise of the case of petitioners and so called trustees are that they are the legal heirs of original plaintiffs and defendants of Suit No. 94 of 1923 and, thus, have continued to manage the affairs of temple and it is them who will nominate a person as a Receiver.

14. Sri Dharam Pal Singh, learned Senior Counsel appearing for petitioners submitted that Dauji Temple is not a registered trust within the meaning of The Indian Trusts Act, 1882. It is a private temple managed by Pandas/Sevayats for a long period and are bound by Trust Nama/Ikrar Nama executed in the year 1904. According to him, after the

compromise decree was passed on 15.10.1924, the Receiver was appointed and as per the terms of compromise, the Receiver will take care of the temple from time to time and submit the details of the accounts in the court. There is no complaint against respondent no. 13, Ram Kator Pandey and he has been wrongly dragged in the present litigation by some of the Savayats who want his ouster. Further, there are about 700 Sevayats of Mandir belonging to six Thoks and each of them are performing seva and *puja* according to their turn. He also contended that compromise decree was challenged in F.A.F.O. No. 92 of 1954 and F.A.F.O. No. 100 of 1954 by some of Sevayats which were rejected and in pursuance of the compromise decree, the management of temple had remained with 14 parties of the suit since 1924.

15. Defending appointment of Ram Kator Pandey, he submitted that it has always been appointed by court taking in view the majority opinion of 14 parties to the suit. According to him, lot of improvement has been done by Receiver and hence he should continue with his appointment.

16. Sri C.L. Pandey, learned Senior Counsel appearing for respondent no. 1, 2, 4, 5, 6, 7, 8, 11 and 12 endorsed the argument of petitioners' counsel. He further contends that there is unanimity between all the 14 trustees and Ram Kator Pandey should continue as Receiver of the temple.

17. Ms. Nandani Sharma, learned counsel has appeared for respondent no. 9 and supported the argument made by petitioners' counsel and defended the action of Ram Kator Pandey and submitted

that order passed by court below was not correct in suspending the power of Receiver.

18. Sri Badri Mani Tripathi, learned counsel has put in appearance on behalf of respondent no. 10 and submitted that pursuant to consent decree dated 15.10.1924, Babu Baldeo Bihari Lal was appointed as the first Receiver. According to him, the terms of compromise provided that in case the Receiver did not continue, then it is the court who has to appoint Receiver and the consent decree is to continue in eternity. He contended that representatives of 14 parties to the suit were to continue and would succeed as a party to the suit. He has tried to explain that it is the legal heirs of seven plaintiffs and defendants who have been successively brought as a party in the litigation which is going on since 1924 till date and the present 14 claimed trustees by the petitioners are the legal representatives of those original seven plaintiffs and defendants.

19. Sri H.N. Singh, learned Senior Counsel appearing for respondent nos. 14, 15, 16 and two intervenors, Dauji Dayal and Balram Pandey submitted that for last 100 years the parties are litigating on the basis of compromise decree of 1924 without adhering to the agreement executed on 02.09.1904 which is the basic document dividing the 145 families in six Thoks and appointing Seven Member Management Committee.

20. There was no concept of legal representative in the Management Committee. Once any member of the managing Committee representing his Thok died or was unable to perform, another member was appointed from the

same Thok, or in case of failure to appoint so, the remaining members appointed a member to the Management Committee. According to him, the concept of legal representative in the Management Committee is alien to the initial agreement which is binding upon all the Pandas/Sevayats of Dauji Temple.

21. There are about 734 families of Pandas and Sevayats of Dauji Temple and Management Committee has to be appointed from these 734 families which has grown from initial 145 families. The compromise which was entered in 1924 is not binding on the Pandas/Sevayats as the suit was filed by Committee of Management which was elected in the year 1923 and had claimed relief against those persons who were not members of the Management Committee and were acting in violation of the agreement dated 02.09.1904. There is no provision for succession in the compromise decree/compromise application and court can appoint Receiver only in case of failure of appointment of Management Committee of Sevayats in terms of Trust Nama/Agreement of the year 1904.

22. I have heard respective counsel for the parties and perused the material on record.

23. This is a classic case of misuse of judicial process to usurp and manage the temple property of Dauji. Basically, 145 families of Pandas/Sevayats had entered into an Agreement on 02.09.1904 which was registered on 13.09.1904. The agreement clearly spells out that Seven Member Management Committee would be constituted from six Thoks (groups).

24. The members of first Committee of Management were appointed

when the agreement was executed and paragraph 2 details the names of members. Paragraph 3 of the agreement encapsulates the work to be performed by Committee of Management. Paragraph 7 is of great relevance as it does not provide for line of succession of any member of Committee of Management, in fact, it details that in case any member dies or refuses to work or fails to attend the meeting of Committee of Management for one year, he shall be replaced by a member from his Thok (group). In case of failure on the part of the Thok to appoint a member within three months, rest of the members can appoint a member from his Thok. In case of a tie or a dispute between the existing members, chit will be placed before the Deity for appointing the member.

25. The concept of successorship to the members of Management Committee is alien to the registered agreement executed between the 145 families of Pandas on 13.09.1904. The aforesaid agreement is the genesis of governance and management of the temple by families of Pandas/Sevayats of Dauji Temple who are divided in six Thoks (groups) nominating seven members for managing day to day affairs. The document executed on 02.09.1904 and registered on 13.09.1904 governs the entire action of the parties to the litigation.

26. In the suit instituted in the year 1923 by seven plaintiffs who were appointed the members of Management Committee by Sevayats/Pandas in the meeting held on 17.06.1923 had specifically claimed relief of declaration as well also sought relief of permanent injunction against seven defendants of the suit for permitting them to manage the affairs of the temple in pursuance of resolution dated 17.06.1923 and defendants

be injuncted from interfering in their peaceful working.

27. The entire premise of Suit No. 94 of 1923 was on the basis that agreement executed on 02.09.1904 governs the field of management of temple, and initially a Seven Member Committee was appointed and those members have expired and their legal heirs and family members have unscrupulously constituted a Committee of Management and were looking after the affairs of the temple.

28. In the plaint, it was specifically averred that defendants cannot function as Committee of Management which was against the agreement dated 02.09.1904. The defendants of the said suit in their written statement had admitted the execution of Agreement dated 02.09.1904. They had also admitted that initial seven members had died and it is they who are managing the affairs of the temple.

29. No plea in the written statement was taken as to how they were performing the work of Committee of Management or stepped into the shoes of the earlier Committee of Management. There was no reliance upon any resolution in their favour appointing them as the members of Committee of Management from their respective Thoks (group).

30. The member can only be appointed in the Management Committee from his Thok. One has to demonstrate his continuance as a member, having been sent from his Thok. In the written statement, there was no such averment by contesting defendants of that suit.

31. In the compromise application which was filed on 14.10.1924, the parties

to the suit had not accepted that their continuance had been on the basis of law of inheritance/succession. The alleged compromise was entered so as to resolve the dispute for managing the affairs of the temple and one Babu Baldeo Bihari Lal, Advocate was appointed as the Receiver. The intention of the compromise entered does not reveal that Receiver would continue to operate in the temple for eternity.

32. The argument of respondent counsel that decree has bound the parties in eternity is absolutely vague and against the material on record. The agreement executed on 02.09.1904 binds the entire Pandas/Sevayats of Dauji Temple who now number 734 families. The agreement never provided for succession to operate in the appointment of members to the Management Committee. It was the respective Thok which was to send one member to the Management Committee.

33. It was only in a case of deadlock that a Receiver was appointed pursuant to compromise arrived in the year 1924.

34. Once Babu Baldeo Bihari Lal left as Receiver of Dauji Temple, it appears that successive applications were filed by the parties for appointment of Receiver which continued for last 100 years. No court considered the agreement executed between the Pandas/Sevayats on 02.09.1904, registered on 13.09.1904 that the legal heirs/representatives of members of Management Committee would not succeed.

35. What transpires from the present case is that parties to the litigation claiming on the basis of law of

inheritance/succession have been appointing their persons as Receiver of the temple and they are inducting themselves to be the people in-charge of the affairs of Committee of Management and treating them to be trustees of the trust. The description of the parties to the writ petition clearly reveals that both petitioners claim themselves to be the trustees of Dauji Temple along with respondent nos. 1 to 12. While petitioners' counsel had vehemently argued that it was not a trust registered under The Indian Trusts Act, 1882 nor it is governed by The Charitable and Religious Trusts Act, 1920.

36. It is in the garb of this fact that petitioners and respondents are claiming themselves to be the successors/legal heirs and representatives of the seven plaintiffs and defendants of Suit No. 94 of 1923 and litigating since then and managing the affairs of the temple ousting all the Sevayats and Pandas from the judicial arena.

37. The argument of Sri Tripathi, also rests on this premise that present petitioners and respondent nos. 1 to 12 are descendants of plaintiffs and defendants of Suit No. 94 of 1923 and they are entitled to carry on the litigation and only with their consent any person can be appointed as a Receiver. The argument is totally vague and alien to the concept of succession in view of agreement dated 02.09.1904.

38. All the parties to the present litigation have admitted the execution and registration of document dated 02/13.09.1904. Once such is the position, then the entire action will be governed by the terms and conditions laid down in the said agreement. It is for the first time that intervenor counsel has brought the

agreement executed between 145 families of Pandas/Sevayats of Dauji Temple, registered on 13.09.1904, which details the name of members of 145 families which was divided in six Thoks. The entire process for appointment and functioning of Committee of Management has been clearly spelt out in the Agreement of the year 1904. It is the binding force between all the Pandas and Sevayats of the Temple.

39. No judgment or order can be passed excluding the agreement or which is against the provision of the agreement.

40. The entire premise of argument of petitioners and respondents counsel especially respondent nos. 1 to 12, rests on the compromise decree of the year 1924 leaving aside the agreement executed in the year 1904. The agreement is the genesis of the entire dispute which has stemmed from 1923 onwards. The plaint of Suit No. 94 of 1923, at the outset, mentions the execution of Agreement on 02.09.1904. The plaintiffs therein had solely and entirely relied upon the agreement of 1904 and had claimed their relief relying upon it.

41. With the passage of time, families of Pandas and Sevayats have grown from 145 to 734 at present. It is only these families who are divided in six Thoks will send seven members to Management Committee who will look after the affairs of the Temple. The role of Receiver will come into play only in case no unanimity is arrived at or the Committee of Management is not constituted. Litigation after compromise decree does not reveal that any effort was made in last 100 years to constitute Committee of Management whose basic job was to look after the affairs of Temple. Receiver is only appointed when all the measures fail and to

protect the property the court is left with no option but to appoint a person.

42. Order XL Rule 1 CPC provides for appointment of Receiver where it appears to the Court to be just and convenient, the Court may by order :- (a) appoint a Receiver of any property, whether before or after the decree, (b) remove any person from the possession or custody of the property, (c) commit the same to the possession, custody or management of the Receiver; and (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such those powers as the Court thinks fit.

43. The object of appointing a Receiver is to protect, preserve and manage the property during the pendency of a suit. The words “to be just and convenient” have been substituted for the words “to be necessary for the realization, preservation or better custody, or management of any property, movable or immovable, subject of a suit or attachment”. The effect of this amendment is that the Court may now appoint a Receiver not only in a particular case specified in the old section, but in every case in which it appears to the Court to be just and convenient to do so.

44. The power of the Court to appoint a Receiver under this order is subject to the controlling provision of Section 94 and is to be exercised for preventing the ends of justice from being defeated. Section 94 CPC reads as under;

“94. Supplemental Proceedings.-

In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,—

(a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;

(b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;

(c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(e) make such other interlocutory orders as may appear to the Court to be just and convenient.”

45. The source of power of the Court to grant interim relief is under Section 94. However, exercise of that power can only be done if the circumstances of the case fall under the rules. Therefore, when a matter comes before the Court, the Court has to examine the facts of each case and ascertain whether the ingredients of Section 94 read with rules, in an order, are satisfied and accordingly grant an appropriate relief.

46. In **Mulji Umershi Shah Vs. Paradise Builders Private Limited**, AIR 1998 Bombay 87, Bombay High Court held that appointment of Receiver can be made on the application of either parties to

the litigation as well as *suo moto* and therefore, absence of application shall not preclude the Court from passing such orders if it is just and convenient.

47. In **S.B. Industries Vs. United Bank of India**, AIR 1978 189, Division Bench of this Court while considering the appointment of Receiver held that in order to justify the appointment of Receiver, the plaintiff must establish a reasonable possibility that the plaintiff will ultimately succeed in obtaining the relief claimed in the suit. The requirement, thus, is that he must establish a *good prima facie* case. The Court further held that appointment of a Receiver is, as a general rule, discretionary, and not a matter of right. The Court also observed that a Receiver has no power except such as are conferred upon him by the orders by which he is appointed.

48. In **Satyanarayan Banerji & Another Vs. Kalyani Prosad Singh Deo Bahadur & Others**, AIR 1945 CAL 387, the Court held that object and purpose of appointment of a Receiver may generally be stated to be the preservation of subject matter of the litigation pending, a judicial determination of the rights of the parties thereto. The Receiver is appointed for the benefit of all concerned, he is the representative of the Court and of all parties interested in the litigation, wherein he is appointed. The appointment of a Receiver is an act of Court and made in the interest of justice. He is an officer or representative of the Court subject to its order. His possession is the possession of the Court.

49. In **T. Krishnaswamy Chetty (Supra)** Madras High Court had laid five principles which can be described as “panch sadachar” of our Courts exercising

equity jurisdiction in appointing Receivers. Relevant paragraph no. 13 of the judgment is extracted here as under;

“13. The five principles which can be described as the ‘panch sadachar’ of our Courts exercising equity jurisdiction in appointing receivers are as follows:

(1) *The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. The discretion is not arbitrary or absolute: it is a sound and judicial discretion, taking into account all the circumstances of the case, exercised for the purpose of permitting the ends of justice, and protecting the rights of all parties interested in the controversy and the subject-matter and based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding:* — ‘Mathusri v. Mathusri,’ 19 Mad 120 (PC) (Z5); — ‘Sivagnanathammal v. Arunachallam Pillai,’ 21 Mad LJ 821 (Z6); — ‘Habibullah v. Abtiakallah,’ AIR 1918 Cal 882 (Z7); — ‘Tirath Singh v. Shromani Gurudvara Prabandhak Committee,’ AIR 1931 Lah 688 (Z8); — ‘Ghanasham v. Moraba,’ 18 Bom 474 (Z9); — ‘Jagat Tarini Dasi v. Nabagopal Chaki,’ 34 Cal 305 (Z10); — ‘Sivaji Raja Sahib v. Aiswariyanandaji,’ AIR 1915 Mad 926 (Z11); — ‘Prasanno Moyi Devi v. Beni Madhab Rai,’ 5 All 556 (Z12); — ‘Sidheswari Dabi v. Abhayeswari Dabi,’ 15 Cal 818 (Z13); — ‘Shromani Gurudwara Prabandhak Committee, Amritsar v. Dharam Das,’ AIR 1925 Lah 349 (Z14); — ‘Bhupendra Nath v. Manohar Mukerjee,’ AIR 1924 Cal 456 (Z15).

(2) *The Court should not appoint a receiver except upon proof by the plaintiff that prima facie he has very excellent chance of succeeding in the S. suit.* — ‘Dhumi v. Nawab Sajjad Ali Khan,’ AIR

1923 Lah 623 (Z16); — ‘Firm of Raghbir Singh Jaswant v. Narinjan Singh’, AIR 1923 Lah 48 (Z17); — ‘Siaram Das v. Mohabir Das’, 27 Cal 279 (Z18); — ‘Muhammad Kasim v. Nagaraja Moopnar’, AIR 1928 Mad 813 (Z19); — ‘Banwarilal Chowdhury v. Motilal’, AIR 1922 Pat 493 (Z20).

(3) Not only must the plaintiff show a case of adverse and conflicting claims to property, but, he must show some emergency or danger or loss demanding immediate action and of his own right he must be reasonably clear and free from doubt. The element of danger is an important consideration. A Court will not act on possible danger only; the danger must be great and imminent demanding immediate relief. It has been truly said that a Court will never appoint a receiver merely on the ground that it will do no harm. — ‘Manghanmal Tarachand v. Mikanbai’, AIR 1933 Sind 231 (Z21); — ‘Bidurramji v. Keshoramji’, AIR 1939 Oudh 61 (Z22); — ‘Sheoambar Ban v. Mohan Ban’, AIR 1941 Oudh 328 (Z23).

(4) An order appointing a receiver will not be made where it has the effect of depriving a defendant of a ‘de facto’ possession since that might cause irreparable wrong. If the dispute is as to title only, the Court very reluctantly disturbs possession by receiver, but if the property is exposed to danger and loss and the person in possession has obtained it through fraud or force the Court will interpose by receiver for the security of the property. It would be different where the property is shown to be ‘in medio’, that is to say, in the enjoyment of no one, as the Court can hardly do wrong in taking possession: it will then be the common interest of all the parties that the Court should prevent a scramble as no one seems to be in actual lawful enjoyment of the property and no

harm can be done to anyone by taking it and preserving it for the benefit of the legitimate who may prove successful. Therefore, even if there is no allegation of waste and mismanagement the fact that the property is more or less ‘in medio’ is sufficient to vest a Court with jurisdiction to appoint a receiver. — ‘Nilambar Das v. Mabal Behari’, AIR 1927 Pat 220 (Z24); — ‘Alkama Bibi v. Syed Istak Hussain’, AIR 1925 Cal 970 (Z25); — ‘Mathuria Debya v. Shibdayal Singh’, 14 Cal WN 252 (Z26); — ‘Bhubaneswar Prasad v. Rajeshwar Prasad’, AIR 1948 Pat 195 (Z27). Otherwise a receiver should not be appointed in supersession of a bone fide possessor of property in controversy and bona fides have to be presumed until the contrary is established or can be indubitably inferred.

(5) The Court, on the application of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame. He must come to Court with clean hands and should not have disintitiled himself to the equitable relief by laches, delay, acquiescence etc.”

50. Pleading of the parties and the argument advanced from both sides reveal that they are only interested in the appointment and continuance of a Receiver. There is no whisper in the petition or the argument led by counsel for the parties that any effort was made to constitute Committee of Management in last 100 years. Once, it is an admitted case that there are more than 700 families of Pandas and Sevayats who are divided in six Thoks, their wishes needs to be taken into consideration for appointment of Seven Member Committee.

51. The present proceedings which continued before court below in form of Misc. Case No. 165 of 2020 cannot continue as the compromise decree did not

mandate that Receiver was to continue in infinity. The appointment of Receiver is a stop gap arrangement. The compromise decree in 1924 was entered only because of the dispute between two groups claiming to be in-charge of affairs of the Temple. The agreement governs the field of appointment of Committee of Management. In the garb of misc. proceedings in Original Suit No. 94 of 1923, proceedings had been going on for last 100 years.

52. This Court is shocked to note that no effort was made by courts below to look into the agreement of 1904 and make effort for constituting Committee of Management in pursuance of the agreement entered between all the Pandas and Sevayats of the Temple.

53. The instant petition, filed by the alleged two trustees, appears to be a proxy petition on behalf of respondent no. 13 who was appointed Receiver by court below in the year 2019. Respondent nos. 1 to 12 who also claim to be the trustees of Dauji Temple had supported the stand taken by petitioners and have prayed for continuance of respondent no. 13 as Receiver.

54. It is a fraud being played on the judicial system by these alleged trustees who have clearly failed to demonstrate as to how they are calling themselves to be trustees of Dauji Temple or a person in-charge for the management of the Temple. The original agreement of 1904 does not provide for any succession to the Seven Member Committee of Management. It only provides for replacement of member from his respective Thok and law of inheritance or succession is not applicable.

55. Continuance of judicial proceedings for several decades in the garb

of compromise decree of 1924 is a fraud which has been played upon the court. The concept of appointment of Receiver is only to protect, preserve and manage the property during the pendency of a suit. The suit instituted in the year 1923 was compromised between the parties which had led to appointment of Receiver in 1924 by the court. The decree does not provide for continuance of Receiver in eternity.

56. At present, there is no such suit pending between any of the parties. Out of 734 Pandas/Sevayats, none have instituted any suit nor parties before the Court have brought any material to demonstrate that any suit is pending consideration. Through a misc. proceeding, a frivolous case has been carved out for appointment of Receiver, wherein there is no litigation pending between any party and the suit property needs to be protected.

57. The interest of Pandas/Sevayats of Dauji Temple needs to be protected, and according to the agreement arrived between 145 families of Pandas/Sevayats in the year 1904, the Committee of Management is to be constituted. After 13.09.1904, neither the agreement was rescinded or altered. It still holds the field and binds the families of Pandas and Sevayats. The entire *seva/puja* and the management of affairs of Temple has to be seen from the terms laid down in the agreement of 1904.

58. Through artificial litigation which has been created after the compromise decree was made in the year 1924, Receivers have been appointed successively to manage the affairs of Dauji Temple. It was never brought to the notice of the court that any agreement was executed in 1904 between 145 families of Pandas/Sevayats.

59. Reliance placed upon the decision of co-ordinate Bench rendered in case of **Ram Kumar Pandey vs. Narain Prasad Pandey, Matters under Article 227 No. 1637 of 2018**, delivered on 31.08.2018, clearly reveals that agreement of 1904 was not brought to the notice of the Court. The entire case brought before the Court was from the stage, when the compromise decree was passed. Parties litigating in the matter for last few decades have never referred to the agreement of 1904 and solely relying upon the compromise decree of 1924 had proceeded further in the matter.

60. The entire genesis of the litigation of 1923 was the defiance of agreement of 1904 by the parties. Agreement entered between 145 families of Sevayats is the basic document upon which any litigation in regard to Dauji Temple would rest.

61. Without discussion and consideration of the said Agreement, no dispute can be resolved. It is in garb of the consent decree that petitioners have created an illusionary litigation and claiming to be the successors of parties to the suit of 1923 and are trying to control the temple in question.

62. The management of temple rests with Seven Member Committee to be constituted from six Thoks of 145 families of Pandas and Sevayats. Apart from this, no one can claim right to manage affairs of the Dauji Temple.

63. Considering the facts and circumstances of the case, I find that no misc. proceedings can be carried on in Original Suit No. 94 of 1923 for appointment of Receiver. Thus, entire proceedings of Misc. Case No.

165 of 2020 are hereby set aside. No person shall act as Receiver of the Temple in question and a Seven Member Management Committee be constituted in terms of Agreement dated 02.09.1904. The matter is remitted to District Judge, Mathura, with a request to:-

(i) Convene a meeting of 734 Pandas/Sevayats of Dauji Temple, who are divided in six Thoks, to be conducted by the senior most Additional District Judge, within a month.

(ii) A supplementary agreement would be executed by all 734 members only to the extent that their names are brought on record, without touching upon the terms and conditions laid out in the Agreement dated 02.09.1904, registered on 13.09.1904.

(iii) The members shall select a person from their respective Thoks to be sent to Committee of Management for managing the affairs of the Temple.

(iv) The Management Committee would be constituted in terms of Agreement dated 02.09.1904 and only the new members of 734 families would become part of the supplementary agreement.

(v) The newly constituted Management Committee would look after day to day affairs of the Temple.

64. In view of the fact that entire misc. proceedings initiated by the parties for appointment of Receiver has been set aside and direction has been issued for constituting fresh Committee of Management to look after the affairs of the Temple in pursuance of the Agreement dated 02.09.1904, the present writ petition stands disposed of.

*In Re: Civil Misc.
Correction/Modification Application No.
13 of 2025*

1. This correction/modification application has been moved on behalf of respondent nos. 14, 15 and 16 seeking correction/modification of judgment and order dated 21.03.2025 to the extent that District Judge, Mathura, shall get an inventory of all movable and immovable properties including cash, bank accounts, ornaments etc. prepared immediately and a report is submitted by officiating Receiver, Kunwar Pal Singh Tomar before Committee of Management is constituted.

2. In view of said fact, judgment and order dated 21.03.2025 is modified to the extent that after Paragraph No. 64, following paragraphs are added:-

"65. The District Judge, Mathura, is hereby requested to get the complete inventory prepared of all movable and immovable properties of Dauji Temple, including cash, bank accounts, ornaments etc. immediately, within a period of two days from today. When the management is handed over to newly constituted Committee of Management, the inventory so prepared shall also be passed on.

66. Further, Registrar (Compliance) is hereby directed to communicate this order along with earlier judgment and order dated 21.03.2025 to District Judge, Mathura, within 24 hours, for necessary compliance."

3. The correction/modification application stands disposed of.

(2025) 3 ILRA 116

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 11.03.2025

BEFORE

THE HON'BLE ROHIT RANJAN AGARWAL, J.

Matters Under Article 227 No. 11807 of 2024

Smt. Santosh Awasthi ...Petitioner
Versus
Smt. Urmila Jain ...Respondent

Counsel for the Petitioner:
Rama Goel Bansal, Shalini Goel

Counsel for the Respondent:
Arvind Srivastava

Civil Law-The Constitution of India,1950-Article 227 - The Code of Civil Procedure, 1908-Section 115, Order 21 Rule 97,102 - The Transfer of Property Act-1882-Section 52- Revisional court had exceeded its jurisdiction by dismissing the application filed under Order XXI Rule 97 by the petitioner before the executing court while exercising revisional jurisdiction under Section 115 CPC--- The executing court has also failed in its endeavour to decide the execution case pending before it since the year 2014, and after framing the issue of res judicata had postponed the matter to be decided at the final stage--- Where it is an admitted fact that the property was transferred during pendency of the suit and petitioner is a transferee pendente lite and hit by provisions of Section 52 of the Transfer of Property Act, the executing court should have, at the very outset, proceeded to pass the order in pursuance of Rule 102--- Matter is remanded to the executing court to pass necessary orders on the application moved under Order XXI Rule 97 CPC in accordance with law within a period of one month. **(Para 34, 35 & 37)**

Petition disposed of. (E-15)

List of Cases cited:

1. Siddamsetty Infra Projects Pvt. Ltd. Vs Katta Sujatha Reddy & ors., 2024 SCC OnLine SC 3214
2. Shingara Singh Vs Daljit Singh & anr., 2024 SCC OnLine SC 2823
3. Usha Sinha Vs Dina Ram 2008 (7) SCC 144

4. Sriram Housing Finance and Investment Vs Omesh Misra Memorial Charitable Trust 2024 (15) SCC 176

5. Silverline Forum Pvt. Ltd. Vs Rajiv Trust & anr.(1998) 3 SCC 723

6. Surya Dev Rai Vs Ram Chander Rai 2003 (6) SCC 675

7. Radhey Shyam & anr. Vs Chhabi Nath & ors. 2009 (5) SCC 616

8. Periyammal Vs V. Rajamani, Civil Appeal No. 3640-3642 of 2025

(Delivered by Hon'ble Rohit Ranjan Agarwal, J.)

1. Heard Ms. Rama Goel Bansal, learned counsel for petitioner and Sri Arvind Srivastava, learned counsel for respondents.

2. This writ petition under Article 227 of Constitution of India has been filed assailing the order dated 05.08.2024 passed by Additional District Judge, Court No. 1, Jhansi in Civil Revision No. 59 of 2024.

3. Facts, in brief, leading to filing of present petition are that one Malti Devi was the original owner of property in question. She had sold 1.8 Acres of land to one Roop Chand Jain, which includes the property in dispute. On 03.12.1976 Roop Chand Jain carved out different plots from the property purchased by him and sold one part to one Sushila Kumari, wife of Ram Narayan. In the sale deed plot number was mentioned as '767'.

4. Similarly, on 20.05.1979 Urmila Jain purchased an area of 9 decimal of plot no. 776 from Malti Devi. She also purchased plot nos. 771, 770, 772, 773, 774, 775, 768 and 766 total measuring 2.5 Acres. Sushila

Kumari expired some time in the year 1986, she was survived by her husband Ram Narayan Verma and sons Naveen Prakash, Anand Prakash, Ratnesh Verma and Rajesh Verma. Urmila Jain filed a suit for permanent injunction on 28.01.1991 which was registered as Suit No. 33 of 1991 against Ram Narayan and his sons in respect of plot no. 776 and 771. On 30.01.1991 Ram Narayan filed an affidavit that Smt. Sushila Kumari had purchased part of plot no. 767 measuring 25 x 50 feet and 25 x 50 feet. The trial court had granted temporary injunction in favour of Urmila Jain and restrained the defendants from interfering in peaceful possession of plaintiff in respect of plot no. 776 and 771.

5. On 21.01.1991 a correction deed/titimma was executed by Power of Attorney holder of Roop Chand Jain in favour of Ram Narayan and plot no. 767 was changed to 776. On 16.04.1991 Ram Narayan alongwith his sons filed Suit No. 151 of 1991 for relief of permanent injunction against Prakash Chand Jain, Kailash Chand Jain and Urmila Jain in respect of plot no. 21, 22 and over plot no. 776. An application for grant of temporary injunction was moved which was rejected by the trial court, against which a miscellaneous appeal was preferred by Ram Narayan which was dismissed on 17.05.2000. Both, the Original Suit No. 33 of 1991 and 151 of 1991 were clubbed together. During pendency of both the suits, Ram Narayan executed a sale deed in respect of property in dispute in both the suits to one Smt. Santosh Awasthi on 12.01.2001. Smt. Santosh Awasthi got map sanctioned from Jhansi Development Authority on 23.01.2002.

6. Original Suit No. 33 of 1991 filed by Urmila Jain was decreed on 14.10.2003, while the suit filed by Ram Narayan being Suit No. 151 of 1991 was

dismissed. Ram Narayan filed Civil Appeal No. 96 of 2003 against the judgment dated 14.10.2003. The said appeal was dismissed on 13.04.2010. Urmila Jain on 16.12.2010 filed Execution Case No. 40 of 2010, in the said execution case Smt. Santosh Awasthi filed an impleadment application on 17.01.2011. The said application was dismissed in default on 04.08.2012, a recall application was moved which was again dismissed on 18.09.2013. Another recall application was moved on 19.10.2013 to recall the order dated 18.09.2013 which was rejected on merits on 22.01.2014.

7. Petitioner, Smt. Santosh Awasthi, on 21.07.2010 instituted Suit No. 341 of 2010 for the same relief for which Suit No. 151 of 1991 was filed by Ram Narayan. The said suit was dismissed on 20.09.2022. During pendency of Suit No. 341 of 2010 petitioner Smt. Santosh Awasthi filed application under Order XXI Rule 97 CPC which was registered as Misc. Case No. 6 of 2014. The said application was contested by Urmila Jain, who filed her objections on the ground of maintainability of the same. On 16.05.2024 trial court framed issue in regard to res judicata but observed that the issue of res judicata will be decided at the final stage after completing all the evidences of parties. Aggrieved by the said order, Civil Revision No. 59 of 2024 was filed by Urmila Jain which has been allowed by the order impugned dated 05.08.2024. Hence, this writ petition.

8. Learned counsel for petitioner submits that scope of Section 115 CPC is very limited and the court can only view the order impugned within the parameters given under Section 115 CPC. Revisional power is not akin to appellate court. According to her, the revisional court had not only set aside the

order passed by the trial court but had travelled beyond its jurisdiction and had rejected the application filed under Order XXI Rule 97 CPC. She then contended that from perusal of the order impugned it transpires that court was of the opinion that the issue of res judicata should be decided by trial court as a preliminary issue and revisional court should have remanded the matter to trial court to decide it as a preliminary issue but it committed the mistake and instead dismissed the application filed under Order XXI Rule 97 as well as Rule 101 read with Section 151 CPC.

9. According to her, the right of petitioner should have been adjudicated by execution court itself as petitioner is a lawful owner of property in question since the year 2002 and in garb of decree of Original Suit No. 33 of 1991 the application has been rejected and matter has not been adjudicated by the courts till date. It was further contended that the correction deed/titimma was executed in favour of original holder of the land who has transferred the same to the petitioner who is a bonafide purchaser and, thus, the executing court should have heard her before the application was being dismissed. She has relied upon the various judgments of Apex Court rendered in cases **Hindustan Petroleum Corporation vs. Dilbahar Singh (2014) 9 SCC 78, Jhau Lal & another vs. Mohan Lal & others, AIR Online 2013 SC 498, Tmt. Kasthuri Radhakrishnan & others vs. M. Chinniyar and another AIR 2016 SC 609 and Jini Dhanrajgir & another vs. Shibu Mathew & another etc., Civil Appeal No. 3758-3796/2023 arising out of SLP(C) Nos. 28258-28296/20181**, decided on 16.05.2023.

10. Sri Arvind Srivastava, learned counsel for respondents, submitted that the sale deed was executed by original owner

Roop Chand Jain in favour of Smt. Sushila Kumari in respect of plot no. 767 and not 776. An affidavit was filed in Original Suit No. 33 of 1991 by Ram Narayan admitting that he has no concern with plot no. 776. It was after institution of Original Suit No. 33 of 1991 that a correction deed/titima was executed by the alleged Power of Attorney holder of Roop Chand Jain in respect of land sold in favour of Sushila Kumari and number was corrected from 767 to 776. He then contended that Ram Narayan had also filed a suit in the year 1991 against the answering respondent and both the suits were clubbed together and was finally decided in the year 2003 and suit filed by respondent was decreed while the suit filed by Ram Narayan was dismissed. It was during pendency of the suit that the suit property was transferred by Ram Narayan in favour of petitioner and, thus, it is hit by Section 52 of the Transfer of Property Act and lis pendens will apply.

11. He further contended that petitioner who had purchased the property in the year 2001 was well aware of the pendency of the suit and did not choose to file any appeal against the judgment rendered in the year 2003 decreeing the suit in favour of answering respondent. The appeal was preferred by Ram Narayan which was ultimately dismissed in the year 2010 against which no second appeal was preferred and the judgment became final. Further, petitioner herself instituted the Suit No. 341 of 2010 against the respondent claiming same relief which was there in Suit No. 151 of 1991 which was dismissed on 20.09.2022, against which no appeal till date has been preferred and it has become final between the parties inter se. It was also contended that during pendency of the suit of the year 2010 petitioner had moved an impleadment application in execution

proceedings which was dismissed twice and, thereafter, in the year 2014 application under Order XXI Rule 97 CPC was filed.

12. According to learned counsel, the application filed under Order XXI Rule 97 CPC is not maintainable as it is barred by principle of Order IX Rule 9 CPC as no fresh suit can be filed after dismissal of Suit No. 341 of 2010. Further, after dismissal of Suit No. 151 of 1991 filed by Ram Narayan, an application under Order XXI Rule 97 CPC was filed by petitioner which is barred by principle of res judicata as it has been moved by transferee pendente lite which is not maintainable. It is also contended that the application under Order XXI Rule 97 CPC is barred by Order XXI Rule 102 CPC as it has been moved by transferee pendente lite. He lastly contended that the order passed by the trial court on 16.05.2024 was not an interlocutory order and same is a final order which has been rightly interfered by the revisional court. He has relied upon the judgment of Apex Court rendered in cases of **Shalini Shyam Shetty & another vs. Rajendra Shankar Patil (2010) 8 SCC 329**, **Roshan Deen vs. Preeti Lal (2002) 1 SCC 100**, **Radhey Shyam & another vs. Chhabi Nath & others (2009) 5 SCC 616**, **State of West Bengal & others vs. Samar Kumar Sarkar (2009) 15 SCC 444**, **Gadde Venkateswara Rao vs. Government of A.P. and others (1965) Supreme Today 247**, **Sadhana Lodh vs. National Insurance Co. Ltd. & another (2003) 3 SCC 524**, **Waryam Singh & another vs. Amarnath & another (1954) AIR SC 215**, **Ouseph Mathai & others vs. M. Abdul Khadir (2001) 8 Supreme 262**, **Mohd. Inam vs. Sanjay Kumar Singhal & others (2020) 0 Supreme (SC) 423**, **Usha Sinha vs. Dina Ram & others (2008) 7 SCC 144**, **Shingara Singh vs.**

Daljit Singh & another (2024) SCC Online SC 2823, Siddamsetty Infra Projects Pvt. Ltd. vs. Katta Sujatha Reddy & others (2024) SSC Online SC 3214, Sriram Housing Finance and Investment India Limited vs. Omesha Mishra Memorial Charitable Trust (2024) 15 SCC 176, Suresh Chand Jain vs. IIIrd Addl. District Judge (2001) 10 SCC 508, Silverline Forum Pvt. Ltd. vs. Rajiv Trust & another (1998) 3 SCC 723, Regional Manager, Region II, State Bank of India, Zonal Office, Garh Road, Meerut & others vs. Pradeep Goel (1992) All WC 857, Hari Vishnu Kamath vs. Ahmad Ishaque & others (1955) AIR SC 233, State of Gujarat vs. Vakhatsingji Vajesinghji Vaghela (dead) & others (1968) AIR SC 1481 and M.M.T.C. Limited vs. Commissioner of Commercial Tax & others (2009) 1 SCC 8.

13. I have heard learned counsel for the parties and perused the material on record.

14. The entire dispute hinges around plot no. 776 purchased by both the parties. It is not in dispute that Sushila Kumari on 03.12.1976 had purchased plot no. 767 through registered sale deed from Roop Chand Jain. On 20.05.1979 Urmila Jain purchased 9 decimal of plot no. 776 from Malti Devi. It was after the death of Sushila Kumari when the suit was filed by Urmila Jain, that Ram Narayan, husband of Sushila Kumari, got a correction deed/titimma executed by power of attorney holder of Roop Chand Jain and plot no. was changed from 767 to 776.

15. Admittedly, before the correction deed/titimma was carried out Ram Narayan filed an affidavit on 30.01.1991 that Sushila

Kumari had purchased the plot no. 767 in Original Suit No. 33 of 1991 filed by Urmila Jain. It was during pendency of suit filed by Urmila Jain and Ram Narayan, that the property in dispute was purchased by petitioner on 12.01.2001 from Ram Narayan. The suit filed by Urmila Jain was decreed on 14.10.2003 and the suit filed by Ram Narayan was dismissed, against which Civil Appeal No. 96 of 2003 was filed which was also dismissed on 13.04.2010.

16. Petitioner, during this period, never moved an application for becoming the party in appeal, and after the appeal was dismissed and execution case was filed by the decree holder Urmila Jain, an impleadment application was filed by the petitioner which was rejected thrice. In the meantime, petitioner also instituted Suit No. 341 of 2010 which was dismissed on 20.09.2022 against which no appeal was preferred.

17. Petitioner, during pendency of the said suit, moved an application under Order XXI Rule 97 CPC before the executing court which was also being contested by the decree holder and objections were raised as to the maintainability on the ground that application is hit by doctrine of lis pendens. The decree holder also objected that application is barred by the provisions of res judicata and it should be decided first by the executing court. The trial court on 16.05.2024 having framed the issue in regard to res judicata, but observed that it will be decided at the final stage after completing all evidences of parties. The order of executing court was subjected to revision under Section 115 CPC by the decree holder respondent.

18. Section 52 of The Transfer of Property Act lays down the doctrine of lis pendens. The effect of the aforesaid provision is not to annul all voluntary

transfers effected by the parties to a suit but only to render it subservient to the rights of the parties thereto under the decree or order which may be made in that suit. Its effect is only to make the decree passed in the suit binding on the transferee if he happens to be third party person even if he is not a party to it.

19. Recently, Apex Court in **Siddamsetty Infra Projects Pvt. Ltd. Vs. Katta Sujatha Reddy and others, 2024 SCC OnLine SC 3214** while considering the doctrine of lis pendens held that very purpose of lis pendens is to ensure that the process of Court is not subverted and rendered infructuous. In the absence of the doctrine of lis pendens, a defendant could defeat the purpose of suit by alienating the suit property. Relevant paragraph nos. 47 and 49 are extracted hereunder;

“47. In short, the doctrine of lis pendens that Section 52 of the Transfer of Property Act encapsulates, bars the transfer of a suit property during the pendency of litigation. The only exception to the principle is when it is transferred under the authority of the court and on terms imposed by it. Where one of the parties to the suit transfers the suit property (or a part of it) to a third-party, the latter is bound by the result of the proceedings even if he did not have notice of the suit or proceeding. The principle on which this doctrine rests was explained by Lord Turner in Bellamy v. Sabine¹¹ as follows:

“It is, as I think, a doctrine common to the courts both of Law and Equity and rests, as I apprehend, upon this foundation that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations pendente lite were permitted to

prevail. The plaintiff would be liable in every case to be defeated by the defendants alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the same course of proceedings.”

49. The purpose of lis pendens is to ensure that the process of the court is not subverted and rendered infructuous. In the absence of the doctrine of lis pendens, a defendant could defeat the purpose of the suit by alienating the suit property. This purpose of the provision is clearly elucidated in the explanation clause to Section 52 which defines “pendency”. Amending Act 20 of 1929 substituted the word “pendency” in place of “active prosecution”. The Amending Act also included the Explanation defining the expression “pendency of suit or proceeding”. “Pendency” is defined to commence from the “date of institution” until the “disposal”. The argument of the respondents that the doctrine of lis pendens does not apply because the petition for review was lying in the registry in a defective state cannot be accepted. The review proceedings were “instituted” within the period of limitation of thirty days. The doctrine of lis pendens kicks in at the stage of “institution” and not at the stage when notice is issued by this Court. Thus, Section 52 of the Transfer of Property Act would apply to the third-party purchaser once the sale was executed after the review petition was instituted before this Court. Any transfer that is made during the pendency is subject to the final result of the litigation.”

20. In **Shingara Singh Vs. Daljit Singh and another, 2024 SCC OnLine SC 2823**, Apex Court while considering the earlier decision rendered in case of **Usha**

Sinha Vs. Dina Ram 2008 (7) SCC 144 held that doctrine of lis pendens applies to an alienation during the pendency of the suit whether such alienees had or had no notice of the pending proceedings. Relevant paragraph no. 11 is extracted hereasunder;

“11. In Usha Sinha v. Dina Ram² this Court held that the doctrine of lis pendens applies to an alienation during the pendency of the suit whether such alienees had or had no notice of the pending proceedings. The following has been held I paras 18 & 23:

“18. Before one-and-half century, in Bellamy v. Sabine [(1857) 1 De G & J 566 : 44 ER 842], Lord Cranworth, L.C. proclaimed that where a litigation is pending between a plaintiff and a defendant as to the right to a particular estate, the necessities of mankind require that the decision of the court in the suit shall be binding not only on the litigating parties, but also on those who derive title under them by alienations made pending the suit, whether such alienees had or had not notice of the pending proceedings. If this were not so, there could be no certainty that the litigation would ever come to an end.

23. It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent court. The doctrine of “lis pendens” prohibits a party from dealing with the property which is the subject-matter of suit. “Lis pendens” itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if the

resistance is caused or obstruction is offered by a transferee pendente lite of the judgment-debtor, he cannot seek benefit of Rules 98 or 100 of Order 21.”

21. In Sriram Housing Finance and Investment Vs. Omesh Misra Memorial Charitable Trust 2024 (15) SCC 176, Apex Court observed that under Rule 97 of Order XXI it is only the decree holder who is entitled to make an application in case where he is offered resistance or obstruction by any person. Further, Rule 99 pertains to making a complaint to Court against dispossession of immovable property by person in possession of the property by the holder of decree or purchaser thereof.

22. In the instant case, the application under Order XXI Rule 97 has been moved by a transferee pendente lite/petitioner, who had purchased the property from the plaintiff of Suit No. 151 of 1991 on 12.01.2001, while the suit was decided on 14.10.2003. She never become party to the suit nor to the appeal. In fact Suit No. 341 of 2010 instituted by her was dismissed on 20.09.2022, against which no appeal till date has been filed.

23. In Silverline Forum Pvt. Ltd. vs. Rajiv Trust & another (1998) 3 SCC 723 the Apex Court while interpreting the words “all questions arising between the parties to a proceeding on an application under Rule 97” held that it envelopes only such question as would legally arises for determination between those parties. The Court is not obliged to determine a question merely because resister raised it.

24. The Court further held that question which the executing court is obliged to determine under Rule 101, must

possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g., if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property.

25. Rule 102 of Order XXI clearly bars its applicability to transferee pendente lite and the same is extracted hereasunder;

“Order 21 Rule 102 CPC

Rules not applicable to transferee pendente lite- Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation- In this rule, “transfer” includes a transfer by operation of law.”

26. Petitioner before this Court is admittedly a transferee pendente lite and has not denied the factum of purchase of disputed property from Ram Narayan in the year 2001 when both the original Suits No. 33 of 1991 and 151 of 1991 were pending consideration. In view of the judgment rendered by Apex Court in case of **Shingara Singh (Supra), Siddamsetty Infra Projects Pvt. Ltd. (Supra), Sriram Housing Finance and Investment (Supra)** and the judgment rendered in **Silverline Forum Pvt. Ltd. (Supra)**, petitioner being a transferee pendente lite cannot maintain application under Rule 97 of Order XXI and is bound by the decree,

and further barred by Rule 102 of Order XXI.

27. Further, petitioner has not denied the rejection of his impleadment application during execution proceedings and, thereafter, dismissal of the suit instituted by her in the year 2010. Once such is a situation petitioner has to justify maintaining her application under Order XXI Rule 97 CPC.

28. Question which arises for consideration, at this juncture, is whether the executing court was justified in passing the order dated 16.05.2024 when objections were raised by decree holder Urmila Jain as to the maintainability of the application under Order XXI Rule 97 and the same being barred by the provisions of res judicata. Admittedly, executing court had framed the issue of res judicata but had proceeded to hold that the said issue would be decided after considering the evidences at final stage.

29. Looking to the settled legal proposition and provisions of Rule 102 once it is an admitted case that petitioner is a transferee pendente lite the executing court should not have proceeded with the application any more and at the very first instance should have decided the objections raised by decree holder in the light of the doctrine of lis pendens and Rule 102. In case the issue of res judicata was framed by the executing court it should have decided and not waited for taking any evidence further and postponing it.

30. The law is settled as far as doctrine of lis pendens is concerned, once it is admitted to a party that he has purchased the property during pendency of the suit, then such transfer is hit by provisions of

Section 52 of the Transfer of Property Act. If such is the case the application under Order XXI Rule 97, at the very first instance, was not maintainable. The executing court had wrongly dragged the matter for almost 10 years from the year 2014 to 2024 in keeping the application pending filed under Order XXI Rule 97 CPC.

31. However, considering the argument raised by petitioner's counsel as to the maintainability of civil revision against the order dated 16.05.2024, I find that it was not a case decided and only the executing court after framing the issue of res judicata had postponed the matter to be decided at the final stage. In case the revision was entertained by the revisional court and had found that the issue of res judicata was to be adjudicated first, it should have remanded the matter to the executing court for deciding it first. The revisional court should not have exceeded its jurisdiction and rejected the application filed under Order XXI Rule 97 CPC itself once the application was pending before the executing court.

32. Reliance placed upon the various decisions of Apex Court does not help the respondent counsel as the judgment relied upon in case of **Surya Dev Rai Vs. Ram Chander Rai 2003 (6) SCC 675**, **Radhey Shyam and another Vs. Chhabi Nath and others 2009 (5) SCC 616**, clearly hold that the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion.

33. In the instant case the revisional court had assumed the jurisdiction of

executing court and dismissed the application filed under Order XXI Rule 97, though observing that the issue of res judicata should have been decided first. The revisional court at the most could have remanded the matter with certain directions, it cannot assume the role of a executing court while exercising revisional jurisdiction, as the order dated 16.05.2024 does not fall in the category of case decided.

34. After giving thoughtful consideration, I find that the revisional court had exceeded its jurisdiction by dismissing the application filed under Order XXI Rule 97 by the petitioner before the executing court while exercising revisional jurisdiction under Section 115 CPC. However, the executing court has also failed in its endeavour to decide the execution case pending before it since the year 2014, and after framing the issue of res judicata had postponed the matter to be decided at the final stage.

35. In such a case where it is an admitted fact that the property was transferred during pendency of the suit and petitioner is a transferee pendente lite and hit by provisions of Section 52 of the Transfer of Property Act, the executing court should have, at the very outset, proceeded to pass the order in pursuance of Rule 102 CPC.

36. Recently, on 06.03.2025, the Supreme Court in **Periyammal vs. V. Rajamani, Civil Appeal No. 3640-3642 of 2025** issued necessary directions for the executing court throughout the country for expediting the execution proceedings, relying upon the earlier decisions. Relevant paragraphs are extracted hereasunder:-

“72. Before we close this matter, we firmly believe that we should say

something as regards the long and inordinate delay at the end of the Executing Courts across the country in deciding execution petitions.

73. It is worthwhile to revisit the observations in *Rahul S. Shah (supra)* wherein this Court has provided guidelines and directions for conduct of execution proceedings. The relevant portion of the said judgment is reproduced below:

“42. All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:

42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties.

42.5. The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during

adjudication of suit if due diligence was exercised by the applicant.

42.9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10. The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.

42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

(Emphasis supplied)

74. The mandatory direction contained in Para 42.12 of *Rahul S. Shah (supra)* requiring the execution proceedings to be completed within six months from the date of filing, has been reiterated by this Court in its order in *Bhoj Raj Garg v. Goyal Education and Welfare Society, Special Leave Petition (C) Nos. 19654 of 2022.*”

37. Considering the facts and circumstances of the case, the order dated 05.08.2024 passed by Additional District Judge, Court No. 1, Jhansi in Civil Revision No. 59 of 2024 as well as the order of executing court dated 16.05.2024 passed in Misc. Case No. 6 of 2024 are hereby set aside. The matter is remanded to the executing court to pass

necessary orders on the application moved under Order XXI Rule 97 CPC by the petitioner in accordance with law keeping in mind the decisions of Apex Court rendered in cases of **Shingara Singh (Supra)**, **Siddamsetty Infra Projects Pvt. Ltd. (Supra)**, **Sriram Housing Finance and Investment (Supra)**, **Silverline Forum Pvt. Ltd. (Supra)** and **Periyammal (Supra)** as well as Rule 102 CPC and considering the doctrine of lis pendens, within a period of one month from the date of receipt of a certified copy of this order.

38. With the aforesaid directions, writ petition stands disposed of.

(2025) 3 ILRA 126

ORIGINAL JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 12.03.2025

BEFORE

THE HON'BLE RAJIV GUPTA, J.
THE HON'BLE SAMIT GOPAL, J.

Application U/S 482 No. 13742 of 2021
With
Application U/S 482 No. 13816 of 2021

Mohd. Khalid **...Applicant**
Versus
State of U.P. & Anr. **...Opposite Parties**

Counsel for the Applicant:

Sri Ashish Malhotra, Ms. Pushpila Bisht

Counsel for the Opposite Parties:

Sri Ashutosh Upadhyay, Sri Birendra Singh,
Sri Ajay Kumar Singh, G.A.

Criminal Law – Criminal Procedure Code, 1973 - Section 482 - Negotiable Instruments Act, 1881 – Sections 138 & 142- Application U/s 482 – Larger Bench – constituted to address whether filing of a Impleadment application in a complaint filed

under Section 138 of the N.I. Act is valid, if filed solely against the proprietor without naming the company as an accused - Different High Court benches had given conflicting decisions - The reference arose due to conflicting High Court rulings interpreting *Aneeta Hada v. Godfather Travels*. – Later, the Supreme Court in *Pawan Kumar Goel v. St. of U.P.* clarified that if a company is involved, it must be named as an accused in the complaint. Also, once the legal time limit (limitation period) for taking action under Section 142 is over, no new accused can be added - held – no additional accused can be impleaded subsequent to filing of a complaint once the limitation prescribed for taking of cognizance of the offence under section 142 of the NI Act, has expired – hence, the reference was thus answered - and the matter will resume before the concerned Single Judge – Application is pending. (Para – 9, 10, 11)

Application Pending. (E-11)

List of Cases cited:

1. Mohd. Khalid Vs St. of U.P. & anr. - Criminal Misc. Application U/S 482 No. 11600 of 2021 decided on 19.08.2021,
2. Gaurav Sabbarwal Vs St. of U.P. - Criminal Misc. Application U/S 482 No. 1224 of 2021 – decided on 19.08.2021,
3. Aneeta Hada Vs Godfather Travels and Tours Private Limited: (2012) 5 SCC 661,
4. Pawan Kumar Goel Vs St. of U.P. & anr.: 2022 SCC OnLine SC 1598.

(Delivered by Hon'ble Samit Gopal, J.)

1. Heard Ms. Pushpila Bisht and Shri Ashish Malhotra, learned counsels for the applicant, Shri Ajay Kumar Singh, Holding Brief of Shri Birendra Singh, learned counsel for the O.P. No.2, Shri A.N. Mulla, Shri Shashi Shekhar Tiwari and Shri Jitendra Kumar Jaiswal, learned AGAs for

the State/O.P. No.1 and perused the records.

2. This matter has been placed before this Bench through nomination of this Larger Bench vide order dated 17.05.2024 of Hon'ble The Chief Justice.

3. The issue before the Larger Bench as has been raised vide order dated 25.11.2021 by learned Single Judge reads as under:-

"Written arguments filed on behalf of applicant is taken on record.

Heard Shri Satish Trivedi, learned Senior counsel assisted by Shri Ajay Kumar Pandey and Shri Ashish Malhotra, learned counsel for the applicant, Shri Birendra Singh, learned Senior advocate assisted by Shri Prashant Kumar on behalf of opposite party no.2 and learned A.G.A.

The only legal issue which crops up for consideration before this Court is that whether a complaint is maintainable in the form and style of the present complaint wherein notice has been issued to the proprietor of the company and complaint has been filed against Mohd. Khalid proprietor of M/s. Plenum Infrastructure Private Limited without impleading M/s. Plenum Infrastructure Private Limited as a party in its capacity of a corporate entity.

On the same controversy two judgments one delivered by Hon'ble Vivek Agarwal, J. vide order dated 19.8.2021 which has been corrected vide order dated 17.9.2021 and the second by Hon'ble Rajeev Misra, J. vide order dated 19.8.2021 and in both the judgments reliance has been placed upon Aneeta Hada and Others Vs. Godfather Travels and Tours Private Ltd. and Others, delivered by a Three Judges Bench of Supreme Court reported

in (2012) 5 SCC 661. In the aforesaid two cases Hon'ble Vivek Agarwal, J. quashed and allowed the application whereas Hon'ble Rajeev Misra, J. has passed the following order :-

"15. Upon consideration of above, this Court could have directed parties to exchange pleadings and granted an interim stay of the proceedings. However, considering the fact that complaint was filed in the year 2015 and the matter has remained pending for more than six years at initial stage, this court is of the view that interest of justice shall better be served in case the defect pointed out by applicant herein is equitably considered.

16. Accordingly, Cognizance Taking Order as well as Summoning Order dated 23.01.2015 passed by court below is hereby quashed. Complainant/opposite party-2 shall move an impleadment application seeking amendment in the complaint by impleading the Company namely M/s. Saksham Services Pvt. Ltd. as a party in the complaint and further take necessary steps, to amend the complaint by way of amendment. Aforesaid exercise shall be completed by 30th of October, 2021. Thereafter, court below shall consider the complaint and proceed accordingly."

The issue is whether the filing of impleadment application can be allowed or not.

In such circumstances, the matter is referred to Hon'ble The Chief Justice to constitute the larger Bench to settle down the issue.

Till then no coercive action shall be taken against the applicant."

4. Before the learned Single Judge two orders were placed of co-ordinate Benches amongst which one was in Criminal Misc. Application U/S 482 No.

11600 of 2021 (Mohd. Khalid Vs. State of U.P. and Another) on 19.08.2021 which was subsequently corrected vide order dated 17.09.2021 and the second was an order dated 19.08.2021 passed in Criminal Misc. Application U/S 482 No. 1224 of 2021 (Gaurav Sabbarwal Vs. State of U.P.). Both the matters relied upon the judgement of the Apex Court in the case of ***Aneeta Hada Vs. Godfather Travels and Tours Private Limited: (2012) 5 SCC 661*** but vide the former order the petition was allowed and the proceedings were quashed keeping the option to the complainant open, of availing civil remedy for recovery of debt if so advised whereas vide the latter order directions were issued in its paragraph 15 & 16 to the effect that the complainant / opposite party-2 shall move an impleadment application seeking amendment in the complaint by impleading the company as a party in the complaint and further take necessary steps to amend the complaint by way of amendment. The court concerned was directed to consider the complaint and proceed accordingly.

5. Learned Single Judge ceased with the present matter after referring to both the orders culled out the issue which reads as under:-

"The issue is whether the filing of impleadment application can be allowed or not."

6. Thus a reference was made to Hon'ble The Chief Justice to constitute a Larger Bench to settle down the issue. The matter is thus before this Larger Bench on the aforesaid pretext.

7. The issue thus which arose before the learned Single Judge in the present matter for consideration was

whether a complaint is maintainable in the form and style wherein notice has been issued to the proprietor of the company and the complaint has been filed against him arraying him as the proprietor of the company but without impleading the company as a party in its capacity of a corporate entity. Thus by referring to the two orders of different co-ordinate Benches the learned Single Judge framed the aforesaid issue and referred the matter to a Larger Bench.

8. The question whether filing of an impleadment application in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as N.I. Act) by a complainant for impleading a company as an accused is no more res integra. The Apex Court in the case of ***Pawan Kumar Goel Vs. State of U.P. & Another: 2022 SCC OnLine SC 1598*** (decided on 17.11.2022) was faced with the same issue.

9. The challenge before the Apex Court was of a final judgement & order of the High Court allowing the writ petitions and quashing the entire proceedings including the summoning order of the said case before it. The submissions before the Apex Court were that the High Court erred in appreciating that the respondent no.2 was arrayed by name describing him as a Director of the company and on account of typographical error, the company could not be arrayed as accused no.2 in complaint by name, though the details thereof were mentioned in the description of the accused no.1. The issue was considered in paragraph 26, 27, 28 of the said judgement and finally in paragraph 29 of the same, the Court held that an additional accused cannot be impleaded subsequent to the filing of the complaint where the limitation

period for taking the cognizance of the offence under Section 142 of the N.I. Act has expired. Paragraph 24 to 29 of the said judgement reads as under:-

"24. Coming to the facts of the present case at hand, a perusal of the complaint filed as Annexure P-1 clearly goes to establish two facts :-

(i) The description of the respondent-accused contained in the complaint is as under :-

"Mr. Devendra Kumar Garg, S/o Lala Jagdish Prasad Garg, Director, Ravi Organics Limited, 19-A, New Mandi, Police Station-New Mandi, District-Muzaffarnagar."

From the aforesaid, it is clear that though the respondent-accused was described as a Director of Ravi Organics Limited, but the company itself was not arrayed as a party in the complaint.

(ii) A perusal of the averments made in the complaint goes to show beyond a shadow of doubt that there are no averments that respondent no. 2, at the time when the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company.

25. This Court has been firm with the stand that if the complainant fails to make specific averments against the company in the complaint for the commission of an offence under Section 138 of NI Act, the same cannot be rectified by taking recourse to general principles of criminal jurisprudence. Needless to say, the provisions of Section 141 impose vicarious liability by deeming fiction which pre-supposes and requires the commission of the offence by the company or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-

Section (1) and (2) would not be liable to be convicted on the basis of the principles of vicarious liability.

26. Reference in this connection may also be made to another judgment of the two-Judge Bench of this Court in Himanshu Vs. B. Shivamurthy and Another (Supra), the facts wherein have a stark similarity to the facts of the present case, considering the issue where the complaint was lodged only against the director without arraigning the company as an accused and whether the company could be subsequently arraigned as an accused, it was observed as under:-

"11. In the present case, the record before the Court indicates that the cheque was drawn by the appellant for Lakshmi Cement and Ceramics Industries Ltd., as its Director. A notice of demand was served only on the appellant. The complaint was lodged only against the appellant without arraigning the company as an accused.

12. The provisions of Section 141 postulate that if the person committing an offence under Section 138 is a company, 4 (2018) 13 SC 663 every person, who at the time when the offence was committed was in charge of or 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.

13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the

company could now be arraigned as an accused."

27. This issue stands concluded by a decision of three-Judge Bench of this Court in the case of *Aneeta Hada Vs. Godfather Travels & Tours (P) Ltd.* (Supra), wherein it has been held that for maintaining the prosecution under Section 141 of NI Act, arraigning of the company as an accused is imperative and non-impleadment of the company would be fatal for the complaint. It may be relevant to extract the following from the said judgment :-

"58. Applying the doctrine of strict construction, we are of the considered opinion that **commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.**

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself."

28. The observations made in the aforesaid judgment is also a complete answer to the arguments advanced by learned counsel for the appellant that in the absence of any prohibition under the NI Act, the amendment in the complaint is permissible and the impleadment of an additional accused subsequent to filing of the complaint, would not be barred. At this juncture, we may also refer to the following observations made in the case of *N. Harihara Krishnan Vs. J. Thomas* (Supra) :-

"26. The scheme of the prosecution in punishing under Section 138 of the Act is different from the scheme of CrPC. Section 138 creates an offence and prescribes punishment. No procedure for the investigation of the offence is contemplated. The prosecution is initiated on the basis of a written complaint made by the payee of a cheque. Obviously such complaints must contain the factual allegations constituting each of the ingredients of the offence under Section 138. Those ingredients are: (1) that a person drew a cheque on an account maintained by him with the banker; (2) that such cheque when presented to the bank is returned by the bank unpaid; (3) that such a cheque was presented to the bank within a period of six months from the date it was drawn or within the period of its validity whichever is earlier; (4) that the payee demanded in writing from the drawer of the cheque the payment of the amount of money due under the cheque to payee; and (5) such a notice of payment is made within a period of 30 days from the date of the receipt of the information by the payee from the bank regarding the return of the cheque as unpaid. It is obvious from the scheme of Section 138 that each one of the ingredients flows from a document which evidences the existence of such an

ingredient. The only other ingredient which is required to be proved to establish the commission of an offence under Section 138 is that in spite of the demand notice referred to above, the drawer of the cheque failed to make the payment within a period of 15 days from the date of the receipt of the demand. A fact which the complainant can only assert but not prove, the burden would essentially be on the drawer of the cheque to prove that he had in fact made the payment pursuant to the demand.

27. By the nature of the offence under Section 138 of the Act, the first ingredient constituting the offence is the fact that a person drew a cheque. The identity of the drawer of the cheque is necessarily required to be known to the complainant (payee) and needs investigation and would not normally be in dispute unless the person who is alleged to have drawn a cheque disputes that very fact. The other facts required to be proved for securing the punishment of the person who drew a cheque that eventually got dishonoured is that the payee of the cheque did in fact comply with each one of the steps contemplated under Section 138 of the Act before initiating prosecution. Because it is already held by this Court that failure to comply with any one of the steps contemplated under Section 138 would not provide "cause of action for prosecution". Therefore, in the context of a prosecution under Section 138, the concept of taking cognizance of the offence but not the offender is not appropriate. Unless the complaint contains all the necessary factual allegations constituting each of the ingredients of the offence under Section 138, the Court cannot take cognizance of the offence. Disclosure of the name of the person drawing the cheque is one of the factual allegations which a complaint is required to contain. Otherwise in the

absence of any authority of law to investigate the offence under Section 138, there would be no person against whom a court can proceed. There cannot be a prosecution without an accused. The offence under Section 138 is person specific. Therefore, Parliament declared under Section 142 that the provisions dealing with taking cognizance contained in the CrPC should give way to the procedure prescribed under Section 142. Hence the opening of non obstante clause under Section 142. It must also be remembered that Section 142 does not either contemplate a report to the police or authorise the Court taking cognizance to direct the police to investigate into the complaint.

28. The question whether the respondent had sufficient cause for not filing the complaint against Dakshin within the period prescribed under the Act is not examined by either of the courts below. As rightly pointed out, the application, which is the subject-matter of the instant appeal purportedly filed invoking Section 319 CrPC, is only a device by which the respondent seeks to initiate prosecution against Dakshin beyond the period of limitation stipulated under the Act."

29. In view of the above, arguments advanced by learned counsel for the appellant that an additional accused can be impleaded subsequent to the filing of the complaint merits no consideration, once the limitation prescribed for taking cognizance of the offence under Section 142 of NI Act has expired. More particularly, in view of the fact that neither any effort was made by the petitioner at any stage of the proceedings to arraign the company as an accused nor any such circumstances or reason has been pointed out to enable the Court to exercise the power conferred by proviso to Section 142,

Counsel for the Opposite Parties:
Vijai Kumar Tiwari, G.A.

Criminal Law-The Code of Criminal Procedure,1973-Section 482 - The Indian Penal Coe, 1860-Sections 420, 323, 376, 344 - The Uttar Pradesh Conversion Prevention Act, 2020-Sections 3/4- Any compromise or settlement with respect to the offence of rape, against the honour of a woman, which shakes the very core of her life and tantamounts to a serious blow to her supreme honour, offending both, her esteem and dignity, is not acceptable to this Court--- The object of Act, 2020 is to provide for prohibition of unlawful conversion from one religion to another by misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means--- It is clear that unlawful religious conversion, particularly when achieved through coercion, fraud, or undue influence, is considered a serious offence, in which the Court cannot quash the proceedings on the basis of settlement between the parties--- The alleged offences under section 376 IPC and Section 3/4 (1) U.P. Conversion Prevention Act, 2020, are serious in nature and non-compoundable, therefore, the instant proceedings cannot be quashed on the basis of compromise between the parties in exercise of powers conferred under Section 482 Cr.P.C. **(Para 48, 54 & 56)**

Petition dismissed. (E-15)

List of Cases cited:

1. B.S. Joshi & ors. Vs St. of Har. & anr.;
(2003)4 SCC 675

2. Gian Singh Vs St. of Pun. (2012) 10 SSC 303

3. St. of M.P. Vs Laxmi Narayan & ors. (2019) 5 SCC 688

4. Madhu Limaye Vs The St. Of Mah. (1977) 4 SCC 551

5. St. of Karn. Vs L. Muniswamy (1977) 2 SCC 699

6. Madhavrao Jiwajirao Scindia Vs Sambhajirao Chandrojirao Angre (1988) 1 SCC 692

Counsel for the Applicant:
Ved Prakash Mishra

7. Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & ors. Vs St. of Guj. & anr. (2017) 9 SCC 641

8. Social Action Forum For Manav Adhikar & anr. Vs U.O.I.& ors. (2018) 10 SCC 443

9. Narinder Singh & ors. Vs St. of Pun. & ors. (2014) 6 SCC 466

10. Shimbhu Vs St. of Har.10 (2014) 13 SCC 318

11. Shyam Narain Vs St. (NCT of Delhi)

12. Baldev Singh v. St. of Pun.

13. Ravindra Vs St. of M.P.

14. Daxaben Vs St. of Guj. & ors. 2022 SCC OnLine SC 936

15. St. of M.P. Vs Madan Lal (2015) 7 SCC 381

16. Rev. Stainislaus Vs St. of M.P. & ors. (1977) 1 SCC 677

17. Priyanshi @ Km Shamreen & anr. Vs St. of U.P. & ors. Writ-C No.14288 of 2020, decided on 23.09.2020

18. Smt. Noor Jahan Begum @ Anjali Mishra & anr. Vs St. of U.P. & ors. Writ-C No.57068 of 2014 alongwith connected matters, decided on 16.12.2014

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Mr. Ved Prakash Mishra, learned counsel for the applicant, Mr. Vijai Kumar Tiwari, learned counsel for the opposite party no.2 and Mr. Pramod Kumar Singh, learned counsel for the State and perused the record.

2. The present 482 Cr.P.C. application has been filed to quash the charge-sheet No.230 of 2021, dated 07.05.2021 and the entire proceedings of

Criminal Case No.1340 of 2021, arising out of Case Crime No.220 of 2021, under Sections 420, 323, 376, 344 IPC and Section 3/4 (1) U.P. Conversion Prevention Act, 2020, Police Station Swar, District Rampur.

3. Brief facts of the case are that an FIR was lodged on 07.06.2021 at about 18:31 hrs by the opposite party no.2 against Rahul @ Mohd. Ayan and two unknown persons with the allegations that the opposite party no.2 became friendly with one Rahul through Facebook. Rahul took mobile number of opposite party no.2 and repeatedly used to call her. After nearly one year of chatting through Facebook, the alleged accused; Rahul proposed to marry the opposite party no.2. From the conversation through telephone, the opposite party no.2 liked habits of the aforesaid Rahul, therefore, she gave her consent of marriage. On request of Rahul, the opposite party no.2 reached Rampur from where she was taken to Nawabnagar, Police Station-Swar, District-Rampur, his village and she was detained in his house till six months. During the period of stay, she came to know that the aforesaid Rahul Kumar is a Muslim boy, therefore, she said that it is not possible for her to marry him as her religion is Hindu. On her refusal to marry, the opposite party no.2 was badly beaten by Rahul Kumar @ Mohd. Ayan s/o Mohd. Jahoor and without her consent, he forcefully established physical relations with her. She was illegally detained for six months and was sexually assaulted by him. He also called his two friends, who forcefully committed rape upon her. The opposite party no.2 has managed to run away from there and lodge the present FIR. She also disclosed that Rahul @ Mohd. Ayan exploited a number of girls by trapping them becoming friendly through

Facebook. She came to know about money being given by Madarsa for exploiting of Hindu girls, which was disclosed by him to opposite party no.2.

4. During course of investigation, statement of opposite party no.2 was recorded under Sections 161 and 164 Cr.P.C. and she was also medically examined. In her statements u/s 161 & 164 Cr.P.C., she has reiterated her version as narrated in the FIR and disclosed the name of two persons, i.e. Taufik Ahmad (applicant herein), and Mohd. Riyaz, who are brother-in-law and elder brother of Rahul Kumar @ Mohd. Ayan. Taufik Ahamd (applicant herein) and Mohd. Riyaz have also committed rape upon her. After investigation, charge sheet has been submitted on 07.05.2021.

5. It appears that on the submission as made by counsel for the applicant that the parties have entered into compromise, on 25.03.2023, the following order was passed by Hon'ble Syed Aftab Husain Rizvi, J. (since retired):-

“Learned counsel for the applicant is present. State is represented through learned A.G.A.

This Criminal Misc. Application under Section 482 of Cr.P.C. has been filed to quash the entire criminal proceeding against the Criminal Case No. 1340 of 2021 in chargesheet no. 230 of 2021 dated 07.05.2021 in Case Crime No. 220 of 2021 u/s 420, 323, 376, 344 IPC and 3/5(1) of U.P. Conversion Prevention Act, 2020, Police Station Swar, District Rampur.

Learned counsel for the applicant submitted that the parties have entered into a compromise. The terms and conditions have been entered into a compromise

which is Annexure No. CA-1 to the counter affidavit.

Learned counsel for the opposite party has acknowledged the aforesaid facts.

The parties shall appear before the trial court and file compromise within two weeks. Upon the said compromise being filed before the trial court, it shall after due identification, verify the compromise. The trial Judge shall forward to this Court a duly verified copy of the compromise entered into between the parties along with a copy of his order verifying the compromise which shall be before the next date fixed.

List on 28.04.2022.

Till the next date of listing, no coercive steps shall be taken against the applicant in the aforesaid case crime.

Office will ensure the compliance of the aforesaid order and will transmit the copy of the compromise along with copy of the order to the trial court through the concerned Session Judge within three days.”

6. The interim order so granted was extended on 28.04.2022 and 06.09.2022. Subsequently, when the matter was listed on 15.03.2023, the Co-ordinate Bench of this Court listed the matter for hearing on 10.04.2023 and the interim order was extended.

7. On 10.04.2023, as prayed by learned counsel for the applicant, 15 days' time was granted to file afresh compromise and the interim order was extended.

8. The matter came up for hearing before this Court on 31.08.2024 and on the said date, counsel for the parties were asked to address the Court on the issue as to how compromise can be entered in such

serious offence in which the FIR was lodged.

9. On 30.09.2024, the case was passed over on the illness slip of Mr. Ved Prakash Mishra, learned counsel for the applicant and the matter was fixed for hearing on 03.10.2024 at 10:00 a.m. On the said date, after hearing the counsel for the parties, judgment in the matter was reserved.

10. Learned counsel for the applicant, placing reliance upon the case of ***B.S. Joshi and others Vs. State of Haryana and Another; (2003)4 SCC 675***, submits that to prevent abuse of process of court and to secure ends of justice, the entire proceedings as well as chargesheet deserve to be quashed in exercise of inherent jurisdiction under Section 482 Cr.P.C. as the parties have amicably settled the dispute and have entered into compromise.

11. Learned counsel for the applicant as well as counsel for the opposite party no.2 submits that the compromise has already been verified on 21.04.2022 as is clear from the letter of Additional Chief Judicial Magistrate, Court No.1, Rampur. Therefore, the entire proceedings may be quashed.

12. On the other hand, Mr. Pramod Kumar Singh, learned AGA has opposed the prayer for quashing of the proceedings as well as charge sheet of the case on the basis of the compromise. He submits that some of the offences, are non- compoundable and heinous as well; they are not private/personal in nature, affecting only the individuals but they have impact on the society; they are wrong to the society and as such neither the offences can be compounded nor the

proceedings can be quashed on the basis of compromise.

13. On the cumulative strength of the aforesaid submissions, learned A.G.A. states that this Court may not exercise its inherent power under Section 482 Cr.P.C. in the present case, and hence the present application is liable to be rejected.

14. I have considered the submissions made by the learned counsel for the parties and gone through the records of the present application.

15. The short question which requires consideration is, whether in the exercise of inherent jurisdiction under Section 482 Cr.P.C. the charge sheet as well as the entire proceedings can be quashed in the cases involving an offence of Rape punishable under Section 376 and Section 376(1) U.P. Conversion Prevention Act, 2020 in view of the compromise entered into by the parties?

16. Before scrutinizing the facts of the present case and rephrasing the scope of powers exercisable by this Court under Section 482 Cr.P.C., it would be appropriate to understand Section 482 Cr.P.C. which provides for saving of inherent powers of High Court. Section 482 Cr.P.C., reads as under:-

"Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

17. The inherent power of the Courts set up by the Constitution is a power

that inheres in such Courts being Court of record. This power is vested by the Constitution itself, inter-alia, under Article 215 of the Constitution of India. Every High Court has inherent power to act *ex-debito justitiae* to do real and substantial justice, for the administration of which alone it exists or to prevent the abuse of the process of the Court. Section 482 Cr.P.C. saves inherent powers of the High Court and it starts with non-obstante clause "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary." The inherent power can be exercised under Section 482 Cr.P.C. (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of Court; and (iii) to otherwise secure the ends of justice.

18. This inherent power possessed by the High Court is of wide plenitude, with no statutory restrictions. The limitations imposed on exercise of such power are the self imposed restrictions. Any provision of the Code cannot limit or affect the inherent powers of the High Court. But, this power, being extraordinary, is required to be exercised sparingly, carefully, with caution, and circumspection and only when such exercise is justified by the tests specifically laid down in Section 482 Cr.P.C. If there is any specific provision in the statute for redressal of grievance, the High Court, ordinarily, refuses to invoke the extraordinary powers, and also, in a situation with respect to the matter where there is a specific bar of law engrafted in the statute. The paramount consideration to the exercise of this power is to prevent the abuse of the process of the Court. If any abuse of the process leading to injustice is brought to the notice of the Court, then the Court would be justified in

preventing injustice by invoking inherent powers in absence of any specific provision in the statute.

19. At this juncture, it would be apropos to illuminate the following principles laid down by a Three Judge Bench of the Apex Court in **Gian Singh Vs. State of Punjab**¹ case:-

"61. ...the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. **Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.:-**

(i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that

capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. **But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim.** In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

(Emphasis Applied)

20. The compendium of these broad fundamentals structured in more than one judicial precedent, has been recapitulated by

another Three Judge Bench of the Apex Court in **State of Madhya Pradesh vs. Laxmi Narayan & Ors.**² elaborating:

“(1) That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

(2) Such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society; (3) Similarly, such power is not to be exercised for the offences under the special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

(4) xxx xxx xxx

(5) While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc.”

(Emphasis Applied)

21. Section 320 (1) of the Code provides for compounding of certain offences punishable under Indian Penal Code (IPC) specified in first two columns of the Table, given there under, by the persons mentioned in the third Column of the table. Sub-Section (2) of Section 320 of the Code, further provides for compounding of certain offences punishable under Indian Penal Code specified in the first two columns by the persons specified in the third column of the table given under Sub-section (2), with the permission of the Court before which any prosecution for such offence is pending. Subsection (9) of Section 320, specifically provides that, "No offence shall be compounded except as provided by this Section" i.e. Section 320 of the Code.

22. Section 320 Cr.P.C. does not come in the way of exercise of inherent power of the High Court for quashment of criminal proceeding. The power of the High Court for quashment of the criminal proceeding is distinct and different from the power given to a criminal Court for compounding the offences under Section 320 of the Code. The inherent power of the High Court is neither restricted nor controlled by Section 320 of the Code. The proceedings of the offences which are non-compoundable can also be quashed by the High Court in exercise of inherent jurisdiction, on the well settled principles, but sparingly and with caution, forming an opinion, on either of the two objectives of securing the ends of justice and to prevent abuse of the process of any Court. This bar of Section 320 Cr.P.C. is attracted only before the Criminal Court, where the prayer for compounding is made. There, only those offences which have been made compoundable, can be compounded and the offences which are non-compoundable

cannot be compounded in view of Sub-Section (9) of Section 320 Cr.P.C.

23. It is true that offences which are 'non-compoundable' cannot be compounded by a criminal court in purported exercise of its powers under Section 320 Cr.P.C. There is no patent or latent ambiguity in the language of Section 320 Cr.P.C., which may justify its wider interpretation and include such offences in the docket of 'compoundable' offences which have been consciously kept out as non-compoundable. Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 320 Cr.P.C. is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 Cr.P.C.

24. In **B.S. Joshi & Ors. Vs. State of Haryana & Another**,³ the Hon'ble Supreme Court has held that if for the purpose of securing the ends of justice, quashing of F.I.R becomes necessary, section 320 Cr.P.C. would not be a Bar to the exercise of power of quashing. It is, however, a different matter depending on facts and circumstances of each case, whether to exercise or not, such a power. The High Court in exercise of its inherent powers can quash criminal proceedings or F.I.R or complaint and Section 320 Cr.P.C. does not limit or affect the powers under Section 482 Cr.P.C.

25. Similarly, in the case of **Madhu Limaye vs. The State Of Maharashtra**⁴, the Apex Court has held that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon

the facts and circumstances of each case whether to exercise or not such a power.

26. In **State of Karnataka v. L. Muniswamy**⁵, considering the scope of inherent power of quashing under Section 482, the Apex Court has held that in the exercise of this wholesome power, the High Court is entitled to quash proceedings if it comes to the conclusion that the ends of justice so require. It was observed that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice had got to be administered according to laws made by the legislature. The Court said that the compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction. On facts, it was also noticed that there was no reasonable likelihood of the accused being convicted of the offence. What would happen to the trial of the case where the wife does not support the imputations made in the FIR of the type in question. As also noticed by the Court, later she has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. It may be either for the reason that she has resolved disputes with her husband and his other family members and as a result thereof she has again started living with her husband with whom she earlier had differences or she has

willingly parted company and is living happily on her own or has married someone else on the earlier marriage having been dissolved by divorce on consent of parties or fails to support the prosecution on some other similar grounds. In such eventuality, there would almost be no chance of conviction. Would it then be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences? The answer clearly has to be in the "negative". It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides.

27. In **Madhavrao Jiwajirao Scindia vs. Sambhajirao Chandrojirao Angre**,⁶ the Apex Court has held that while exercising inherent power of quashing under Section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the court, chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a case, also quash the proceedings.

28. Thus, the Apex Court in **B.S. Joshi (Supra)** case has come to the conclusion that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code.

29. In **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and**

others Vs. State of Gujrat and another⁷, the Hon'ble Apex Court again summarized and laid down principles which emerged from the precedents on the subject, in paragraph no.16 of the judgment, which is as follows:-

"16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16.1 Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

16.2 The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3 In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

16.4 While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

16.5 The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

16.6 In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

16.7 As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

16.8 Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

16.9 In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10 There is yet an exception to the principle set out in propositions 16.8 and 16.9, above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

30. In **Parbatbhai Aahir (Supra)**, the Hon'ble Supreme Court held that the High Court was justified in declining to entertain the application for quashing the FIR in exercise of its inherent jurisdiction, as the case involved extortion, forgery, conspiracy, fabrication of documents, utilization of fabricated documents to effectuate transfers of title before the registering authorities and deprivation of the complainant therein of his interest in land on the basis of a fabricated power of attorney, and consequently it was not in the interest of the society to quash the FIR on the ground that a settlement had been arrived at with the complainant. Such offences could not be construed to be merely private or civil disputes but implicated the societal interest in prosecuting serious crime.

31. In **"Social Action Forum For Manav Adhikar and Another Vs. Union of India and Others"**⁸, the Hon'ble Supreme Court reiterated that a criminal proceeding with respect to offence which is non-compoundable can be quashed by the High Court under section 482 Cr.P.C. When settlements take place, then both the parties can file a Petition under section 482

Cr.P.C and the High Court, considering bona-fide of the Petition shall dispose of the same, keeping in view the law laid down in **Gian Singh (Supra)**.

32. In **"State of Madhya Pradesh Vs. Laxmi Narayan and others"**⁹, the Hon'ble Supreme Court, again held that the power to quash the criminal proceedings in exercise of power under Section 482 of the Code is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Paragraph 15 of **Laxmi Narayan (Supra)** is being reproduced as under:-

"15. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:-

15.1) That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2) Such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

15.3) Similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed

by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

15.4) Offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

15.5) While exercising the power under Section 482 of the Code to quash the

criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”

33. In **Laxmi Narayan(Supra)**, the High Court had quashed the criminal proceedings for the offences under Section 307 and 34 IPC on the basis of settlement mechanically and even when the investigation was under process and some how, the accused managed to enter into a compromise with the complainant and sought quashing of the FIR on the basis of a settlement. It was held that the allegations were serious in nature. Fire arms was used in the commission of the offence. Considering the gravity of the offence and the conduct of the accused his antecedents, quashment of the FIR on the basis of settlement was held as not sustainable in the eye of law.

34. From the above discussion, it is clear that the Court considering the nature of offence and the fact that the parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under Section 482 Cr.P.C. even if the offences are non-compoundable. The Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does

not tinker with or paralyze the very object of the administration of criminal justice system.

35. It has further held that criminal proceedings involving non-heinous offences or where the offences are predominantly of a private nature, can be quashed. The cases where compromise has taken place, this Court under inherent power ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence.

36. This Court is of the opinion that the touchstone for exercising the extraordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard and fast line constricting the power of the Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as has been observed by the Apex Court in the case of **Narinder Singh & Ors. vs. State of Punjab & Ors. and Laxmi Narayan (Supra)**.

37. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed between two individuals or groups only, for such

offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a 'settlement' through duress, threats, social boycotts, bribes or other dubious means. It is well said that "let no guilty man escape, if it can be avoided.

38. It is profitable to reproduce a passage from **Shimbu vs. State of Haryana**¹⁰, wherein a three-Judge Bench has held that a compromise entered into between the parties cannot be construed as a leading factor based on which proceedings can be quashed. It has further been held that rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurized by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise.

39. In a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive in life. No one would allow it to be extinguished. When a human frame is defiled, the "purest treasure", is lost. Dignity of a woman is a part of her non-perishable and immortal self and no

one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the Courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error.

40. In the case of **Shyam Narain vs. State (NCT of Delhi)**, the Apex Court has gone to the extent of sum that an attitude reflects lack of sensibility towards the dignity, the elan vital, of a woman. Any kind of liberal approach or thought of mediation in this regard thoroughly and completely sans legal permissibility.

41. At this juncture, it would be appropriate to refer to two authorities, namely, **Baldev Singh v. State of Punjab and Ravindra vs. State of Madhya Pradesh. Baldev Singh (supra)** was considered by the three-Judge Bench in **Shimbhu (supra)** and in that case it has been stated that:-

“18.1. In **Baldev Singh v. State of Punjab**, though the courts below awarded a sentence of ten years, taking note of the facts that the occurrence was 14 years old, the appellants therein had undergone about 3½ years of imprisonment, the prosecutrix and the appellants married (not to each other) and entered into a compromise, this Court, while considering peculiar circumstances, reduced the sentence to the period already undergone, but enhanced the fine from Rs. 1000 to Rs. 50,000. In the

light of series of decisions, taking contrary view, we hold that the said decision in **Baldev Singh v. State of Punjab** cannot be cited as a precedent and it should be confined to that case.”

42. Hon'ble Supreme Court in **Narinder Singh and others vs. State of Punjab and another**¹¹, has specifically held that the matter under Section 376 I.P.C. is also such an offence, which, though committed in respect of a particular victim, cannot be termed to be a private dispute between the parties. It has serious adverse societal effect. Therefore, any proceeding on the basis of alleged compromise of the accused vis-a-vis the victim cannot be quashed.

43. This principal of law also came to be reiterated recently by Hon'ble Supreme Court in **Daxaben vs. State of Gujarat and others**¹² wherein the Hon'ble Supreme Court in Paragraphs No.34, 38, and 47 has held as under:-

"34. In **Inder Mohan Goswami v. State of Uttaranchal**, (2007) 12 SCC 1, this Court observed:-

"46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled

legal position, the impugned judgment cannot be sustained."

38. However, before exercising its power under Section 482 of the Cr.P.C. to quash an FIR, criminal complaint and/or criminal proceedings, the High Court, as observed above, has to be circumspect and have due regard to the nature and gravity of the offence. Heinous or serious crimes, which are not private in nature and have a serious impact on society cannot be quashed on the basis of a compromise between the offender and the complainant and/or the victim. Crimes like murder, rape, burglary, dacoity and even abetment to commit suicide are neither private nor civil in nature. Such crimes are against the society. In no circumstances can prosecution be quashed on compromise, when the offence is serious and grave and falls within the ambit of crime against society.

47. In *State of Madhya Pradesh v. Laxmi Narayan*, (2019) 5 SCC 688, a three-Judge Bench discussed the earlier judgments of this Court and laid down the following principles:-

"15. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

15.1. That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2. Such power is not to be exercised in those prosecutions which involved heinous and serious offences of

mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

15.3. Similarly, such power is not to be exercised for the offences under the special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

15.4. Offences under Section 307 IPC and the Arms Act, etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act, etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used, etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge-sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under

investigation. Therefore, the ultimate conclusion in paras 29.6 and 29.7 of the decision of this Court in *Narinder Singh* [(2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54] should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

15.5. While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc."

(emphasis supplied)

44. A compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurized by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise.

45. In "**Shimbhu Vs. State of Haryana**"¹³, the Hon'ble Supreme Court held that rape is a non compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the

Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurized by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. Infact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurize her for compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the court to exercise the discretionary power under proviso to Section 376(2) IPC.

46. In "**State of Madhya Pradesh Vs. Madan Lal**"¹⁴, the Hon'ble Supreme Court held that rape or attempt to rape are crimes against the body of a women which is her own temple. These are the offences which suffocate the breath of life and sully the reputation. Reputation is the richest jewel one can conceive of in life. No one can allow it to be extinguished. When a human frame is defiled, the "Purest Treasure" is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner. The Apex Court emphasized that, the Courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently,

it would be in the realm of a sanctuary of error.

47. Thus, it is very well settled that in respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. Any compromise between the victim and the offender in relation to such offences, cannot provide for any basis for quashing the criminal proceedings. The inherent power is not to be exercised in those prosecutions which involve heinous and serious offences. Such offences are not private in nature and have a serious impact on society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences. The offences under Sections 376 and 392 IPC fall in the category of serious and heinous offences. They are treated as crime against the society and not against individual alone and therefore, the criminal proceeding for the offences under these sections having a serious impact on the society, cannot be quashed in exercise of power under Section 482 of the Code on the ground that the parties have resolved their entire dispute among themselves through compromise/settlement.

48. Any compromise or settlement with respect to the offence of rape, against the honour of a woman, which shakes the very core of her life and tantamounts to a serious blow to her supreme honour, offending both, her esteem and dignity, is not acceptable to this Court.

49. Conversion to another religion basically requires change of faith and belief of personal relations of a major individual of sound mind by his free will, with what he/she regards as Cosmos, his/her Maker or Creator, which he/she believes, regulates the existence of insentient beings and the forces of Universe.

50. Faith and belief in the unity of God and Mahommed to be his/her prophet is the foundation to call a person of another religion that he embraced Islam. Conversion to Islam makes the muslim personal law applicable to such a person.

51. A conversion of religion by an individual to Islam can be said to be *bona fide* if he/she is major and of sound mind and embraces Islam by his/her own freewill and because of his/her faith and belief in the oneness of God (Allah) and prophetic character of Mahommed. If a conversion is not inspired by religion feeling and under gone for its own sake, but is resorted merely with object of creating a ground for some claim of right or as a device adopted for the purpose to avoid marriage or to achieve an object without faith and belief in the unity of God (Allah) and Mahommed to be his prophet, the conversion shall not be *bonafide*. In case of a religion conversion there should be a change of heart and honest conviction in the tenets of new religion in lieu of tenets of the original religion.

52. In the case of **Rev. Stainislaus Vs. State of Madhya Pradesh and others**¹⁵, the Apex Court while considering the constitutional validity of M.P. Dharma Swantantraya Adhiniyam, 1968 has observed as under:-

“.....there is no fundamental right to convert another person to one's own

religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike."

53. The object of Act, 2020 is to provide for prohibition of unlawful conversion from one religion to another by misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means.

54. In view of the above settled position of law, it is clear that unlawful religious conversion, particularly when achieved through coercion, fraud, or undue influence, is considered a serious offence, in which the Court cannot quash the proceedings on the basis of settlement between the parties.

55. In the case of **Priyanshi @ Km Shamreen and another vs. State of U.P. and 3 Others**¹⁷, the Co-ordinate Bench of this Court has considered the observation made in **Smt. Noor Jahan Begum @ Anjali Mishra & another vs. State of U.P. and 4 Ors.**¹⁸ and held that conversation just for the purpose of marriage is unacceptable. From the Act, 2020 also such conversation just for the purpose of marriage is an offence.

56. Considering the facts and circumstances of the case as well as above stated position of law, the Court finds that the alleged offences under section 376 IPC and Section 3(1) U.P. Conversion Prevention Act, 2020, are serious in nature and non-compoundable, therefore, the instant proceedings cannot be quashed on the basis of compromise between the

parties in exercise of powers conferred under Section 482 Cr.P.C.

57. Accordingly, the present application under Section 482 Cr.P.C. is **dismissed.**

(2025) 3 ILRA 148

**ORIGINAL JURISDICTION
CRIMINAL SIDE**

DATED: ALLAHABAD 06.03.2025

BEFORE

**THE HON'BLE MRS. MANJU RANI
CHAUHAN, J.**

Application U/S 482 No. 25836 of 2024

Smt. Suman Prajapati **...Applicant**
Versus
State of U.P. & Anr. **...Opposite Parties**

Counsel for the Applicant:
Lalji Yadav, Yashpal Yadav

Counsel for the Opposite Parties:
G.A., Sanjay Kr. Srivastava

(A) Criminal Law - Cognizance on police report - Informant's right to notice - Code of Criminal Procedure, 1973 - Sections 173(2)(ii) , 190(1)(b) & 319 - Power to proceed against other persons appearing to be guilty of offence - Principles of natural justice - Magistrate not bound to issue notice to informant before taking cognizance against charge-sheeted accused - No prejudice is caused to the informant when Magistrate has taken cognizance only against charge-sheeted persons without issuing notice to the informant with respect to the persons named in FIR but not charge-sheeted - there remains scope to summon others under Section 319 Cr.P.C. during trial.(Para - 25 to 31)

FIR lodged by the applicant - charge sheet submitted only against one accused - final

report against five others - applicant challenged the order of cognizance taken by Magistrate without notice to her. **(Para - 2,3)**

HELD: - The right of the informant is not in any way affected in case if the Magistrate has taken cognizance only against charge-sheeted persons without issuing notice to the informant with respect to the persons who are named in the FIR but have not been charge-sheeted. No interference is called for in the present matter. **(Para -31,33)**

Application under Section 482 Cr.P.C. dismissed. (E-7)

List of Cases cited:

1. Bhagwat Singh Vs Commissioner of Police & anr., AIR 1985 SC 1285
2. U.P.S.C. Vs S. Papaiah, 1997 (7) SCC 614
3. Abhinandan Jha & ors. Vs Dinesh Mishra, 1968 AIR 117
4. Mahesh Chand Vs B. Janardan Reddy & anr., 2003 (1) SCC 734
5. M.S. Ahlawat Vs St. of Har. & anr., 2000 (1) SCC 278
6. India Carat P. Ltd. Vs St. of Karn. & anr., AIR 1989 SC 885

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Mr. Yashpal Yadav, learned counsel for the applicant, Mr. Sanjay Kr. Srivastava, learned counsel for the opposite party no.2 and Mr. Amit Singh Chauhan, learned A.G.A. for the State.

2. The present application has been filed with prayer to quash the order dated 30.01.2024 passed by Additional Chief Judicial Magistrate I, Court No.16, Allahabad in Criminal Case No.04/2024 (State Vs. Tripurari), arising out of Case

Crime No.436/2023, under Sections 498-A, 323, 504, 506 I.P.C. and Section 3/4 D.P. Act, P.S. Dhoomanganj, District-Prayagraj (Allahabad). It is further prayed to direct the A.C.J.M. Court No.16, Allahabad to provide an opportunity of hearing to the applicant before taking further cognizance.

3. Brief facts of the case are; a first information report² was lodged on 23.08.2023 at 20:55 hours by Smt. Suman Prajapati (applicant) against six persons with the allegations of being mentally and physically harassed for additional dowry demand. After investigation charge sheet was submitted on 19.11.2023 only against Tripurari Prajapati whereas final report was submitted in favour of Santlal, Smt. Lalmani Devi, Smt. Pratibha, Smt. Sandhya and Divya on 19.11.2023. The charge sheet dated 19.11.2023 was placed before the Court concerned on 30.01.2024 and the Court concerned took cognizance and summoned Tripurari Prajapati fixing 28.01.2024.

4. Learned counsel for the applicant has challenged the order dated 30.01.2024 passed by the Court concerned summoning Tripurari Prajapati against whom a charge sheet has been submitted without providing any opportunity to the applicant (informant in the present case) before taking cognizance in the matter.

5. Learned counsel for the applicant submits that as per Section 173(2) of the Code of Criminal Procedure, 1973 the Investigating Officer must communicate about the action taken by him to persons by whom the information relating to commission of offence was given first. The applicant-informant lodged the FIR but the Investigating Officer neither informed her about the progress of

investigation nor supplied a copy of the case diary (police report) before its submission to the Court below. Thus, the submission of charge sheet before the Court concerned without informing and communicating about the police report to the applicant was against the mandate of Section 173(2) of Cr.P.C., hence, improper, unjust and illegal.

6. Learned counsel for the applicant further submits that a final report was submitted in favour of other five persons who were named in the FIR exonerating them from the nemesis of law (legal proceedings) as the applicant who had lodged the FIR was affected by the same, hence, it was mandatory for the learned Magistrate to issue notice, give an opportunity to the informant and only after hearing the informant, order taking cognizance should have been passed, thus the order taking cognizance against Tripurari Prajapati and not against the others, who were named in the FIR, though they were exonerated is illegal and against the principles of natural justice.

7. Learned counsel for the applicant next submits that the Investigating Officer should have informed the applicant about the charge sheet being submitted against opposite party no.2 and final report being submitted against other persons and also before passing any orders the Court concerned should have issued notices to the informant and after providing an opportunity of hearing should have taken cognizance. In support of his submission he has relied upon judgement of Apex Court passed in case of **Bhagwat Singh vs. Commissioner of Police and Anr**⁴. Thus, order dated 30.01.2024 is illegal and is liable to be quashed.

8. Learned A.G.A. submits that at this stage issuing notice to the informant

giving an opportunity to him to address the Magistrate with respect to non-charge sheeted persons, would prolong the matter causing unnecessary delay whereas there is ample time for the informant to place an evidence on record during course of trial. There is no illegality and infirmity in submitting the charge sheet against the accused only, hence, no interference is required.

9. Heard learned counsel for the parties and perused the record.

10. Before dealing with the issue in hand, it would be appropriate to discuss certain provisions for proper adjudication of the matter.

11. Chapter XII of the Cr.P.C. deals with information to the police and their powers of investigation.

12. Section 154(1) provides that every information relating to the commission of a cognizable offence, if given orally to an officer-in-charge of a police station, shall be reduced in writing by him or under his direction and be read over to the informant and every such information, whether given in writing or reduced to writing, shall be signed by the person giving it. As per Section 154(2) Cr.P.C. a copy of such information shall be given forthwith, free of cost, to the informant.

13. Section 156(1) Cr.P.C. vests in the officer-in-charge of a police station the power to investigate any cognizable case without the order of a magistrate and sub-section (3) of that section authorises the magistrate empowered under Section 190 to order an investigation as mentioned in sub-section (1) of that section.

14. Section 157(1) Cr.P.C. lays down that if, from information received or otherwise an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 Cr.P.C. to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offender. Thus, on an application u/s 156(3) Cr.P.C. as moved by complainant/informant before the Magistrate, FIR is lodged pursuant to the order passed by the concerned Magistrate to investigate and lodge an FIR. No sooner he lodges the First Information Report, a copy of it has to be supplied to him, free of cost, under Section 154(2) Cr.P.C..

15. Proviso (b) to Section 157(2) Cr.P.C. enacts that if it appears to the officer-in-charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case. But in such a case, section 157(2) Cr.P.C. requires that the officer shall forthwith notify to the informant the fact that he will not investigate the case or cause it to be investigated. What the officer in charge of a police station is required to do on completion of the investigation is set out in section

16. Section 173(2)(i) Cr.P.C. provides that as soon as investigation is completed, the officer in charge of a police station shall forward to the magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government setting out various particulars including

whether, in the opinion of the officer, as offence appears to have been committed and if so, by whom.

17. Section 173(2)(ii) Cr.P.C. states that the officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

18. When the report forwarded by the Officer-in-charge of a police station, to the Magistrate under Section 173(2)(i) Cr.P.C. comes up for consideration by the Magistrate, one of two different situations may arise.

(1) The report may conclude that an offence appears to have been committed by a particular person or persons.

(2) The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed.

In such a situation the Magistrate may take one of three following things:-

(i) He may accept the report and take cognizance of the offence and issue process; or,

(ii) he may disagree with the report and drop the proceeding; or,

(iii) he may direct further investigation under Section 156(3) Cr.P.C. and require the police to submit a further report.

19. In either of these two situations, the Magistrate decides to take cognizance of the offence and issue process, the informant is not prejudicially affected, nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the

offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceedings or takes the view that though there is sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose; wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in Section 154(2) Cr.P.C, of Section 157(2) Cr.P.C. and Section 173(2)(ii) Cr.P.C, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him.

20. The Court in **Bhagwat Singh (supra)** was of the view that in a case when a Magistrate to whom a report is forwarded under Section 173(2)(i) Cr.P.C. decides not to take cognizance of the offence and to drop the proceedings or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give a notice to the informant and provide him an opportunity of being heard at the time of consideration of the report, and the difficulty of serving notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.

21. In the aforesaid case, the Court could not find out either from the provisions of the Code of Criminal procedure, 1973 or from the principles of natural justice, any obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased for providing such person an opportunity to be heard at the time of consideration of the report, unless such a person is the informant who has lodged the First Information Report. But observed that even if such a person is not entitled to notice from the Magistrate, they may still can appear before the Magistrate and make their submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report. It was also observed that the injured person or any relative of the deceased, though not entitled to notice from the Magistrate, has locus standi to appear before the Magistrate at the time of consideration of the report, if they otherwise come to know that the report is going to be considered by the Magistrate and if they wants to make their submissions in regard to the report, the Magistrate is bound to hear them.

22. From the provisions of Code of Criminal Procedure, 1973, principles of natural justice as well as observations made in **Bhagwat Singh (supra)**, even though the Magistrate is not bound to give notice of the hearing fixed for consideration of the report to the injured person or to any relative of the deceased, he may, in the exercise of his discretion, if he so thinks fit, give such notice to the injured person or to any particular relative or relatives of the deceased, but not giving of such notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report.

23. In the criminal cases, when charge sheet is filed under Section 173 of Cr.P.C., the Magistrate reviews it to decide whether to take cognizance of the offence. If the Police does not include certain persons in charge sheet, who are shown as an accused in the FIR, and the Magistrate disagrees with this, the Magistrate can still summon those persons if the evidence suggests their involvement. However whether the Magistrate is bound to summon the informant or complainant before deciding not to summon the un-chargesheeted persons depends upon the situation and legal proceedings.

24. The Courts have ruled that the informant and complainant should be given an opportunity to be heard before Magistrate decides not to summon individuals who have been left out of the charge sheet. This is based on the principles of natural justice, ensuring that the informant has a chance to contest the police's decision. However, if the Magistrate is satisfied with the police report and sees no ground to summon the un-chargesheeted individuals, they can proceed without necessarily hearing the informant. The informant always has a chance to challenge the final report by means of filing protest petition which shall be heard by the concerned Magistrate. It was also observed that in the case where the persons shown as an accused in the FIR are not charge sheeted, there is always a scope of them being summoned under Section 319 Cr.P.C., thus, it cannot be said that the right of informant is affected in case notices are not issued to them in those cases where charge sheet has been submitted against a few persons and rest of the persons remain un-chargesheeted.

25. The Supreme Court of India in the case of **Bhagwat Singh (supra)** held

that the informant must be heard when the Magistrate is considering, dropping proceedings or accepting the final report that excludes some accused persons. However from the aforesaid, it cannot be said that it is automatic in every case, that if the Magistrate is not considering to proceed against someone who was named in the original complaint or FIR but left out of the charge sheet, informant has right to be heard. The aforesaid case is frequently cited case for the principle that the informant has right to be heard before a Magistrate accepts a police report that omits certain accused persons.

26. The Apex Court in another case of **Union Public Service Commission v. S. Papaiah**⁵, has clarified that the Magistrate is not bound by the police report and has the authority to take cognizance of an offence even if certain individuals are not charge sheeted, however, informant must be given a chance to present objections if Magistrate is inclined to accept the report as it is.

27. In another case of **Abhinandan Jha & Ors. v. Dinesh Mishra**⁶, the Supreme Court ruled that Magistrate cannot direct the police to submit a charge sheet but can choose to disagree with the police report and take cognizance of the offence, this case establishes the Magistrate's independence in evaluating the police report but does not specifically address the informant's right to be heard.

28. The Supreme Court in the case of **Mahesh Chand v. B. Janardan Reddy And Anr.**⁷ reiterated that the Magistrate can take cognizance against individuals not named in the charge sheet, if there is sufficient material and the informant's right to be heard can be implied in cases where

the Magistrate is evaluating whether to proceed against un chargesheeted individuals or not.

29. The Apex Court expressed its view in the case of **M.S. Ahlawat v. State of Haryana And Anr.8** that a fair hearing for the complainant or informant is essential in criminal proceedings especially the Magistrate is deciding on reports excluding certain individuals from prosecution.

30. From the aforesaid judgements, it is established that while the Magistrate has discretion in accepting or rejecting the police report, the informant or complainant must generally be given an opportunity to be heard, especially if the Magistrate is inclined to accept a report that exonerates some individuals.

31. After going through the aforesaid provisions of the Code of Criminal Procedure and various decisions, this Court is of the opinion that issuance of notice to informant giving opportunity to him to address the Magistrate with respect to non-charge-sheeted persons would prolong the matter causing unnecessary delay and whereas ample opportunity is there for the informant to place evidence and materials on record during course of trial, on the basis of which they can be arrayed as accused persons under the provisions of Section 319 Cr.P.C., no prejudice is caused to the informant when the Magistrate has only issued notice to the charge-sheeted persons as in the present case. The right of the informant is not in any way affected in case if the Magistrate has taken cognizance only against charge-sheeted persons without issuing notice to the informant with respect to the persons who are named in the FIR but have not been charge-sheeted.

32. This Court feels that the stage of Section 319 of Cr.P.C., has not yet been reached in the present case. The order impugned vide which cognizance has been taken against the charge-sheeted persons is in exercise of powers under Section 190(1)(b) of Cr.P.C. and at this stage it is not fatal to the powers of the Magistrate to take cognizance of offence and issue process against those who have not been arrayed as accused persons by the police while filing the charge sheet. The aforesaid has also been held in the case of **India Carat P. Ltd. Vs. State of Karnataka & Anr.9**.

33. Having considered the submissions advanced by learned counsel for the parties, facts of the case and material brought on record in view of the discussion as referred to herein above, and keeping the settled proposition of law on the issue, I am of the view that no interference is called for in the present matter. The instant application under Section 482 Cr.P.C. stands **dismissed**.

34. The Court would like to appreciate the hard work put in by Ms. Shreya Shukla, Research Associate, who has drawn attention to detail and the same shows in her work of providing legal assistance in this matter.

(2025) 3 ILRA 154

ORIGINAL JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 28.03.2025

BEFORE

THE HON'BLE SAMIT GOPAL, J.

Application U/S 482 No. 28882 of 2024

**Mukul Kumar Jain & Anr.
Versus**

C.B.I.

...Applicants

...Opposite Party

Counsel for the Applicants:

Shiv Sagar Singh

Counsel for the Opposite Party:

Sanjay Kr. Yadav

Criminal Law-The Code of Criminal Procedure, 1973-Section 482-

Law protects those who respect it and abide by it. A person flagrantly violating law cannot be equated with a person following the process of law. A person avoiding the process of law cannot be let to ventilate his grievance as per his choice for selective stages as per his sweet will--- The accused-applicants never joined the investigation which concluded in filing of a charge sheet against them as an absconder and again they are absconding from the trial court despite knowledge of the proceedings and thus are not entitled to invoke the inherent powers of this Court for seeking quashing of proceedings-- - total non cooperation of the applicants in the investigation, vagueness of the pleadings, the conduct of the applicants in not joining the investigation and not co-operating therein due to which charge sheet was submitted against them as absconders, intentional efforts to avoid the courts orders as would appear from the order of the revisional court and the fact that charge sheet is not being challenged on its merits coupled with the fact that the order of taking cognizance dated 01.3.2024 being challenged in a revision which stood dismissed on its merits, no ground for interference is called for. **(Para 20 & 21)**

Petition dismissed. (E-15)

(Delivered by Hon'ble Samit Gopal, J.)

1. On 03.01.2025 the following order was passed by this Court:-

"1. List revised.

2. Heard Sri Mayank Kumar Jain, Advocate holding brief of Sri Shiv Sagar Singh, learned counsel for the applicants who appears in the present matter as well as in the connected matter and Sri Gyan Prakash, learned Senior

Counsel assisted by Sri Sanjay Kumar Yadav, learned counsel for C.B.I. in both the matters.

3. The present application is connected with Application U/S 482 Cr.P.C. No. 11034 of 2024 (Mukul Jain And Another vs. Central Bureau Of Investigation) in compliance of order dated 27.09.2024.

4. Records show that the present matter has been listed today in the Additional Cause List / Unlisted List-I under the "Hon'ble Supreme Court Order (Expedited) case". The matter along with connected matter has been listed today on the direction of Hon'ble the Chief Justice dated 02.01.2025 directing the matter to be listed today.

5. On the matter being taken up in the revised list, learned counsel for the applicants submits that the matter be adjourned for a week to enable him to prepare it for arguments.

6. The records further show that the Apex Court in the Misc. Application Diary No. 59714 of 2024 in Special Leave Petition (Criminal) No. 12964 of 2024 (Mukul Kumar Jain vs. Central Bureau of Investigation) has vide order dated 20.12.2024 directed that the present matter be placed before Hon'ble the Chief Justice for fixing a date in the opening week of January, 2025 with a further request to the learned Presiding Judge of the Bench to take up the matter expeditiously.

7. Today, on the matter being taken up, the learned counsel for the applicants seeks adjournment on the ground of preparation for arguments. He is reminded of the order dated 20.12.2024 of the Apex Court passed on his application.

8. Learned counsel for the applicant submits that the both matters be listed on 16.01.2025 to enable him to argue them.

9. Prayer is allowed.

10. The present matter along with connected matter be listed on 16.01.2025."

2. Subsequently on 16.01.2025 the following order was passed by this Court:-

"1. The present matter is connected with Crl. Misc. 482 No. 11034 of 2024 (Mukul Jain and another Vs. Central Bureau of Investigation), the record of which goes to show that the same has been finally disposed of vide order dated 6.8.2024 passed by a Co-ordinate Bench of this Court.

2. In the present matter an order has been passed by the Apex Court on 20.12.2024 directing the matter to be placed before Hon'ble the Chief Justice for fixing a date in the opening week of January, 2025 with the further request to the learned Presiding Judge of the Bench to take up the matter expeditiously. The matter was thus placed before this Bench on 3.1.2025 on which date learned counsel for the applicants prayed for an adjournment for a week to enable him to prepare the matter for arguments. The following order was passed by this Bench on the said date:-

"1. List revised.

2. Heard Sri Mayank Kumar Jain, Advocate holding brief of Sri Shiv Sagar Singh, learned counsel for the applicants who appears in the present matter as well as in the connected matter and Sri Gyan Prakash, learned Senior Counsel assisted by Sri Sanjay Kumar Yadav, learned counsel for C.B.I. in both the matters.

3. The present application is connected with Application U/S 482 Cr.P.C. No. 11034 of 2024 (Mukul Jain And Another vs. Central Bureau Of

Investigation) in compliance of order dated 27.09.2024.

4. Records show that the present matter has been listed today in the Additional Cause List / Unlisted List-I under the "Hon'ble Supreme Court Order (Expedited) case". The matter along with connected matter has been listed today on the direction of Hon'ble the Chief Justice dated 02.01.2025 directing the matter to be listed today.

5. On the matter being taken up in the revised list, learned counsel for the applicants submits that the matter be adjourned for a week to enable him to prepare it for arguments.

6. The records further show that the Apex Court in the Misc. Application Diary No. 59714 of 2024 in Special Leave Petition (Criminal) No. 12964 of 2024 (Mukul Kumar Jain vs. Central Bureau of Investigation) has vide order dated 20.12.2024 directed that the present matter be placed before Hon'ble the Chief Justice for fixing a date in the opening week of January, 2025 with a further request to the learned Presiding Judge of the Bench to take up the matter expeditiously.

7. Today, on the matter being taken up, the learned counsel for the applicants seeks adjournment on the ground of preparation for arguments. He is reminded of the order dated 20.12.2024 of the Apex Court passed on his application.

8. Learned counsel for the applicant submits that the both matters be listed on 16.01.2025 to enable him to argue them.

9. Prayer is allowed.

10. The present matter along with connected matter be listed on 16.01.2025."

3. Today the matter has been taken up on mention being made on behalf of the applicant. Shri Manish Gupta and Shri Shiv Sagar Singh, Advocates appear

for the applicant and Sri Gyan Prakash, learned Senior Advocate/ Additional Solicitor General of India assisted by Shri Sanjay Kumar Yadav, Advocate appear for the Respondent, Central Bureau of Investigation.

4. Learned counsel for the C.B.I. submits that after the order of the Apex Court and on 3.1.2025 he has been served with a third supplementary affidavit dated 3.1.2025 for which he may be granted three weeks' time to file a counter affidavit/response.

5. The record also show that although an adjournment was prayed on 3.1.2025 for preparing the matter for arguments on behalf of the applicant but a third supplementary affidavit is seen to have been filed on the said date.

6. The prayer of learned counsel for the Respondent C.B.I. is allowed.

7. Three weeks' time is granted to file a counter affidavit/response to the third supplementary affidavit dated 3.1.2025. Applicants will have two weeks thereafter to file rejoinder/response to the same, if any.

8. Let the matter be listed on 20.2.2025. The office shall ensure that the matter is listed under the heading of cases expedited by the Supreme Court on the next date."

3. On 20.2.2025 the following order was passed:-

"1. List revised.

2. Sri Manish Gupta, Advocate holding brief of Sri Shiv Sagar Singh, learned counsel for the applicant and Sri Sanjay Kumar Yadav, learned counsel for C.B.I. are present.

3. Learned counsel for C.B.I. submits that the matter is to be argued by Sri Gyan Prakash, learned Senior Advocate

/ Deputy Solicitor General of India who had although come to Court but has gone back since there is wedding of his daughter scheduled for tomorrow. He prays for an adjournment in the matter for a weeks.

4. Learned counsel for the applicant fairly does not object to the same but submits that in compliance of the order dated 16.01.2025 no response / counter affidavit has been served on him by the C.B.I.

5. In view of the request for adjournment made by learned counsel for C.B.I., the matter is adjourned for today.

6. Let the matter be listed on 27.02.2025."

4. On 27.20.2025 the following order was passed by this Court:-

"1. List revised.

2. Sri Manish Gupta, Advocate holding brief of Sri Shiv Sagar Singh and Sri Shiv Sagar Singh, learned counsels for the applicants and Sri Sumit Kesarwani, Advocate holding brief of Sri Sanjay Kumar Yadav, learned counsel for C.B.I. are present.

3. Learned counsel for the C.B.I. has served a copy of counter affidavit to learned counsel for the applicants today in Court. The same be filed / uploaded on the portal by learned counsel for the C.B.I. within 48 hours.

4. Learned counsels for the applicants submit that they do not propose to file any rejoinder affidavit to the counter affidavit of the C.B.I.

5. Learned counsel for C.B.I. submits that the matter is to be argued by Sri Gyan Prakash, learned Senior Advocate / Deputy Solicitor General of India, who has not come to Court since he is unwell.

6. The records show that on the last occasion adjournment was sought on

behalf of Sri Gyan Prakash on personal ground. Today also adjournment is being sought on his request on the ground of his being unwell.

7. As a last opportunity, the matter is adjourned for today.

8. Let the matter be listed on 06.03.2025.

9. The matter is being adjourned on the understanding that it will not be adjourned on the next date.”

5. The order of the Apex Court dated 20.12.2024 passed in Miscellaneous Application Diary No(s).59714/2024 is extracted herein below:-

“1. The application under Section 482 of the Code of Criminal Procedure, 1973 bearing No.28882/2024, filed by the applicant-petitioners seeking urgent interim relief, is pending before the High Court of Judicature at Allahabad. Since the matter was not being listed for hearing notwithstanding the urgency pleaded on behalf of the applicant-petitioners, they approached this Court through SLP (Crl.) No.12964/2024. The said petition was, however, not pressed on merits, with liberty to move the High Court for expeditious disposal of the above-mentioned application-cum-petition.

2. The instant miscellaneous application has been filed in the disposed of special leave petition, inter alia, pointing out that the matter was listed before the High Court on 23.10.2024, but it was adjourned without any effective hearing to 18.12.2024. It is stated that no hearing could take place on 18.12.2024 also, and the matter has been adjourned to January, 2025 without fixing any date. In this backdrop, the applicant-petitioners seek appropriate direction.

3. Having heard Dr. Abhishek Manu Singhvi, learned senior counsel for the applicant-petitioners, and keeping in view the fact that the application under Section 482 bearing No.28882/2024 is still pending before the High Court, we dispose of this miscellaneous application with a direction to the Registrar General of the Allahabad High Court to put up this order before Hon'ble Chief Justice of the High Court and obtain appropriate administrative order with a date for hearing fixed in the opening week of January, 2025, with a further request to the learned Presiding Judge of the bench to take up the matter expeditiously.

4. It is clarified that we have not expressed any opinion on the merits of the case.

5. The Miscellaneous Application is, accordingly, disposed of.

6. All pending applications, if any, also stand disposed of.”

6. The present Criminal Misc. Application U/S 482 Cr.P.C. has been filed by the applicants Mukul Kumar Jain/applicant no. 1 and Priyanka Jain/applicant no. 2 before this Court with the following prayers:-

“It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to set-aside/quash the cognizance order dated 01.03.2024 passed by the Ld. Special Judicial Magistrate, CBI Court, Ghaziabad in Case No. 06/2024 and all consequential proceedings arising out of the Charge-sheet dated 30.12.2023 in FIR bearing no. RC0072022A0001 dated 11.03.2022 u/s 120-B, 420, 467, 468 and 471 I.P.C. r/w Sec 13(2) r/w 13(1)(d) of the PC Act, 1988 registered at P.S. ACB Dehradun, Uttarakhand titled as “Central

Bureau of Investigation vs. Mukul Jain & another.

That further pass any order that no coercive action shall be taken against the Applicant/s in the FIR bearing no. RC0072022AA0001, dated 11.03.2022 u/s 120-B, 420, 467, 468 and 471 IPC r/w Sec 13(2) r/w 13(1)(d) of the PC Act, 1988 registered at P.S. ACB Dehradun, Uttarakhand and any other consequential proceedings till the pendency of the instant application and further stay all the proceedings arising out of the instant FIR dated 11.03.2022 till the final disposal of the instant application.”

7. The facts of the case are that a First Information Report was lodged on 11.3.2022 as F.I.R. No. RC0072022A0001 of 2022, Police Station ACB Dehradun, District Dehradun, under Sections 120B r/w sections 420, 467, 468, 471 I.P.C., Sections 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, by Mr. Asheesh Agarwal, Branch Manager, Bank of India, Meerut Branch, Anand Bhawan, Kothi No. 346, Khair Nagar, Meerut, U.P. against Mukul Jain, Mrs. Priyanka Jain, M/s Mahaveer Fording Pvt. Ltd. Meerut, M/s Ashray Enterprises (Guarantor) through its Proprietor Smt. Priyanka Jain and unknown public servant(s) & private person(s) with the allegations that M/s Mahaveer Forging Pvt. Ltd., Meerut was availing credit facilities to the tune of Rs.742.00 Lacs from Syndicate Bank, Defense Colony Branch, Meerut. The said loans were taken over by the Bank of India, Meerut Branch on 17.3.2011 with enhanced credit facilities Term Loan (T.L.) of Rs.3 Crore and Cash Credit (CC) limit of Rs. 13 Crore. Thus on 17.03.2011, the total credit facility amounting to Rs. 1732.17 Lakh were sanctioned by Bank of India to M/s Mahaveer Forgings Pvt. Ltd. The borrower

company has created Equitable mortgage of eight properties. As per the terms and conditions, borrower company was required to change the land use of Agricultural land to Non-agricultural land within 30 days period after first disbursement. The accused borrower in respect of three properties situated at Village Bhuwa, Pargana Hastinapur, Tehsil Mawana submitted three fake and forged orders under Section 143 of Uttar Pradesh Zamindari Abolition and Land Reform Act with the bank related to change of land use. Further Mukul Jain and Smt. Priyanka Jain had consented for cancellation of sale deed related to the mortgaged property situated at Village Kashi Pargana & District Meerut comprising of two sale deeds number 2872 and number 2874, without any permission and intimation to the bank. Accordingly the court concerned at Meerut cancelled the sale deeds vide order 11.02.2015 which resulted in the bank being deprived of its security. The Directors of the company removed the plant and machinery which were hypothecated/charged to the bank without informing the bank and thereby deprived the bank of the security. It is further alleged that Foreign Bills of Rs.250 lacs purchased by the Bank remained unpaid. The company could not advise the status of overseas consignment sent by it. The Foreign Bills submitted by the company turned out to be fake and no amount could be recovered by the bank. The account of the company thus turned into NPA on 15.09.2014 causing wrongful loss to the tune of Rs. 21,10,49,257.12 and declared fraud on 25.06.2020.

8. Subsequent to lodging of the F.I.R. the matter was investigated by the respondent/C.B.I. and a charge sheet no. 05 of 2023 dated 30.12.2023 was submitted with the following details:-

Sl. No .	Name of Accused	Acts and Sections	Status of accused person(s)
1.	Sh. Mukul Jain	U/s 120B r/w 420, 468, 471 IPC and substantive offence thereof.	Absconding.
2.	Smt. Priyanka Jain	U/s 120B r/w 420, 468, 471 IPC and substantive offence thereof.	Absconding.
3.	M/s Mahaveer Forgings Pvt. Ltd. Through its director Sh. Mukul Jain & Smt. Priyanka Jain	U/s 120B r/w 420, 468, 471 IPC and substantive offence thereof.	Pvt. Ltd. Company.
4.	Sh. Akashdeep Singhal	U/s 120B r/w 420 IPC	Private Person.
5.	Sh. Nimit Singhal	U/s 120B r/w 420 IPC	----
6.	Sh. Vipin Kumar Jain	U/s 120B r/w 420 IPC	-----
7.	Sh. Vikas	U/s 120B r/w 420 IPC	Pvt. Person.
8.	Sh. Mohan	U/s 120B r/w 420	Untraceable (Pvt.

	Kumar	IPC	Person).
9.	Sh. Ajay Sharma	U/s 120B r/w 420 IPC	-----
10.	Sh. Devendra Sharma	U/s 120B r/w 420 IPC	Untraceable (Pvt. Person).
11.	Smt. Usha Gupta	U/s 120B r/w 420 IPC.	---
12.	Sh. Pankaj Kumar	U/s 120B r/w 420 IPC	----

9. On the said charge sheet the court of Special Judicial Magistrate (CBI), Ghaziabad vide order dated 03.01.2024 directed the matter to be listed for arguments for cognizance. Subsequently vide order dated 01.03.2024 the court of Special Judicial Magistrate (CBI), Ghaziabad took cognizance upon the said charge sheet and summoned the accused persons.

10. It appears from the records that Anticipatory Bail Applications were filed by the applicants and the same were deferred by Special Judicial Magistrate (CBI), Ghaziabad vide order dated 14.3.2024 on certain defects in the said anticipatory bail applications. Aggrieved by the said orders dated 14.3.2024 an Application U/S 482 No. 11034 of 2024 (Mukul Jain and another vs. Central Bureau of Investigation) was filed before this Court which was disposed of vide order dated 06.8.2024 passed by a co-ordinate Bench of this Court keeping it open for the applicants to raise their objections before the court concerned on the date fixed regarding jurisdiction to decide the anticipatory bail application filed by the applicants and the court concerned was directed that before

deciding the application for anticipatory bail filed by the applicants on merits, it shall first answer this question and then proceed with the matter. The order passed therein is extracted herein below:-

“Heard Mr. Manish Gupta, Advocate along with Mr. Shiv Sagar Singh, the learned counsel for applicants and Mr. Gyan Prakash Srivastava, the learned Deputy Solicitor General of India assisted by Mr. Sanjay Kumar Yadav, the learned counsel representing C.B.I.

This application under Section 482 CrPC has been filed challenging the order dated 14.03.2024, passed by Special Judge, C.B.I. Court, Ghaziabad in Anticipatory Bail Application nos.1918 of 2024 and 1919 of 2024, whereby court below has deferred the hearing of anticipatory bail applications filed by applicants on the ground that there are certain defects in the applications for anticipatory bail filed by applicants.

Learned counsel for applicants contends that though first information report which was lodged against applicants was also under the Prevention of Corruption Act but, subsequently, C.B.I. has submitted the police report dated 30.12.2023 in terms of Section 173 (2) CrPC (charge-sheet), but the applicants have not been charge-sheeted under the Prevention of Corruption Act.

It is further contended by the learned counsel for applicants that during the pendency of anticipatory bail application filed by applicants, non-bailable warrants have been issued against applicants.

However, the Court finds from the record that subsequently, court below has passed an order dated 14.03.2024 whereby it has been observed that though applicants were repeatedly given

opportunity to remove the defect but it appears that they intentionally delaying the proceedings therefore it directed that one last opportunity is granted to the applicants to remove the defects and further submit affidavit regarding their whereabouts before court concerned. The above order dated 14.03.2024 has not been challenged in this application under Section 482 CrPC by moving an amendment application.

Considering the above and also the law laid down by the Apex Court in Srikant Upadhyay And Others Vs. State of Bihar And Another, 2024 SCC OnLine 282, no interim protection can be provided by this Court in favour of applicants, as non-bailable warrants have been issued against applicants by court below.

Considering the facts as noted herein-above, it is hereby directed that court below shall decide the application for anticipatory bail filed by applicants bearing nos.1918 of 2024 and 1919 of 2024 on the next date fixed in aforementioned applications for anticipatory bail. The anxiety expressed by the learned counsel for applicants is that the court hearing the application for anticipatory bail of applicants does not have jurisdiction to decide the anticipatory bail. Admittedly, the application for anticipatory bail was filed by applicants before the Sessions Judge, which has been transferred by the Sessions Judge to the Special Judge, C.B.I. Court. It is well settled that the Sessions Judge cannot try the jurisdiction of Special Judge, C.B.I. Court. However, it shall be open to the applicants to raise their objection before court below on the date fixed in the matter regarding the jurisdiction to decide the anticipatory bail application of applicants and the court below is directed that before deciding the application for anticipatory bail filed by applicants on

merits shall first answer this question and then proceed with the matter.

With the aforesaid direction/observation, this application stands disposed off finally.”

11. The Anticipatory Bail Application of the applicant no. 2/Priyanka Jain numbered as Anticipatory Bail Application No.690 of 2024, Registration No. 1919 of 2024, stood rejected by the court of In-charge, Special Judge (Anti-Corruption), C.B.I., Ghaziabad vide order dated 16.8.2024 on the ground that despite granting time to the accused Priyanka Jain to file her own affidavit in the same, no such affidavit has been filed and thus disposal of the said anticipatory bail application is not possible. The Supplementary Affidavit dated 22.10.2024 has been filed on behalf of the applicants bringing on records the order dated 16.8.2024 passed in the said Anticipatory Bail Application No.690 of 2024, Registration No. 1919 of 2024, Priyanka Jain vs. C.B.I. Although the perusal of the order dated 06.8.2024 passed in the 482 Cr.P.C. petition filed on behalf of the accused Mukul Jain and Smt. Priyanka Jain is concerned, the same goes to show that two Anticipatory Bail Applications numbered as Anticipatory Bail Application No. 1918 of 2024 and 1919 of 2024 were the subject matter therein, but the records of the present case and the documents as placed during arguments do not show the fate of the anticipatory bail application of the applicant no. 1/Mukul Kumar Jain as there is nothing on record to show as to what happened in the same.

12. At this point it would be relevant once again to reiterate the fact that Criminal Misc. Application U/S 482 No. 11034 of 2024 (Mukul Jain and another vs.

C.B.I.) was filed on behalf of both the applicants challenging the order dated 14.03.2024 passed in the said two anticipatory bail applications but the fate of the anticipatory bail application filed on behalf of the applicant no. 1/Mukul Kumar Jain is not disclosed. Further a 3rd Supplementary Affidavit dated 03.1.2025 has been filed on behalf of the applicants, perusal of which particularly its paragraph nos. 2, 3 and 4 would go to show that Red Corner Notice was initiated against the applicant by the Indian Authorities in furtherance to the non bailable warrants and a Blue Notice was issued for the present offence in pursuance of which the applicant was detained by the authorities in Dubai on 02.1.2025 and was taken into custody for a period of 15 days. Further para-4 of the same goes to show that request for extradition of the applicant in India has also been made by the Government. Even at this point of time, it is relevant to state that the said affidavit is vague inasmuch as it states that it has been filed on behalf of the applicants and the applicants in the present application u/s 482 Cr.P.C. are two accused being Mukul Kumar Jain and Smt. Priyanka Jain but paragraph nos. 2, 3 and 4 did not, in any manner in specific terms, clarify as to which of the applicant was detained and taken into custody. The same only refers to the accused as “the applicant”. Annexure No. SA-1 annexed to the same was perused from which it then transpires that the applicant no. 1 Mukul Kumar Jain was detained. Paragraph nos. 2, 3 and 4 are extracted herein below:-

“2. That during the pendency of the instant application u/s 482 CrPC which was preferred primarily on the ground that the Ld. Trial Court has exceeded its jurisdiction in trying the matter at hand

having no offence made out under the Prevention of Corruption Act, 1988, the Applicant was detained by the authorities in Dubai on 17.12.2024 and was taken into custody on 19.12.2024 for a period of 15 days.

3. That the primary reason cited by the authorities in Dubai for detention and further custody is the requirement of the Applicant by the Indian authorities under a Red Corner Notice initiated further to the NBW and the Blue Notice issued for the offence under consideration in the instant Application u/s Section 482 CrPC. Copy of the detention and custody notice/proceedings are annexed herewith and marked as Annexure SA-1 to the third Supplementary Affidavit.

4. That the Applicant has not committed any crime in Dubai and the detention in Dubai is only on the ground of the Red Corner Notice issued on the recommendation of the Respondent CBI for seeking the extradition of the Applicant in India.”

13. Further Annexure No. SA-2 of the said supplementary affidavit goes to show that the same is a judgement and order dated 06.11.2024 passed by the A.S.J./Special Judge, Special Court, Anti-Corruption, CBI, Court No. 3, Ghaziabad in Criminal Revision No. 217 of 2024, Mukul Kumar Jain and another vs. CBI, which was preferred against the order dated 01.3.2024 passed by the court of Special Magistrate, CBI, Ghaziabad in Criminal Case No. 06 of 2024, C.B.I. vs. Mukul Jain and others, which was decided and the said revision stood dismissed. A perusal of the said judgement and order goes to show that in its paragraph no. 2 that learned counsel for the C.B.I. was heard and the entire records including the precedents/circulars supplied by the parties were considered. It

further shows that no one appeared on behalf of the revisionist despite several opportunities. The court then proceeded to decide the revision on its merits on the basis of material available before it. The present application under Section 482 Cr.P.C. has thus been filed by the applicants before this Court with the aforesaid prayers.

14. At the very outset, learned counsel for the C.B.I. while placing paragraph nos. 7, 8 and 9 of the supplementary counter affidavit dated 26.2.2025 has submitted that the present application u/s 482 Cr.P.C. challenging the order of cognizance dated 01.03.2024 and all the consequential proceedings therein is not maintainable inasmuch as the applicants are not entitled to any relief as they neither joined the investigation nor co-operated in the investigation and have absconded till date. It is further submitted that the applicants did not appear before the trial court concerned despite issuance of non-bailable warrants against them. It is further submitted that Blue Notices have been issued against them. It is submitted that an Interpol Red Notice Control No. A-12804/11-2024 dated 05.11.2024 has been issued against the accused Mukul Kumar Jain and published by the Interpol Secretariat General at Lyon, for apprehension of accused Mr. Mukul Kumar Jain. Further it is submitted that the NCB, Abu Dhabi vide their E-mail dated 21.12.2024 has requested to send the Extradition Request of accused Mukul Kumar Jain through diplomatic channel and an Extradition request for extradition of Mukul Kumar Jain has been forwarded to the Ambassador, Embassy of India, Abu Dhabi by the Joint Secretary (CPV), Ministry of External Affairs, New Delhi on 03.02.2025 requesting to submit the

Extradition request to the concerned authorities in UAE. It is further submitted that Red Notice vide Control No. A-12809/11-2024 dated 05.11.2024 has been issued against the accused Priyanka and published by the Interpol Secretariat General at Lyon, for the apprehension of accused Priyanka Jain. The accused Priyanka Jain has been detained in Abu Dhabi on the basis of said Notice. Paragraph Nos. 7, 8 and 9 of the said affidavit are extracted herein below:-

“7. That it is pertinent to mention that the reason why the 3rd supplementary affidavit of the instant petition under section 482 Cr.P.C. is being sworn by deponent Sidhant Kumar Singh is because both the accused /applicants i.e. Mūkul Kumar Jain and Smt. Priyanka Jain are absconding after commission of cognizable offence. That the accused/applicants have neither joined the investigation nor cooperated in the investigation and therefore are not entitled to any relief. It is further submitted that pursuant to the investigation in F.I.R. RC0072022A0001, C.B.I. has filed a charge sheet against accused Mukul Kumar Jain and Smt. Priyanka Jain for commission of offences punishable u/s 120 B, r/w 420, 468 & 471 I.P.C. and substantive offences thereof. The accused applicants have neither joined the investigation nor cooperated in the investigation and have absconded. They did not appear before the Ld. Trial Court despite issuance of non-bailable warrants against them. It is further submitted that BLUE Notices have been issued against the accused/applicants. That an Interpol Red Notice Control No. A-12804/11-2024 dated 5th November, 2024 has been issued against the accused Mukul Kumar Jain and published by the INTERPOL Secretariat General at Lyon, for the apprehension of

accused Mr. Mukul Jain. On the basis of Red Notice Control No. A-12804/11-2024 dated 5th November, 2024, the accused Mukul Kumar Jain has been located in United Arab Emirates with Nationality (Republic of VANUATU). The NCB, Bahrain has intimated vide their E-mail dated 28 November 2024 about his presence in United Arab Emirates. A copy of the E-mail dated 28 November, 2024 is enclosed herewith and marked as Annexure SCA-1.

8. That, the pursuant to Interpol Red Notice Control No. A-12804/11-2024 dated 5th November, 2024, the accused Mukul Kumar Jain has been arrested in United Arab Emirates on 18.12.2024. The NCB, ABU DHABI vide their E-mail dated 23.12.2024 has requested to send the Extradition Request of accused Mukul Kumar Jain to UAE Central Authority (Ministry of Justice) through diplomatic channels. A copy of the said E-mail is enclosed herewith and marked as Annexure SCA-2.

9. That, the Extradition Request for extradition of accused Mukul Kumar Jain has been forwarded to the Ambassador, Embassy of India, Abu Dhabi by the Joint Secretary (CPV), Ministry of External Affairs, New Delhi on 03.02.2025 requesting to submit the Extradition request to the concerned authorities in UAE. It is further submitted that Red Notice vide Control No. A-12809/11-2024 dated 5th November, 2024 has been issued against the accused Priyanka Jain and published by the INTERPOL Secretariat General at Lyon, for the apprehension of accused Priyanka Jain. That based on Red Notice vide Control No, A-12809/11-2024 dated 5th November, 2024, accused Priyanka Jain has been detected in Abu Dhabi, UAE.”

15. Heard Sri Manish Gupta, Advocate, holding brief of Sri Shiv Sagar Singh and Sri Shiv Sagar Singh, learned

counsels for the applicants, Sri Gyan Prakash, learned Senior Advocate/Deputy Solicitor General of India, assisted by Sri Sanjay Kumar Yadav, learned counsel for the C.B.I./Opposite Party and perused the records.

16. Learned counsels for the applicants submitted that submission of charge sheet in the present matter is not being challenged but the only challenge is of jurisdiction in the matter and not on merits. He submits that their submissions are not at all touching the merits of the matter but only on the ground of jurisdiction.

17. Learned counsels for the applicants submitted as under:-

(1) The First Information Report is beyond jurisdiction as the same was lodged at Dehradun whereas the matter pertains to District Meerut.

(2) The present F.I.R. is the second F.I.R. as an application for lodging of F.I.R. was initially moved which was returned and then the present application was given which was registered.

(3) Cognizance and issuance of non-bailable warrants are beyond territorial jurisdiction.

(4) The order dated 06.8.2024 passed in Application U/S 482 No.11034 of 2024 by this Court has not been complied with by the Special Judge and an order dated 16.8.2024 has been passed.

(5) The judgement and order of the Additional Sessions Judge concerned dated 06.11.2024 dismissing the said revision is against the jurisdiction of the court.

(6) The present petition be allowed and prayers as prayed for by the applicants be granted.

18. Learned counsel for the C.B.I. submitted as under:-

(1) The prayer in the present petition is vague inasmuch as there is a challenge to the cognizance order and all the proceedings but the charge sheet is not being challenged and the only challenge of the order of cognizance on the basis of jurisdiction at this stage cannot be looked into.

(2) Even the judgement of the revisional court dated 06.11.2024 challenging the order dated 01.03.2024 which is also challenged herein is not under challenge.

(3) The order of cognizance merges with the judgement and order of the revisional court and thus the present petition u/s 482 Cr.P.C. is not maintainable.

(4) The present petition be dismissed.

19. After having heard learned counsels for the parties and perusing the records and looking to the facts of the matter as stated above, at the very outset, it is clear that the challenge in the present matter has been argued to be not on merits of the matter subsequent to filing of charge-sheet, cognizance and summoning on it but only on the ground of competence of the court concerned on the ground of jurisdiction. The arguments that the present F.I.R. is a second F.I.R. is fallacious inasmuch no previous F.I.R. on the present issue and subject matter has been lodged. The present F.I.R. is the first report on the issue and the matter. Further in so far as the jurisdiction of the revisional court is concerned, at the very inception it would be relevant to point out that the order taking cognizance dated 01.3.2024 which is also impugned herein, was under challenge therein and the said revision was dismissed.

The said dismissal was on merits and the judgement and order passed therein clearly mentions in it that despite repeated opportunities no one appeared on behalf of the revisionist and then the court proceeded to examine the matter on merits and passed the judgement and order therein. The court was seized with the said revision and it has decided the same on its merit as despite several opportunities no one appeared on behalf of the revisionist. The same is in consonance with the settled principles of law. In so far as non-compliance of the order dated 06.8.2024 passed in the said Application U/S 482 No.11034 of 2024 of the applicants is concerned, there is nothing on record to show that as to what happened in the anticipatory bail application of the applicant no. 1/Mukul Kumar Jain. The only disclosure is with regards to the anticipatory bail application filed by the applicant no. 2/Priyanka Jain which can be culled out from Annexure No. SA-1 as annexed in the said supplementary affidavit whereas in the paragraphs of the same, the pleading is vague and it refers to the applicant although the said 482 Cr.P.C. petition was filed by both the two applicants challenging the orders passed in their respective anticipatory bail applications. Learned counsels for the applicants have categorically clarified that they do not challenge the charge sheet on its merits but challenges the jurisdiction of the court concerned on the ground of its jurisdiction. Charge sheet in the matter has been submitted against the applicants as absconders. Paragraph-7 of the counter affidavit of the C.B.I. states that the applicants neither joined the investigation nor co-operated in the investigation and further they have also not obeyed the orders of the trial court concerned and then non bailable warrants have been issued against them. There is no rebuttal to the same since

learned counsel for the applicants had, on 27.2.2025, submitted that they did not propose to file any rejoinder affidavit to the counter affidavit of the C.B.I. The facts thus remains that the status of the applicants even during investigation was as absconder and they did not co-operate in the investigation and even not joined the investigation. After submission of charge-sheet and taking cognizance on it and summoning, they again failed to abide by the orders of the court concerned and then non bailable warrants were issued against them. It is not the case that the applicants were unaware of the present case and proceedings against them but from records it appears that they were well aware of the case and proceedings against them and even then they chose to abscond and not join the proceedings at any stage. Further it transpires from the Supplementary Affidavit dated 03.1.2025 filed on behalf of the applicants and paragraphs no. 7, 8 and 9 of the counter affidavit of the C.B.I. that the applicants are not even in the country and are outside the country.

20. Law protects those who respect it and abide by it. A person flagrantly violating law cannot be equated with a person following the process of law. A person avoiding the process of law cannot be let to ventilate his grievance as per his choice for selective stages as per his sweet will. The settled principle of law is that inherent powers are to be exercised sparingly and with circumspection and cannot be exercised in a routine manner, much less for the convenience of the accused. This Court is cognizant of the scope of Section 482 Cr.P.C. and the various pronouncements on the issue of inherent powers of a Court under Section 482 Cr.P.C. In a given matter, like the present one, the conduct of the accused-

applicants would acquire importance and this Court finds that both the accused-applicants never joined the investigation which concluded in filing of a charge sheet against them as an absconder and again they are absconding from the trial court despite knowledge of the proceedings and thus are not entitled to invoke the inherent powers of this Court for seeking quashing of proceedings. They cannot short circuit the legal system and provision and thus gain advantage.

21. In view of the said facts and total non cooperation of the applicants in the investigation, vagueness of the pleadings, the conduct of the applicants in not joining the investigation and not co-operating therein due to which charge sheet was submitted against them as absconders, intentional efforts to avoid the courts orders as would appear from the order of the revisional court and the fact that charge sheet is not being challenged on its merits coupled with the fact that the order of taking cognizance dated 01.3.2024 being challenged in a revision which stood dismissed on its merits, no ground for interference is called for.

22. The present Criminal Misc. Application U/S 482 Cr.P.C. is **dismissed**.

(2025) 3 ILRA 167

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 12.03.2025

BEFORE

**THE HON'BLE SAURABH SHYAM
SHAMSHERY, J.**

Writ A No. 368 of 2021

Amna Khatoon C/o Rajeeb Ahmad & Ors.

...Petitioners

Versus

A.M.U. & Anr.

...Respondents

Counsel for the Petitioners:

Sri Mohd. Aadil Siddiqui, Sri Tauseef Khan,
Sri Alibin Saif, Sri Zeeshan Khan

Counsel for the Respondents:

A.S.G.I., Sri Abrar Ahmad, Sri Tirath Raj
Shukla, Sri Shashank Shekhar Singh

Civil Law - Service Law - Appointment - Ambiguity in Advertisement - ambiguous expressions like "concerned/relevant/allied subject" - Aligarh Muslim University's recruitment to post of Assistant Professor (Chemistry) - AMU used ambiguous expressions like "*concerned/relevant/allied subject*" in the advertisement - Supreme Court in *Mohd. Sohrab Khan v. Aligarh Muslim University, (2009) 4 SCC 555* has very specifically directed that the University shall lay down the qualification necessary for filling up the post laying down exact essential qualification indicating allied subject and subject stream which is required to be mentioned for making application for filling up said post - Writ petition disposed of with direction to AMU to ensure future advertisements carry specific, unambiguous qualifications to avoid prejudice and exclusion of otherwise eligible candidates (Para 15, 18)

Allowed. (E-5)

(Delivered by Hon'ble Saurabh Shyam
Shamshery, J.)

1. Heard S/Sri Alibin Saif and Zeeshan Khan, learned advocates for petitioners, Sri Tirath Raj Shukla, learned advocate holding brief of Sri Shashank Shekhar Singh, learned counsel for respondent-Aligarh Muslim University (for short "A.M.U.").

2. Petitioners (Amma Khatoon, Dr. Mohd. Azfar Shaida and Dr. Syed Md.

Humayun Akhter) have approached this Court in the year 2021 with a prayer that they may be allowed to participate in a selection process initiated in pursuance of an Advertisement No. 4/2019(T) dated 03.07.2019 as well as in Advertisement No. 2/2020(T) dated 11.06.2020 issued by A.M.U. contending that they are also qualified for post of Lecturer (Chemistry) having a qualification of M.Sc. in 'Industrial Chemistry' which could be an "allied subject" i.e. an essential qualification for that post.

3. It is not disputed that earlier a similar controversy arose in regard to an earlier recruitment process conducted by respondent-A.M.U. and matter reached upto Supreme Court in a case of **Mohd. Sohrab Khan vs. Aligarh Muslim University and others, (2009) 4 SCC 555** wherein it was finally held that Master Degree holder in Industrial Chemistry would not be better suited for post of Lecturer (Chemistry) without there being any specific declaration in the advertisement to this effect. In that regard, it was further observed that post advertised was meant to be filled up by a person belonging to pure Chemistry stream, without any specific clause that a person holding M.Sc. Industrial Chemistry would also be eligible or could be suited more. Relevant part of judgment is quoted below :-

"21. Learned counsel appearing for the University on our enquiry fairly stated before us that the aforesaid post which was advertised to be filled up in the aforesaid manner is at present vacant and the same is being manned by appointing a Guest Lecturer who holds a Master's degree in Pure Chemistry.

22. If the requirement was to have a person having Master's degree in Industrial Chemistry, then in that event the post would have been manned through a Guest Lecturer from the Industrial Chemistry stream. Therefore, it cannot be accepted that the person holding a Master's degree in Industrial Chemistry would be better suited for appointment as against the said post.

23. The post advertised was meant for a person belonging to Pure Chemistry Department for if it was otherwise, then it would have been so mentioned in the advertisement itself that a person holding a Master's degree in Industrial Chemistry should only apply or that a person holding such a degree could also apply along with other persons. It was not so mentioned in the advertisement and, therefore, except for Merajuddin Ahmad, no other degree-holder in Industrial Chemistry had applied for becoming a candidate as against the aforesaid post."

4. In above referred judgment, it was also directed that :-

"University to lay down the qualification necessary for filling up the aforesaid post. The University shall now advertise the said post by laying down exact essential qualification indicating the particular subject and subjects-stream which is required to be possessed for making an application to fill up the said post."

5. It appears that A.M.U. has not understood the direction and has not followed above referred judgment in its true spirit and without making any specific clarification for purpose of appointment of Assistant Professor (Chemistry) in subsequent advertisement i.e. whether

M.Sc. Industrial Chemistry would be an equal eligibility or not and instead of having used some ambiguous words i.e. “A Master’s degree with 55% marks (or an equivalent grade in a point-scale wherever the grading system is followed) in a concerned/relevant/allied subject from an Indian University, or an equivalent degree from an accredited foreign university” in the advertisement in question. The words “concerned/relevant/allied subject may have different meaning in different circumstances.

6. In aforesaid circumstances, learned advocates for petitioners have submitted that for purpose of Assistant Professor in Chemistry, degree of M.Sc. in Industrial Chemistry would fall within “allied subject”.

7. Learned advocates further submitted that instead of removing above referred ambiguity, the A.M.U. published a Corrigendum dated 05.11.2019 stating that in view of Mohd. Sohrab Khan (supra), Industrial Chemistry cannot be equalled with M.Sc. degree. For reference, relevant part of Corrigendum dated 05.11.2019 is quoted below :-

Corrigendum

Reference: Local Advertisement No. 12/ Poly/2019-2020 Dated: 23.10.2019

The following changes in the qualification in above notification for the post of Assistant Professor Contractual (Chemistry) may kindly be noted.

As per the Judgment of the Honourable Supreme Court in the civil appeal No. 1130 of 2009, regarding the course structure of graduate and post graduate classes in Chemistry and Industrial Chemistry, the Honourable Court came to the conclusion that the courses of

the two subjects are quite different and distinct and in the light of the findings it is also recorded that the degree of M.Sc. in Industrial Chemistry cannot be equated with the degree of M.Sc. in Chemistry.

It is therefore notified that the candidates with qualification M.Sc. in Industrial Chemistry are not eligible for the post of Assistant Professor-Contractual (Chemistry) in Applied Science & Humanities Section University Polytechnic-AMU.

8. Learned advocates further submitted that ambiguity further perpetuated and they have referred a document annexed in counter affidavit filed by the University being CA-15 i.e. Minutes of Meeting held on 14.07.2021 to discuss issue relating to Industrial Chemistry as an “allied subject” in the discipline of Chemistry for recruitment of Assistant Professor in the University and it was held that “Industrial Chemistry is an allied subject for the post of Assistant Professor in the University Polytechnic. However, the candidates for allied subject will only be considered, if the candidates from concerned subject are not available and the same will be examined by the competent/relevant body empowered to determine the eligibility of the candidates prior to the selection. This will only apply to the post of Assistant Professor (Chemistry) in the University Polytechnic.” Above decision has caused more prejudice to petitioners and both decisions were not only self-contrary but arbitrary also.

9. Learned counsel for respondent-University has submitted that judgment of Mohd. Sohrab Khan (supra) was followed and ambiguity, if any, was cleared and M.Sc. Industrial Chemistry was declared to be an “allied subject” for consideration on

post of Lecturer (Chemistry). He further submitted that in pursuance of Adv. No. 2/2022(T) dated 03.05.2022 and 4/2022(T) dated 06.08.2022, a Selection Committee met on 06.12.2024 and two candidates were appointed on the post of Lecturer (Chemistry) and since their appointments are not under challenge in this writ petition and they are also not a party-respondents, therefore, no relief could be granted to petitioners in this writ petition.

10. In reply to above submissions, learned advocates for petitioners submitted that law in this regard is well settled that since appointments of selected candidates (two in numbers) are not under challenge, therefore, present writ petition may not be maintainable, however, they further submitted that a direction be passed to A.M.U. to clear the position as and when a new advertisement is published, so that petitioners and similarly situated candidates may apply for same, that it should be specifically mentioned whether M.Sc. Industrial Chemistry is an eligibility for post of Lecturer Chemistry and further arbitrary direction that candidature of such candidates would be considered in last should be specifically removed.

11. I have considered above submissions and perused the record.

12. As referred above, Supreme Court in the judgement of Mohd. Sohrab Khan, (supra) has dealt with an issue whether for appointment of post of Lecturer (Chemistry), A.M.U. a candidate having M.Sc. in Industrial Chemistry would be eligible for the post of Lecturer M.Sc. (Chemistry) or not and whether without any specific declaration in the advertisement, such candidates would be considered more suitable and, after

consideration, action of A.M.U. was criticized and an direction was passed that in future advertisement should clearly reflect the eligibility without any ambiguity.

13. However, it appears that A.M.U. has not followed the dictum passed by Supreme Court in Mohd. Sohrab Khan (supra) and perpetuated the ambiguity in subsequent advertisements though they have tried to clear the position later on that, on one hand, they have adopted that M.Sc. Industrial Chemistry would fall within “allied subject”, therefore, treated it to be an eligibility for consideration for the post of Lecturer (Chemistry), however, an arbitrary decision was taken that their candidature will be considered in the last if the candidates having M.Sc. (Chemistry) were not available or not found suitable.

14. Said action on face of it is arbitrary. They have published subsequent advertisement and described eligibility of having Master’s degree with 55% marks in a concerned/relevant/allied subject without making any clarification that whether M.Sc. Industrial Chemistry would be allied subject for purpose of Chemistry or not, therefore, it was possible that many candidates having M.Sc. Industrial Chemistry have chosen not to participate.

15. Supreme Court in Mohd. Sohrab Khan (supra) has very specifically directed the University shall lay down the qualification necessary for filling up the post laying down exact essential qualification indicating allied subject and subject stream which is required to be mentioned for making application for filling up said post, however, such dictum was not followed and ambiguity was, therefore, repeated.

16. At this stage, Court takes note that during pendency of this writ petition i.e. for last 5 years, much water has flown and that posts have already been filled up and since their selection are not under challenge, therefore, relief sought in present writ petition is rendered infructuous.

17. However, Court takes note of last submission of learned counsel for petitioners that a direction be passed that not only judgment of Supreme Court be followed in letter and spirit but such ambiguity may not be repeated.

18. In aforesaid circumstances, this writ petition is **disposed of** with a direction that judgment of Supreme Court in Mohd. Sohrab Khan (supra) shall be followed in its letter and spirit. Registrar, A.M.U. shall remain cautious in future while publishing advertisement that it may not to create ambiguity but such ambiguity should be removed i.e. words shall be chosen carefully and instead of ambiguous words “concerned/relevant/allied subject”, the University must specifically mention about qualification so that all eligible candidates may participate in advertisement and no one be left prejudiced.

19. Registrar (Compliance) to take steps.

(2025) 3 ILRA 171

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 25.03.2025

BEFORE

**THE HON'BLE SAURABH SHYAM
SHAMSHERY, J.**

Writ A No. 634 of 2025

Dilip Kumar Singh Rajpoot & Ors.

...Petitioners

Versus

State Of U.P. & Ors.

...Respondents

Counsel for the Petitioners:

Sri Ashok Khare, Sri Radha Kant Ojha (Sr. Adv.), Sri Anurag Tripathi, Sri Shevindu Ojha, Sri Prabhakar Awasthi, Sri Seemant Singh, Sri Ravindra Prakash Srivastava, Sri Phool Chnadra Singh, Sri Bhanu Pratap Singh, Sri Amit Kumar Tiwari, Sri Rajesh Kumar Verma, Sri Jainendra Pandey, Sri Kabir Tiwari

Counsel for the Respondents:

Smt. Archana Singh, Sri Sanjay Kumar Singh, Sri V.P. Singh Kachwa, Sri Jai Prakash Singh, Sri Shashi Prakash Rai, Sri Atul Kumar Shahi, Sri Abhishek Srivastava, C.S.C., Sri A.K. Nagwanshi, A.C.S.C., Smt. Stati Malviya

अ) सेवा नियम - शिक्षा नीति - संवैधानिक मामले - शैक्षणिक संसाधन व्यक्तियों (ARP- Academic Resource Person) के चयन और कार्यकाल से संबंधित विवाद - ARP के चयन प्रक्रिया और कार्यकाल की वैधता - संवैधानिक अधिकारों का उल्लंघन - भारतीय संविधान - अनुच्छेद 14, 16, उत्तर प्रदेश बेसिक शिक्षा अधिनियम - समानता का अधिकार - युक्तियुक्त वर्गीकरण - नीतिगत निर्णयों में न्यायिक हस्तक्षेप की सीमा - नीतिगत निर्णयों में न्यायालय तभी हस्तक्षेप करेगा जब वे मनमाने, तर्कहीन या संवैधानिक प्रावधानों के विपरीत हों। (पैरा - 26,27)

याचिकाकर्ता उत्तर प्रदेश के विभिन्न विद्यालयों में सहायक अध्यापक के पद पर कार्यरत हैं - ARP के रूप में 3 वर्ष तक सेवा दे चुके हैं - शासनादेश दिनांक 22.10.2019 के तहत ARP के पदों का पुनर्गठन किया गया - जिसमें नए चयन प्रक्रिया के लिए पूर्व ARP को अयोग्य घोषित कर दिया गया। (पैरा 1, 10, 17)

निर्णीत: याचिकाकर्ताओं का ARP पद पर पुनः चयन के लिए अयोग्य घोषित किया जाना संवैधानिक या विधिक

दृष्टि से अमान्य नहीं है, क्योंकि यह नीतिगत निर्णय है जो शैक्षणिक उद्देश्यों को पूरा करता है। न्यायालय नीतिगत निर्णयों में तभी हस्तक्षेप करेगा जब वे मनमाने, तर्कहीन या संविधान के प्रावधानों के विपरीत हों। (पैरा 26, 27) (E-7)

उद्धृत मामलों की सूची:

1. आंध्र प्रदेश राज्य प्रति डा० वी. बी. जे. चेलीकनी, २०२४ आई.एन.एस.सी. ८९४
2. दयाराम सरोज एवं अन्य प्रति उत्तर प्रदेश राज्य एवं अन्य २००६ एस.सी.सी. आनलाइन ए.एल.एल. २२८८
3. ए.एच.व्हीलर एण्ड को०.प्रा०.लि०. एवं अन्य प्रति यूनिनयन आफ इण्डिया एवं अन्य : २००५ एस.सी.सी. आनलाइन ए.एल.एल २०६
4. श्रद्धा यादव एवं ६ अन्य प्रति उत्तर प्रदेश राज्य एवं १० अन्य ; २०२४ : ए.एच.सी.: ४०८५

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

१. वर्तमान याचिकाओं के समूह के समस्त याचिकाकर्ता, बेसिक शिक्षा परिषद के अंतर्गत संचालित विभिन्न विद्यालयों में सहायक अध्यापक के पद पर कार्यरत हैं।

२. अपर मुख्य सचिव, उत्तर प्रदेश शासन ने एक शासनादेश दिनांक २२ अक्टूबर २०१९ के द्वारा राज्य परियोजना निदेशक, समग्र शिक्षण अभियान, उत्तर प्रदेश (बेसिक शिक्षा अनुभाग- ५) को विषय "समग्र शिक्षा अभियान के अंतर्गत स्थापित न्याय पंचायत संसाधन केन्द्रों एवं ब्लाक संसाधन केन्द्रों के पुनर्गठन के संबंध में", संबोधित किया, जिसके द्वारा पूर्व में शासनादेश दिनांक ०२.०२.२०१९ को

अवक्रमित करते हुए एक नवीन व्यवस्था लागू किए जाने का निर्णय लिया गया। इस निर्णय को लेने का कारण पूर्व व्यवस्था से अपेक्षित परिणाम प्राप्त न होना था।

३. उपरोक्त शासनादेश के अंतर्गत पुनर्गठन की व्यवस्था व संरचना व 'अकादमिक रिसोर्स पर्सन' (ए.आर.पी.) के चयन हेतु निम्न आर्हता निर्धारित की गयी है:-

“ (१) पुनर्गठन की व्यवस्था व संरचना-

उक्त के परिप्रेक्ष्य में प्राथमिक एवं उच्च प्राथमिक विद्यालयों को अपेक्षानुरूप शैक्षिक सहयोगात्मक पर्यवेक्षण (Supportive Supervision) प्रदान करने के लिये नयी व्यवस्था में विषय विशेषज्ञों के समूह का पुनर्गठन किया जा रहा है।

१. प्रत्येक विकास खण्ड हेतु कुल ६ Academic Resource Person (ARP) जिसमें से ०५ विषय विशेषज्ञ शिक्षक, ०१ डायट मेंटर सदस्य होंगे, Academic Resource Persons (ARP) का चयन जनपद स्तर पर निर्धारित चयन प्रक्रिया के माध्यम से किया जाएगा। ०६ विशेषज्ञ सदस्यों का विवरण निम्नवत है:-

२. ०१ विशेषज्ञ सामाजिक अध्ययन विषय के (चयन हेतु कला संवर्ग में निर्धारित विषय- समाज शास्त्र, इतिहास, भूगोल, नागरिक शास्त्र, अर्थ शास्त्र, मनोविज्ञान, सैन्य विज्ञान, सांख्यिकी, कृषि)

३. ०१ विशेषज्ञ अंग्रेजी विषय के (चयन हेतु कला संवर्ग में स्नातक के अंतिम वर्ष में अंग्रेजी अनिवार्य हो।)

४.- ०१ विशेषज्ञ हिन्दी विषय के (चयन हेतु कला संवर्ग में स्नातक में अंतिम वर्ष में हिन्दी अनिवार्य हो)

५. ०१ विशेषज्ञ गणित विषय के (चयन हेतु भौतिक विज्ञान, रसायन विज्ञान, गणित पी. सी. एम संवर्ग से अनिवार्य हो)

६. ०१ विशेषज्ञ विज्ञान विषय के (चयन हेतु जीव विज्ञान, वनस्पति विज्ञान_जेड.बी सी. संवर्ग से अनिवार्य हो)

७. ०१ डायट मॅटर (संबंधित विकास खण्ड के लिये नामित पदेन Academic Resource Person (ARP)

८- अकादमिक संदर्भ समूह Academic Resource Group (ARG) के सदस्यों का चयन विद्यालयों को पूर्णकालिक सहयोगात्मक पर्यवेक्षण प्रदान करने एवं लर्निंग आउटकम के सापेक्ष बच्चों में अधिगम स्तर बढ़ाने के लिए किया जायेगा। इसके अतिरिक्त उनसे अन्य कार्य नहीं लिया जायेगा।

(२) Academic Resource Person (ARP) के चयन हेतु अर्हता:-

i. वांछित विषय में स्नातक के साथ अध्यापक प्रशिक्षण योग्यता हो।

ii. प्राथमिक/पूर्व माध्यमिक विद्यालय में न्यूनतम ०५ वर्ष का शिक्षण अनुभव हो।

iii. सेवा निवृत्त होने में न्यूनतम १० वर्ष शेष हो।

iv. किसी भी प्रकार की जांच गतिमान न हो और न ही पूर्व में किसी प्रकार की अनुशासनात्मक कार्यवाही की गयी हो।”

४. उक्त शासनादेश के अनुसार ए.आर.पी. के चयन के मानदण्ड व इनके कार्यकाल व अन्य महत्वपूर्ण निर्देश निम्न हैं:-

“(६) चयन हेतु मापदण्ड:-
Academic Resource Person (ARP) के चयन हेतु निम्नवत अंक निर्धारित हैं:-

क्र०सं०	विवरण	अंक
१	विषयवार लिखित परीक्षा	६० अंक
२	माइक्रो टीचिंग/शिक्षण प्रदर्शन (१० से १५ मिनट प्रति प्रतिभागी- श्रोताओं को बाँधे रखना, संतुलित दृष्टिकोण, सहज एवम् तार्किक प्रवाह, एक अच्छे सम्प्रेषक के रूप में इत्यादि)	३० अंक
३	साक्षात्कार (विषयगत जानकारी, स्वप्रेरण, Leadership, Commitment, प्रारंभिक शिक्षा के प्रति विज्ञान इत्यादि)	१० अंक
	कुल योग	१०० अंक

१. लिखित परीक्षा में ६० प्रतिशत या ६० प्रतिशत से ऊपर अंक पाने वाले अभ्यर्थी ही माइक्रो टीचिंग/शिक्षण प्रदर्शन के लिये क्वालिफाई करेंगे।

२. माइक्रो टीचिंग/शिक्षण प्रदर्शन में ६० प्रतिशत या ६० प्रतिशत से ऊपर अंक पाने वाले अभ्यर्थी ही साक्षात्कार के लिये क्वालिफाई करेंगे।

३. साक्षात्कार में ६० प्रतिशत या ६० प्रतिशत से ऊपर अंक पाने वाले अभ्यर्थी ही फाईनल चयन हेतु क्वालिफाई करेंगे।

४. लिखित परीक्षा, माइक्रो टीचिंग शिक्षण प्रदर्शन तथा साक्षात्कार के कुल योग को जोड़ने के बाद जिन अभ्यर्थियों का नम्बर ६० प्रतिशत या ६० प्रतिशत से ऊपर होगा उन्हें Academic Resource Person (ARP) के चयन के लिये मेरिट लिस्ट बनाई जाये।

५. यदि जनपद में रिक्त पदों के सापेक्ष अधिक अभ्यर्थी क्वालिफाई करते हैं तो उस स्थिति में मेरिट के आधार पर चयन किया जाये। शेष क्वालिफाई करने वाले अभ्यर्थियों में से विषयवार अधिकतम ०५ अभ्यर्थियों की प्रतीक्षा सूची बनाई जाये जो ६ माह तक वैध होगी।

६. चयन के उपरान्त यदि कुछ पद रिक्त रह जाते हैं तो ऐसी दशा में उपरोक्तानुसार पुनः चयन प्रक्रिया सुनिश्चित करते हुए शत प्रतिशत नियुक्तियां सुनिश्चित की जायें।

७- साक्षात्कार सम्पन्न होने के दो दिवस के अन्दर चयनित अभ्यर्थियों की सूची डायट एवं जिला बेसिक शिक्षा अधिकारी कार्यालय के नोटिस बोर्ड पर चस्पा की जाये।

८- चयनित Academic Resource Person (ARP) का पदस्थापन काउंसलिंग के माध्यम से मेरिट वरिष्ठता के क्रम में किया जायेगा। पदस्थापन का कार्य सूची प्रकाशन की अगली तिथि को अनिवार्य रूप से किया जाना होगा।

(७) Academic Resource Person (ARP) का कार्यकाल एवं अन्य निर्देश:-

I. Academic Resource Person (ARP) का कार्यकाल ०१ वर्ष हेतु निर्धारित होगा। प्रत्येक वर्ष परफारमेन्स अप्रैजल के आधार पर जनपदीय चयन समिति द्वारा अनुमोदन के पश्चात् इनका नवीनीकरण किया आयेगा। अधिकतम ०३ वर्ष के पश्चात् पुनः चयन की प्रक्रिया की जायेगी।

II. विद्यालयों का सहयोगात्मक पर्यवेक्षण (Supportive Supervision) करने हेतु प्रत्येक Academic Resource Person (ARP)

को समग्र शिक्षा के वित्तीय नियमों/अनुमोदन के आधार पर Academic Resource Person को रु. २५००.०० प्रतिमाह एवम डायट मेन्टर को रु. १०००.०० प्रतिमाह मोबिलिटी वाहन भत्ता जनपद स्तर से देय होगा।

III. Academic Resource Person (ARP) का समुचित वार्षिक मूल्यांकन (Performance appraisal) की व्यवस्था की जायेगी। मूल्यांकन हेतु जिला बेसिक शिक्षा अधिकारी एवं प्राचार्य, डायट द्वारा गठित समिति द्वारा की जायेगी। समिति द्वारा आख्या प्रस्तुत करने के उपरांत मुख्य विकास अधिकारी द्वारा स्वीकृति दी जायेगी।

IV. Academic Resource Person (ARP) के वार्षिक मूल्यांकन में संबंधित ब्लाक का मेन्टर एक सदस्य के रूप में सम्मिलित होगा।

V Academic Resource Person (ARP) पदस्थापन के उपरान्त जिला परियोजना कार्यालय में कार्यभार ग्रहण करेंगे। पदस्थापन उपरान्त इनका कार्यक्षेत्र सम्बन्धित ब्लाक निर्धारित होगा।

VI Academic Resource Person (ARP) की कार्य अवधि मुख्यरूप से विद्यालय समयावधि होगी किसी कार्य की आवश्यकता पर विद्यालय समयावधि के बाद ही ब्लाक संसाधन केन्द्र पा जा सकेंगे।

VII. Academic Resource Person (ARP) द्वारा नियोजित कार्य योजना के अंतर्गत किये जाने वाले कार्य के लिये संकुल का मुख्य विद्यालय अथवा संकुल का अन्य विद्यालय (जहां पर अतिरिक्त कक्षा कक्ष/स्थान हो) मुख्यतौर पर होगा।

VIII. Academic Resource Person (ARP) की नियमित उपस्थिति उनके द्वारा

प्रेषित सपोर्टिव सुपरविजन रिपोर्ट प्रेरणा एप पर अपलोड किये जाने से मानी जाये।

IX. Academic Resource Person (ARP) अपने विषय से संबंधित प्रशिक्षणों में ही प्रतिभागी। प्रशिक्षक के रूप में नियोजित किये जायेंगे।”

५. उक्त शासनादेश के द्वारा ए.आर.पी के कार्य व दायित्व भी निर्धारित किए गए हैं, जो निम्न हैं:-

“(९) Academic Resource Person (ARP) के कार्य व दायित्व:-

१. Academic Resource Person (ARP) आगामी एक माह की कार्ययोजना एवं भ्रमण कार्यक्रम जिला समन्वयक प्रशिक्षण के माध्यम से जिला बेसिक शिक्षा अधिकारी एवं डायट प्राचार्य को माह की २८ तारीख तक अवश्य प्रेषित करेंगे तथा कार्ययोजना के अनुसार क्रियान्वयन सुनिश्चित करेंगे। यह कार्ययोजना वर्तमान विद्यालयों स्थितियों व उपलब्ध अकादमिक जानकारीयों व आंकड़ों के आधार पर बनायेगे। उसी प्रकार मासिक कार्ययोजना के आधार पर उपलब्धि आख्या (Achievement Report) उपर्युक्त उल्लिखित प्रक्रिया आगामी माह की ५ तारीख तक सम्बन्धित को प्रेषित करेंगे।

२. प्रत्येक Academic Resource Person (ARP) द्वारा प्रतिमाह न्यूनतम ३० विद्यालयों (डायट मेन्टर द्वारा १० विद्यालय) (के.जी.बी.वी. में अधिकतम हो बार) में 'प्रेरणा' एप के माध्यम से आनलाईन सपोर्टिव सुपरविजन सुनिश्चित करेंगे।

३. लर्निंग आउटकम पर आधारित बच्चों का अधिगम स्तर आकलन का डाटा

फीडिंग पूर्ण करवाना तथा विद्यालयवार/ छात्रवार उपलब्धि आख्या अपने पास सुरक्षित रखेंगे।

४. विद्यालयों का सपोर्टिव सुपरविजन करने के दौरान लर्निंग आउटकम पर आधारित बच्चों का अधिगम स्तर आकलन के आधार पर सबसे कम परफार्मेंस वाले ५ बच्चों से बातचीत कर प्रगति का विश्लेषण करेंगे एवं सुधार हेतु शिक्षक/प्रधानाध्यापक से वार्ता कर कार्ययोजना बनवायेंगे। (अधिगम स्तर आकलन के आधार पर कम उपलब्धि वाले बच्चों को यह एहसास न होने दें कि उनका परफार्मेंस कम है)

५. दीक्षा एप के प्रयोग हेतु निरन्तर समीक्षा कोगे। दीक्षा एप शिक्षण सामग्री/ गतिविधि/आडियो विजुअल विषय वस्तु को देख व समझकर आत्मसात करने एवं कक्षा शिक्षण में प्रयोग कर बच्चों के सीखने की प्रक्रिया को आनन्दकारी बनाने हेतु शिक्षक को प्रेरित करेंगे।

६. दीक्षा एप में आडियो विजुअल डिजिटल सामग्री के Adoption एवं Viewing Time बढ़ाने हेतु शिक्षकों का अभिमुखकरण करना एवं उन्हें प्रेरित करेंगे।

७. जनपद में गठित एस०आर०जी०. खण्ड शिक्षा अधिकारी, डायट एवं डी०पी०ओ० के साथ समन्वय स्थापित करेंगे।

८. पर्यवेक्षण के समय विद्यालय की शैक्षणिक गतिविधियों जैसे विद्यालय में बच्चों को प्रार्थना सभा, बैठक व्यवस्थाए समय-सारिणी का प्रयोग, बाल संसद/मीना मंच, पुस्तकालय, खेलकूद आदि गतिविधियों का अवलोकन एवं माडल शिक्षण का प्रदर्शन (डिमान्सट्रेशन) करेंगे।

९. प्रत्येक Academic Resource Person (ARP) के पास अपने विषय से सम्बन्धित एक किट होगा, जिसमें विषय से सम्बन्धित टी.एल.एम., साहित्य, पाठ्यक्रम,

लर्निंग आउटकम तथा कुछ ऐसी कच्ची सामग्री एवं उपकरण होंगे जिनसे वह आवश्यकतानुसार मौके पर अपनी विषयवस्तु के सापेक्ष कुछ टी.एल.एम./सामग्री तैयार कर सके।

१०. विद्यालय भ्रमण के दौरान विभिन्न महत्वपूर्ण संवेदनशील मुद्दे जैसे लैंगिक, समता समानता, जीवन कौशल शिक्षा, पर्यावरण संवेदना, सड़क सुरक्षा, आपदा प्रबन्धन, आत्मरक्षा, बाल अधिकार आदि विषय पर विचार विमर्श के द्वारा शिक्षकों को संवेदनशील बनायेंगे।

११. विद्यालय भ्रमण उपरान्त प्रधानाध्यापक एवं शिक्षकों के साथ चर्चा करेंगे एवं पर्यवेक्षण पंजिका में अपने द्वारा प्रदान किये गये शैक्षिक अनुसमर्थन एवं आगामी कार्ययोजना के बिन्दुओं को अंकित करेंगे तथा प्रधानाध्यापक एवं शिक्षक साथी हस्ताक्षर उपरान्त इसकी फोटो खींचकर प्रेरणा ऐप पर अपलोड करेंगे। अगले भ्रमण में यह सुनिश्चित करेंगे कि दिए गए सुझावों व तय की गयी कार्ययोजना का विद्यालय द्वारा अनुपालन किया गया अथवा नहीं।

१२. विद्यालय स्तर पर छात्र प्रोफाइल व सतत व्यापक मूल्यांकन प्रपत्र भरने में आ रही कठिनायों का निदान करेंगे।

१३. विद्यालय भ्रमण के दौरान शिक्षकों द्वारा किए जा रहे नवाचारों या बेहतर शिक्षण-अधिगम प्रयासों अभिलेखीकरण करेंगे तथा डायट, डी.पी.ओ. व राज्य परियोजना कार्यालय को प्रेषित करेंगे।

१४. कक्षा अवलोकन/शिक्षक से बातचीत के आधार पर शिक्षण अधिगम प्रक्रिया में गुणवत्ता सुधार हेतु शिक्षकों की आवश्यकता आधारित अभिमुखीकरण/प्रशिक्षण करेंगे।

१५. ब्लाक स्तर पर नवाचारी व बेहतर शिक्षण अधिगम कार्य करने वाले शिक्षकों का समूह (पीयर लर्निंग कम्यूनिटी-PLC) विकसित करेंगे तथा नवाचारी शिक्षकों द्वारा किये गये कार्यों को विकास खण्ड के अन्य शिक्षकों के साथ साझा करेंगे।

१६. बी.आर.सी. स्तर पर होने वाली प्रधानाध्यापकों की मासिक बैठकों में Academic Resource Person (ARP) प्रतिभाग करेंगे तथा विद्यालय स्तरीय अकादमिक उपलब्धियों तथा चुनौतियों से उन्हें अवगत करायेंगे तथा इस संबंध में प्राप्त आंकड़ों के आधार पर एक कार्ययोजना विकसित करायेंगे।

१७. जनपद में शैक्षिक गुणवत्ता में वृद्धि एवं शैक्षिक वातावरण के निर्माण हेतु कार्यशाला प्रशिक्षण, गोष्ठी, सेमिनार, प्रतियोगिता, बैठक, रैली इत्यादि का आयोजन करेंगे।

६. समस्त याचिकाकर्ता उपरोक्त वर्णित चयन प्रक्रिया में सम्मिलित हुए और ए.आर.पी. के पद पर कार्यालय आदेश दिनांक १३.०१.२०२० द्वारा नियुक्त हुए और उनको अलग-अलग जिलों में अलग-अलग विकास खण्ड आवंटित हुए।

७. नियुक्ति आदेश के अनुसार उनकी नियुक्ति अस्थाई व प्रारम्भिक कार्यकाल ०१ वर्ष निर्धारित किया गया एवं परफार्मेंस अप्रेसल के अनुसार, चयन समिति के अनुमोदन के पश्चात, प्रत्येक वर्ष नवीनीकरण किए जाने का प्रावधान भी रखा गया एवं अधिकतम कार्यकाल ०३ वर्ष निर्धारित किया गया।

८. सभी याचिकाकर्ताओं का कथन है कि उनके परफार्मेंस अप्रेसल पर हर वर्ष उनकी

नियुक्ति का नवीनीकरण ए.आर.पी. के पद पर किया गया और उन्होंने सफलतापूर्वक ३ वर्ष पूर्ण किये एवं वर्तमान में भी कार्य कर रहे हैं अर्थात् वर्तमान तक करीब ५ वर्ष का कार्यकाल पूर्ण कर लिया है।

९. अब नवीन नियुक्ति की प्रक्रिया प्रारंभ होने वाली है। इस स्तर पर प्रमुख सचिव उत्तर प्रदेश शासन के आदेश दिनांक १०-१०-२०२४ के माध्यम से एक शासनादेश, विषय "समग्र शिक्षा के अन्तर्गत स्थापित न्याय पंचायत संसाधन केन्द्रों एवं ब्लॉक संसाधन केन्द्रों के पुर्नगठन हेतु निर्गत शासनादेश के क्रम में अकादमिक रिसोर्स पर्सन्स (ए०आर०पी०) के कार्यकाल की अवधि विस्तारित किये जाने के सम्बन्ध में" निर्गत किया गया, जिसके प्रमुख अंश निम्न हैं:-

"२- इस संबंध में मुझे यह कहने का निदेश हुआ है कि शासन स्तर पर सम्यक विचारोपरान्त विषयगत प्रकरण में निम्नवत निर्णय लिया गया है:-

१) शासनादेश संख्या-९०२/६८-५-२०१९ दिनांक २२ अक्टूबर, २०१९ एवं शासनादेश संख्या-२८४७/६८-५-२०२२ दिनांक ०५ जनवरी, २०२३ के क्रम में अकादमिक रिसोर्स पर्सन्स (ए०आर०पी०) के कार्यकाल की अवधि माह मार्च, २०२५ तक विस्तारित किये जाने की अनुमति प्रदान की जाती है। ताकि इनके द्वारा विकास खण्ड के १० विद्यालयों को "निपुण विद्यालय" के रूप में विकसित किये जाने का लक्ष्य सुनियोजित ढंग से प्राप्त किया जा सके। उक्त सेवा अवधि अर्थात् दिनांक ३१ मार्च, २०२५ को जिन ए०आर०पी० का कार्यकाल ०३ वर्ष या इससे अधिक हो जायेगा, उन ए०आर०पी० का

कार्यकाल स्वतः समाप्त हो जायेगा तथा ए०आर०पी० चयन हेतु पुनः नवीन चयन प्रक्रिया संपादित की जायेगी।

(२) वर्तमान शैक्षिक सत्र २०२४-२५ (अर्थात् दिनांक ३१ मार्च, २०२५ तक) के उपरान्त शासनादेश संख्या-९०२/६८-५-२०१९ दिनांक २२ अक्टूबर २०१९ के परिप्रेक्ष्य में ए०आर०पी० का कार्यकाल ०१ वर्ष हेतु निर्धारित होगा तथा प्रत्येक वर्ष ए०आर०पी० का परफारमेन्स अप्रेजल के आधार पर जनपदीय चयन समिति द्वारा अनुमोदन के पश्चात् इनका नवीनीकरण किया जायेगा। अधिकतम ०३ वर्ष के पश्चात् पुनः नवीन चयन की प्रक्रिया अपनाई जायेगी।

(३) ए०आर०पी० के रूप में अधिकतम ०३ वर्ष का कार्यकाल पूर्ण करने के उपरान्त पूर्व में कार्य कर चुके कोई भी अकादमिक रिसोर्स पर्सन्स भविष्य में अकादमिक रिसोर्स पर्सन के पद पर चयन के लिए अनर्ह होंगे।

(४) अकादमिक रिसोर्स पर्सन्स के चयन संबंधी अन्य दिशा निर्देश शासनादेश संख्या-९०२/६८-५-२०१९ दिनांक २२ अक्टूबर, २०१९ में उल्लिखित व्यवस्थानुसार यथावत् रहेंगे।"

१०. समस्त याचिकाकर्ता उपरोक्त प्रस्तर २(३) से क्षुब्ध हैं क्योंकि उन्होंने ३ वर्ष से अधिक का ए.आर.पी. के पद पर कार्यकाल पूर्ण कर लिया है, अतः अब वे नवीन नियुक्ति की प्रक्रिया में भाग नहीं ले पाएंगे, क्योंकि उपरोक्त प्रस्तर द्वारा उन्हें चयन के लिए अनर्ह घोषित कर दिया है।

११. वर्तमान सभी याचिकाओं में उपरोक्त खण्ड २(३) को निरस्त करने की प्रार्थना

यह कहते हुये की गयी है कि उनको अनर्ह घोषित करना एक मनमाना आदेश है।

१२. याचिकाकर्ताओं की ओर से श्री अशोक खरे, वरिष्ठ अधिवक्ता द्वारा सहायक श्री अनुराग त्रिपाठी, अधिवक्ता; श्री राधा कान्त ओझा; वरिष्ठ अधिवक्ता द्वारा सहायक श्री शिवेन्दू ओझा, अधिवक्ता तथा सर्व श्री प्रभाकर अवस्थी; श्री सीमांत सिंह; श्री रवींद्र प्रकाश श्रीवास्तव; श्री फूल चंद्र सिंह; श्री भानु प्रताप सिंह; श्री अमित कुमार तिवारी; श्री राजेश कुमार वर्मा एवं श्री जैनेंद्र पांडे, कबीर तिवारी, अधिवक्तागणों ने अपना पक्ष रखा तथा उनके द्वारा दिए गए तर्क संक्षेप में निम्न हैं:-

(क) पूर्व निर्धारित चयन व्यवस्था में ऐसी कोई अनर्हता वर्णित नहीं की गई थी।

(ख) पूर्व में ए.आर.पी. का कार्यकाल ३ वर्ष पूर्ण करने के बाद भविष्य में उपरोक्त पद के चयन के लिए अनर्ह कारित का आदेश पूर्णतः मनमाना है एवं भारत के संविधान के अनुच्छेद १४ का पूर्ण रूपेण उल्लंघन है।

(ग) याचिकाकर्ता चयन का अधिकार तो नहीं रखते हैं, परंतु चयन प्रक्रिया में भागीदार होने का अधिकार अवश्य रखते हैं और यह अधिकार मनमाने रूप से समाप्त नहीं किया जा सकता।

(घ) आक्षेपित प्रस्तर २(३), भारतीय संविधान के अनुच्छेद १६ (लोक नियोजन के विषय में अवसर की समानता) का भी उल्लंघन करता है।

(ङ) याचिकाकर्ताओं ने ए.आर.पी. के पद पर ३ वर्ष से अधिक कार्य किया और उनके विरुद्ध कार्य संबंधी कोई भी शिकायत नहीं की

गई। उनको मनमाने आदेश द्वारा नवीन चयन प्रक्रिया के लिए अनर्ह घोषित करना 'वैध अपेक्षा' के सिद्धान्त के भी विपरीत है।

(च) याचिकाकर्ताओं के ए.आर.पी. पर ३ वर्षों से ज्यादा कार्य करने में हुए अनुभव का लाभ देने के स्थान पर उनको चयन के लिए अनर्ह घोषित करना न्याय विरुद्ध है।

(छ) ए.आर.पी. के चयन की प्रक्रिया का निर्धारण, जैसा प्रारम्भिक स्तर पर किया गया था, उसके अनुसार कोई भी अध्यापक वर्णित शर्तें पूर्ण होने के बाद, भाग ले सकता है। चयन के मानदण्ड के अनुसार, प्रत्येक प्रतियोगी को लिखित परीक्षा, शिक्षण प्रदर्शन व साक्षात्कार का भागीदार बनना होगा, अतः यह एक मुक्त प्रतियोगिता है। याचिकाकर्ताओं को उनके पूर्व अनुभवों के आधार पर कोई महत्व नहीं दिया जा रहा है। यदि उन्हें भी अन्य प्रतियोगियों की भांति ही चयन प्रक्रिया में भाग लेने का अवसर प्रदान किया जाता है तो इससे किसी दूसरे प्रतियोगी पर कोई प्रतिकूल प्रभाव नहीं पड़ेगा।

(ज) संविधान के अनुच्छेद १४ के अंतर्गत अनुमय वर्गीकरण के लिए दो कारकों का होना आवश्यक है। पहला, वर्गीकरण बोधगम्य विभेद पर आधारित होना चाहिए व दूसरा, विभेद, वर्गीकरण के उद्देश्य से तार्किक रूप से संबंधित होना चाहिए। परंतु वर्तमान तथ्यों में विभेद, उपरोक्त दोनों कारकों का पालन नहीं करता है अतः निरस्त किया जाना चाहिए।

(झ) अधिवक्ताओं ने न्यायालय का ध्यान वार्षिक शिक्षा स्थिति रिपोर्ट (ग्रामीण), २०२४, (Annual Status of Education Report, (Rural), २०२४) की ओर आकर्षित यह कहते हुए कराया कि गत वर्षों में ए.आर.पी. के सफल

कार्यों के कारण अच्छे परिणाम आयें हैं, एवं छात्र-छात्राओं के मूलभूत शिक्षण स्तर में संतोषजनक सुधार आया है। अतः अगर वह मुक्त प्रतियोगिता में भाग लेकर पुनः सफल होते हैं तो वह अपने पूर्व अनुभवों के कारण और अधिक अच्छे परिणाम लाने में सफल होंगे।

(ज) अधिवक्ताओं ने अपर मुख्य सचिव द्वारा पारित कार्यालय जाप दिनांक ०६.०२.२०२५ पर भी ध्यान यह कहते हुए आकर्षित कराया कि यह आदेश इस न्यायालय के द्वारा पारित आदेश दिनांक २३.०१.२०२५ के अनुपालन में पारित किया गया था जिसमें उपरोक्त वर्गीकरण के उद्देश्य को वर्णित किया गया है, जिसे निम्न उद्धीर्णित किया जा रहा है:-

“उपर्युक्त संदर्भित शासनादेश दिनांक १० अक्टूबर, २०२४ में उल्लिखित निर्देशानुसार कार्यवाही सुनिश्चित कराये जाने के लिये राज्य परियोजना कार्यालय के पत्रांक-गुण०वि०/ए०आर०पी०/ ६७७८/२०२४-२५ दिनांक १८ अक्टूबर, २०२४ द्वारा जनपदों को दिशा निर्देश निर्गत किये गये।

(४) शासनादेश संख्या-६८-५०९९/१४३/२०२४-अनुभाग-५ दिनांक १० अक्टूबर, २०२४ में प्रदत्त निर्देशों एवं उल्लिखित प्रक्रियानुसार आगामी शैक्षिक सत्र (२०२५-२६) के पूर्व जनपद में अकादमिक रिसॉर्स पर्सन्स के चयन संबंधी कार्यवाही नियमानुसार दिनांक १५ मार्च, २०२५ तक पूर्ण कराये जाने के लिये राज्य परियोजना कार्यालय के पत्रांक-गुण०वि०/ए०आर०पी०/९३३३/२०२४-२५ दिनांक १५ जनवरी, २०२५ द्वारा जनपदों को दिशा-निर्देश निर्गत किये गये हैं।

(५) “राष्ट्रीय शिक्षा नीति-२०२०” एवं नेशनल कॅरीकुलम फ्रेमवर्क (NCF-FS) के परिप्रेक्ष्य में शिक्षा मंत्रालय, भारत सरकार द्वारा निपुण भारत मिशन प्री-प्राइमरी (बालवाटिका) से कक्षा-२ (अर्थात् ०८ वर्ष की आयु) तक लागू किये जाने का निर्णय लिया गया है। तत्क्रम में शासनादेश संख्या-३६/२०२४/१/७९७९६२/ २०२४-६८-५०९९/४९७/२०२४, बेसिक शिक्षा अनुभाग-५, दिनांक १८ नवम्बर, २०२४ द्वारा 'निपुण भारत मिशन' के प्रभावी क्रियान्वयन हेतु संशोधित निपुण लक्ष्य एवं गतिविधियों के क्रियान्वयन हेतु निर्देश निर्गत किये गये हैं।

निपुण भारत मिशन के अन्तर्गत शिक्षा की गुणवत्ता पर विशेष बल देते हये बच्चों में बुनियादी भाषायी एवं गणितीय दक्षताओं को प्राप्त कराने के लिये 'संदर्शिका' के माध्यम से सुनियोजित शिक्षण कार्यक्रम का क्रियान्वयन किया जा रहा है तथा विभिन्न शैक्षणिक सामग्री यथा-संदर्शिका, प्रिंटरिच सामग्री, टी०एल०एम०, गणित किट, लाइब्रेरी बुक्स, शिक्षक हैण्डआउट्स तथा 'तालिका' समस्त परिषदीय प्राथमिक विद्यालयों को उपलब्ध करायी गयी हैं। इसके साथ ही परिषदीय प्राथमिक विद्यालयों के शिक्षकों को प्रशिक्षण भी प्रदान किया गया है। निपुण भारत मिशन के अन्तर्गत निर्धारित लक्ष्यों को प्राप्त किये जाने हेतु समस्त शिक्षकों एवं सभी हितधारकों के निरन्तर, समन्वित एवं समर्पित प्रयास की आवश्यकता है, जिसके लिये विभिन्न शैक्षणिक गतिविधियां क्रियान्वित की जा रही हैं।

(६) राष्ट्रीय शिक्षा नीति- २०२० में शिक्षकों के Continuous Professional Development पर विशेष बल दिया गया है। अवगत कराना है कि उ०प्र० बेसिक शिक्षा

परिषद के अधीन परिषदीय विद्यालयों में ४.३४ लाख से अधिक शिक्षक कार्यरत हैं, जिन्हें ऑनसाइट शैक्षिक सपोर्ट तथा सहयोगात्मक पर्यवेक्षण हेतु प्रत्येक विकासखण्ड में ०५ अकादमिक रिसोर्स पर्सन की व्यवस्था की गयी है। विभाग चरणबद्ध रूप से अधिक संख्या में शिक्षकों को ए०आर०पी० के रूप में कार्य करने का अवसर प्रदान करना चाहता है, जिससे कि अधिक से अधिक शिक्षकों का चरणबद्ध रूप से विशेष क्षमता संवर्द्धन करते हुये सकारात्मक शैक्षणिक वातावरण का सृजन किया जा सके। विभाग में शिक्षकों की संख्या के दृष्टिगत उनके सतत् क्षमता संवर्द्धन हेतु विशेष प्रयास आवश्यक हैं ताकि पियर लर्निंग करते हुये लक्षित हस्तक्षेप सुनिश्चित किये जा सकें।

(७) विद्यालयों में मेण्टरिंग के दो पक्ष हैं-ए०आर०पी० के माध्यम से विद्यालयों का सहयोगात्मक पर्यवेक्षण किया जाना तथा शिक्षक संकुल बैठकों के माध्यम से पियर लर्निंग को बढ़ावा दिया जाना। सुनियोजित कक्षा-शिक्षण, शैक्षणिक चुनौतियों पर चर्चा, शिक्षकों को प्रभावी फीडबैक प्रदान करने एवं उत्कृष्ट तथा नवाचारी शैक्षिक प्रथाओं को साझा किये जाने के साथ ही अकादमिक गतिविधियों के संबंध में विचार-विमर्श करने के लिये शिक्षक संकुल की एजेण्डा आधारित मासिक बैठकें आयोजित की जाती हैं। उक्त बैठकों में अकादमिक रिसोर्स पर्सन (ए०आर०पी०) मेण्टरिंग के समय के प्राप्त अनुभवों को शिक्षकों के साथ साझा कर सकते हैं। इसके अतिरिक्त अर्जित अनुभव, विशेषज्ञता एवं समर्पित भाव से अपने मूल विद्यालय को आदर्श विद्यालय के रूप में विकसित कर उदाहरण प्रस्तुत कर सकते हैं।

(८) यह शासनादेश एक समान सभी शिक्षकों पर लागू है। इस संबंध में यह बिन्दु विशिष्ट रूप से उल्लेखनीय है कि दीर्घ अवधि तक मूल विद्यालय एवं मूल शिक्षण कार्यों से पृथक रहने से शिक्षकों का बच्चों एवं स्थानीय समुदाय के साथ आत्मीय रिश्ता प्रतिकूल रूप से प्रभावित होता है। अतः एक निश्चित अवधि के उपरान्त मेण्टरिंग का कार्य कर रहे शिक्षकों को विद्यालय में सामान्य शिक्षण कार्य हेतु नियोजित रखा जाना आवश्यक है, जिससे कि वास्तविक कक्षा शिक्षण, पाठ्यक्रम की योजना और क्रियान्वयन, सब्जेक्ट नॉलेज, कक्षा प्रबन्धन, विद्यालय प्रबन्धन आदि महत्वपूर्ण एवं मुख्य शैक्षणिक तथा विद्यालयीय पहलुओं से अद्यावधिक रह सकें।

इसके अतिरिक्त यह भी उद्देश्य है कि विद्यालयों में अध्यापन कार्य कर रहे अन्य योग्य शिक्षकों को भी ए०आर०पी० के पद पर मेण्टरिंग कार्य एवं सहयोगात्मक पर्यवेक्षण संबंधी कार्य करने के अवसर उपलब्ध हो सकें। यह तभी संभव है जब चरणबद्ध रूप से अधिक से अधिक शिक्षकों को मेण्टर्स के रूप में कार्य करने का अवसर प्रदान किया जा सके, जिससे कि बेहतर शिक्षण संस्कृति को बढ़ावा दिया जा सके।”

(ट) अधिवक्ताओं ने उपरोक्त वर्णित कारणों को निराधार बताया कि ५-६ वर्ष की अवधि को दीर्घ अवधि नहीं माना जा सकता। यह प्रक्रिया स्थाई नहीं है तथा कुछ वर्षों के उपरांत सभी ए.आर.पी. को वापस शिक्षण कार्य पर ही जाना होगा। मात्र याचिकाकर्ताओं को चयन प्रक्रिया से अनर्ह करने से, अन्य योग्य शिक्षकों को ए.आर.पी. के पद में मेण्टरिंग कार्य एवं सहयोगात्मक पर्यवेक्षण संबंधी कार्य करने के

अवसर उपलब्ध नहीं होंगे, यह निर्धारित करने के पीछे कोई युक्तियुक्त कारण नहीं है। यह स्वस्थ प्रतिस्पर्धा के उद्देश्य के भी विपरीत है। विद्वान अधिवक्ताओं ने उच्चतम न्यायालय द्वारा आंध्र प्रदेश राज्य प्रति डा० राव वी. बी. जे. चेलीकनी, २०२४ आई.एन.एस.सी. ८९४, का उद्धरण किया कि किसी भी विभेद का उद्देश्य विसंगत, अनुचित एवं अन्यायपूर्ण नहीं होना चाहिए। विद्वान अधिवक्ताओं ने निम्न विधि दृष्टांगो पर भी बल दिया: दयाराम सरोज एवं अन्य प्रति उत्तर प्रदेश राज्य एवं अन्य : २००६ एस.सी.सी. आनलाइन ए.एल.एल. २२८८; ए.एच.व्हीलर एण्ड को०.प्रा०.लि०. एवं अन्य प्रति यूनियन आफ इण्डिया एवं अन्य: २००५ एस.सी.सी. आनलाइन ए.एल.एल २०६;

१३. प्रतिवादीगणों की ओर से श्रीमती अर्चना सिंह; श्री संजय कुमार सिंह; श्री वी.पी.सिंह कछवाह; श्री जय प्रकाश सिंह; श्री शशि प्रकाश राय; श्री अतुल कुमार शाही, अधिवक्तागण एवं श्री अभिषेक श्रीवास्तव, मुख्य स्थायी अधिवक्ता; ए.के.सिंह नागवंशी, अतिरिक्त मुख्य स्थायी अधिवक्ता; एवं, श्रीमती श्रुती मालवीया, ब्रीफ होल्डर, ने पक्ष रखा और लिखित बहस भी दाखिल की। उनके द्वारा दिए गए तर्क संक्षेप में निम्न हैं:-

क. "राष्ट्रीय शिक्षा नीति-२०२०" एवं राष्ट्रीय पाठ्यक्रम की रूपरेखा (एनसीएफ-एफएस) के परिपेक्ष में शिक्षा मंत्रालय, भारत सरकार द्वारा प्री-प्राइमरी (बालवाटिका) से कक्षा-२ तक (अर्थात् ०८ वर्ष की आयु तक) निपुण भारत मिशन को क्रियान्वित किये जाने का निर्णय लिया गया है। इस सम्बन्ध में

शासनादेश संख्या-३६/२०२४/१/७९७९६२/ २०२४-६८-५०९९/४९७/२०२४, बेसिक शिक्षा अनुभाग-५, दिनांकित १८ नवम्बर, २०२४ द्वारा 'निपुण भारत मिशन' के प्रभावी क्रियान्वयन हेतु पुनरीक्षित निपुण भारत मिशन के लक्ष्यों एवं क्रियाकलापों के क्रियान्वयन हेतु निर्देश जारी किये गये हैं।

ख. निपुण भारत मिशन के अंतर्गत बच्चों को बुनियादी भाषायी एवं गणितीय कौशल प्राप्त कराने के लिए 'संदर्शिका' के माध्यम से एक संरचित शिक्षण पद्धति लागू की जा रही है, जिसमें शिक्षा की गुणवत्ता पर विशेष बल दिया गया है। सभी परिषदीय प्राथमिक विद्यालयों में संदर्शिका, चित्र बहुल सामग्री, टीएलएम, गणित किट, पुस्तकालय की पुस्तकें, शिक्षक हैंडआउट और 'तालिका' जैसी विभिन्न शैक्षिक सामग्री उपलब्ध कराई गई है। निपुण भारत मिशन के तहत निर्धारित लक्ष्यों को प्राप्त करने के लिए सभी शिक्षकों और सभी हितधारकों के निरंतर, समन्वित और समर्पित प्रयासों की आवश्यकता है, जिसके लिए विभिन्न शैक्षिक गतिविधियों को लागू किया जा रहा है।

ग. राष्ट्रीय शिक्षा नीति-२०२० में शिक्षकों के सतत वृत्तिक विकास पर विशेष बल दिया गया है। उत्तर प्रदेश बेसिक शिक्षा परिषद के अन्तर्गत परिषदीय विद्यालयों में ०४ लाख से अधिक शिक्षक कार्यरत हैं, जिनके लिए यथास्थान शैक्षिक सहायता एवं सहयोगी पर्यवेक्षण हेतु प्रत्येक विकास खण्ड में ०५ एकेडमिक रिसोर्स पर्सन की व्यवस्था की गई है। विभाग चरणबद्ध तरीके से अधिकाधिक संख्या में शिक्षकों को ए.आर.पी. के रूप में कार्य करने का अवसर प्रदान करना चाहता है, जिससे

शिक्षकों की क्षमता निर्माण में अधिकाधिक वृद्धि हो सके।

घ. विद्यालयों में मार्गदर्शन के दो पहलू हैं- ए.आर.पी. के माध्यम से विद्यालयों का सहायक पर्यवेक्षण तथा शिक्षक संकुल बैठकों के माध्यम से सहकर्मी शिक्षण को बढ़ावा देना। सुनियोजित कक्ष शिक्षण, शैक्षिक चुनौतियों पर चर्चा, शिक्षकों को प्रभावी फीडबैक प्रदान करने तथा शैक्षणिक गतिविधियों के संबंध में चर्चा के साथ-साथ सर्वोत्तम एवं नवीन शैक्षिक प्रथाओं को साझा करने के लिए, शिक्षक संकुल की एजेंडा आधारित मासिक बैठकें आयोजित की जाती हैं। उक्त बैठकों में अकादमिक रिसोर्स पर्सन (ए.आर.पी.) शिक्षकों के साथ मार्गदर्शन के दौरान प्राप्त अनुभवों को साझा कर सकते हैं। इसके अतिरिक्त, अर्जित अनुभव, विशेषज्ञता और समर्पण के साथ, कोई भी व्यक्ति अपने मूल विद्यालय को एक आदर्श विद्यालय के रूप में विकसित करके एक उदाहरण प्रस्तुत कर सकता है।

ड. संदर्भित शासनादेश सभी शिक्षकों पर समान रूप से लागू हैं। इस संबंध में यह विशेष रूप से उल्लेखनीय है कि मुख्य विद्यालय एवं मुख्य शिक्षण कार्य से लम्बे समय तक दूर रहने से शिक्षकों का बच्चों एवं स्थानीय समुदाय के साथ आत्मीय सम्बन्ध प्रतिकूल रूप से प्रभावित होता है। अतः एक निश्चित अवधि के पश्चात् विद्यालय में ही मार्गदर्शन कार्य करने वाले शिक्षकों को मूल शिक्षण कार्य हेतु नियोजित रखना आवश्यक है, ताकि वे महत्वपूर्ण एवं प्रमुख शैक्षिक एवं विद्यालयी पहलुओं जैसे वास्तविक कक्षा शिक्षण, पाठ्यक्रम की योजना एवं क्रियान्वयन,

विषय ज्ञान, कक्षा प्रबन्धन, विद्यालय प्रबन्धन आदि से अद्यतन रह सकें।

च. उपरोक्त का उद्देश्य स्कूलों में पढ़ाने वाले अन्य योग्य शिक्षकों को ए.आर.पी. के रूप में मार्गदर्शन कार्य और सहायक पर्यवेक्षण कार्य करने के अवसर प्रदान करना भी है। यह तभी संभव है, जब अधिक से अधिक शिक्षकों को चरणबद्ध तरीके से मार्गदर्शन कार्य करने के अवसर प्रदान किए जाएं, ताकि बेहतर शिक्षण संस्कृति को बढ़ावा दिया जा सके।

छ. ए.आर.पी के पास ए.आर.पी के रूप में काम करने का कोई निहित अधिकार नहीं है क्योंकि मूल नियुक्ति बेसिक स्कूल में सहायक शिक्षक के रूप में है। नीतिगत निर्णय के तहत ए.आर.पी की नियुक्ति उपरोक्त वर्णित कारणों के लिए की गई थी और अन्य शिक्षकों को भी यही लाभ और अनुभव दिया जाना है, इसलिए उन ए.आर.पी पर प्रतिबंध लगाया गया है जो पहले से ही तीन साल तक काम कर चुके हैं। ऐसी शर्त न तो मनमानी है और न ही तर्कहीन है, बल्कि वैध कारणों पर आधारित है। ४ लाख से अधिक शिक्षकों में से केवल ४४०० को हमेशा के लिए ए.आर.पी के रूप में काम करने की अनुमति नहीं दी जा सकती है। यह एक क्लास मॉनिटर की भूमिका से बढ़कर है, इसलिए दूसरों को नेतृत्व की भूमिका निभाने का अवसर देने के लिए इसे नियमित रूप से बदलना होगा।

ज. याचीगण बेसिक शिक्षा परिषद द्वारा संचालित बेसिक प्राइमरी स्कूलों में नियुक्त सहायक अध्यापक हैं और उनकी सेवाएं उत्तर प्रदेश बेसिक शिक्षा (अध्यापक) सेवा नियमावली १९८१ के प्रावधानों द्वारा शासित होती हैं, जिसके नियम २७ में यह प्रावधान है कि शिक्षक

को अपने विद्यालय में जहां वे नियुक्त हैं अनिवार्य रूप से शिक्षण कार्य करना होगा, इसलिए याचीगण द्वारा ए.आर.पी. के रूप में अपने कार्यकाल के तीन वर्ष पूरे करने के बाद भी ए.आर.पी. के लिए फिर से आवेदन करने की अनुमति देने के लिए किया गया कोई भी अनुरोध नियम २७, १९८१ नियमावली का उल्लंघन होगा, क्योंकि उन्हें स्वयं को उन विद्यालयों से, जहां उन्हें अध्यापन के लिए नियुक्त किया गया था, दूर रखने की अनुमति नहीं दी जा सकती है, इसलिए राज्य सरकार द्वारा शासनादेश दिनांकित १०.१०.२०२४ में जो प्रतिबंध लगाया गया है, वह नियम २७, १९८१ नियमावली के तहत उल्लिखित कर्तव्यों के उद्देश्य को प्राप्त करने और शिक्षण कार्य की गुणवत्ता बनाए रखने के लिए है, ताकि एक शिक्षक को बहुत लंबे समय तक अपने मूल शिक्षण कार्य से दूर न रखा जा सके।

१४. याचिकाकर्ताओं व प्रतिवादीगणों के विद्वान अधिवक्ताओं को सुना एवं पत्रावली का अध्ययन किया।

१५. ए.आर.पी. के कार्य व दायित्व पूर्व के प्रस्तरों में वर्णित किए गए हैं कि उनको एक सहायक पर्यवेक्षक (सपोर्टिव सुपरविजन) सुनिश्चित करना और अधिगम प्रतिफल (लर्निंग आउटकम) पर विद्यालयों के बच्चों (८ वर्ष) तक अधिगम स्तर आकलन कर उनसे व उनके शिक्षक/प्रधानाध्यापक से वार्ता कर ऐसी कार्य योजना बनवानी है जिससे उन बच्चों को उनकी कमियों का एहसास दिलाए बिना, उनके अधिगम में सुधार करना है। उसके लिए उनको 'प्रेरणा' व 'दीक्षा' ऐप का प्रयोग करके निरंतर समीक्षा करना है। और विभिन्न शैक्षणिक गतिविधियों

एवं महत्वपूर्ण संवेदनशील मुद्दों पर अन्य शिक्षकों को भी संवेदनशील बनाना है।

१६. उपरोक्त कार्यों व अन्य दायित्वों के स्तर के अध्ययन से यह निर्धारित किया जा सकता है कि ए.आर.पी. एक समग्र शिक्षक बनाने में अपना योगदान देता है। और वास्तव में इसका सबसे अधिक लाभ स्वयं उसको होगा एवं जब वह वापस अपने मूल शिक्षा क्षेत्र में जाएगा, तो अर्जित अनुभव व निपुणता, अपने व बच्चों के स्तर को ऊपर उठाने एवं निपुण बनाने के लिए करेगा। और यही 'निपुण भारत मिशन' का उद्देश्य भी है, जिससे शिक्षा की गुणवत्ता उच्च हो, अर्थात् अगर एक शिक्षक ने ए.आर.पी. का दायित्व पूर्ण रूप से निभाया है तो वह एक निपुण शिक्षक बनेगा जिसका सबसे अधिक लाभ उन छात्र-छात्राओं को होगा जो सुकुमार उम्र (८ वर्ष तक) में उन शिक्षकों से शिक्षा प्राप्त करेंगे।

१७. यह विदित है कि ए.आर.पी. योजना एक बहुत लंबे समय की योजना नहीं है और २०२६-२७ तक या कुछ और वर्षों तक रहेगी और तब तक यह आशा है कि कक्षा ३ तक बुनियादी साक्षरता और संख्यात्मकता (एफ.एल.एन) का सार्वभौमिक अधिग्रह सुनिश्चित हो जाएगा जैसा 'निपुण भारत मिशन' का उद्देश्य है।

१८. उपरोक्त से यह भी विदित है कि उक्त ए.आर.पी. के पद के दायित्व निभाते समय, अर्जित हुए अनुभवों का उपयोग वह शिक्षक तब भी करेगा जब वह वापस अपना शिक्षण कार्य अपने विद्यालय में करेगा। यह अनुभव उसके ही हित में है और वृहद रूप से छात्र-छात्राओं के भी हित में है।

१९. शासनादेश दिनांक ०२.०२.२०१९ द्वारा शासन ने पूर्व में समग्र शिक्षा अभियान के अंतर्गत स्थापित न्याय पंचायत संसाधन केंद्रों एवं ब्लॉक संसाधन केंद्रों का पुनर्गठन करने का निर्णय किया, क्योंकि पूर्व संरचना से अपेक्षित परिणाम प्राप्त नहीं हुए थे, अतः गुणवत्ता बढ़ाने के लिए नई प्रक्रिया का चयन किया तथा ए.आर.पी की अवधारणा करी और यह भी निर्धारित किया कि ए.आर.पी का कोई पद पृथक् से सृजन नहीं किया जाएगा वरन् पूर्व व्यवस्था में सह-समन्वयकों हेतु स्वीकृत पदों में ही समाहित किया जाएगा। एक विस्तृत पुनर्गठन की व्यवस्था व संरचना का निर्माण किया तथा चयन हेतु मानदण्ड निर्धारित किये व कार्यकाल की अवधि को भी निर्धारित किया। अर्थात् एक युक्तियुक्त नीतिगत निर्णय लिया।

२०. सभी याचिकाकर्ताओं ने अपने ए.आर.पी. का दायित्व का निर्वहन अपने निर्धारित कार्यकाल ३ वर्ष से अधिक, सफलतापूर्वक किया है। उनके कार्यकाल के संदर्भ में कोई शिकायत पत्रावली पर उपलब्ध नहीं है। याचिकाकर्ता ने कुछ रिपोर्ट पत्रावली पर प्रस्तुत करी है कि पिछले कुछ वर्षों में इस व्यवस्था के कारण छात्र-छात्राओं के शिक्षण के स्तर में सुधार हुआ है अर्थात् नीतिगत निर्णय के परिणाम अच्छे आए हैं।

२१. यह अविवादित है कि सभी याचिकाकर्ताओं को वापस अपने-अपने विद्यालय जाना है और शिक्षण का कार्य करना है एवं उनका ए.आर.पी. के कार्यकाल के अनुभव से उनके शिक्षण के स्तर में सुधार आएगा, जिससे छात्र-छात्राओं को लाभ होगा।

२२. आक्षेपित प्रस्तर द्वारा नवीन चयन प्रक्रिया से उन ए.आर.पी. को अनर्ह किया गया है जो पूर्व में ३ वर्ष तक ए.आर.पी. रह चुके हैं। नीतिगत निर्णय का उद्देश्य यह बताया गया है कि अगर नवीन शिक्षक ए.आर.पी. के पद पर चयनित होते हैं, तो वह भी कुछ वर्ष बाद जब अपने विद्यालय वापस जाएंगे तो उस अनुभव का उपयोग अपने शिक्षण कार्य में करेंगे और कई महत्वपूर्ण कारक जैसे मेंटरिंग, संवेदनशीलता व शिक्षण कार्य का उत्थान होगा और उनका अपने विद्यालय के छात्र-छात्राओं से संपर्क भी पुनः स्थापित होगा।

२३. याचिकाकर्ताओं के विद्वान अधिवक्ताओं का कथन है कि चयन प्रक्रिया एक मुक्त प्रक्रिया है जिसमें कोई भी शिक्षक अगर अर्हता रखता है, भागीदार बन सकता है और चयनित हो सकता है। याचिकाकर्ताओं को भी किसी सामान्य प्रतियोगी की तरह ही चयन प्रक्रिया में सम्मिलित होने का अवसर देना चाहिए और क्योंकि उनके पूर्व ए.आर.पी. कार्यकाल का कोई महत्व नहीं दिया जा रहा है, इसलिए उनकी भागीदारी से किसी भी अन्य प्रतियोगी को किसी प्रकार की प्रतिकूलता का सामना नहीं करना होगा। यह उद्देश्य कि, पूर्व ए.आर.पी. को पूर्णतया नवीन चयन प्रक्रिया से अलग करके नए ए.आर.पी का चयन पूर्ण रूप से नये शिक्षकों से ही होना चाहिए, एक युक्तियुक्त निर्णय नहीं हो सकता। यह कारण की वर्तमान ए.आर.पी. वापस अपने विद्यालय जाकर अपने ए.आर.पी के अनुभव का उपयोग करके अपने विद्यालय में बच्चों से संपर्क फिर स्थापित कर शिक्षण का स्तर बढ़ायें, विभेद का युक्तियुक्त कारण नहीं हो सकता है।

२४. याचिकाकर्ताओं का यह तर्क कि उनको चयन से अनर्ह करना भारतीय संविधान के अनुच्छेद १६ (लोक नियोजन के विषय में अवसर की समानता) का उल्लंघन है, एक बलहीन तर्क है, क्योंकि ए.आर.पी. की चयन प्रक्रिया किसी अधिनियम या नियमावली के अंतर्गत निर्धारित नहीं की गई है, और न ही इसमें सभी शिक्षक भागीदार हो सकते हैं, क्योंकि यह माध्यमिक/पूर्व माध्यमिक विद्यालयों के शिक्षकों के लिए ही है। और न ही यह प्रक्रिया लोक नियोजन के अंतर्गत आती है। परंतु इस कथन को अस्वीकृत नहीं किया जा सकता कि किसी भी प्रकृति की चयन प्रक्रिया में मनमाने कारक नहीं हो सकते हैं।

२५. प्रतिवादियों के विद्वान अधिवक्ताओं ने, याचिकाकर्ताओं को अनर्ह निर्धारित करने का उद्देश्य उल्लिखित किया कि ऐसे ए.आर.पी. जो ३ वर्ष का कार्यकाल पूर्ण कर चुके हैं उनको एक निश्चित अवधि मानते हुए यह निर्धारित किया गया है कि अब उनकी उपयोगिता अपने-अपने विद्यालयों में वापस जाकर वहां के शिक्षार्थियों को अपने इस पद पर अर्जित अनुभव का लाभ देकर उनके शिक्षा का स्तर उच्च करना है व नए शिक्षकों को ए.आर.पी बनने का मौका देना है जिससे वह भी अनुभव अर्जित कर वापस विद्यालय आकर, शिक्षण का स्तर और उच्च कर सकें।

२६. जहां तक नीतिगत निर्णयों में न्यायालय द्वारा हस्तक्षेप करने की सीमा का प्रश्न है, इस न्यायालय द्वारा श्रद्धा यादव एवं ६ अन्य प्रति उत्तर प्रदेश राज्य एवं १० अन्य; २०२४: ए.एच.सी.: ४०८५ के वाद में पारित

निर्णय के प्रस्तर १९ व २० को निम्न उल्लिखित करना समीचीन रहेगा।

“१९. मा० उच्चतम न्यायालय के एक नवीन निर्णय जो देवेश शर्मा प्रति भारत संघ व अन्य: २०२३ एस.सी.सी. ऑनलाइन एस.सी. ९८५, के प्रकरण में पारित किया गया है, में पुनः यह प्रतिपादित किया कि:-

“ ७३. हमारे मस्तिष्क में निश्चित रूप से कोई संदेह नहीं है, कि साधारणतः राज्य के नीतिगत निर्णयों में संवैधानिक न्यायालयों द्वारा उसके पुनः निरीक्षण अधिकारो के अंतर्गत हस्तक्षेप नहीं किया जा सकता है। इसी के साथ अगर नीतिगत निर्णय स्वयं में ही विधि के विरुद्ध और वो मनमाना व तर्कहीन हो तो पुनः निरीक्षण के अधिकार का उपयोग करना ही चाहिये।”

२०. मा० उच्चतम न्यायालय द्वारा एक अन्य प्रकरण सत्यदेव बागुर प्रति राजस्थान शासन व अन्य (२०२२) ५ एस. सी.सी. ३२४, के प्रकरण में पूर्व में पारित कृष्णन्न कक्कनाथ प्रति केरल राज्य: (१९९७) ९ एस.सी.सी. ४९५ व शेर सिंह प्रति भारत संघ: (१९९५) ६ एस.सी.सी. ५१५ के निर्णयों का संदर्भ लेते हुए यह निर्णीत किया कि:-

“१५. यह अतिसामान्य है कि न्यायालय नीतिगत मामलो में हस्तक्षेप करने में मन्द रहेंगे. जब तक कि नीति स्पष्ट रूप से पक्षपाती और मनमानी न स्थापित हो जाये। यह न्यायालय राज्य की नीतिगत निर्णय में हस्तक्षेप नहीं करेगा. जब राज्य यह इंगित कर सके कि नीति के कार्यावहन में युक्तियुक्त अंतर है और वो युक्तियुक्त अंतर उसके उद्देश्य की प्राप्ति से संबंध रखता है।”

२७. यह अविवादित है कि एक नीति के अंतर्गत ही सभी याचिकाकर्ताओं को पूर्व में ए.आर.पी. बनने का मौका दिया गया और उनका इस पद पर वैधानिक रूप से बने रहना या भागीदार होने का कोई निहित अधिकार नहीं है। यह भी अविवादित है कि नीति को बदला भी जा सकता है, जैसा पूर्व में भी किया गया, जिसका लाभ वर्तमान याचिकाकर्ताओं को हुआ। अतः मात्र इस कारण से कि अब नवीन चयन नीति के अंतर्गत उन्हें अनर्ह घोषित किया गया तो वह निर्णय असंगत व मनमाना है, ऐसा नहीं माना जा सकता। उन्हें यह प्रदर्शित करना होगा कि नवीन नीतिगत निर्णय, किसी वैधानिक विधि से विपरीत हो, पूर्णतः तर्कहीन व पूर्णतः मनमाना हो और इसके विपरीत अगर यह प्रदर्शित किया जा सके कि, युक्तियुक्त विभेद उसके उद्देश्य की प्राप्ति से संबंध रखता है, तो नीतिगत निर्णय में इस न्यायालय द्वारा हस्तक्षेप नहीं किया जा पाएगा।

२८. उपरोक्त विभेद का कारण विद्यालयों के शिक्षा के स्तर को और अधिक उच्च करना है, जिसके लिए वर्तमान ए.आर.पी. के अनुभवों का उपयोग करना है। यह अविवादित है कि याचिकाकर्ताओं का मूल कार्य शिक्षण है और उनका सर्वप्रथम कर्तव्य अपने छात्र-छात्राओं के शिक्षण स्तर को उत्तम करना है, इसके लिए उनके द्वारा अर्जित अनुभवों का लाभ यथाशीघ्र उनके छात्र-छात्राओं को मिले, जो उनके उद्देश्य व कर्तव्य के लिए भी उत्तम है वरन् बच्चों के लिए भी अत्यंत उपयोगी है इस कारण यह न्यायालय नियमावली १९८१ के नियम २७ का भी संज्ञान लेता है।

२९. न्यायालय इस कथन का भी संज्ञान लेता है कि ए.आर.पी. के प्रदेश स्तर पर मात्र ४४०० पद हैं, जबकि शिक्षकों की संख्या ४ लाख से भी अधिक है और इस प्रक्रिया की शेष अवधि भी बहुत कम है अतः इस अल्प समयान्तराल में अगर ऐसी नीति जिससे अधिक से अधिक शिक्षक ए.आर.पी. के पद के अनुभव का लाभ ले सके, इसके लिए अगर उस युक्तियुक्त उद्देश्य की प्राप्ति के लिए चयन प्रक्रिया में कुछ बदलाव के कारण उन ए.आर.पी. को, जो पूर्व में ३ वर्ष तक उक्त पद पर कार्य कर चुके हैं, चयन प्रक्रिया के लिए अनर्ह घोषित किया गया है, वो पूर्णतः मनमाना नहीं हो सकता। इसका उद्देश्य वृहद लाभ के लिए है, जिससे याचिकाकर्ता किसी भी तरह के पक्षपात से पीड़ित नहीं माने जा सकते। उपरोक्त विभेद, प्रत्यक्ष या अप्रत्यक्ष रूप से मनमाना नहीं माना जा सकता। याचिकाकर्ता यह भी प्रदर्शित करने में असफल रहें हैं कि अनर्हता से उनकी अग्रिम सेवा के भविष्य में कोई प्रतिकूलता हो सकती है। इसके विपरीत जो शिक्षक ए.आर.पी. का लाभ नहीं ले पायेंगे वह उस स्तर के शिक्षण से कदापि वंचित रह सकते हैं।

३०. उपरोक्त विश्लेषण का परिणाम यह है कि अनर्हता का उद्देश्य, ए.आर.पी. से लाभान्वित शिक्षकों का छात्र-छात्राओं के वृहद हित में होना है, एवं अन्य शिक्षकों को ए.आर.पी. बनने के लिए अधिक से अधिक अवसर प्रदान करना है, जो युक्तियुक्त विभेद से तार्किक रूप से संबंध रखता है। ऐसा विभेद मनमाना या पक्षपात पूर्ण कदापि नहीं माना जा सकता है। अतः ऐसे नीतिगत निर्णय में हस्तक्षेप नहीं किया जा सकता है।

३१. अतः सभी यचिकाएं बलहीन होने के कारण निरस्त की जाती हैं।

(2025) 3 ILRA 187
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.03.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ A No. 7683 of 2021

Ras Bihari Srivastava ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Awadh Behari Singh

Counsel for the Respondents:

C.S.C., MJ Akhtar

A. Service Law - Regularisation - U.P. Regularisation of Persons Working on Daily Wages or on Work-charge or on Contract in Government on Group 'C' and Group 'D' Posts (Outside Purview of the U.P. Public Service Commission) Rules, 2016 - Group 'D' employee engaged on contractual basis - Denial of regularisation on technical grounds - Held, impermissible - Employer is a model employer - Has to act fairly - Nomenclature not determinative - Nature of work, continuity of service, and perennial need to be considered - Writ petition allowed.

B. Service Law - Regularisation - Petitioner, a Group-D multipurpose employee engaged on contractual basis, had discharged various duties assigned to him without interruption. His claim for regularisation was declined on the ground that he did not possess the technical qualification for appointment as Pump Operator and was a contractual employee. Held : Denial of regularisation on such

technical grounds amounted to unfair labour practice. Court emphasized that the real nature of employment must be determined by lifting the veil and examining the duties performed, duration of service, and the ongoing need for such services. Court further observed that multipurpose employees, who perform diverse tasks under the direction of the employer, cannot be denied regularisation solely due to the absence of qualification for one specific role, particularly when they are willing to be appointed to other Group-D posts for which they are otherwise eligible. Respondents were directed to consider the case of the petitioner for regularisation in Group-D category . (Para 8, 11, 15)

Allowed. (E-5)

List of Cases cited:

Jaggo Vs U.O.I. & ors. reported at MANU/SC/1403/2024

(Delivered by Hon'ble Ajay Bhanot, J.)

1. Heard Sri Awadh Behari Singh, learned counsel for the petitioner, Sri M.J. Akhtar, learned counsel for the respondent no. 3 and learned Standing Counsel for the State respondents.

2. By the impugned order the claim of regularization of the petitioner as Class-IV employee has been declined solely on the footing that he does not possess the qualification of pump operator.

3. Petitioner was initially appointed as pump operator on 15.05.1995 in the respondent Nagar Palika Parishad, Kushinagar. The petitioner was appointed on Class-IV post, and has been discharging duties of different categories of Class-IV employees like Safai Nayak. The respondents in their counter affidavit as admitted to the fact that the petitioner is a

Group-D employee engaged on contractual basis. According to the counter affidavit different kinds of duties were being discharged by the petitioner as per the work assigned to him by respondent no. 4. A Group-D employee has to perform different roles as per the direction of the employer.

4. Undisputedly the petitioner has been functioning continuously without interruption from the date of his appointment. He is a multi-purpose employee under the Group-D category. □

5. Even as per the stand of the respondents Group D employees who are appointed on contract are multipurpose employees. The said class of employees can be detailed for a variety of jobs by the employer as per departmental needs. In fact the concept of multipurpose employees entails that the said pool of employees can perform multifarious tasks or sundry jobs and may not be restricted to a particular kind of work or only be confined to a specific duty. The said employees to cannot refuse to perform such duties as may be assigned by the employer.

6. The claim of the petitioner for regularisation is being made on the strength of rights vested in daily wage employees under the U.P. Regularisation of Persons Working on Daily Wages or on Work-charge or on Contract in Government on Group 'C' and Group 'D' Posts (Outside Purview of the U.P. Public Service Commission) Rules, 2016. The petitioner satisfies the criteria for regularisation as contemplated in the said Regularisation Rules, 2016 and is entitled for regularisation under the said Rules.

7. The counter affidavit discloses that minimum eligibility qualifications for

being appointed as regular pump operator includes technical qualifications. As per the stand of the respondents the petitioner does not possess the aforesaid technical qualifications and hence cannot be regularized on the post of pump operator.

8. In case the petitioner does not possess the aforesaid qualifications he may not be appointed as a pump operator. However, this fact does not in any manner dilute his claim to be appointed on other posts in the Group-D category for which he is qualified. The eligibility of petitioner for regularisation on a Group-D post for which possesses the qualification has already been affirmed in the preceding part of the discussion. Moreover, the petitioner before this Court has unequivocally stated that he is prepared to join any post under the Group-D category and shall perform any other duties as may be assigned to him by the employer.

9. Continuance of the petitioner on the Group-D post attests the fact that the need of the department is perennial in nature. The respondents have admitted that there are vacant posts of Group-D employees under different categories.

10. The denial of regularisation by the impugned order by resorting to highly technical grounds is an unfair practice adopted by a model employer. The said practice amounts to exploitation of the employees which cannot be countenanced by this Court.

11. The other ground of non suiting the claim of the petitioner for regularization is that he is a contractual employee. The law is alert to various devices adopted by employers to deprive class D employees of their rights, and the Courts have set their

face against any exploitative practice adopted by a State employer. In such cases the Court has to go beyond the nomenclature of the appointment by tearing the veil. The Court may examine the nature of duties performed by an employee, length of service and other relevant factors (if any) in the facts and circumstances of a case. In light of such enquiry the Court may determine the nature of employment and the rights of the employee. The discussion has the benefit of authorities.

12. The Supreme Court in **Jaggo Vs Union of India and others reported at MANU/SC/1403/2024** noticed the consequences of misclassifying employees to circumvent providing benefits. The relevant paras are quoted hereunder:

24. The landmark judgement of the United State in the case of *Vizcaino v. Microsoft Corporation*⁴ serves as a pertinent example from the private sector, illustrating the consequences of misclassifying employees to circumvent providing benefits. In this case, Microsoft classified certain workers as independent contractors, thereby denying them employee benefits. The U.S. Court of Appeals for the Ninth Circuit determined that these workers were, in fact, common-law employees and were entitled to the same benefits as regular employees. The Court noted that large Corporations have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee benefits, thereby increasing their profits. This judgment underscores the principle that the nature of the work performed, rather than the label assigned to the worker, should determine employment status and the corresponding rights and benefits. It highlights the judiciary's role in

rectifying such misclassifications and ensuring that workers receive fair treatment.

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

- **Misuse of "Temporary" Labels:** Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.

- **Arbitrary Termination:** Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.

- **Lack of Career Progression:** Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.

- **Using Outsourcing as a Shield:** Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of

exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.

- Denial of Basic Rights and Benefits: Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.

26. While the judgment in Uma Devi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between "illegal" and "irregular" appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in Uma Devi (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it

against employees who have rendered indispensable services over decades.

27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country.?

13. The case of the petitioner is clearly covered by the holding of the Supreme Court. Responsibility is cast on the respondents to implement the law laid down by the Supreme Court in **Jaggo Vs Union of India (supra)**.

14. The impugned order dated 12.03.2021 is liable to be set aside and is set aside.

15. The respondents are directed to pass appropriate orders directing regularisation of the petitioner as per the seniority list of Group-D post who have been engaged on daily wages/contract basis within a period of two months from the date of receipt of a certified copy of this order.

16. The writ petition is allowed.

7. Smt. Karuna Jaiswal Vs St. of U.P., 2018 (9) ADJ 107 (DB)

8. St. of U.P. Vs Aditya Prasad Srivastava, 2017 (2) ADJ 554 (DB)

9. Gaya Prasad Yadav Vs St. of U.P., 2022 SCC OnLine All 685

(Delivered by Hon'ble J.J. Munir, J.)

1. This writ petition is directed against the order of the Sub-Divisional Officer, Koraon, District Prayagraj dated 16.04.2024, punishing the petitioner, a *Lekhpal*, after holding disciplinary proceedings and the further order of the Sub-Divisional Officer, Koraon, Prayagraj dated 30.04.2024, modifying the last mentioned order. By the order dated 16.04.2024, disciplinary proceedings initiated against the petitioner were concluded, punishing the petitioner by reducing him to his basic pay. In addition, it was directed that the petitioner would not be entitled to any emoluments during the period that he remained out of service on account of dismissal from service earlier ordered and since set aside by the State Public Services Tribunal (for short, 'the Tribunal') with liberty to hold a fresh inquiry. The modification of the order dated 16.04.2024 came, because pending proceedings the employee has superannuated.

2. The facts, giving rise to this petition, make a sordid reading and convinces this Court that come what may, the Disciplinary Authorities in various departments of the Government, who are Administrative Officers, cannot appreciate the essentials of valid procedure to hold a departmental inquiry on a charge against an employee, which may lead to the imposition of a major penalty. They would

not understand what Rule 7 of the Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 (for short, 'the Rules of 1999') requires of the establishment in proving charges against a delinquent/ charge-sheeted employee, facing charges, that may lead to the imposition of a major penalty. This we say because the law in this regard has been laid down authoritatively across more than two decades, which holds that in all major penalty matters charges have to be proved by production of evidence in the first instance by the employer, which would include both oral and documentary evidence. The Inquiry Officer cannot return findings by merely reading the charge-sheet and the charge-sheeted employee's reply. Documentary evidence has to be led by the establishment, together with the production of witnesses to prove the charges in the first instance. It is not that the charge-sheeted employee is to be presumed guilty of the charges and after perusing his reply, which is not found satisfactory, sans evidence by the establishment, held guilty. The guilt can be proved upon following the procedure of holding an inquiry, consistent with Rule 7 of the Rules of 1999, where the Inquiry Officer sits as a Tribunal and the establishment bear the burden of proving the charges in the first instance by producing documentary evidence and witnesses with opportunity to the charge-sheeted employee to cross-examine such witnesses. That is the salutary procedure for any valid inquiry to be held in a major penalty matter.

3. We would presently refer to authority on the point. Howsoever high and consistent authority may there be, excluding any other possible course of action, experience dictates that Administrative Authorities, acting as

Disciplinary Authorities, would not give up the practice of presuming a charge-sheeted employee guilty by reading the charge-sheet, where the charges are regarded true, and then, look into the reply to find out if a plausible explanation, consistent with the charge-sheeted employee's innocence, has come forth. This is the approach which Disciplinary Authorities across the State in various establishments, including the Government, adopt and we are convinced that they would not give it up. When we refer to authority on the point, its age and consistency, it would leave no one in doubt that the principles there are consistently observed in breach. In this case, as in almost all others, a mere reference to the authority, followed by a quashing of the order on that ground, may not suffice. Something more would have to be done to compel Disciplinary Authorities in various establishments of the State to ensure that the procedural law, regarding the holding of a valid inquiry, in accordance with Rule 7 of the Rules of 1999 or salutary procedure in regard to such inquiries, involving the imposition of a major penalty, is followed. Enforcement of the settled law in this regard would spare unnecessary harassment to the employees facing inquiry and avoidable expenditure to the State. How and why this Court has remarked in the terms indicated above, would be apparent from the facts of this case, that would be presently referred to.

4. The petitioner was a *Lekhpal* in the District of Allahabad (now Prayagraj). He was appointed and initially posted at Tehsil Handia vide order dated 20.10.1982, where he worked up to the year 2001. He was transferred to Tehsil Meja and stayed there until 11.05.2010. The petitioner was suspended pending inquiry on charges of misconduct, vide order dated 12.05.2010.

This happened in the circumstances that while posted as a *Lekhpal* in Bari, Tehsil Meja, District Prayagraj, in the months of April and May, 2010, an order of mutation was passed regarding Khata Nos. 39, 198 and 120 in error by the Revenue Inspector. The order was passed on the basis of a report made by the petitioner, which led to an irregular succession being recorded.

5. A charge-sheet was served upon the petitioner on 19.07.2010, carrying four charges. These read:

"आरोप 1 :- अपचारी कमचारी के ऊपर प्रथम आरोप यह है कि वह ग्राम बरी खाता संख्या - 198, 39 पर दर्ज खातेदार सितावी देवी पत्नी रामराज निवासी बेदौली को मृत दर्शाकर उसके स्थान पर धर्मराज पुत्र ठाकुर प्रसाद नि0 ग्राम बेदौली का नाम हितबद्ध होकर दर्ज करा दिया गया, जबकि सितावी देवी पत्नी रामराज अभी जीवित है। इस आरोप के जवाब में अपचारी कर्मचारी द्वारा कहा गया है कि धर्मराज पुत्र ठाकुर प्रसाद ने उसको बताया कि सितावी देवी हमारी भाभी है तथा मृतक हो चुकी है और उनके कोई संतान नहीं है, वारिस हमी है, तब मैंने सितावी देवी के स्थान पर धर्मराज पुत्र ठाकुर प्रसाद (देवर) के नाम दिनांक 20.04.2010 को वरासत करा दिया। अपचारी कर्मचारी के कथन से ही स्पष्ट है कि उसने हितबद्ध व्यक्ति के अतिरिक्त किसी अन्य व्यक्ति से सितावी देवी के बारे में कोई जाँच नहीं की और उससे मिलकर गलत ढंग से जीवित व्यक्ति को मृतक दिखाकर वरासत दर्ज कर दिया। अपचारी कर्मचारी का जवाब संतोषजनक नहीं है। आरोप संख्या-1 उसके ऊपर पूर्णतया सिद्ध होता है।

आरोप 2:- अपचारी कर्मचारी के ऊपर द्वितीय आरोप यह है कि उसने ग्राम बरी के खाता संख्या - 120 पर दर्ज खातेदार रामबरन पुत्र रामलाल के स्थान पर उसके जायज वारिसान सभाजीत पुत्र रामबरन व विनय कुमार पुत्र कमेशचन्द्र का नाम न दर्ज करके अन्य व्यक्ति रमेश पुत्र जयनारायण निवासी बेदौली का नाम दिनांक 20.04.2010 को वरासत दर्ज कर दिया। जवाब में अपचारी कर्मचारी द्वारा कहा गया है कि रमेश पुत्र जयनारायण ने उनसे कहा कि रामबरन उसके बाबा है, उसके मेरे 10 वर्ष हो गये और अभी तक मेरे नाम उनकी वरासत नहीं हुई है। अपचारी कर्मचारी ने कहा है कि विश्वास में आकर गलत वरासत दर्ज कर दिया। अपचारी कर्मचारी के जवाब से स्पष्ट है कि वरासत दर्ज करने से पहले उसके द्वारा समुचित जाँच पड़ताल नहीं कि गई और गलत ढंग से वरासत दर्ज कर दी गई। आरोपी कर्मचारी का जवाब

संतोषजनक नहीं है और आरोप संख्या-2 उसके ऊपर पूर्णतया सिद्ध है।

आरोप 3 :- अपचारी कर्मचारी के ऊपर तीसरा आरोप यह है कि उसने पदेन दायित्वों का निर्वहन न करके स्वेच्छाचारितापूर्वक हितबद्ध होकर अनुचित रूप से दूसरे व्यक्ति के नाम वरासत दर्ज कर लाभ पहुँचाने का दोषी है। इस आरोप का जवाब भी संतोषजनक नहीं है और यह आरोप भी अपचारी कर्मचारी पर सिद्ध होता है।

आरोप 4: - अपचारी कर्मचारी के ऊपर चौथा आरोप यह है कि वह एक लापरवाह कर्मचारी है और भूमाफियों से सौंठ-गाँठ करके उन्हे लाभ पहुँचाने का दोषी है। जवाब में अपचारी कर्मचारी द्वारा कहा गया है कि वह सत्यनिष्ठा पूर्वक कार्य करने वाला कर्मचारी है और उसके साथ विश्वासघात करके कार्य कराया गया तथा उसने कर्मचारी आचार संहिता का उल्लंघन नहीं किया है। हो सकता है हितबद्ध व्यक्ति भू-माफियों न हो, लेकिन वरासत दर्ज करने में आरोपी कर्मचारी द्वारा अत्यधिक लापरवाही बरती गयी है। दो-दो प्रकरणों में एक साथ ऐसी वरासत दर्ज हो जाना संयोग की बात नहीं हो सकती है। इसलिए आरोप संख्या - 4 भी अपचारी कर्मचारी पर सिद्ध होता है।"

6. The petitioner filed his reply to the charge-sheet on 04.08.2010, denying the charges and raising pleas in defence.

7. As regards the first charge, the petitioner's defence was that Dharmraj son of Thakur Prasad, described as a *Pahi Kastkar* in Village Bari, had told the petitioner that Sitabi Devi wife of Ramraj, who was his sister-in-law is no more and that he is entitled to be mutated in her place. The petitioner made a report in this regard before the Revenue Inspector, proposing a mutation in good faith. A mutation order dated 20.04.2010 was passed on its basis. The petitioner came to know that the intimation given by Dharmraj was incorrect. He, therefore, immediately approached the *Naib Tehsildar* with a report, as a result whereof the flawed mutation, directed by the Revenue Inspector on 20.04.2010, was set aside by the *Naib Tehsildar* vide order dated 04.05.2010. Sitabi Devi's name was restored.

8. About the second charge, the petitioner says that one Ramesh Chandra son of Jay Ram had informed him that Ram Baran son of Ram Lal, being a *Pahi Kastkar* in Village Bari, who was his grandfather, is dead. Ramesh Chandra represented himself to be Ram Baran's heir and legal representative entitled to inherit. The petitioner in good faith, believing the aforesaid state of things to be correct, made a mutation report to the Revenue Inspector, who passed a mutation order dated 20.04.2010 on its basis. Again, as soon as the petitioner came to know that the intimation given by Ramesh Chandra was incorrect, he immediately approached the *Naib Tehsildar* with a report, on the basis of which the mutation granted by the Revenue Inspector was set aside on 04.05.2010.

9. About the third and fourth charges, the petitioner said in his defence that he had taken immediate steps for cancellation of the wrong mutations, without any complaint from the affected parties or a direction by any higher Authority in this regard. He, therefore, said that he is entitled for protection of his actions earlier done on ground of good faith and a mere error during the course of duties, discharged *bona fide*.

10. It is the petitioner's case that the Inquiry Officer failed to adhere to the procedure of holding an inquiry in accordance with Rule 7 of the Rules of 1999. He did not fix any date, time and venue of inquiry, where the establishment would be called upon to produce their evidence, in particular, witnesses in order to prove the charges. The inquiry report dated 31.08.2010 was submitted by the Inquiry Officer, after going through the charge-sheet and the petitioner's reply with

no inquiry being held. All the charges were held proved by the Inquiry Officer. The petitioner submitted a detailed reply to the inquiry report, apparently, in answer to a show cause served along with a copy of the inquiry report dated 31.08.2010. The petitioner's reply is one dated 15.09.2010. The Sub-Divisional Officer, Meja, Prayagraj, the Disciplinary Authority, by an order dated 09.12.2010 dismissed the petitioner from service.

11. Aggrieved by the order of punishment, the petitioner preferred a statutory appeal on 10.01.2011 to the Appellate Authority, the District Magistrate of Prayagraj. Upon a writ petition filed, being Writ-A No.18116 of 2011, the relief sought wherein is not clear at all, this Court directed the Appellate Authority to ensure that the petitioner's pending appeal was decided in accordance with law within two months next from the date of receipt a certified copy of the order passed in the aforesaid writ petition. This order was passed by this Court on 29.03.2011. The Prayagraj District Magistrate, the Appellate Authority, dismissed the petitioner's appeal vide order dated 30.04.2011. The petitioner then put to challenge both these orders vide Writ-A No.40747 of 2011. In the said writ petition, the learned Standing Counsel raised an objection that against the appellate order, the petitioner still had an alternative remedy by way of revision before the State Government under Rule 13 of the Rules of 1999. This Court, sustaining the challenge and trusting the efficacy of the alternative remedy urged by the learned Standing Counsel, dismissed the writ petition on that ground, relegating the petitioner vide order dated 22.07.2011.

12. The petitioner lodged a revision before the State Government on

04.08.2011, addressing it to the Principal Secretary, Department of Revenue, Government of U.P. The said revision came to be dismissed by the Principal Secretary, Department of Revenue, acting for the State Government, exercising their powers under Rule 13 and saying no more than this for a reasoning:

“7- उपर्युक्त तथ्यों के परिप्रेक्ष्य में श्री जगमोहन, लेखपाल, क्षेत्र बरी, तहसील मेजा, जनपद इलाहाबाद द्वारा प्रस्तुत पुनरीक्षण अभ्यावेदन जिलाधिकारी की आख्या तथा पत्रावली में उपलब्ध अन्य अभिलेखों का भलीभाँति परीक्षण किया गया और यह पाया गया कि श्री जगमोहन, लेखपाल के पुनरीक्षित अभ्यावेदन दिनांक 04-08-2011 में उल्लिखित तथ्यों में कोई बल नहीं है। अतः वर्णित स्थिति में श्री जगमोहन, लेखपाल, (पदच्युत) क्षेत्र बरी, तहसील मेजा, जनपद इलाहाबाद का पुनरीक्षण अभ्यावेदन दिनांक 04-08-2011 आधारहीन एवं तथ्यों से परे होने के कारण एतद्द्वारा निरस्त करते हुए निस्तारित किया जाता है।”

13. Again, the petitioner came back to this Court a third time, challenging all the orders, to wit, the order of the Disciplinary Authority, the appellate order and the revisional order, by means of Writ-A No.40170 of 2013. This time, this Court dismissed the writ petition on ground that the petitioner had a statutory alternative remedy under Section 4 of the Uttar Pradesh Public Services Tribunal Act, 1976 (for short, 'the Act of 1976'). Until this time, the petitioner was not heard by this Court on merits. The petitioner instituted Claim Petition No.258 of 2014, questioning all the three orders passed by the Disciplinary Authority, the Appellate Authority and the Revisional Authority, dispensing with his services. The Tribunal allowed the claim petition vide order dated 06.02.2015 and quashed all the three orders. Liberty was granted to the respondents to proceed with the departmental inquiry against the petitioner afresh from the stage of recording evidence

in his presence and, after providing opportunity to him, to cross-examine witnesses as well as opportunity to adduce evidence in his defence. The inquiry was directed to be concluded within a period of four months from the date of receipt of a certified copy of the Tribunal's judgment. Why this relief was granted to the petitioner, would be pellucid from the following remarks of the Tribunal, carried in their judgment dated 06.02.2015, which say:

"6. The impugned order of dismissal has been assailed mainly on the ground that the inquiry officer has not examined any witness in support of the charges and the petitioner has not been provided an opportunity of cross-examination and no date, time and place was fixed for conducting the inquiry as such the inquiry was not conducted as per provisions of rule 7 of U.P. Government Servants (Discipline and Appeal) Rules, 1999, which is violative of principles of natural justice.

7. In this regard, we have gone-through Rule 7(vii) of U.P. Government Servants(Discipline and Punishment) Rules, 1999 reads as under:-

Where the charged government servant denies the charges the inquiry officer shall proceed to call the witnesses proposed in the charge sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charges Government servant desired in his written statement to be produced in his defence."

8. Perusal of record shows that the petitioner was placed under suspension in contemplation of departmental inquiry

vide order dated 12.5.2010 and a charge-sheet dated 19.7.2010 was issued to the petitioner containing four charges. The main charges levelled against the petitioner relates to wrong and illegal mutation, which was made by the petitioner. We have also gone-through the inquiry report dated 31.8.2010, which reveals that the inquiry officer has not fixed any date, time and place for conducting the inquiry and no witness was examined to prove the charges. The petitioner was also not provided any opportunity of cross-examination of witnesses and the inquiry officer has only considered the reply to the charge sheet and submitted the inquiry report on 31.8.2010 proving the charges levelled against him. Perusal of charge sheet clearly shows that the report of Tehsildar, Meza dated 07.5.2010 was cited as evidence, but the inquiry officer has not examined the Tehsildar, Meza for proving the charges.

9. From the perusal of above rule, It is clear that when the petitioner denies the charges levelled against him, it is obligatory on the part of the inquiry officer to fix date, time and place for recording the oral evidence of the witnesses, in support of charges, in presence of the petitioner, but in the present case, no oral inquiry was ever held and no witness was examined either in his presence or in his absence, so, the inquiry has not been conducted as per provisions of aforesaid rules. The Petitioner was also not afforded an opportunity to cross-examine the witnesses. It was obligatory on the part of the inquiry officer to have provided an opportunity to cross-examine the witnesses, whether the petitioner requests for it or not. No opportunity for adducing defence evidence was provided to petitioner. Thus, it is established beyond any doubt that the inquiry has not been conducted as per provisions of rules and the petitioner was

denied reasonable opportunity of defence also. Therefore, the inquiry report is vitiated and on the basis of vitiated inquiry report, no punishment can be inflicted on incumbent.

10. The Hon'ble Supreme Court has also held in a case reported in **2010(2) Supreme Court Cases 772 State of U.P. & others vs. Saroj Kumar Sinha** as under:

An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un-rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid. procedure has not been observed. Since no oral evidence has been. examined, the documents have not been proved and could not have been taken into consideration to conclude that the charges have been proved against the respondents."

11. In view of above position of case law, it is clear that departmental inquiry conducted against the petitioner was not according to prescribed rules. No oral evidence has been recorded. No witness was examined either in presence of the petitioner or in his absence. Opportunity of cross-examination of witnesses was not provided to the petitioner, so, the on the basis of irregular inquiry cannot be said to be legal and is liable to be quashed. The appellate authority and Revisional authority have also not considered these points before passing the order dated 30.4.2011 and 22.4.2013, so, they are also liable to be quashed. Thus, on this technical ground, the impugned order is not sustainable in eye of law and liable to be quashed.

12. In the instant case, no oral inquiry was held and no date, time and place was fixed under intimation to the petitioner, so, the whole inquiry is vitiated and on the basis of vitiated inquiry, no punishment could be awarded to the petitioner.

In **2003(21) LCD 610 Radhey Kant Khare Vs. U.P. Coop. Sugar Factories Federation Ltd.** The division bench of Hon'ble High Court Allahabad (Lucknow Bench) while dealing with the procedure of enquiry before imposing major punishment has held as follows:

"After a charge sheet is given to the employee an oral enquiry is a must, whether the employee requests for it or not. Hence a notice should be issued to him indicating him the date, time and place of the enquiry."

14. In compliance with the order dated 06.02.2015 passed by the Tribunal, the Sub-Divisional Officer, Meja, Prayagraj passed an order dated 27.04.2015, reinstating the petitioner in service and suspended him pending inquiry in the same breath. The inquiry from stage of the charge-sheet was proposed to be held again, acting on the directions of the Tribunal. The petitioner challenged the part of the order that had directed his suspension from service by means of Writ-A No.23323 of 2015. This Court issued a notice of motion on 19.05.2015 and stayed the order of suspension, leaving it open to the respondents not to assign any work to the petitioner. It is pointed by the learned Counsel for the petitioner that the Disciplinary Authority went beyond the judgment of the Tribunal and issued a fresh charge-sheet dated 02.06.2015 to the petitioner, to which he filed a reply dated 08.06.2015. The four charges, that were then laid against the petitioner vide charge-sheet dated 02.06.2015, read:

"प्रथम आरोप- आपके विरुद्ध प्रथम आरोप यह है कि ग्राम बरी के खाता सं० 198, 39 पर दर्ज सितावी देवी पत्नी रामराज की मृत दिखाकर धर्मराज पुत्र ठाकुर प्रसाद नि० बेदौली प० क० 11 क पर आदेश 20.04.2010 द्वारा बरासतन दर्ज करा दिया है जब कि मूल खातेदार सितावी देवी पत्नी रामराज अभी जीवित है। इस प्रकार जीवित को मृतक दिखाकर उसके स्थान पर दूसरे व्यक्ति के नाम बरासत दर्ज कराकर हितवद्ध होकर लाभ पहुंचाने के दोषी है।

साक्ष्य में तहसीलदार मेजा की आख्या दिनांक 07.05.2010 पठनीय है।

द्वितीय आरोप- आपके विरुद्ध दूसरा आरोप यह है कि ग्राम बरी के खाता संख्या 120 पर दर्ज खातेदार राम बरन पुत्र राम लाल के मृत होने पर उनके वारिसान सभाजीत पुत्र रामबरन व विनय कुमार पुत्र कमलेश चन्द्र का नाम बरासतन दर्ज न कराकर अन्य व्यक्ति रमेश चन्द्र पुत्र जयनरायन नि० बेदौली का नाम वज्रिए बरासत दिनांक 20.04.2010 को आदेश पारित कराकर दर्ज करा दिया। इस प्रकार अवैधानिक कार्य करके आवंछित व्यक्ति को अनुचित लाभ पहुंचाने के दोषी है।

साक्ष्य में तहसीलदार मेजा की आख्या दिनांक 07.05.2010 पठनीय है।

तृतीय आरोप- आपके विरुद्ध तीसरा आरोप यह है कि आपने अपने पदेन दायित्वों का निर्वहन नहीं किया और स्वेच्छा चारिता पूर्वक हितवद्ध होकर अनुचित रूप से दूसरे व्यक्तियों के नाम बरासत दर्ज कराकर लाभ पहुंचाने के दोषी है।

चौथा आरोप- आपके विरुद्ध चौथा आरोप यह है कि आप एक लापरवाह कर्मचारी है और भूमाफियों से सांठ- गाठ करके उन्हें लाभ पहुंचाने के दोषी है और आप द्वारा कर्मचारी आचार संहिता का उल्लंघन किया है। आपके इस कृत्य से आप सरकारी सेवा में रहने योग्य नहीं है।"

15. It is the petitioner's case pleaded in paragraph No.25 of the writ petition that in the inquiry held de novo under the judgment of the Tribunal, the establishment did not produce witnesses in support of the charges or afford opportunity to the petitioner to cross-examine them. An inquiry report dated 06.02.2016 was submitted, holding the first and the second charge proved, but the third and the fourth not proved. The Sub-Divisional Officer, on occasion, did not serve the petitioner with a show cause notice along with a copy of the

inquiry report to enable the petitioner to reply. Instead, considering the inquiry report without the petitioner's answer to it, the Sub-Divisional Officer proceeded to punish the petitioner vide order dated 30.04.2024 in the following terms:

(1) *the petitioner would not receive any emolument for the period of his suspension;*

(2) *the punishment earlier awarded to the petitioner would remain the same; and,*

(3) *a censure was awarded to the petitioner in the terms set forth in the order.*

16. Later on, vide order dated 04.05.2016, the order of punishment dated 30.04.2016 was amended to clarify that in the ninth line of paragraph No.8, the direction to deprive the petitioner of his emoluments for the period of his suspension from service, had been incorrectly mentioned, which ought be read as the period of removal from service.

17. The petitioner, aggrieved by the orders dated 30.04.2016 and 04.05.2016, preferred a statutory appeal to the District Magistrate, Prayagraj on 28.06.2016. He raised his grievance about the establishment not proving their case by leading evidence at the inquiry, besides other contentions. The appeal remained pending with the District Magistrate for more than three years. The petitioner then instituted Writ-A No.4728 of 2019, complaining of delay in the decision of his statutory appeal by the District Magistrate. This Court, accordingly, disposed of Writ-A No.4728 of 2019 with a direction to the District Magistrate *'that subject to verification of all facts, the pending statutory appeal of the petitioner shall be*

attended to and disposed of in accordance with law, preferably within a period of two months from the date of presentation of a certified copy of this order.'

18. In compliance with the last mentioned order passed by this Court, the District Magistrate, Prayagraj decided the petitioner's appeal vide order dated 02.03.2021, setting aside the punishment order dated 30.04.2016, including the one correcting it dated 04.05.2016, with a direction to the Sub-Divisional Officer, Koraon to pass appropriate orders afresh after examination of records in accordance with law. The Sub-Divisional Officer did not comply with the order dated 02.03.2021 passed by the District Magistrate, Prayagraj for about six months, leading the petitioner to institute Writ-A No.17166 of 2021 before this Court, praying that a *mandamus* be issued to the Sub-Divisional Officer to pass appropriate orders in accordance with the order dated 02.03.2021 passed by the District Magistrate. This petition was disposed of vide order dated 07.12.2021 with a direction to the Sub-Divisional Officer, Koraon, Prayagraj to comply with the order dated 02.03.2021 passed by the District Magistrate, Prayagraj and to pass fresh orders in accordance with law, preferably within a period of three months of the date of service of a certified copy of the order passed in the last mentioned writ petition. The order dated 07.12.2021 passed by this Court in Writ-A No.17166 of 2021 was not complied with by the Sub-Divisional Officer, Koraon or the order of the District Magistrate, which was enforced by a *mandamus* of this Court. The Sub-Divisional Officer kept the matter pending with him for a few more months until 28.02.2022, when the petitioner retired from service upon attaining the age of superannuation.

19. The petitioner, after retirement, approached the Sub-Divisional Officer, Koraon and also sent reminders to enforce the District Magistrate's order, but all in vain. He did not carry out the order dated 02.03.2021 passed by the District Magistrate. Aggrieved by continued inaction by the Sub-Divisional Officer, the petitioner moved Contempt Application (Civil) No.6545 of 2023 against Avinash Yadav, the then Sub-Divisional Officer, Koraon, Prayagraj. The said contempt application was disposed of vide order dated 12.09.2023, granting the contemnor-opposite party to that application three months' further time to comply with the order dated 07.12.2021 passed by this Court on the writ side. The Sub-Divisional Officer did not avail that opportunity and the petitioner would say that he deliberately and knowingly disobeyed the orders dated 07.12.2021 passed by this Court on the writ side and in the contempt application, compelling the petitioner to move Contempt Application (Civil) No.775 of 2024 against Avinash Yadav, Sub-Divisional Officer, Koraon, a second time. This Court in the last mentioned contempt application, made the following order on 06.03.2024:

"1. Instant contempt application has been filed owing to willfully disobedient of the order dated 07.12.2021 passed by this Court in Writ-A No.17166 of 2021, at the part of the opposite party who has deliberately not reconsidered the case of the applicant till date.

2. Learned Standing Counsel has filed copy of the instruction dated 05.03.2024 duly signed by the Sub Divisional Magistrate, Koraon, District Prayagraj today in Court, which is taken on record. Copy of the aforesaid instructions has been served upon learned counsel for the applicant.

3. Learned Standing Counsel, on the basis of instructions, states that legal advise has been sought for from the D.G.C. (Civil) as to whether order passed by this Court could be complied with or not. It is very sorry state of affairs at the part of the officer concerned who has given instructions that the order of this Court could be complied with only after taking legal advise from D.G.C. (Civil). It appears that the authority concerned is preventing himself superior to this Court. It amounts second contempt in the matter in hand. Conduct shown by the opposite party is highly condemnatory.

4. As a last opportunity, in the interest of justice, one month and no more time is granted to the opposite party, either to comply with the order passed by this Court or show cause as to why contempt proceeding should not be drawn against him.

5. Put up this matter on 22.04.2024 in the additional cause list."

20. The petitioner's case is that upon receipt of the aforesaid order, in haste and without application of mind, the Sub-Divisional Officer, Koraon passed an order dated 16.04.2024, reinstating the petitioner, reducing him to his initial pay-scale. In addition, the salary for the period that the petitioner remained out of service was denied. A censure was also awarded. This order was amended by the Sub-Divisional Officer on 30.04.2024, realizing that the petitioner had retired from service and could no longer be reinstated. The amended order of punishment reads:

"अपचारी कर्मचारी श्री जगमोहन लेखपाल के विभागीय कार्यवाही में जिलाधिकारी महोदय, प्रयागराज के पत्रांक - 459 / भूलेख सात 2020-21 दिनांक 02 मार्च 2021 के अनुपालन में अधोहस्ताक्षरी के कार्यालय पत्रांक- 2914 / एस0टी0कोरांव - 2024 दिनांक 16. 04.2024 से निर्गत

आदेश के पृष्ठसंख्या - 02 के पैरा संख्या-02 में आंशिक संशोधन करते हुए उसके स्थान पर निम्न आदेश पारित किया जाता है.

"मेरे द्वारा जांच अधिकारी की जांच आख्या व अपचारी कर्मचारी के उत्तर / जवाब व पत्रावली में संलग्न साक्ष्यों के अनुशीलन करने के उपरान्त मैं इस निष्कर्ष पर पहुँचता हूँ कि अपचारी कर्मचारी ने जानबूझकर जीवित खातेदार को मृतक दिखाकर वरासत दर्ज किया है, जिसके लिए अपचारी कर्मचारी पूर्ण रूपेण दोषी है। अपचारी कर्मचारी का यह कृत्य कर्मचारी आचरण नियमावली के विपरीत है। अपचारी कर्मचारी दिनांक 28.02.2022 को सेवानिवृत्त हो चुके हैं। अपचारी कर्मचारी को पृथक काल का वेतन अदेय करते हुए विभागीय कार्यवाही समाप्त की जाती है।"

21. Aggrieved by the order dated 16.04.2024, as amended on 30.04.2024, passed by the Sub-Divisional Officer, Koraon, Prayagraj, the petitioner has instituted the present writ petition under Article 226 of the Constitution.

22. Notice of motion was issued by this Court on 09.08.2024 and a counter affidavit on behalf of respondent Nos.3 and 4 filed in Court on 05.09.2024. The learned Counsel for the petitioner waived her right to file a rejoinder. The petition was admitted to hearing, which proceeded forthwith. Judgment was reserved.

23. Heard Ms. Sharda Vishwakarma, learned Counsel for the petitioner and Ms. Monika Arya, learned Additional Chief Standing Counsel, appearing on behalf of the State.

24. Upon a careful consideration of the matter, what this Court finds is that it is true, as remarked in the opening paragraphs of this judgment, that the Inquiry Officer, after the Tribunal remanded the matter for a de novo inquiry, did not follow the salutary procedure governing a departmental inquiry, where there was likelihood of the imposition of a major penalty. It is also a

case where breach of Rule 7 of the Rules of 1999 is there for the same flaw as that which violates salutary principles governing such inquiries.

25. In paragraph Nos.43 and 44 of the writ petition, there is a categorical case that the Inquiry Officer did not fix a date, time and place for holding the inquiry, nor did he require the establishment to lead oral evidence or examine witnesses to prove the charges. In the counter affidavit filed on behalf of the respondents, the assertions in paragraph Nos. 43 and 44 have neither been effectively denied nor has it been shown that the procedure necessary to hold a valid departmental inquiry in a major penalty matter was adhered to.

26. It is imperative in a case involving an inquiry, where a major penalty may result that a date, time and place be fixed for holding the inquiry, with intimation both to the delinquent and the establishment. The hearing before the Inquiry Officer, that is to be held on the appointed date, time and venue, is hearing the establishment's evidence to prove the charges in the first instance. The Inquiry Officer, in doing this, must convene himself as a formal Inquiry Tribunal, distancing himself from the establishment, which he may otherwise be a part of. He must require the establishment through their Presenting Officer to produce evidence, both documentary and oral, that is to say, witnesses to prove the charges against the delinquent. After evidence in support of the charges has been led by the establishment, the witnesses have to be made over to the delinquent to cross-examine them. It is in the next stage that the delinquent may be called upon to produce his evidence in defence, which, again, can be both documentary and oral. If

the delinquent examines witnesses, they would be available for cross-examination by the establishment in the same fashion. If the delinquent does not produce any evidence, the Inquiry Officer cannot relieve the establishment of the burden of producing evidence in support of the charges.

27. The Inquiry Officer cannot infer upon a reading of the charge-sheet and the written statement, together with the papers annexed, that the charge-sheeted employee is guilty. The Inquiry Officer has to require the establishment to prove the charges, as already remarked, through evidence both documentary and oral. In the present case, as the record would show, despite specific remarks by the Tribunal in the judgment of remand dated 06.02.2015 about this breach of salutary procedure done by the Inquiry Officer, which is contrary to Rule 7 of the Rules 1999 as well, in the de novo inquiry undertaken, the Inquiry Officer did not require the establishment to produce evidence, including witnesses at the appointed date, time and place. Hearing at the inquiry would mean hearing the establishment's witnesses and their evidence. Here, what seems is that the Inquiry Officer thought that the charges are proof of themselves and the petitioner by his reply has not been able to dispel the charges. No evidence at all was heard by the Inquiry Officer in the manner mandatory, both by salutary principle and the provisions of Rule 7 of the Rules of 1999.

28. The position of the law, as regards the salutary procedure to be adhered to by the Inquiry Officer in holding an inquiry, which may lead to the imposition of a major penalty, is well settled in view of the law laid down by the

Supreme Court in **State of Uttar Pradesh and others v. Saroj Kumar Sinha, (2010) 2 SCC 772, Roop Singh Negi v. Punjab National Bank and others, (2009) 2 SCC 570, State of Uttaranchal and others v. Kharak Singh, (2008) 8 SCC 236** and the Bench decisions of this Court in **State of U.P. and another v. Kishori Lal and another, 2018 (9) ADJ 397 (DB) (LB), Smt. Karuna Jaiswal v. State of U.P., 2018 (9) ADJ 107 (DB) (LB) and State of U.P. v. Aditya Prasad Srivastava and another, 2017 (2) ADJ 554 (DB) (LB).**

29. The position of the law in this regard that has withstood the test of time has been recently endorsed by the Supreme Court in **Satyendra Singh v. State of U.P. and another, 2024 SCC OnLine SC 3325**, where it has been held:

“12. Learned counsel for the State was ad idem to the submissions of the appellant's counsel that no witness whatsoever was examined during the course of the inquiry proceedings. On a minute appraisal of the Inquiry Report, it is evident that other than referring to the documents pursuant to the so-called irregular transactions constituting the basis of the inquiry, the Inquiry Officer failed to record the evidence of even a single witness in order to establish the charges against the appellant.

13. This Court in a catena of judgments has held that the recording of evidence in a disciplinary proceeding proposing charges of a major punishment is mandatory. Reference in this regard may be held to *Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570* and *Nirmala J. Jhala v. State of Gujarat, (2013) 4 SCC 301*.

30. If the petitioner were in service, this would be a case of a second remand for a de novo inquiry on the same charge-

sheet, awarding costs against the respondents, this time for repeatedly following a flawed procedure in holding the inquiry. But, the position in this case has undergone a generic change. This change has come by on account of the petitioner's retirement pending disciplinary proceedings. An order that can be passed by a Disciplinary Authority against an employee, who retires pending disciplinary proceedings is governed by Article 351-A of the Civil Service Regulations (for short, 'the CSR'). In case of government servants, like the petitioner, serving the Government of U.P., there is no bar in continuing pending disciplinary proceedings after retirement without a sanction by the Governor. However, the punishments that can be awarded to a retired government servant are limited to those postulated under Article 351-A of the CSR. The power under Article 351-A can exclusively be exercised by the Governor and not the Disciplinary Authority. Punishment that can be inflicted is limited to the withholding or withdrawing of pension or any part of it, besides the right to recover from the employee's pension any loss caused to the State. This power can be exercised if the misconduct of the employee is found to be grave or one that has resulted in pecuniary loss to the Government. Whatever may be the gravity of the misconduct, punishments that can be imposed against an employee while in service under the Rules of 1999 cannot be awarded. While the employee is in service, the punishments that could be awarded are spelt out by Rule 3 of the Rules of 1999. These are broadly subdivided into 'minor' and 'major' penalties. Rule 3 of the Rules of 1999 reads:

“3. Penalties.—

The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon the Government Servants :

Minor Penalties:

- (i) Censure;
- (ii) Withholding of increments for a specified period;
- (iii) Stoppage at an efficiency bar;
- (iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders;
- (v) Fine in case of persons holding Group 'D' posts : provided that the amount of such fine shall in no case exceed twenty five per cent of the month's pay in which the fine is imposed.

Major Penalties:

- (i) Withholding of increments with cumulative effect;
- (ii) Reduction to a lower post or grade or time scale or to a lower stage in a time scale;
- (iii) Removal from the service which does not disqualify from future employment;
- (iv) Dismissal from the service which disqualifies from future employment.

Explanation.- The following shall not amount to penalty within the meaning of this rule, namely:

- (i) Withholding of increment of a Government servant for failure to pass a departmental examination or for failure to fulfil any other condition in accordance with the rules or orders governing the service;
- (ii) Stoppage at the efficiency bar in the time scale of pay on account of ones not being found fit to cross the efficient bar;
- (iii) Reversion of a person appointed on probation to the service during or at the end of the period of probation in accordance with the terms of appointment or the rules and orders governing such probation;

(iv) Termination of the service of a person appointed on probation during or at end of the period of probation in accordance with the terms of the service or the rules and orders governing such probation.”

31. Even if the petitioner were in service, the punishment that has been awarded after the amended order dated 30.04.2024, that is to say, denial of salary for the period that the petitioner was out of service in consequence of the order of dismissal, could not be validly made. The reason is that this is not one of the punishments contemplated under Rule 3 of the Rules of 1999. This could have been the order made regarding emoluments payable to the petitioner for the period that he was out of service on account of the dismissal order, since set aside with a remand, if the petitioner were reinstated in service before his superannuation.

32. As matters stand, the petitioner is a retired employee and what punishment can be awarded to a retired government servant, can well be understood from the remarks of the Division Bench of this Court in **Gaya Prasad Yadav v. State of U.P. through Principal Secretary and another, 2022 SCC OnLine All 685. In Gaya Prasad Yadav (supra)**, which was a case relating to a Constable of the Armed Police, this Court held:

“31. The question, therefore, in this case to be considered as to whether any such rule, as discussed in the case of *Rabindranath Choubey* (supra) by the Hon'ble Supreme Court exists in the Conduct, Discipline and Appeal Rules governing the appellant-petitioner.

32. The State Government in exercise of its powers vested in it under the

Police Act, 1861 has framed "The U.P. Police Officers of the Subordinate Ranks(Punishment and Appeal) Rules, 1991". The Rules are statutory in nature. Two types of punishment are provided in Rule 4, according to which major penalties include (i) dismissal from service, (ii) removal from service and, (iii) reduction in rank including reduction to a lower-scale or to a lower stage in a time scale whereas minor penalties include (i) withholding of promotion, (ii) fine not exceeding one month's pay, (iii) withholding of increment, including stoppage at an efficiency bar and, (iv) Censure. The procedure for award of punishment is provided in Rule 14.

33. Rule 14(1) provides for the procedure for major penalty, according to which the proceedings are to be conducted in accordance with the procedure laid down in appendix-I appended to the Rules. Rule 14(2) states that minor penalty may be imposed after informing the Police Officer in writing of the action to be proposed to be taken against him and what imputation of the act or omission on which action is proposed to be taken after giving him reasonable opportunity of making representation.

34. In U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 there is no provision akin to the provision of 34.2 of the Discipline and Appeal Rules, as discussed in the case of *Rabindranath Choubey* (supra). Even the Civil Service Regulations does not contain any such rule or provision which may permit passing of order of dismissal or for that matter any other penalty in case the employee has retired. Learned State Counsel has also not been able to place any such rule before us.

35. In absence of any rule, which permits imposition of punishment of dismissal after retirement or which deems

the employee-employer relationship to be continued even after retirement for the purposes of disciplinary proceedings, in our opinion, the judgment of Hon'ble Supreme Court in the case of *Rabindranath Choubey* (supra) does not have any application in this case. Accordingly the reliance placed by the learned State Counsel on the said judgment is misplaced. As already observed above, Hon'ble Supreme Court in the case of *Prabhakar Sadashiv Karvade* (supra) has clearly held that penalty of dismissal cannot be imposed on an officer/employee after his retirement after attaining the age of superannuation unless there exists a specific rule in that behalf. If the disciplinary enquiry is instituted prior to retirement of the employee concerned, the same will continue by operation of Article 351A of Civil Service Regulations as held by Hon'ble Supreme Court in the case of *Harihar Bholenath* (supra). However, in such a case if the employee is found to be guilty of grave misconduct of or is found to have caused pecuniary loss to the Government, it is the Governor who can take action as provided in Article 351-A of the Civil Service Regulations."

33. The only question that survives for consideration is, if the respondents could deprive the petitioner of all his emoluments for the period he remained out of service on account of the order of dismissal, since set aside by the Appellate Authority with a remand to the Disciplinary Authority. It could perhaps be considered how much of the emoluments for the period of time that the petitioner remained out of employment ought be given, depending on the gravity of the charge, its proof etc., if it were a case of reinstatement. The respondents here have lost the power to reinstate the petitioner, who has retired from service, leading to a severance of the

employer – employee relationship. Therefore, there is no scope for the respondents to deny the petitioner his emoluments for the period that he remained out of employment on account of the dismissal order. The dismissal order being set aside by the Tribunal with remand for a *de novo* inquiry and no further order in the respondents' disciplinary jurisdiction being passed while the petitioner was in service, the only order that could now be made against the petitioner is one in terms of Article 351-A of the CSR, which can exclusively be done by the Governor.

34. The issue that still survives for consideration is, if the respondents can be asked to take recourse to the provisions of Article 351-A of the CSR, if they so elect, on the basis of findings recorded against the petitioner by the Inquiry Officer. We do not think so. As matters stand, the inquiry report by the Inquiry Officer shows that after liberty by the Tribunal to hold an inquiry *de novo* in accordance with the salutary procedure and Rule 7 of the Rules of 1999, the Inquiry Officer has again faltered. He has submitted an inquiry report, which does not conform to the law governing salutary procedure for the holding of a departmental inquiry, where a major penalty may be imposed. The fact that punishment of reduction to the basic pay was awarded after remand by the Tribunal based on the inquiry report, shows that a major penalty was intended to be awarded and was indeed awarded under Rule 3(ii) of the Rules of 1999 vide the order impugned dated 16.04.2024. The inference is imperative that this was a major penalty matter. The fact that this order was amended by the other order impugned dated 30.04.2024 is the result of a fortuitous circumstance that pending proceedings, the petitioner superannuated.

That would not derogate from the nature of the disciplinary proceedings as one involving a major penalty. Therefore, the salutary procedure, governing departmental inquiries in a major penalty matter, had to be followed by the respondents. Rule 7 of the Rules of 1999 would also require the same course of action. The result would be that the inquiry report, on the foot of which the order of punishment has been passed, is the result of flawed procedure.

35. In the event, the respondents wish to proceed against the petitioner and pass an order, as the law would now countenance, they would have to hold a fresh inquiry, which would be a third instance of it, in order to determine if the petitioner is guilty. If the respondents elect to pursue fresh proceedings against the petitioner, they must hold an inquiry in accordance with the procedure salutary and Rule 7 of the Rules of 1999, where the Inquiry Officer would require the establishment to prove their case by producing oral evidence after fixing a date, time and place for holding the inquiry. The other remarks in this regard carried in this judgment as also the settled position of the law, shall be borne in mind. If the respondents do not elect to hold fresh proceedings, no order of any kind of punishment, whether by resort to Article 351-A or otherwise can be passed against the petitioner on the basis of an inquiry report, which is the product of an inherently flawed procedure. In case the respondents elect to pursue fresh proceedings in accordance with the procedure mandated by law, the order of punishment, that can be passed, is not within the province of the respondents any more. They would have to take resort to the provisions of Article 351-A of the CSR, where appropriate orders of the Governor

would be required in the event the petitioner is found guilty again, on an inquiry held, in accordance with law.

36. In the result, this petition succeeds and is **allowed**. The impugned order dated 16.04.2024 and the amended order dated 30.04.2024, both passed by the Sub-Divisional Officer, Koraon, Prayagraj are hereby **quashed**. It will be open to the respondents, if they so elect, to hold a departmental inquiry de novo from the stage of the charge-sheet, taking into account the petitioner's reply to the charge-sheet dated 02.06.2015. The inquiry, if held, would be undertaken strictly bearing in mind the remarks carried in this judgment about the procedure to be followed in the inquiry. In the event the petitioner is found guilty, the respondents will proceed in accordance with Article 351-A of the CSR, submitting the matter for the Governor's orders, but will not pass any order of punishment themselves. In the event a *de novo* inquiry is not elected to be undertaken, the petitioner would be entitled to all consequential benefits, including emoluments for the period he has remained out of employment.

37. There shall be no order as to costs.

38. Let a copy of this order be communicated to the Chief Secretary, Government of U.P., Lucknow by the Registrar (Compliance) with a direction to ensure adherence with the settled law, in all departments of the State Government, regarding the salutary procedure relating to conduct of departmental inquiries in matters involving the imposition of major penalties.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.03.2025

BEFORE

**THE HON'BLE SAURABH SHYAM
SHAMSHERY, J.**

Writ A No. 26967 of 2008
With other connected cases

Ram Narain Ram & Ors. ...Petitioners
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioners:

Arvind Upadhyay, Ashok Kumar Singh, I.
Raj Singh, Suresh Chandra Varma

Counsel for the Respondents:

C.S.C., S.K. Singh, S.R. Singh, V.K. Singh

A. Service Law – Payment of salary – Long term appointment – Principle of equity – Application – Appointment made against 14 sanctioned post out of 25 claimed posts – One set of petitioners were found to be working and there is also interim order in their favour – Long term appointment made against sanctioned posts, how far liable to be protected – Held, considering that these writ petitions are pending for last more than 17 years and first set of petitioners, i.e., Ram Narain Ram & ors., have served and now must have attained age of superannuation, therefore, taking note of principle of equity, their services if now disturbed, it would be an inhuman approach of this Court and that should be avoided – Such long appointment even if irregular be protected – *Radhey Shyam Yadav's case* relied upon. (Para 17 and 19)

One set of writ petitions allowed & anr.set of writ petitions dismissed. (E-1)

List of Cases cited:

1. Radhey Shyam Yadav & ors. Vs St. of U.P. & ors.; 2024 INSC 7

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. This is a bunch of six writ petitions. Facts of each case would be necessary to refer hereinafter for proper adjudication of all petitions.

(A) WRIT - A No. - 26967 of 2008

2. This writ petition was filed by 13 petitioners that they were appointed as Teachers/ Employees of Respondent-Institution, namely, Anjuman Islamia Higher Secondary School, Dauna Safipur, Azamgarh, which was later on upgraded from Junior High School to Higher Secondary School.

3. Petitioners have claimed that Deputy Director of Education 7th Region, Gorakhpur has passed an order dated 01.04.1995 and sanction in all 25 posts and petitioners were thereafter appointed in pursuance of a selection process vide appointment letters issued on different dates between 2001 to 2005.

4. In 2004 Committee of Management of Respondent-Institution has filed a writ petition for taking the Institution under grant-in-aid, which was allowed vide order dated 30.09.2004 and a Special Appeal thereof filed by the State was rejected vide order dated 12.07.2005 and accordingly Respondent-Institution was brought under grant-in-aid.

5. Thereafter, in order to give financial approval, papers of petitioners were submitted. District Inspector of Schools, Azamgarh vide order dated

29.12.2007 found that there were only 14 sanctioned posts on which some of the present petitioners were considered to be legally appointed. Thereafter District Inspector of Schools on basis of material available passed a detailed order whereby petitioners, Ram Narain Ram and others, were found to be in service, whereas petitioners in connected writ petitions, i.e., Palakdhari Ram and others were not found to be in service. It is further case of petitioners that within a very short period, aforesaid order was reviewed and a fresh order dated 08.05.2008 was issued wherein appointment of none of the petitioners were considered to be legal and appointment of other 13 persons (Palakdhari Ram and others) were considered to be valid and accordingly their approval was granted. This order is under challenged in present writ petition.

6. This Court vide order dated 04.06.2008 passed an interim order whereby impugned order dated 08.05.2008 was directed to be remain stayed. It appears that petitioners have worked continuously under the strength of same interim order as it remains in currency. For reference interim order dated 04.06.2008 is reproduced hereinafter:

“Learned Standing Counsel representing the respondent nos. 1 to 4 may file counter affidavit within a month. Learned counsel for the petitioner will have two weeks thereafter to file rejoinder affidavit.

Let notice be issued to respondent nos. 5 and 6. Steps may be taken within a week. Upon steps being taken office shall fix a date in the week commencing 18.8.2008 and the writ petition may be listed on the date mentioned in the notice.

Till the next date of listing the effect and operation of the impugned order dated 8.5.2008 (Annexure-6 to the writ petition) passed by respondent no. 4 shall remain stayed.”

(B) WRIT - A No. - 34523 of 2008

7. During pendency of aforesaid writ petition, three other employees have filed this writ petition challenging impugned order dated 08.05.2008 since their appointments were also considered to be illegal. This Court has granted similar interim relief to said petitioners also by way of interim order dated 18.07.2008. These petitioners also appears to continue under said interim order, which is reproduced hereinafter:

“Learned Standing Counsel appears on behalf of respondent nos. 1 to 4 prays for and is granted four weeks time to file counter affidavit. Rejoinder affidavit may be filed within two week thereafter.

Issue notice to the respondent nos. 5 and 6 to file counter affidavit within the aforesaid period.

List immediately thereafter alongwith Writ Petition No. 26967 of 2008, Ram Narain Ram and others vs. State of U.P. and others.

Till the next date of listing, the effect and operation of the impugned order dated 08.5.2008, annexure-15 to the writ petition passed by respondent no. 4, District Inspector of Schools, Azamgarh shall remain stayed.”

(C) WRIT - A No. - 51401 of 2013

8. During exchange of pleadings in above two writ petitions, it was brought into notice that other set of group of employees (i.e. Palakdhari Ram and others)

were already terminated by different orders passed in the year 2004, which was not noted when impugned order dated 08.05.2008 in above two writ petitions was passed in their favour, therefore, present writ petition was filed by five petitioners challenging their termination orders, which were passed on ground of their long absence. However, no interim order was passed in this writ petition probably on ground that there was an interim order in favour of other set of petitioners in above referred two writ petitions, i.e., Writ-A Nos. 26967 of 2008 and 34523 of 2008.

(D) WRIT - A No. - 45035 of 2016

9. This writ petition was filed by other set of petitioners (i.e., Palakdhari Ram and others) challenging orders dated 20.06.2016, 13.07.2016 and 09.08.2016, whereby on inquiry it was found that other set of petitioners, i.e., Ram Narain and others, were real appointees and appointments of these writ petitioners were forged. In the present writ petition also no interim order was passed.

(E) WRIT - A No. - 39263 of 2017

10. Above referred impugned orders dated 20.06.2016, 13.07.2016 and 09.08.2016 were also impugned by six petitioners of other set in this writ petition and no interim order was passed.

(F) WRIT - A No. - 16753 of 2024

11. This is the last petition filed by nine petitioners (Ram Narain and others) challenging orders dated 25.09.2024 and 27.09.2024 passed by Additional Director of Education (Secondary), U.P., Prayagraj whereby salary of the petitioners was stopped at belated stage, despite above

referred writ petitions were pending and interim orders were also in currency.

12. As referred above, there are two set of petitioners. First set of petitioners are Ram Narain Ram and others, i.e., petitioners in Writ Petitions No. 26967 of 2008, 34523 of 2008 and 16753 of 2024, who are still working under the strength of interim order passed by this Court but in the year 2024, their salary was stopped and second set of petitioners are Palakdhari Ram and others, i.e., petitioners in Writ Petitions No. 51401 of 2013, 45035 of 2016 and 39263 of 2017, who are under termination and there was no interim order in their favour. According to records, age of all petitioners appears to be more than 60 years.

13. Sri Ashok Khare, learned Senior Advocate assisted by Sri J.P. Singh, learned counsel for first set of petitioners submitted that way back by an order dated 01.04.1995 passed by Deputy Director of Education 7th Region, Gorakhpur it was categorically held that there were 25 sanctioned posts in Respondent-Institution and thereafter District Inspector of Schools on basis of material available passed a detailed order dated 29.12.2007 whereby first set of petitioners, i.e., Ram Narain Ram and others, were found to be in service, whereas second set of petitioners, i.e., Palakdhari Ram and others were not found to be in service. However, within a very few days only on basis of a telephonic instruction given by Director of Education (Secondary) a contrary order dated 08.05.2008 was passed that Ram Narain Ram and others were wrongly appointed and their appointments got wrongly approved by playing fraud. No reason was assigned why such contrary order was passed, i.e., details of instruction given on

telephone by a higher officer as well why an order for lodging FIR was also passed.

14. Learned Senior Advocate also submitted that even if the impugned order considered to be true, it would only means that there were 14 sanctioned posts and that the second set of petitioners have already been terminated, therefore, appointment of first set of petitioners are liable to be protected. He further refers the judgment in the case of **Radhey Shyam Yadav and others vs. State of U.P. and others, 2024 INSC 7** that a very long period of service as in the present case (more than two decades) be protected since it was not the case that due procedure was not followed. Only case against first set of petitioners is that the post was not sanctioned but as referred above today they are working against the original sanctioned posts, i.e., 14 in number. As allegation of fraud must be based on substantial material but no such material was disclosed either in impugned order dated 08.05.2008 or brought on record during exchange of pleadings in present bunch of writ petitions.

15. Per contra, Sri Prabhakar Awasthi, learned counsel appearing for second set of petitioners, i.e., Palakdhari Ram and others, submitted that they were the original appointees against 14 vacant posts. First set of petitioners were appointed on non sanctioned posts and by impugned order dated 08.05.2008 District Inspector of Schools has rightly informed about the actual position by the Director of Education and, therefore, by impugned order second set of petitioners were found in service. All necessary details were part of the impugned order. Learned counsel also submitted that without any inquiry petitioners were terminated and, therefore, principle of natural justice were violated. It

is their case that they were regularly appeared in Collage, however, Management has not allowed or permitted them to make signatures, therefore, ground for termination, i.e., their long absence was incorrect.

16. Heard learned counsel for parties and perused the material available on record.

17. Facts, as referred above, are very disturbing since exact number of posts was differently placed before respondent-authorities by Committee of Management which creates the present litigations. Still, considering that these writ petitions are pending for last more than 17 years and first set of petitioners, i.e., Ram Narain Ram and others, have served and now must have attained age of superannuation, therefore, taking note of principle of equity, their services if now disturbed, it would be an inhuman approach of this Court and that should be avoided.

18. The District Inspector of Schools, Azamgarh vide order dated 29.12.2007 found that there were only 14 sanctioned posts against claimed 25 posts, whereon petitioners of first set, i.e., Ram Narain Ram and others, found to be in service on inspection and accordingly a direction was passed that their salary be paid from State Exchequer. However, within a very few months, i.e., about five months, on 08.05.2008 said order was reviewed and second set of petitioners, i.e., Palakdhari Ram and others, were found to be in service without taking note that they were terminated way back in the year 2004. Therefore, there was no reason to review the earlier order and this Court has rightly stayed operation of impugned order dated 08.05.2008 and under the strength of interim order petitioners of

first set, i.e., Ram Narain Ram and others, were allowed to work. It is also very strange that only on telephonic instruction given by a higher officer, the earlier order was reviewed without disclosing any reason whatsoever. No reason was assigned why inspection report was not followed. Even said petitioners were not put on prior notice.

19. In aforesaid circumstances, the judgment placed by learned Senior Advocate appearing for first set of petitioners, i.e., Ram Narain Ram and others, in **Radhey Shyam Yadav and others (supra)** would be relevant that such long appointment even if irregular be protected, though facts do not very specifically disclose that their appointments were irregular and otherwise also they worked against the sanctioned post only (14 in number).

20. Accordingly, **Writ-A Nos. 26967 of 2008, 34523 of 2008 and 16753 of 2024 filed by first set of petitioners, i.e., Ram Narain Ram and others, are allowed**, subject to factual verification by District Inspector of Schools, Azamgarh about their regular working in Respondent-College since these writ petitions are pending for last more than 17-18 years. The said writ petitioners have worked under interim orders and during pendency of these writ petitions, there was no reason to State-Respondents to pass orders dated 25.09.2024 and 27.09.2024 to stop their salary, therefore, orders impugned in above writ petitions, i.e., dated 08.05.2008, 25.09.2024 and 27.09.2024 are hereby set aside. However, this order will not be construed as a precedent since it is passed in peculiar facts and circumstances of present case.

21. So far as second set of petitioners, i.e., Palakdhari Ram and others, are concerned, they were terminated in the

year 2004 by different orders on ground of their long absence. No material was produced either in pleadings or during hearing that the said ground was factually incorrect. Rather, it appears that in order to adjust them, number of sanctioned seats were increased from 14 to 25 without any legal basis. Therefore, in absence of any substantial material which could contradict the ground for termination, no interference is called for.

22. Accordingly, Writ-A Nos. 51401 of 2013, 45035 of 2016 and 39263 of 2017 filed by second set of petitioners, i.e., Palakdhari Ram and others, are hereby dismissed.

(2025) 3 ILRA 211

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 03.03.2025

BEFORE

**THE HON'BLE SAURABH SHYAM
SHAMSHERY, J.**

Writ A No. 63857 of 2007

With

Writ A No. 52910 of 2011

**Sanjay Kumar Sengar ...Petitioner
Versus**

State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

H.N. Malhotra, Ajay Bhanot, Gaurav Singh, Kripa Shanker Singh, L.S. Yadav, Pankaj Kumar, Ravindra Mishra

Counsel for the Respondents:

C.S.C., Akhilesh Kumar Singh, G.K. Singh, Hritudhwaj Pratap Sahi, R.K. Ojha, Sankalp Narain, V.K. Singh

A. Service Law – Termination – Principle of natural justice – Appointment on

probation – Allegation of not discharging the duty diligently was made – Chargesheet was submitted to the petitioner, and the same was not denied – Submissions as made earlier on a notice was reiterated – Effect – Held, at this stage principles of natural justice were substantially complied with. (Para 22)

B. Service Law – Termination – Allegation of not discharging the duties as Assistant Teacher, Vyayam diligently and of disturbing the normal working of college was made – The allegation has not been specifically denied on the basis of relevant material and St.ments of witnesses recorded during inquiry – Effect – Held, it is well settled that termination of services of a probationer under the Rules of the Employment or in exercise of Contractual Right is neither *per se* dismissal nor removal – However, if the order visits the employee against his character or integrity, it would be an order by way of punishment irrespective of whether the employee was a mere probationer or temporary – If he was terminated without giving a reasonable opportunity of showing cause against his termination and even in such matters if the principles of natural justice were followed and there was no deficiency of the procedure, the writ Court would not inclined to interfere. (Para 24 and 25)

One writ petition dismissed and another writ petition allowed. (E-1)

List of Cases cited:

1. Shamsheer Singh Vs St. of Pun. (1974) 2 SCC 831

2. Swati Priyadarshini Vs the St. of M.P. & ors., 2024 INSC 620).

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Heard Sri Sanjeev Singh, learned counsel for petitioner; Sri V.K. Singh,

learned Senior Counsel assisted by Sri Samarth Singh, learned counsel for respondents and Sri Akhilesh Kumar Singh, learned counsel appearing for respondent no. 2. Sri V.K. Singh, learned Senior Counsel assisted by Sri Samarth Singh, learned counsel for petitioners in connected Writ Petition, Sri Sanjeev Singh, learned counsel appearing for respondent no. 2 in connected petition and Ms. Shruti Malviya, learned counsel appearing for State-respondent in the connected petition.

2. The petitioner was appointed on the post of Assistant Teacher, *Vyayam* in pursuance of a recruitment process initiated in pursuance of an advertisement and he joined on 04.01.2006 with the respondent-institution (a Minority Institution) on probation of one year i.e. up to 3rd January, 2006, which was further extended for one year i.e. upto 3rd January, 2008, by a resolution of the Committee of Management of School.

3. According to the petitioner, when he was not declared permanent and not paid regular salary, he approached the DIOS, Hathras, who passed strict orders dated 09.05.2007 and 21.05.2007 and directed Institution to pay his salary, which were challenged before this Court in Writ-A No. 24751 of 2007 by the respondent-Committee of Management, which was initially tagged with present writ petition but later on, on basis of statement made by its counsel it was disposed of being rendered infructuous by order dated 28.03.2024. The petitioner was thereafter served with a charge-sheet dated 06.09.2007 making allegations that he has not discharged his duties of Assistant Teacher, *Vyayam* diligently and was indulged in activities, which were determined to the interest of Institution and

despite repeated requests, he had not improved his conduct.

4. The petitioner had submitted a reply to it and denied the charges by a reply dated 17.09.2007. The Institution thereafter submitted a letter dated 20.09.2007 to the petitioner assigning reasons that they were not satisfied with his reply and all allegations were reiterated.

5. The Manager of the Institution submitted a charge sheet dated 08.10.2007 mentioning eight charges. For reference the same are reproduced hereinafter:-

"1. आपके द्वारा संस्था में विगत वर्ष 2006-07 के माह जनवरी, 2007 से सत्र 2007-08 के अगस्त माह तक कोई खेल-कूद नहीं कराया गया। प्रबन्धक महोदय द्वारा दि० 01.08.2007 की अध्यापकों के साथ की गई मीटिंग में भी आपको बताया गया कि बार-बार कहने पर भी संस्था में खेल-कूद के स्तर में कोई सुधार नहीं हुआ है। इस गम्भीर व सोचनीय स्थिति के लिए आप जिम्मेदार हैं जिसके लिए आप जान बूझकर गम्भीर कर्तव्य की उपेक्षा के दोषी हैं।

2. आप नैतिक तथा खेलकूद, पी०टी०/स्काउट के घंटों में जान बूझकर नहीं जाते हैं या विलम्ब से पहुँचते हैं। जिससे इन विषयों का शिक्षण प्रभावित हो रहा है। अतः आप अपनी शिक्षा कार्य कलाप ठीक से निर्वाह न करने के दोषी हैं।

3. आप विगत सत्र 2006-07 में कक्षा 9 कृषि (प्रथम) के कक्षाध्यापक थे। कार्यालय द्वारा प्रधानाचार्य जी को अवगत कराया गया कि आपने कक्षा के कक्षा रजिस्टर को कार्यालय में जमा नहीं किया है। जिससे कार्यालय का कार्य बाधित है। संस्था अभिलेख का कार्यालय में जमा नहीं करना घोर अपराध है। ऐसा मालूम पड़ता है कि आपने किसी कमी को छिपाने हेतु इस कक्षा रजिस्टर को जानबूझ कर गुम या नष्ट किया है। अतः आप कॉलेज रिकार्ड को जानबूझकर गुम या नष्ट करने के दोषी हैं।

4. आप संस्था विरोधी कार्यों में संलिप्त हैं। संस्था एवं संस्थाध्यक्षों को बदनाम करने में अवांछनीय एवं विरोधी तत्वों से मिलकर अनेक प्रकार की विरोधी गतिविधियों में संलिप्त हैं जिससे आपकी कर्तव्य निष्ठता एवं विश्वसनीयता संस्था के प्रति संदिग्ध है। अतः आप घोर कुराचरण के दोषी हैं।

5. आपको मौखिक रूप से अनेक बार समझाया जा चुका है कि अपने स्तर से कोई ऐसा कार्य नहीं करें जो

अनुशासनहीनता की श्रेणी में आता हो परन्तु फिर भी आप अपने स्तर से कोई सुधारात्मक रूख अगल में नहीं ला रहे हैं तथा अपने साथी कर्मचारी/शिक्षकों को गुमराह करते रहते हैं जिससे संस्था का शैक्षणिक विकास बाधित हो रहा है, आपका यह कृत्य अनुशासनहीनता की श्रेणी में आता है। अतः आप घोर अनधीनता व अनुशासनहीनता के दोषी हैं।

6. प्रबन्ध समिति की खेलकूद उपसमिति ने अपने आकस्मिक निरीक्षण में आपको खेलकूद के समय मैदान पर नहीं पाया गया। विद्यार्थियों से पूछने पर पता चला कि आप अक्सर मैदान पर नहीं आते हैं। अतः आप अपनी ड्यूटी व कर्तव्यों का पालन न करने के दोषी हैं।

7. प्रबन्ध समिति की खेलकूद उपसमिति ने खेलकूद में कोई सुधार नहीं पाया। इसके लिए आप दोषी हैं।

8. प्रबन्धन की संज्ञाय में आया है कि खेलकूद के लिए बाहर गई टीमों को खाने, नाश्ते आदि का जो पैसा विभाग से दिया जाता है वह आपने उन विद्यार्थियों पर पूर्णरूपेण खर्च न कर उसका दुरुपयोग किया है जो बेईमानी व भ्रष्टाचार की परिधि में आता है इसके लिए आप दोषी हैं।"

6. The petitioner replied to the charge-sheet and denied all charges levelled against him. Thereafter, the petitioner was required to appear before the Inquiry Committee. Learned counsel for petitioner submitted that certain objections were filed by the petitioner that relevant documents were not provided still the Inquiry Committee thereafter submitted a report dated 14.11.2007, whereby all the charges were found to be true and proved and the petitioner's work was found unsatisfactory, therefore, it was proposed that probation period be not extended and his services was terminated. The relevant part of the inquiry report is reproduced hereinafter:-

"श्री संजय कुमार सेंगर जांच उपसमिति के समक्ष उपस्थित नहीं हुये व उन्होंने दिनांक 01.11.2007 को पत्र द्वारा जांच उपसमिति के गठन को चेलेन्ज किया व इण्टरमीडिएट अधिनियम धारा 3(35) का उल्लेख किया। जांच उपसमिति ने सभी पहलुओं पर विचार कर पाया कि जांच समिति गठित किये जाने का कोई प्रतिबन्ध नहीं है। श्री सेंगर ने अपने उत्तर में प्रधानाचार्य

व प्रबन्धक पर सीधे दुराग्रह व पूर्वाग्रह का आरोप लगाया है। अतः प्रबन्ध समिति ने निष्पक्ष न्याय को ध्यान में रखते हुये प्रबन्धक व प्रधानाचार्य को अलग रखते हुये जांच उपसमिति का गठन किया जो विधि अनुसार है। अतः श्री सेंगर का इस बारे में दिया गया आवेदन निरस्त किया जाता है।

श्री संजय कुमार सेंगर ने जांच उपसमिति के अध्यक्ष से समय पूर्व प्रातः 11:00 बजे प्रबन्धक कक्ष में प्रबन्धक व श्री अंजय जैन, सदस्य प्रबन्ध समिति की उपस्थिति में मिलकर कहा कि उन्होंने जो आरोप पत्र का उत्तर दिया है एवं जो पत्र दिनांक 01.11.2007 को दिया है, उसके अतिरिक्त उन्हें कुछ नहीं कहना है। परन्तु उन्होंने इस स्थान पर हस्ताक्षर करने से मना कर दिया था। उन्होंने यह भी आरोप लगाया कि उनके सहयोगी जो विभिन्न खेलों की उपसमितियों के प्रभारी हैं, सहयोग नहीं करते हैं। अन्त में वह यह कह कर चले गये कि वह उपसमिति के समक्ष उपस्थित नहीं होंगे। समिति श्री सेंगर द्वारा लगाये गये अक्षेप के सम्बन्ध में श्री भानु प्रताप सिंह व श्री धमेन्द्र पाल सिंह यदुवंशी के बयान लिये और श्री सेंगर के इस आक्षेप को गलत पाया।

समिति ने श्री संजय कुमार सेंगर के आरोपों के उत्तर को साक्ष्य के अभाव में मानने योग्य नहीं पाया, अतः समिति ने बिन्दुवार जांच करने का निश्चय किया।

समिति ने भी राजवीर सिंह के बयान व कक्षाओं में सीधे विद्यार्थियों से पूछताछ करने पर पाया कि वह नैतिक शिक्षा व खेलकूद पी०टी० व स्काउट के घंटे में नहीं जाते या विलम्ब से पहुंचते हैं। उन्होंने नैतिक शिक्षा व खेलकूद का प्रश्न पत्र बनाने से भी साफ इंकार कर दिया था जिसका साक्ष्य देखने के पश्चात यह निर्णय निकाला कि उन पर लगाया गया आरोप संख्या 2 सत्य है। अतः श्री सेंगर जानबूझकर कर्तव्य की उपेक्षा अनधीनता व अनुशासनहीनता के दोषी है।

कालेज के मुख्य लिपिक श्री विनोद कुमार जैन के बयान व तथ्यों की जानकारी करने पर कोई विपरीत साक्ष्य न होने के कारण समिति ने आरोप संख्या-3 को सच माना है। जिसके आधार पर श्री संजय कुमार सेंगर कालेज रिकार्ड को जानबूझ कर गुम करने व नष्ट करने के दोषी पाये गये।

समिति के सामने जो विभिन्न प्रकार के साक्ष्य उपलब्ध हुये जिसमें Local Intelligence Unit की रिपोर्ट भी शामिल हैं जिसमें की सेंगर का नाम उल्लिखित है, के आधार पर इस बात की पुष्टि होती है कि श्री सेंगर की कर्तव्य निष्ठा एवं विश्वसनीयता संस्था के प्रति नहीं है। अतः श्री सेंगर घोर दुराचरण के दोषी हैं और उन पर लगाया गया आरोप संख्या 4 सत्य है।

आरोप संख्या 1 व 5 के सम्बन्ध में प्रधानाचार्य का ध्यान खेलकूद उपसमिति की रिपोर्ट के आधार पर यह निष्कर्ष निकलता है कि श्री सेंगर को सुधार हेतु एक वर्ष का जो परिवीक्षण का समय बढ़ाया गया, उसके बावजूद भी खेलकूद की गतिविधियों

में कोई सुधार नहीं हुआ। श्री सेंगर को समय समय पर आगाह भी किया गया पर उन पर इसका कोई असर नहीं हुआ। यह भी संज्ञान में आया है कि श्री सेंगर खेलकूद के मैदान में अधिकतर बाहरी व्यक्तियों को खिलाकर यह दिखाना चाहते हैं कि खेलकूद में सुधार हुआ है और प्रबन्धन को गुमराह करने का प्रयास कर रहे हैं। मैनुपुरी के लिये चयनित विद्यार्थियों के शिकायत पत्र की जांच के बाद पाया गया कि श्री सेंगर चयनित विद्यार्थियों को छोड़ गये व उनकी जगह बाहरी लोगों को ले गये जो निहायत ही गलत कार्य है। अगर आयोजकों के संज्ञान में यह बात आ जाती तो विद्यालय की बदनामी होती व उसका नाम काली सूची में डाल दिया जाता। इस प्रकार श्री सेंगर जानबूझ कर गम्भीर कर्तव्य की उपेक्षा, प्रबन्धन को गुमराह करने और घोर अनुशासनहीनता के दोषी है।

आरोप संख्या 6 व 7 के बारे में श्री सेंगर का उत्तर कि संदर्भित खेलकूद उपसमिति का उन्हें कोई ज्ञान नहीं है- झूठा है। श्री सेंगर खेलकूद उपसमिति के सदस्यों से मिलते रहे हैं व उन्होंने उन्हे पत्र भी लिखे हैं इसके बावजूद उनका यह कहना झूठ का आधार लेकर तथ्यों को छिपाने का प्रयास है। प्रबन्ध समिति की खेल कूद उपसमिति ने अपनी आकस्मिक निरीक्षण की रिपोर्ट व मैदान पर विद्यार्थियों से पूछने पर पाया कि श्री सेंगर मैदान पर अधिकांश नहीं आते है। यह तथ्य पूर्ण रूप से सत्य पाया गया। विद्यालय व विद्यार्थियों के हित में प्रबन्ध समिति का कोई भी सदस्य कालेज की गतिविधियों का आकस्मिक निरीक्षण कर सकता है। यदि श्री सेंगर अपनी ड्यूटी ठीक से करते तो उन्हें इस प्रकार के निरीक्षण पर क्यों ऐतराज होता। अतः समिति ने श्री सेंगर को कर्तव्यों का पालन न करने का दोषा पाया व उस पर लगाये गये यह आरोप सं० 6 व 7 सत्य पाये गये।

आरोप संख्या-8 के सम्बन्ध में यह संज्ञान में आया कि श्री सेंगर जो बाहरी लोगों को कालेज में मैनुपुरी खिलाने ले गये उनका टी०ए०/ डी०ए० का बिल उन्होंने पूर्ण पैसा प्राप्त करने हेतु प्रेषित किया। जब उस पर यह आपत्ति लगाई गई तो उन्होंने उसे काट कर ठीक किया। यह दस्तावेज रिकार्ड पर उपलब्ध है। इस प्रकार उन्होंने सरकारी पैसे का गलत तथ्यों के आधार पर निकाल कर अपने स्वार्थ के लिये उपयोग करने का प्रयास किया।

इसी आधार पर यह भी माना जा सकता है कि पूर्व में भी उन्होंने इस प्रकार का कृत्य किया होगा। अतः श्री सेंगर धोखाधड़ी से सरकारी पैसा निकालने व उसका दुरुपयोग करने के प्रयास के दोषी हैं जो बेईमानी व भ्रष्टाचार की परिधि में आता है।

समीक्षा :

उक्त सभी आरोपों को दृष्टिगत रखते हुये सर्व सहमति से समिति ने यह पाया कि श्री संजय कुमार सेंगर व्यायाम शिक्षक पर लगाये गये सभी आरोप सत्य सिद्ध होते हैं जिसके आधार पर वह कर्तव्य की उपेक्षा, अनधीनता, घोर अनुशासनहीनता, घोर दुराचरण प्रबन्धन को गुमराह करने, अपने कर्तव्यों का पालन न करने, बेईमानी

व भ्रष्टाचार के दोषी हैं। वह व्यायाम अध्यापन के कार्य में भी सक्षम नहीं पाये गये। एक वर्ष का परिवीक्षण कार्यकाल भी बढ़ाये जाने के बाद भी खेलकूद के उन्नयन में कामयाब नहीं हुये।

निष्कर्ष

श्री संजय कुमार सेंगर स्थाई अध्यापक नहीं है और उनका परिवीक्षण कार्यकाल जनवरी 2008 के प्रथम सप्ताह में समाप्त हो रहा है। श्री सेंगर पर लगाये गये आरोपों की पुष्टि व उनके असन्तोषजनक कार्य को देखते हुये यह उप समिति सर्व सहमति से विद्यालय और विद्यार्थियों के हितों को ध्यान में रखते हुये संस्तुति करती है कि श्री संजय कुमार सेंगर का स्थाईकरण न किया जाये जिसके फलस्वरूप परिवीक्षण काल समाप्ति होने पर उनकी सेवायें स्वतः ही समाप्त हो जायेंगी।

उपर्युक्त रिपोर्ट प्रबन्धसमिति को विचार हेतु प्रेषित"

(emphasis supplied)

7. The Manager of Committee of Management of college thereafter issued a show cause notice dated 20.11.2007 along with a copy of the inquiry report and fixed a date for consideration of the report and reply.

8. In the aforesaid circumstances, the impugned order dated 26.11.2007 was passed whereby petitioner's services were directed to be terminated with effect from 03.01.2008. The impugned order dated 26.11.2007 is mentioned hereinafter:-

“संस्था की प्रबंध कारिणी समिति की बैठक संस्था में दिनांक 25-11-2007 को हुई। बैठक में अधोहस्ताक्षरकर्ता द्वारा आपको प्रेषित अनुशासनहीनता आदि सम्बन्धी आरोप पत्र दिनांक 8-10-2007 से संबंधित जांच आप समिति द्वारा प्रस्तुत जांच रिपोर्ट सभा के समक्ष रखी गई। जांच उपसमिति ने अपनी जांच में सभी आपसे संबंधित अनुशासनहीनता सम्बन्धी सभी आरोपों को साक्ष्यों एवं गवाही के आधारों पर पूर्णरूप से सही पाया और आपको संस्थाहित में स्थाई नहीं करने की संस्तुति की है। अतः सभा में उपस्थिति श्री सदस्यों ने जांच में सही पाये गये आरोपों उपजांच समिति की संस्तुति पर गम्भीरता से विचार किया और सब सम्पत्ति से एक प्रस्ताव पारित किया कि संस्था की गरिमा एवं स्थाहित में श्री संजय कुमार सेंगर सहायक अध्यापक व्यायाम शिक्षक को सं०अ० पद पर स्थाई नहीं किया जाय और उनकी सेवाओं को समाप्त कर दिया जाय और सेवा समाप्ति की नोटिस की संजय कुमार सेंगर सहायक अध्यापक को भेज दिया जाय और संबंधित विभागीय

अधिकारियों को इस वस्तु स्थिति से अवगत करा दिया जायं जांच उपसमिति ने अपने पत्र दिनांक 26-10-2007 को आपको दिनांक 1-11-2007 को उपसमिति के समक्ष अपना पक्ष प्रस्तुत करने को बुलाया तो आप स्वयं उपस्थित हुए और कहा कि मैंने जो पत्र आज दिनांक 1-11-2007 को दिया है उसके अतिरिक्त मुझे इस सम्बन्ध में कुछ नहीं कहना है और इस व्यान पर हस्ताक्षर करने से मना कर दिया और उठकर चले गये जांच उप समिति ने आपको उत्तर को साक्ष्य के अभाव में मानने योग्य नहीं पाया है। और जांच उप समिति के गठन को उचित ठहराया है।

जांच उपसमिति ने समय सारिणी व्यवस्थापक एवं सीधे संबंधित कक्षाओं विद्यार्थियों से पूछताछ करने पर पाया कि आप नैतिक एवं शारीरिक खेलकूद शिक्षा के अनिवार्य विषय व पी टी तथा स्काउट के घण्टों में पढ़ाने नहीं जाते है या विलम्ब से पहुंचते है। अपने नैतिक एवं शारीरिक खेलकूद शिक्षा अनिवार्य विजय के प्रश्न के प्रश्न पत्र बनाने से स्पष्ट मना कर दिया और कहा कि पेरे पास समय नहीं है। इस बात को संस्था के परीक्षा कार्यालय के साक्ष्यों के आधार पर जांच समिति ने सत्य पाया है। आप इसलिए जानबूझकर कर्तव्य की उपेक्षा अधीनता व अनुशासनहीनता के दोषी है अतः आरोप संख्या-2 सत्य है। इस सम्बन्ध में आप आपने कोई स्पष्टीकरण नहीं दिया है।

जांच उपसमिति ने संस्था के मुख्य लिपिक और अन्य तथ्यों की जानकारी पर आरोप संख्या-3 को तथ्य पाया जिसके आधार पर आप कालिज रिकार्ड को जानबूझकर गुम करने अथवा नष्ट करने के दोषी पाये गये है इस सम्बन्ध में आपने कोई स्पष्टीकरण साक्ष्य प्रस्तुत नहीं किया है। उपसमिति के सामने जो विभिन्न साक्ष्य उपलब्ध कराये गये जिनमें स्थानीय जांच यूनिट की रिपोर्ट समिति है जिसमें आपका नाम शिकायत करता के रूप में उल्लेखित है के आधार पर इस बात का पुष्टि होती है कि बाद को कर्तव्य निष्ठता एवं विश्वसनीयता संस्था के प्रति संदिग्ध कारण नहीं है आप पर लगाया गया आरोप संख्या-4 सत्य है। आप द्वारा खेलकूद गतिविधियों में कोई अभिक्षति नहीं ली जाती है खेलकूद उप समिति एवं संस्था के प्रधानाचार्य की रिपोर्टों के आधार पर जांच उप समिति द्वारा जांच में यह पाया गया कि आप खेलकूद मैदान में अनुपस्थित रहते है और बाहरी छात्रों की विठाकर दिखाना चाहते है कि खेल कूद स्तर में सुधार हुआ है। मण्डलीय स्तर पर कबड्डी टीम में बाहरी कार्यों को इस सन 2007-08 में खिलाने जनपद मैनपुरी मे ले गये थे आरोप संख्या 1 व 05 साक्ष्यों के आधार पर सत्य पाये गये है। अतः आप जानबूझकर गम्भीर कर्तव्य की उपेक्षा प्रबंधन को गुमराह करने एवं घोर अनुशासनहीनता के दोषी हैं इस सम्बन्ध में आपका उत्तर सन्तोष जनक नहीं है। आरोप संख्या 06 व 07 के बारे में आपका उत्तर असत्य है झूठ बोलकर आपने सही संस्था को छिपाने का असफल प्रयास किया है। खेलकूद उपसमिति ने अपनी आकस्मिक निरीक्षण तथा विद्यार्थियों से पूछने पर पाया कि आप खेल मैदान पर

अनुपस्थित चाहते है अतः आप कर्तव्यों के पालन नहीं करने के दोषी है और आरोप संख्या 06 व 07 सत्य है इस सम्बन्ध में आपके स्तर से कोई साक्ष्य या गवाही प्रस्तुत नहीं की गई है। जांच समिति ने अपनी जांच में पाया कि बाहरी लोगों को खिलाने कबड्डी की टीम मैनपुरी ले गये तो उनका टी ए एवं डी ए का बिल पूरा पैसा प्राप्त करने के लिए प्रस्तुत किया। जब संस्थागत छात्रों ने विरोध किया तो अपने विल को संशोधित कर पेश किया वह संशोधित दस्तावेज रिकार्ड पर उपलब्ध है आपने इसी स्वीकार किया तथा भूल वश करने का बयान दिया अतः आरोप संख्या 08 सत्य पाया गया है। आप संस्था से पैसा निकालने व उनका स्वयं के लिए दुरुपयोग करने के प्रयास के दोषी है जो बेईमानी व भ्रष्टाचार की परिधि में आता है। इस प्रकार आप अपने विरुद्ध बने आरोपो के सापेक्ष कोई गवाही एवं साक्ष्य प्रस्तुत करने में असमर्थ रहे है और आरोपों के सम्बन्ध में प्राप्त उत्तर एवं स्पष्टीकरण सन्तोष नहीं है। जबकि आपको गवाही एवं साक्ष्य प्रस्तुत करने में अधोहस्ताक्षरी ने अनेक अवसर प्रदान किये है। ऐसी परिस्थिति में आपको संस्था में सेवा में रखना न्याय संगत नहीं होगा।

अतः आपकी सहायक अध्यापक व्यायाम शिक्ष पद पर सेवाएँ दिनांक 03.01.2009 के बाद स्वतः समाप्त हो जावेगी।”

9. Aforesaid order was impugned in present writ petition. A fresh advertisement to fill up the post of Assistant Teacher, *Vyayam* was also under challenged by way of an amendment.

10. It is not under dispute that in pursuance of said fresh recruitment process, one Waliuzzaman Khan was appointed and when his salary was not paid by subsequent order dated 29.06.2009, he along with Committee of Management had filed a writ petition being Writ-A No. 52910 of 2011 (C/M K.L. Jain Inter College Sasni Mahamaya Nagar & Anr. vs. State of U.P. & Ors.), which was also heard alongwith this writ petition.

11. Mr. Sanjeev Singh, learned counsel for petitioner (Sanjay Kumar Sengar) has submitted that in the disciplinary proceedings, Principles of Natural Justice were not followed and no

opportunity was granted to the petitioner to place his case before the Appointing Authority. Learned counsel further submitted that impugned order was passed only on basis of inquiry report without considering his reply and that all the allegations were false. The inquiry was not conducted in pursuance of relevant provisions.

12. Learned counsel has further stated that the petitioner ought to have declared permanent after probation period of one year was completed. However, it was extended for further period of one year without any legal backup or provisions. The order of termination being a stigmatic order, therefore, his stand has to be considered before the impugned termination order was passed. However, no such opportunity was granted.

13. Learned counsel also submitted that by conducting a fresh recruitment, despite present matter was seized with this Court has created a position that even in an event this writ petition would allowed, petitioner probably may not get any benefit.

14. Per contra, learned Senior Counsel appearing for the Committee of Management has supported the impugned order and submitted that petitioner was under probation and upon inquiry, his conduct was not found satisfactory as he was indulged in illegal activities and has not discharged his duties as Assistant Teacher, *Vyayam* diligently, therefore, his probation was not extended and, accordingly, his services was terminated by complying with due process including the principle of natural justice.

15. Learned Senior Counsel appearing for newly selected candidate also

submitted that fresh recruitment process, to fill up a post of Assistant Teacher, *Vyayam*, was in regard to the other post and which would not give any adverse effect on the claim of the petitioner.

16. Learned Senior Counsel for the petitioner in the connected writ petition being Writ-A No. 52910 of 2011 (C/M K.L. Jain Inter College Sasni Mahamaya Nagar & Anr. vs. State of U.P. & Ors.) submits that the separate recruitment process was initiated to fill up post of Assistant Teacher, *Vyayam* and since the posts were not created subject wise, therefore, there was no illegality to initiate process to fill up a post of Assistant Teacher, *Vyayam* and after due process the petitioner No. 2 in said writ petition was appointed and when his salary was stopped from the State Exchequer, he had approached this Court by way of above referred petition wherein by an interim order dated 28.05.2013, the impugned order therein was stayed and accordingly petitioner no. 2 is still working and being paid regular salary. There is no allegation that selection process was de hors of relevant provisions.

17. Learned counsel for the State has made an objection to the maintainability of the said writ petition and has submitted that it has been filed by both i.e. Committee of Management and the selected candidate, whereas the writ petition is accompanied by an affidavit of selected candidate, who has no concern with the Committee of Management.

18. Sri V.K. Singh, Senior Advocate assisted by Sri Samarth Singh, learned counsel appearing on behalf of petitioners in referred writ petition submitted that this writ petition may be

considered to be filed by the petitioner no. 2 only as he was the affected party.

19. Heard the counsel for parties and perused the record. Petitioner, Sanjay Kumar Sengar, was appointed as Assistant Teacher, *Vyayam* on 02.01.2006 on probation for a period of one year, which was extended for further one year. Though during probation period if the services of a selected candidate was not satisfactory his probation may not be extended, still since it appears there were certain allegations, therefore a department proceeding was initiated. There is no much legal force in arguments of the counsel for petitioner that he ought to have been considered to be permanent after completion of probation of one year. It is also not under dispute that after completion of satisfactory service during the probation, an employee can be given permanent appointment.

20. The allegations against the petitioner are mainly of not discharging his duties as Assistant Teacher, *Vyayam* diligently as well as the standard of games were not improved during his service of two years of probation.

21. Learned counsel for the petitioner has not brought on any substantial material that standard of sports was improved during his tenure of two years of probation. An appointment of probationary can be set aside without even conducting an inquiry if his services were found unsatisfactory. However, as observed above it appears that since there were certain allegations against the petitioner. Therefore, a charge sheet was issued and thereafter an inquiry was also conducted.

22. In order to consider whether principles of natural justice were followed

or not, the Court has looked into the inquiry report. There is no denial that a charge sheet was submitted to which the petitioner and he has reiterated his earlier submissions submitted on a notice issued by the Manager of Committee of Management of concerned college and thereafter an inquiry report was submitted. Therefore, at this stage principles of natural justice were substantially complied with.

23. On basis of the inquiry report, a show cause notice was issued by the Appointing Authority. At this stage, the petitioner has claimed that copy of the show cause notice was not served upon him. Therefore, he was not able to file any reply. It has also been argued that the Committee of Management has also not granted substantial opportunity and it was an ex parte report. The only consideration left is whether the show cause notice was served or not and any reply for consideration was filed or not and if filed whether it was considered. In this regard, the reply of the Committee of Management in the counter affidavit would be relevant and for reference its contents of para 17 are reproduced hereinafter:-

"17. That the contents of paragraph no.17 of the Affidavit filed in support of the amendment application by adding paragraph no. 38 in the writ petition are wrong, hence, denied. In reply thereto it is further submitted that the Committee of Management has sent a letter dated 20.11.2007 to the petitioner intimating therein that meeting will be held on 25.11.2007 to consider enquiry report, therefore, it is directed to the petitioner be present on that date. For kind perusal of this Hon'ble Court, Photostat Copy of the letter dated 20.11.2007 sent by the Manager of the Committee of Management

of the College to the Petitioner is being filed herewith and marked as Annexure CA 3 to this Affidavit.

It is further relevant to mention that by this letter the Petitioner was also informed that if any reply or objection against the enquiry report if he wants to produce then he can submit the same on that date. Further in pursuance of the letter dated 20.11.2007 a meeting was held on 25.11.2007 and the Petitioner himself was present in that meeting and he has also put his signature on the presence sheet. For kind perusal of this Hon'ble Court, Ture/Photostat Copy of the presence sheet dated 25.11.2007 is being filed herewith and marked as Annexure CA-4 to this Affidavit."

(emphasis supplied)

24. As referred above, the petitioner was under probation, therefore, if his work was not satisfactory, the Committee of Management can pass an order not to extend his probation. The allegation against the petitioner mainly was that he was not discharging his duties as Assistant Teacher, *Vyayam* diligently and he was disturbing the normal working of college. It has been stated that instead of encouraging students of college concerned, he took other students for a competition of *Kabaddi*. The said allegation has not been specifically denied on the basis of relevant material and statements of witnesses recorded during inquiry including statments.

25. As referred above, principles of natural justice were substantially complied with. It is well settled that termination of services of a probationer under the Rules of the Employment or in exercise of Contractual Right is neither *per se* dismissal nor removal. However, if the

order visits the employee against his character or integrity, it would be an order by way of punishment irrespective of whether the employee was a mere probationer or temporary. If he was terminated without giving a reasonable opportunity of showing cause against his termination and even in such matters if the principles of natural justice were followed and there was no deficiency of the procedure, the writ Court would not inclined to interfere.

26. In the aforesaid circumstances, it is now safe to observe that since during inquiry principles of natural justice were followed and his reply was considered by the inquiry committee and inquiry report was submitted thereafter as well as show cause notice was also served upon the petitioner by the Manager of Committee of Management and he also approved, no irregularity was committed. The contents of the counter affidavit and annexure annexed therewith would be sufficient to show that the petitioner has appeared in pursuance of the show cause notice and has put signature in the meeting dated 25.11.2007. Therefore, the submission of counsel for petitioner that at stage of show cause notice, principles of natural justice were not followed would be contrary to record.

27. In above referred circumstances and taking note of allegations, which are substantive that the petitioner was not discharging his duties diligently and standard of games were neither improved nor students of college were encouraged to participate in competition, the Court is of view that impugned order whereby probation period was not extended and service was terminated does not require any interference. The impugned order dated 26.11.2007 therefore is upheld.

28. The Court also takes note of a judgment passed by Supreme Court in **Shamsher Singh vs. State of Punjab (1974) 2 SCC 831** that since principle of natural justice was substantially complied with and the petitioner was not able to explain his mis-conduct and that his services was not satisfactory, the law proposed in **Shamsher Sing (supra)** was also complied with that, even order of termination may be punitive, however since proper opportunity of hearing was granted, therefore, no ground exists for interference. (also see **Swati Priyadarshini vs. the State of Madhya Pradesh & Ors., 2024 INSC 620**).

29. So far as the writ petition being Writ-A No. 52910 of 2011 is concerned. In the said petition, an interim order was already passed in favour of selected candidate i.e. petitioner no. 2 therein and that there is merits in the arguments of learned counsel for the said petitioner that the posts are not subject wise and that there are teachers for other subjects, as such there was no bar to appoint another Teacher for *Vyayam*. Therefore, there was no illegality in the appointment of petitioner no. 2 in the said petition. Therefore, the interim order is made absolute.

30. With aforesaid observations, writ petition i.e. Writ-A No. 63857 of 2007 (Sanjay Kumar Sengar vs. State of U.P. & Ors.) is **dismissed** and connected writ petition i.e. Writ-A No. 52910 of 2011 (C/M K.L. Jain Inter College Sasni Mahamaya Nagar & Anr. vs. State of U.P. & Ors.) is **allowed**. The impugned order dated 29.06.2010 passed by Joint Director of Education, Aligarh Region Aligarh is hereby quashed.

(2025) 3 ILRA 219

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 19.03.2025

BEFORE

THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE JASPREET SINGH, J.

Writ B No. 1261 of 2024

Smt. Sushila Srivastava ...Petitioner
Versus
Board of Revenue U.P. & Ors.
...Respondents

Counsel for the Petitioner:

Akhilesh Kumar Pandey, Swadha Gupta

Counsel for the Respondents:

C.S.C., Lakkhi Chand Tyagi, Mohan Singh,
Shiv Shanker Tyagi

A. Civil Law -Constitution of India,1950-Article 226-U.P. Revenue Code,2006-Sections 210 & 212-Maintainability of revision-Transfer of revenue case-Concurrent jurisdiction-The petitioner challenged an order dated 05.09.2024 passed by the Board of Revenue, which had allowed a revision filed u/s 210 of U.P. Revenue Code,2006, against a transfer order u/s 212(2) of the same code-Learned single Judge referred the matter to a Larger Bench-The Division Bench held that a revision petition is maintainable against such order as section 210 provides revisional jurisdiction over proceedings where no appeal lies, and an order u/s 212(2) is not appealable under the code-The bench further clarified that the earlier view taken in Sharda Singh Case which held that no revisional jurisdiction existed over such transfer orders, does not lay down the correct law-The reference was answered accordingly, affirming the maintainability of revision in such cases. (Para 1 to 21)

The writ petition is allowed. (E-6)

List of Cases cited:

1. Sharda Singh & ors. Vs St. of U.P. & ors.(2019) 142RD 190.

2. Babu Singh & ors. Vs Raj Bahadur Singh & ors.{T.A. (Civil) No. 121 of 2021}

(Delivered by Hon'ble Arun Bhansali, C.J.
&
Hon'ble Jaspreet Singh, J.)

1. On a reference made by learned Single Judge vide order dated 19.12.2024 to a larger Bench, for consideration of the following question, the matter has been placed before us :

"Whether any revision under Section 210 of the Revenue Code, 2006 would be maintainable against an order passed transferring any case or proceedings in exercise of power under Section 212 of the Revenue Code 2006 particularly taking into account Section 209 read with Section 210 of the Code of 2006 ?"

2. Writ petition was filed challenging order dated 05.09.2024 passed in revision petition filed under Section 210 of the U.P. Revenue Code, 2006 ('Code, 2006') whereby revision preferred by the respondent no. 3 against an order permitting transfer of case in exercise of powers under Section 212 of the Code, 2006 has been allowed.

3. Before the learned Single Judge, a plea was raised that the revision was not maintainable, which plea was raised before the Board of Revenue, however, the same was not considered and reliance in this regard was placed on judgement in **Sharda Singh and others v. State of U.P. and others : 2019(142) RD 190.**

4. Learned Single Judge, was of the opinion that judgement in the case of

Sharda Singh (Supra) had not taken into account the provisions of Section 209 and 210 of the Code, 2006 and that prima-facie revisional power against an order passed by sub-ordinate revenue court or authority even under Section 212 of the Code, 2006, would be exercisable under Section 210 of the Code, 2006 and consequently, referred the issue to the larger Bench.

5. Learned counsel for the petitioner, at the outset, made submissions that he was unaware of the Division Bench judgement in **Babu Singh & others v. Raj Bahadur Singh and others** [Transfer Application (Civil) No. 121 of 2021] decided on 10.11.202.

6. The Division Bench while answering a similar nature reference in relation to exercise of revisional power under Section 115 CPC against order of the District Judge in relation to order passed under Section 24 CPC, which deals with general powers of transfer and withdrawal, came to the conclusion that such revision petition was maintainable.

7. Learned counsel for the respondents also relied on the decision in **Babu Singh (Supra).**

8. We have considered the submissions made by counsel for the parties and perused the material available on record.

9. It would be appropriate to quote provisions of Section 209, 210 and 212 of the Code, 2006, which read as under :

"209. Bar against certain appeals
-- Notwithstanding anything contained in Sections 207 and 208, no appeal shall lie against any order or decree –

(a) made under Chapter XI of this Code;

(b) granting or rejecting an application for condonation of delay under Section 5 of Limitation Act, 1963;

(c) rejecting an application for revision;

(d) granting or rejecting an application for stay;

(e) remanding the case to any subordinate Court;

(f) where such order or decree is of an interim nature.

(g) passed by Court or officer with the consent of parties; or

(h) where has been passed ex-parte or by default:

Provided that any party aggrieved by order passed ex-parte or by default, may move application for setting aside such order within a period of thirty days from the date of the order;

Provided further that no such order shall be reversed or altered without previously summoning the party in whose favour order has been passed to appear and be heard in support of it.

210. Power to call for the records -- (1) The Board or the Commissioner may call for the record of any suit or proceeding decided by any subordinate Revenue Court in which no appeal lies, for the purpose of satisfying itself or himself as to the legality or propriety of any order passed in such suit or proceeding; and if such subordinate Court appears to have-

(a) exercised a jurisdiction not vested in it by law; or

(b) failed to exercise a jurisdiction so vested; or

(c) acted in the exercise of such jurisdiction illegally or with material irregularity;

the Board, or the Commissioner, as the case may be, may pass such order in the case as it or he thinks fit.

(2) If an application under this section has been moved by any person either to the Board or to the Commissioner, no further application by the same person shall be entertained by the other of them.

Explanation. - For the removal of doubt it is, hereby, declared that when an application under this section has been moved either to the Board or to the Commissioner, the application shall not be permitted to be withdrawn for the purpose of filing the application against the same order to the other of them.

(3) No application under this section shall be entertained after the expiry of a period of sixty days from the date of the order sought to be revised or from the date of commencement of this Code, whichever is later.

212. Power to transfer cases --

(1) Where it appears to the Board that it will be expedient for the ends of justice to do so, it may direct that any case be transferred from one revenue officer to another revenue officer of an equal or superior rank in same district or any other district.

(2) The Commissioner, the Collector or the Sub-Divisional Officer may make over any case or class of cases arising under the provisions of this Code or any other enactment for the time being in force, for decision from his own file to any revenue officer sub-ordinate to him and competent to decide such case or class of cases, or may withdraw any case or class of cases from any such revenue officer and may deal with such case or class of cases himself or refer the same for disposal to any other revenue officer competent to decide such case or class of cases."

10. A perusal of the provisions of Section 212 reveals that power of transfer under sub-section (1) is conferred on the Board of Revenue, which may direct that any case be transferred from one revenue officer to another revenue officer of an equal or superior rank in same district or any other district. Under sub-section (2) the power has been conferred on the Commissioner, the Collector and the Sub Divisional Officer in relation to any case or class of cases for transfer from own file to any revenue officer sub-ordinate to him or withdraw any case or class of cases from any such revenue officer and may deal with such case or class of cases himself or refer the same for disposal to any other revenue officer competent to decide such case or such class of cases.

11. The power of the Board of Revenue and that of the Commissioner/Collector/Sub Divisional Officer are concurrent, wherein the power which can be exercised by the Commissioner, the Collector or the Sub Divisional Officer can also be exercised by the Board of Revenue.

12. The Code, 2006 provides for First Appeal under Section 207 against final order or decree passed in a suit, application or proceedings specified in Column 2 of Third Schedule and the same also lies against an order of nature specified in Section 47, 104 and Order XLIII Rule 1 CPC.

13. Order passed under Section 212 is not specified in Column 2 of the Third Schedule of the Code and as such, the same is not appellable. Section 209 of the Code, 2006 bars filing of appeals against certain orders.

14. Section 210 of the Code, 2006 confers revisional powers on the Board or

the Commissioner in relation to any order passed in any suit or proceeding by any sub-ordinate revenue court in case no appeal lies.

15. A combined reading of the above provisions reveals that against an order passed under Section 212(2) of the Code, 2006, a revision would lie before the Board of Revenue.

16. A Co-ordinate Bench of this Court in **Babu Singh (Supra)**, after scanning the entire law on the subject, came to the following conclusions :

"43. In view of what we have held above, our answers to the questions referred are these:

(i) The question is answered in the affirmative and it is held that an order passed by the District Judge under Section 24 CPC is revisable under Section 115 CPC as applicable in the State of U.P.

(ii) The question stands answered in the negative and it is held that another application under Section 24 CPC by the same applicant based on the same cause of action would not be maintainable before this Court without challenging the order passed by the District Judge, on the application disposed of by the District Judge under Section 24 CPC through a revision under Section 115 CPC. Normally, the order of the District Judge passed on an application under Section 24 CPC being revisable, the constitutional remedy under Article 227, though not barred, may not be invoked on the sound principle of the availability of an equally efficacious statutory alternative remedy under Section 115 CPC."

17. So far as the judgement in the case of **Sharda Singh (Supra)** is

concerned, the issue in the said case arose on account of the plea raised that when the transfer application was filed before the Board of Revenue, it was not disclosed that earlier transfer application was filed before the Collector, Kashganj, which was dismissed, on which submission, the learned Single Judge came to the conclusion that power of transfer under Section 212 is a concurrent power to be exercised by any of the authorities mentioned in sub-section (2) of Section 212 of the Code, 2006, however, after coming to the said conclusion a further observation, as under, was made :

"None of the authorities exercises either appellate or revisional jurisdiction over an order on a transfer application, which may have been passed by a authority subordinate to it."

18. We are of the opinion that the said observations were made without reference to the relevant provisions, including Section 210 of the Code, 2006 and without discussion on the subject matter.

19. In view of the above discussions, our answer to the question referred to us as under :

I. A revision petition under Section 210 of the Code, 2006 would be maintainable against an order passed/transferring any case or proceedings in exercise of powers under Section 212(2) of the Code, 2006.

II. The observations made in the case of **Sharda Singh (Supra)** in relation to the revisional jurisdiction, do not lay down correct law.

20. The reference is answered accordingly.

21. Let the matter be placed before the appropriate Bench.

(2025) 3 ILRA 223
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 03.03.2025

BEFORE

THE HON'BLE JASPREET SINGH, J.

Writ B No. 4405 of 1985
 Connected with
 Writ B No. 3396 of 1987

Agya Ram

...Petitioner

Versus

Joint Director of Consolidation & Ors.

...Respondents

Counsel for the Petitioner:

Sri S. Mirza, Sri H.S. Sahai, Sri Q.M. Haque, Sri S. Mirza, Sri U.S. Sahai

Counsel for the Respondents:

C.S.C., Bal Keshwar Srivastava, Sri N.R. Tripathi, Sri Pankaj Kumar Srivastava, Pinki Devi, Sri Puttu Lal Mishra, Sri Q.M. Haque, Sri R.K. Tripathi, Sri S.P. Dubey, Sri Shri Prakash Verma, Sri Vinod Kumar Gupta, Sri Z. Jilani

A. Civil Law -U.P. Consolidation of Holdings Act,1953-Section 9(A-2)-Co-tenancy and Succession rights-Adverse possession -Family settlement-Mutation proceedings-The dispute concerned Khata No.s5 and 41 in Village Pipra Ekdanga, District Gonda-Upon commencement of consolidation , names of Agya Ram, Parag, and Smt. Chhitna were recorded with shares-Smt. Yashodhara(daughter of Hardwar) filed objections claiming co-tenancy with her sister Chhitna-Agya Ram and Parag also claimed larger shares based on a compromise deed (1959) and a family settlement, asserting the land was ancestral property from one Matai-The Consolidation Officer held the property

was self-acquired by Hardwar and devolved upon his daughters, Smt. Yashodra and Smt. Chhitna, under section 171 of the U.P.Z.A. & L.R. Act, 1950, granting each 1/3rd share alongside the petitioners-The Settlement Officer on appeal altered this, excluding Agya Ram and Parag entirely and distributing the property equally between Chinta and Yashodhra's heirs-The Deputy Director of consolidation upheld this, rejecting the compromise and family settlement for lack of evidence and held that possession alone does not establish title or adverse possession-The court held that the property was not proved to be ancestral-the compromise of 1959 was unproved and non-binding, especially in mutation proceedings-The plea of adverse possession failed due to contradictory pleadings, lack of evidence, and non-fulfillment of legal requirements-The family settlement was not credible, lacked proper documentation and excluded key parties like Smt. Yashodhara-The writ petitions were devoid of merit and were accordingly dismissed-The orders of the Consolidation authorities were upheld.(Para 1 to 46)

The writ petitions are dismissed. (E-6)

List of Cases cited:

1. Bhagwati Deen Vs Sheetiadin (2022) SCC Online All 349
2. Sohan Lal Vs Distt. D.D.C Hardoi & ors.MANU/UP/4198/2022
3. Kale & ors. Vs DDC & ors.(1976)3 SCC 119
4. Ram Milan Vs Kripa Shanker & ors.MANU/UP/2728/2023
5. Bhoop Singh Vs Ram Singh Major & ors.(1995) 5 SCC 709

(Delivered by Hon'ble Jaspreet Singh, J.)

1. Heard Shri U.S.Sahai, learned counsel for the petitioners, Shri Mohd. Kashif Rafi and Shri Prakash Verma,

learned counsel appearing on behalf of heirs of deceased respondent no.5 and Shri Pankaj Srivastava learned counsel for respondent no.7.

2. This judgement will decide Writ Petition No.4405 of 1985 (Agya Ram and another Vs. Assistant Director Consolidation and others) and connected Writ -B No.3396 of 1987 (Chhotey Lal and another Vs. Assistant Director of Consolidation and others).

3. Since both the writ petitions assail the common order passed by the Settlement Officer of Consolidation and the Deputy Director of Consolidation and involve common facts and questions of law, hence both the petitions have been clubbed and are being decided by this common judgement. Since the petitions are pending since 1985 and 1987 and few of the parties have expired and their legal heirs have been brought on record, however for the sake of convenience, the court shall be referring to the parties as they were originally impleaded before the consolidation courts.

4. The dispute relates to Khata No.5 which is a bhumidhari Khata and Khata No.41 which is a Sirdari Khata, situated in village Pipra Ekdanga, Pargana and Tehsil Utraula, District Gonda.

5. Upon commencement of consolidation operations in the village in question, the names of Agya Ram, Parag and Smt. Chhitna was recorded. Half share was shown of Smt. Chhitna whereas Agya Ram and Parag had 1/4th share therein.

6. Smt. Yashodra filed her objections under Section 9 (A-2) of the U.P. Consolidation of Holdings Act, 1953

(hereinafter referred to as the "*Act of 1953*") claiming co-tenancy right alongwith her sister Smt. Chhitna. The petitioners Agya Ram and Parag also filed their objections stating therein that they together had 2/3rd share in both the Khata Nos.5 and 41 which was incorrectly shown as half share with Chhitna whereas she only had 1/3rd share therein. This was claimed on the basis of a compromise said to have been entered between the parties in mutation proceedings before the court of Tehsildar on 28.2.1959.

7. Another set of objections was filed by Awadh Ram claiming co-tenancy rights but the same was turned down and thereafter he did not pursue his claim any further and for the said reason, the main contest remained between Smt. Chhitna, Smt. Yashodra and Parag and Agya Ram.

8. Before the Consolidation Officer, the case as set up by the petitioners namely Agya Ram and Parag was that the disputed Khatas in question were procured/created by Hardwar and Har Krishan who were real brothers. It was further stated that a family settlement was arrived at between the parties and as a consequence 2/3rd share came in the hands of Parag and Agya Ram together whereas 1/3rd share was that of Smt. Chhitna. It was further stated that since Hardwar was the elder brother, hence his name was recorded and after his death, the name of his wife Smt. Pran Dei was recorded. After the death of Pran Dei, in the mutation proceedings, before the Tehsildar, a settlement/ compromise was arrived at wherein Smt. Chhitna had acknowledge and accepted the share of Parag and Agya Ram together having 2/3rd whereas Smt. Chhitna would have 1/3rd. Thus, it was stated that the entry in the base year Khatauni noticing half share of

Chhitna was incorrect and Smt. Chhitna though had filed her separate objections they were not tenable as Smt. Chhitna in pursuance of the compromise entered before the Tehsildar was estopped from taking a contrary plea nor she could challenge the 2/3rd share of the petitioners.

9. Awadh Ram who had filed his set of objections claimed that the property in question was created by the common ancestor Matai who was survived by his four sons namely Hardwar, Har Krishan, Hardutt and Har Prasad. It was further stated that Hardwar was the eldest and hence his name was duly recorded in representative capacity. However, the family continued to remain joint and as such upon the death of Matai, the rights in the two disputed Khatas came to be devolved on the four sons of Matai and Awadh Ram being the son of Har Prasad who had his co-tenancy rights in the property. It was also stated that Smt. Chhitna, Parag and Agya Ram had fraudulently got their names mutated to the exclusion of Awadh Ram and accordingly the said entries were incorrect.

10. The third set of objections were filed by Smt. Yashodra who is the daughter of Hardwar and she claimed that the property was self created by her father namely Hardwar and after his death, it devolved on Smt. Pran Dei and upon the death of Smt. Pran Dei who at the relevant time was survived by her two daughters namely Chhitna and Yashodra. Accordingly, Smt. Chhitna has no exclusive right to exclude the share of Smt. Yashodra and she had half share in the disputed Khata.

11. Smt. Chhitna while filing her objections had stated that at the time of

death of Smt. Pran Dei, Smt. Yashodra had relinquished her rights and therefore she could not claim any right. Smt. Chhitna also disputed the right of Parag and Agya Ram on the premise that the property in question was created solely by Hardwar and upon the death of Hardwar, the property devolved on Smt. Pran Dei and from Pran Dei, Smt. Chhitna got her exclusive right. Smt. Chhitna also disputed that no such compromise was arrived at in the court of Tehsildar on 28.2.1959 as alleged by Parag and Agya Ram. She also disputed that Har Krishna who was the brother of Hardwar did not have any right in the property and therefore no right could devolved on Parag and Agya Ram, hence Smt. Chhitna must be considered and recorded as the sole tenure holder of both the Khatas in dispute.

12. At this stage, it will be relevant to notice that Smt. Yashodra died during the proceedings and she was represented and her claim was contested by her son Raghu Nandan. Upon the death of Smt. Chhitna, her case was taken forward by her son namely Chhotey Lal whereas Parag and Agya Ram who died during the pendency of the writ petition are represented by the legal heirs of Parag and Agya Ram who are the petitioners.

13. In the light of the aforesaid conflicting claims filed before the Consolidation Officer, who framed eight issues. After permitting the parties to lead evidence, the Consolidation Officer recorded a finding that it could not be proved that the property in question was ever recorded in the name of Matai, the common ancestor. The oldest revenue record which was placed on record by Smt. Chhitna was a copy of Khatauni of 1358 fasli (1951 C.E.) year wherein Khata Nos.5

and 41 were recorded in the name of Hardwar son of Matai. It also held that Awadh Ram could not bring any document on record to indicate that disputed Khatas at any point of time was recorded in the name of Matai, hence in absence thereof, it could not be said that the property was ancestral and it devolved on the four sons of Matai.

14. He further held that Awadh Ram could not indicate that the name of Hardwar was recorded in the representative capacity and with the said findings, the claim of Awadh Ram was turned down.

15. The Consolidation Officer, further went on to hold that since it was clearly proved that the property was self-acquired by Hardwar and upon the death of Hardwar, it devolved on his wife Pran Dei who died sometimes in the year 1959 and thereafter Pran Dei was succeeded by her two daughters namely Smt. Chhitna and Yashodra. It further held that even though in terms of Section 171 of the U.P. Z.A. & L.R. Act, 1950 (hereinafter referred to as "*Act of 1950*") the property would devolve on the two daughters of Hardwar but since a compromise was entered between Chhitna and Agya Ram and Parag and they have been in possession of the disputed plots, but, the fact remains that Yashodra was also the real sister of Chhitna and daughter of Hardwar. Therefore, in absence of any relinquishment at the behest of Smt. Yashodra in accordance with law, she could not be deprived of her share. Therefore, the Consolidation Officer granted 1/3rd share to Smt. Yashodra, 1/3rd to Smt. Chhitna and 1/3rd jointly to Agya Ram and Parag. It also noticed that since Smt. Yashodra had died during the pendency of the proceedings before the Consolidation Officer, hence her share

would be inherited by her son and similarly the share of Smt. Chhitna would be inherited by her sons namely Chhotey Lal and Ram Achebar.

16. This judgement of the Consolidation Officer dated 10.12.1982 came to be challenged before the Settlement Officer, Consolidation. Three appeals came to be filed; one by the legal heirs of Smt. Yashodra ; the other by the legal heirs of Smt. Chhitna and the third by Agya Ram and Parag. The Settlement Officer of Consolidation after hearing the parties, dismissed the appeal of Agya Ram and Parag and further held that since it was not disputed that Smt. Yashodra and Smt. Chhitna were the daughters of Hardwar, hence both would have half share therein which was going to be distributed amongst legal heirs of Smt. Chhitna and Smt. Yashodra. The Settlement Officer of Consolidation went on to consider the shares amongst the legal heirs of Smt. Yashodra and Smt. Chhitna and held that since Chhitna was survived by her two sons namely Ram Achebar and Chhotey Lal they would have 1/4th share therein whereas the other half would be inherited by Raghu Nandan son of Yashodra.

17. The judgement passed by the Settlement Officer of Consolidation dated 13.3.2008 further came to be assailed before the Deputy Director of Consolidation where again three revisions were filed Revision No.724 was filed by Agya Ram and Parag as they were completely ousted as it had been held by the Settlement Officer of Consolidation that they had no right in the disputed Khatas. Revision No.723 was filed by Raghu Nandan (son of Yashodra) wherein he disputed the distribution of shares amongst him and his other cousin brothers (sons of

Chhitna). The third revision came to be filed by the heirs of Chhitna.

18. All the three revisions were clubbed together and decided by a common judgement dated 22.4.1985 passed by Deputy Director of Consolidation, Gonda wherein it held that there could be no compromise which could bind the parties arrived at in mutation proceedings in the year 1959 as all the concerned parties were not parties to the said compromise. It also noticed that the plea taken by Agya Ram and Parag that there was a family settlement also could not be proved in accordance with law as it had already been held concurrently that the property in question was not created by Matai but only by Hardwar. As per the law of succession, the property would devolve only on the legal heirs of Hardwar i.e. his two daughters namely Chhitna and Yashodra. Smt. Chhitna on her own even by compromise or alleged settlement could not create rights in favour of a party who had no right. Any right created in favour of a third party could only be done by an instrument such as a Will, Gift or a Sale but not by a compromise nor as a family settlement. It thus concluded that merely by getting the names recorded, Agya Ram and Parag could not claim right to the property specially when Smt. Chhitna herself disputed the alleged compromise said to have been arrived at in the court of Tehsildar in the year 1959. Also for the reason that the alleged compromise was signed only by Parag and neither Chhitna nor Yashodra or Agya Ram had put their signatures/thumb impressions.

19. The Deputy Director of Consolidation also held that mere possession at the behest of Agya Ram and Parag could not confer any right or title and

the plea of adverse possession as raised by Agya Ram and Parag was not sustainable in law. Accordingly, the revision of Agya Ram and Parag was dismissed.

20. Considering the revision preferred by the legal heirs of Smt. Chhitna and Yashodra, the Deputy Director of Consolidation found that once both Smt. Chhitna and Yashodra had expired but in absence of any date of death, it could not be ascertained that whose share would be succeeded by which of the legal heirs and in what proportion, hence in order to adjudicate the respective shares of the legal heirs of Yashodra and Chhitna, the Deputy Director of Consolidation remanded the matter to the Consolidation Officer with the limited directions vide its judgement dated 22.4.1985.

21. It will further be relevant to notice that insofar as Agya Ram and Parag are concerned, since they were completely non suited and excluded by the Deputy Director of Consolidation as well as Settlement Officer of Consolidation, hence, they preferred Writ Petition No.4405 of 1985. Similarly, the legal heirs of Chhitna also assailed the order of remand passed by the Deputy Director of Consolidation, hence, they filed Writ Petition No.3396 of 1987.

22. It will be relevant to notice here that Raghu Nandan son of Yashodra participated in the proceedings for determination of share in terms of remand order passed by the Deputy Director of Consolidation dated 22.4.1985 and in furtherance thereof, the order was passed by Consolidation Officer and Settlement Officer of Consolidation which came to be assailed in the revision wherein the Deputy Director of Consolidation by means of the

order dated 28.10.2009 had categorically upheld the shares between the heirs of Chhitna and Yashodra and this was further challenged in Writ Petition No.732 (Consolidation) of 2009 which came to be dismissed for non prosecution on 27.10.2014 and the recall application which was moved was also dismissed on 2.8.2019 and to that extent, the inter se claim between the heirs of Chhitna and Smt. Yashodra came to be concluded, finally.

23. In the aforesaid backdrop, the only two writ petitions which survived were Writ Petition Writ -B No.4405 of 1985 and Writ -B No.3396 of 1987.

24. Shri U.S.Sahai, learned counsel appearing for the petitioners in Writ Petition Writ -B No.4405 of 1985 has submitted that the orders passed by the Settlement Officer of Consolidation and Deputy Director of Consolidation are bad in the eyes of law since they do not take note of the law of succession which would govern the rights of the parties in the correct perspective. It has been submitted that the property belonged to Matai and upon his death, it devolved on his four sons. He further urged that upon the death of Hardwar, the property would devolve on his widow Pran Dei and after the death of Smt. Pran Dei, since Chhitna and Yashodra were married daughters, they would not inherit the property rather Agya Ram and Parag being the sons of Har Krishan would be preferential heirs in terms of order of succession as per U.P.Z.A.& L.R.Act, 1950, hence, they would be entitled to succeed to the entire share of Hardwar. He further urged that the Consolidation authorities have misconstrued the factum of the compromise which in effect was a family settlement. Once the property was ancestral and it had devolved on the four

sons of Matai, Agya Ram, Parag, Yashodra, Smt. Chhitna, these were children in the third generation from Matai and they were legally entitled to enter into a family settlement readjusting their shares in the manner as they pleased and it cannot be said that the compromise or the family settlement was bad in the eyes of law.

25. Shri Sahai, learned counsel for the petitioner has further submitted that even otherwise it was not disputed that Agya Ram and Parag were in settled possession of the property in question and their continuous possession was admitted to the contesting parties. Thus, they had already perfected their rights and alternatively they would have the right in the property on the basis of adverse possession as well.

26. Moreover, it is urged that at no point of time, name of Smt. Yashodra was incorporated. Accordingly, she could not have any right and this aspect has not been considered by the Settlement Officer of Consolidation and the Deputy Director of Consolidation who have erroneously excluded and completely deprived the petitioners of their shares in the disputed Khatas. It is thus urged that the impugned orders passed by the Settlement of Consolidation and the Deputy Director of Consolidation are patently illegal and as such deserve to be set aside.

27. Mohd. Kashif Rafi and Shri Prakash Verma, learned counsel who appeared on behalf of the heirs of Chhotey Lal and Ram Achebar (both sons of Smt. Chhitna) and Shri Pankaj Srivastava, learned counsel who appeared on behalf of the heirs of Raghu Nandan (son of Yashodra) supported the judgements passed by the Settlement Officer of

Consolidation and Deputy Director of Consolidation and prayed that the writ petitions be dismissed.

28. It was also contended that the plea of adverse possession as raised by the learned counsel for the petitioners was not sustainable as it was a mutually destructive plea where on the one hand, the petitioners claim rights on the basis of co-tenancy having perfected their rights in terms of a compromise of 1959, hence their claim of co-ownership and adverse possession cannot be sustained, simultaneously. It was further urged that even if the plea of compromise and adverse possession is considered separately, even then the ingredients required to establish the same, were neither fulfilled nor any evidence in this regard was led, hence on the strength of aforesaid plea, the impugned orders cannot be said to be bad.

29. It was also urged that the learned counsel for the petitioners have argued a contradictory plea to what had been pleaded before the Consolidation Courts. It is not permissible for the petitioners to change their stand during the course of arguments whereas their entire case as per the pleadings before the Consolidation Officer and even uptill filing of the writ petition had been that the property was created by the father of Chhitna namely Hardwar and the father of the petitioners namely Har Krishan. Having abandoned the aforesaid plea in absence of any evidence, it was now not open for the petitioners to state that the property was ancestral and moreover there was no material on record to establish the same specially when the Consolidation Officer had already recorded a finding of fact that the property was created by Hardwar alone. It is thus submitted that the submissions

advanced by the learned counsel for the petitioners are not sustainable and as such the writ petitions deserve to be dismissed.

30. Learned counsel Shri Mohd. Kashif Rafi and Shri Prakash Verma appearing for the legal heirs of Chhotey Lal and Ram Achebar (sons of Chhitna) could not dispute the fact that though they had challenged the order passed by the Deputy Director of Consolidation insofar as it remanded the matter for determining the shares *inter se* between the heirs of Chhitna and Yashodra and this has already been decided and the writ petition filed by Raghu Nandan bearing Writ Petition No.732 (Consolidation)/ 2009 impugning the order of determination of shares in pursuance of the remand order had attained finality, hence the said Writ -B No.3396 (Consolidation) of 1987 also does not survive on its own except in case if the writ -B No.4405 (Consolidation) of 1985 is allowed.

31. Shri Pankaj Srivastava, learned counsel also did not dispute the fact that as far as the heirs of Raghu Nandan are concerned (sons of Yashodra), their rights have already been decided in terms of the remand order dated 22.4.1985 passed by the Deputy Director of Consolidation and his challenge to the same, has also attained finality on dismissal of his Writ Petition bearing No.732 of 2009.

32. In the light of the aforesaid factual matrix practically it is only the Writ Petition No.4405 of 1985 which survive for consideration and unless the same is allowed, it will not impact the rights of the heirs of Chhitna and Yashodra.

33. In this view of the matter, the Court considers it proper to deal with the

submissions of Shri U.S. Sahai in Writ -B No.4405 of 1985.

34. To recapitulate the primary three submissions made by Shri U.S.Sahai, are :-

(i). The property was ancestral and emanated from

Matai. Accordingly, upon the death of Matai, the property would devolve on his legal heirs i.e. the four sons namely Hardwar, Har Kishan, Har Dutt and Har Prasad.

(ii). Shri Sahai also submits that Agya Ram and Parag perfected their rights by adverse possession.

(iii). The petitioners had right in the property on the basis of family settlement/ the compromise arrived at in the court of Tehsildar in the year 1959.

35. This court deems appropriate to first take up the plea of adverse possession as raised by the learned counsel for the petitioners.

36. Before proceeding further, it will be relevant to notice that the law of adverse possession in respect of agricultural properties operates a little differently. Even though it is now well settled that the person who pleads adverse possession has no special equities in his favour as it is an attempt to deprive the lawful owner of his rights. Thus, in order to prove the plea of adverse possession the party pleading it has to strictly adhere to the pleadings and standard of proof required to establish the said claim.

37. It will also be relevant to state that on one hand, the petitioners have been claiming rights on the basis of a family settlement and it also claims right on the

basis of succession claiming entire rights to the exclusion of all others. In such circumstances, the petitioners cannot plead adverse possession as it would be a mutually destructive plea. Nevertheless, even if at all, the plea of adverse possession is considered, though it is quite contrary to the pleadings of the petitioners who stated that the property in question was created by father of Chhitna namely Hardwar and father of the petitioners namely Har Krishan. In light of the contrary pleadings, the bona fides of the petitioners becomes doubtful but nevertheless in order to successfully plead and prove the plea of adverse possession, it ought to have been indicated clearly as to who was the true owner of the property? when and how the petitioners came in the possession of the property and from which point of time their possession became hostile and to the knowledge of the true owner and that from that given point of time despite knowledge, the true owner did not take any legal steps to oust the persons pleading adverse possession, only then after the expiry of prescribed period as provided in law, the plea can be said to be substantiated.

38. This Court in **Bhagwati Deen v. Sheetaladin; 2022 SCC OnLine All 349**, had the occasion to consider the applicability of law of adverse possession relating to agricultural properties and the same was followed by this Court in **Sohan Lal vs. Distt. D.D.C. Hardoi and Ors. MANU/UP/4198/2022** and the relevant portion as considered by this Court in para-11 of **Sohan Lal (supra)** is being reproduced hereinafter:-

11. Having taken note of the aforesaid as well as considering the decision of this Court in the case of **Bhagwati Deen (supra)**, wherein a detailed

discussions has been made on the plea of adverse possession by referring to other decisions of this Court and of the Apex Court. Para-28 of the said report reads as under:-

"28. Lately, this Court also had the occasion to consider the aforesaid issue of adverse possession in the case of **Chit Bahal Singh v. Joint Director of Consolidation**, decided on 29.04.2022 and by relying upon the decision of **Babu Ali v. D.D.C. (supra)** the plea of adverse possession was rejected. The relevant paras explaining the law and the preparation of entries and what ingredients have to be met are being extracted hereinafter:-

"11. The para-89-A, 89-B and 102-B of the Land Records Manual (herein-after referred as "the manual"), relevant for the purpose, are extracted below:—

"89-A. List of changes.-After each Kharif and rabi portal of a village the Lekhpal shall prepare in triplicate a consolidated list of new and modified entries in the Khasra in the following form:

Form No. P-10

Khasra No. of Plot	Area	Details of entry in the last year	Details of entry made in the current year	Verification report by the Revenue Inspector	Remarks
1	2	3	4	5	6

(ii) The Lekhpal shall fill in the first four Columns and hand over a copy of the list to the Chairman of the Land Management Committee. He shall also prepare extract from the list and issue to the person or persons concerned recorded in Columns 3 and 4 to their heirs, if the person or persons concerned have died, obtaining their signature in the copy of the list retained by him. Another copy shall be sent to the Revenue Inspector.

(iii) *The Revenue Inspector shall ensure at the time of his partial of the village the extract have been issued in all the cases and signatures obtained of the recipients.*

89-B. *Report of changes.- The copy of the list with the Lekhpal containing the signatures of the recipients of the extracts shall be attached to the Khasra concerned and filed with the Registrar (Revenue Inspector) alongwith it on or before 31st July, of the following year (sub-paragraph (iv) of the paragraph 60).*

102-B. *Entry of possession (Column 22) (Remarks column).- (1) The Lekhpal shall while recording the fact of possession in the remarks Column of the Khasra, write on the same day the fact of possession with the name of the person in possession in his diary also, and the date and the serial number of the dairy in the remarks Column of the Khasra against the entry concerned.*

(2) *As the list of changes in Form p-10 is prepared after the completion of the patal of village, the serial number of the list of changes shall be noted in red ink below the entry concerned in the remarks column of the Khasra in order to ensure that all such entries have been brought on the list.*

(3) *If the Lekhpal fails to comply with any of the provisions contained in paragraph 89-A, the entry in the remarks Column of the Khasra will not be deemed to have been made in the discharge of his official duty."*

12. *Reading of the aforesaid provisions makes it clear that if any entry is made in PA-10, the same shall be communicated to the person or persons concerned recorded in columns 3 and 4 or their heirs and obtain their signatures. Records on being submitted to the Revenue Inspector, he shall ensure at the time of Padtal i.e. verification of the village that it*

has been issued in all the cases and the signatures obtained by the recipients. Therefore, in case, any entry made on the basis of adverse possession the same was to be communicated to the person concerned and the person claiming is required to prove that it was in accordance with the manual and as to what was nature of possession and when it started in the knowledge of the tenant and the possession was continuous and how long it continued.

13. *This Court considered this issue in the case of Mohd. Raza v. Deputy Director of Consolidation, 1997 RD 276 and held that the entries in the revenue papers not prepared by following the procedure prescribed under the Uttar Pradesh Land Records Manual and PA-10 notice was not served on the main tenant, such entries are of no evidentiary value and would not confer any right.*

14. *This court, in the case of Gurumukh Singh v. Deputy Director of Consolidation, Nainital, (1997) 80 RD 276, has also held that the entries will have no evidentiary value if they are not in accordance with the provisions of Land Records Manual and the burden to prove is on the person who is asserting the possession on the basis of adverse possession. Relevant paragraphs 6 and 7 are extracted below:—*

"6. It is clear from Para A-102C of the Land Records Manual that the entries will have no evidentiary value if they are not made in accordance with the provisions of Land Records Manual. There is presumption of correctness of the entries provided it is made in accordance with the relevant provision of Land Records Manual and secondly, in case where a person is claiming adverse possession against the recorded tenure-holder and he denies that he had not received any P.A. 10 or he had no knowledge of the entries made in the

revenue records, the burden of proof is further upon the person claiming adverse possession to prove that the tenure-holder was duly given notice in prescribed Form P.A. 10. Para A-81 itself provides that the notice will be given by the Lekhpal and he will obtain the signature of the Chairman, Land Management Committee as well as from the recorded tenure-holder. It is also otherwise necessary to be provided by the person claiming adverse possession. The law of adverse possession contemplates that there is not only continuity of possession as against the true owner but also that such person had full knowledge that the person in possession was claiming a title and possession hostile to the true owner. If a person comes in possession of the land of another person, he cannot establish his title by adverse possession unless it is further proved by him that the tenure-holder had knowledge of such adverse possession.

7. In *Jamuna Prasad v. Deputy Director of Consolidation, Agra*, this Court repelled the contention that the burden of proof was upon the person who challenges the correctness of the entries. It was observed:

“Learned counsel for the Petitioner argued that there was a presumption of correctness about the entries in the revenue records and the onus lay upon the Respondent to prove that the entries showing the Petitioner's possession had not been in accordance with law. This contention is untenable. Firstly, it is not possible for a party to prove a negative fact. Secondly, the question as to whether the notice in Form P.A. 10 was issued and served upon the Petitioner also is a fact which was within his exclusive knowledge.”

“Petitioner's contention that the burden lay on the Respondents to disprove

the authenticity and destroy the probative value of the entry of possession cannot be accepted. In my opinion, where possession is asserted by a party who relies mainly on the entry of adverse possession in his favour and such possession is denied by the recorded tenure-holder, the burden is on the former to establish that the entries in regard to his possession was made in accordance with law.”

15. This Court, in the case of *Sadhu Saran v. Assistant Director of Consolidation, Gorakhpur*, (2003) 94 RD 535, has held that it is well settled in law that the illegal entry does not confer title. Therefore even if the entry has been made, it does not confer right title or interest if it is not in accordance with law and the prescribed procedure. This Court and the counsel for the parties also could not get the same in the Lekhpal diary. The provision of PA-24 has come vide notification dated 03.07.1965, therefore it is also of no assistance because entry could not have been made on the basis of PA-24 in Khatauni of 1373 fasli and it is also without number and year.

16. This Court, in the case of *Putti v. Assistant Director of Consolidation, Bahraich*, (2007) 2 All LJ 43, has held that the court should be slow to declare the right on the basis adverse possession otherwise it may become a weapon in the hands of mighty persons to acquire the property of the weaker sections of society. It has further held that there shall not be presumption of continuous possession to declare right and title on the basis of adverse possession unless year to year entries made in accordance with law in the Khasra or Khatauni and proved by cogent and trustworthy evidence, the burden to prove which is on the person who claims Sirdari or Bhumidhari rights on the

basis of adverse possession. Relevant paragraph-41 is extracted below:—

“41. Right to claim title on the basis of adverse possession is a legacy of British law. Courts should be slow to declare right on the basis of adverse possession. In case liberal approach is adopted to extend right and title on the basis of adverse possession then it may become a weapon in the hands of mighty persons to acquire the property of the weaker sections of the society. Accordingly, it shall always be incumbent upon the Courts to do close scrutiny of the evidence and material on record within the four corners of law as settled by Apex Court, discussed herein above. Even little reasonable doubt on the evidence relied upon by a party to claim right and title on the basis of adverse possession may be sufficient to reject such claim under a particular fact and circumstance. There shall not be presumption on continuous possession to declare right and title on the basis of adverse possession unless year to year entries made in accordance to law in the Khasra or Khatauni are proved by cogent and trust worthy evidence. burden of proof of such entries shall lie, as discussed herein above, on the person who claims Sirdari or bhumidhari right on the basis of adverse possession. In the absence of any such proof, presumption shall be in favour of recorded tenure-holder whose name has been recorded in column-1 of the Khatauni.”

17. The Hon'ble Apex Court, in the case of *P.T. Munichikkanna Reddy v. Revamma*, 2008 (26) LCD 15, has held that in case of adverse possession, communication to the owner and his hostility towards the possession is must. The relevant paragraphs 19 to 23 are extracted below:—

“19. Thus, there must be intention to dispossess. And it needs to be open and hostile enough to bring the same to the knowledge and plaintiff has an opportunity to object. After all adverse possession right is not a substantive right but a result of the waiving (willful) or omission (negligent or otherwise) of right to defend or care for the integrity of property on the part of the paper owner of the land. Adverse possession statutes, like other statutes of limitation, rest on a public policy that do not promote litigation and aims at the repose of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence.

20. While dealing with the aspect of intention in the Adverse possession law, it is important to understand its nuances from varied angles.

21. Intention implies knowledge on the part of adverse possessor. The case of *Saroop Singh v. Banto*, (2005) 8 SCC 330 in that context held:

“29. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendants possession becomes adverse. (See *Vasantiben Prahladi Nayak v. Somnath Muljibhai Nayak*, (2004) 3 SCC 376).

30. *Animus possidendi* is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See *Mohd Mohd. Ali v. Jagadish Kalita*, SCC para 21)”

22. *A peaceful, open and continuous possession as engraved in the maxim nec vi, nec clam, nec precario has been noticed by this Court in Karnataka Board of Wakf v. Government of India, (2004) 10 SCC 779 in the following terms:*

“Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show : (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession”

It is important to appreciate the question of intention as it would have appeared to the paper-owner. The issue is that intention of the adverse user gets communicated to the paper owner of the property. This is where the law gives importance to hostility and openness as pertinent qualities of manner of possession. It follows that the possession of the adverse possessor must be hostile enough to give rise to a reasonable notice and opportunity to the paper owner.”

39. Applying the aforesaid principles to the present case as already noticed above, neither there was adequate pleadings nor there was any evidence in this regard nor it could be shown that the

possession of the petitioners if at all was ever adverse or recorded in column 9 of the Revenue records maintained under the U.P. Land Records Manual nor that P.A.-10 was ever issued to the true owners and was served, hence in absence thereof, the plea of adverse possession is clearly misconceived and is turned down.

40. Now in case if the plea of family settlement and compromise is considered, it will worthwhile to state that both family settlement and the compromise operate and different spheres. It would be appropriate to notice the celebrated case of the Hon'ble Apex Court relating to family settlement which still holds goods is ***Kale and others Vs. Deputy Director of Consolidation and others : 1976 (3) SCC 119***, the proposition laid down therein was followed by this Court while considering the plea of family settlement in ***Ram Milan Vs. Kripa Shanker and others : MANU/UP/2728/2023*** wherein this Court had considered the aforesaid plea relating to a family settlement all the leading decisions right from Kale Vs. D.D.C.(supra) with the aid of several decisions of the Apex Court and the relevant portion of Ram Milan (supra) reads as under :-

"25. Sri Vibhansu Srivastava, learned counsel for the appellants has relied upon the decision of Khushi Ram (Supra) wherein the Apex Court dealing with the question as to whether a decree passed in a civil suit requires registration and after considering the provisions of Section 17 of the Registration Act, 1908 held that the decree if it relates to the subject matter of the suit, it was not required to be registered under Section 17 (2) (vi) of the Registration Act, 1908 and thus it was covered by the exclusionary clause.

26. The other question which was referred to the Apex Court regarding the family settlement, the Apex Court after relying upon the celebrated decision of the Apex Court in *Kale Vs. DDC* (supra) held that the propositions laid in *Kale Vs. DDC* (supra) was still binding and thus the Court is required to take a broad approach while dealing with family settlements, however, what needs to be seen in the said case that the issue was whether the parties could be treated as a family in order to enter into a family settlement and it is in the aforesaid context that the said decision was rendered.

27. In *Korukonda* (supra), the Apex Court noticing the earlier decisions on the issue of family settlement and requirement of its registration held that in case a document is in the nature of memorandum evidencing a family settlement already entered into and having been prepared as record so that there are no confusion in future, it need not be stand or register, however, where there has been a partition then there may be no scope for invoking the concept of antecedent rights as such then such a document would require registration.

28. The decision of *Compac Enterprises* (supra) relates to a consent decree wherein it has been held by the Apex Court that the consent decree are intended to create estoppel by judgment against the parties thereby putting an end to the future litigations, however, this is not an absolute formulation and a consent decree would not serve as an estoppel where the compromise was vitiated by fraud, misrepresentation or mistake.

29. As far as the decisions cited by Sri Chaudhary are concerned in *Kale Vs. DDC* (supra), the Apex Court has noticed the various nuances relating to the family settlement which are undoubtedly followed till today and shall be

appropriately considered while dealing with the respectful submissions of the parties.

30. Learned counsel for the respondents has relied upon a decision of *Ripu Daman* (supra) which is also in respect of an issue as to whether a compromise decree in respect of land which is not the subject matter of suit but is part of the settlement between the family members required compulsory registration and after noticing the provisions of Section 17 of The Registration Act, 1908 and other decisions of the Apex Court held that the compromise decree which declares a pre-existing rights and does not by itself create a new right or title in the property does not require registration, however, if the decree were to create a right for the first time or title or interest in the immovable property then it would require registration.

31. In *J. Yashoda* (supra), the Apex Court dealing with the Section 65 of The Evidence Act, 1872 has held that as a general rule, secondary evidence is admissible only in the absence of primary evidence and the law requires a proper explanation for absence of the primary evidence only then the secondary evidence can be admitted.

32. In the backdrop of the aforesaid propositions of law cited by the respective parties and noticing the questions of law required to be answered, it would be apposite to consider the effect of the family settlement filed as Exhibit-5 and the effect of the consent decree dated 01.11.1972 which is Exhibit-2.

"33. First and foremost, it will be relevant to notice what is a family settlement and how the same is to be construed and for the aforesaid purpose, the decision of the Apex Court in *Kale Vs. DDC* (supra) would be helpful and the relevant paragraphs of the said decision

are being noticed hereinafter for ready reference:-

9.....By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. In this connection, Kerr in his valuable treatise *Kerr on Fraud* at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus:

“The principles which apply to the case of ordinary compromise between strangers do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend.”

The object of the arrangement is to protect the family from long-drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the

hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term “family” has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes succession is so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits. The law in England on this point is almost the same. In *Halsbury's Laws of England*, Vol. 17, Third Edition, at pp. 215-216, the following apt observations regarding the essentials of the family settlement and the principles governing the existence of the same are made:

“A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family

property or the peace and security of the family by avoiding litigation or by saving its honour.

The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term "family arrangement" is applied.

Family arrangements are governed by principles which are not applicable to dealings between strangers. The court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements."

10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

"(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a

distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

*41. The Hon'ble Apex Court in the case of **Bhoop Singh Vs. Ram Singh Major and others : (1995) 5 Supreme Court Cases 709**, has held as under (relevant paragraph 12) :*

"12. The aforesaid decisions do not cover the whole ground, according to

us. They meet our approval as far as they go. But something more is required to be said to find out the real purport of clause (vi). It needs to be stated that sub-section (1) of section 17 mandates that the instrument enumerated in clauses (a) to (e) shall be registered compulsorily if the property to which they relate is immovable property, the value of which is Rs.100/- or upwards. When the document purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest therein, whether vested or contingent, it has to be registered compulsorily. The Act does not define "instrument". Section 2(14) of the Indian Stamp Act, 1899, defines "instrument" to include every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded. Sub-section (2) of section 17 of the Act engrafts exceptions to the instruments covered only by clauses (b) and (c) of sub-section (1). We are concerned with clause (vi) of sub-section (2). Clause (vi) relates to any decree or order of a court, except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceeding. Clause (v) is relevant which in contrast reads thus:

"Any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another instrument which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest;"

The Explanation amplifies that a contract for the sale of immovable property containing a recital of payment of any earnest money or of the whole or any part

of the purchase price shall not be deemed to be required or ever to have required registration."

42. Considering the law which has been crystalized by the Hon'ble Apex Court in various decisions which have been noticed in Ram Milan (supra), this Court finds that the plea of family settlement also does not impresses the court for the reason that it has not been indicated as to how the property was acquired by Matai. There was no material brought on record to indicate that the property in question was created by Matai. Surprisingly, only in the year 2006, the petitioners have attempted to introduce certain documents by filing a supplementary affidavit which had never seen the light of the day despite the proceeding pending since 1959 when Smt. Pran Dei expired. The three courts of Consolidation have crystalized the controversy and as already noticed above, the petitioners have been taking contrary stand inasmuch as before the consolidation officer, it was their specific pleading that the property was created by Har Krishan and Hardwar and it was never their case that it was ancestral. Even while filing the writ petition, the plea remained the same and without amending the writ petition or the pleadings, merely by introducing a supplementary affidavit and by filing certain documents which have not been tested in trial cannot be a ground to permit the petitioners to take a somersault in respect of their case contrary to the plea upon which they had contested proceedings throughout.

43. Be that as it may, unless and until the petitioners could indicate that they had any pre existing rights till then the family settlement as pleaded, cannot be sustained. It also could not be established

by the petitioners that their father Har Krishan had acquired the property alongwith Hardwar and therefore, again there cannot be any plea of family settlement specially between Chhitna and the petitioners in exclusion to the others that would necessarily include Smt. Yashodra to say the least.

43. For the said reasons, the plea of family settlement also does not inspire confidence and the reasonings given by the Deputy Director of Consolidation as well as Settlement Officer of Consolidation to discard the plea of family settlement does not suffer from any palpable error.

44. Upon examining the plea of a compromise said to have occurred before the court of Tehsildar, the same did not find acceptance before the Settlement Officer of Consolidation and the Deputy Director of Consolidation and this Court also agrees with the reasonings that the said compromise in mutation proceedings was in any case not binding in the sense that it could deprive a lawful owner of his right. It could not be disputed by learned counsel for the petitioners that the alleged compromise said to have been filed in the court of Tehsildar was only signed by Parag. It did not have the signatures of Smt. Chhitna, Smt. Yashodra or even Agya Ram himself. Even if at all for the sake of arguments, the said compromise is taken into consideration, even then it cannot have any binding impact as it was held in a mutation proceedings whereas the same came to be disputed in proceedings under Section 9-A (2) of the Act of 1953 which are substantive proceedings where the rights of the parties including their title is decided and the same has a binding impact including it operates as res-judicata in terms of Section 49 of the Act of 1953 before any other revenue or civil court. In the proceedings before the

Consolidation Officer, the said compromise was neither proved despite the fact that Smt. Chhitna had denied the said compromise. It was always open for the petitioners to have proved the compromise but it was not proved and thus by merely taking the plea without proving the said compromise in accordance with law, it cannot be treated to have been proved. There was no justification for the said compromise to be accepted when it was not signed by Yashodra, Parag and Chhitna. Hence, the plea of compromise is also turned down.

45. Lastly, the plea that the property was ancestral also in the light of the aforesaid discussion, learned counsel for the petitioner could not prove that the property was ancestral and even otherwise it was contrary to his pleadings, thus the said plea also does not have any merit.

46. For all the aforesaid reasons, the petition bearing Writ -B No.4405 of 1985 has no merit and is accordingly *dismissed*. So also the Writ -B No.3396 of 1987 meets the same fate. It is accordingly *dismissed*.

Costs are made easy.

(2025) 3 ILRA 240

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 04.03.2025

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ B No. 15451 of 1996

Rama Shanker & Ors.

...Petitioners

Versus

The Board of Revenue, U.P., Allahabad & Ors.

...Respondents

Counsel for the Petitioners:

Sri Prakash Chandra, Sri Vishal Khandelwal

Counsel for the Respondents:

Sri Ashish Kumar Srivastava, Sri Avinash Chandra Srivastava, C.S.C., Sri Jai Raj Singh Tomar

A. Civil Law -U.P. Zamindari Abolition and Land Reforms Act,1950-Section 122B(4-F)-The petitioners belonging to the Scheduled caste community, were granted the benefit of Section 122B(4-F) of the Act,1950 in respect of Gaon Sabha land vide orders dated 31.01.1994 and 20.01.1994-Their names were accordingly recorded in the revenue records as bhumidhar with non-transferable rights-Subsequently, the District Government counsel filed a recall application, which was allowed by the Sub-Divisional Officer on 17.09.1994, setting aside the original allotment order-The Board of Revenue, upon reference from the Additional Commissioner recommending restoration of the petitioner's rights, rejected the same vide order dated 25.01.1996-The court held that once the benefit of Section 122B(4-F) is granted, the proper procedure to challenge the same is through proceedings u/s 198(4) of the Act,1950 and not by way of recall/restoration applications-The recall application filed by the DGC was therefore not maintainable-Reliance was placed on Navami Lal Vs. State, Smt. Reshma Devi Vs. Commissioner and the Supreme court judgment in Manorey @ Manohar Vs. Board of Revenue which affirmed the substantive and procedural rights of Scheduled caste agricultural labourers u/s 122B(4-F)-The orders dated 17.09.1994(SDO) and 25.01.1996(Board of Revenue) are set aside.(Para 1 to 15)

The writ petition is allowed. (E-6)

List of Cases cited:

1. Navmi Lal Vs St. of U.P. thru Secy & ors.(2018) 141 R.D. 750

2. Smt Reshma Devi & ors.Vs Commr. & ors.(2014)122 RD 667

3. Basdev Vs St. of U.P. & Ors(2023) 9 ADJ 208

4. Manorey @ Manohar Vs Board of Revenue & ors.(2003) AIR SC 4102

(Delivered by Hon'ble Chandra Kumar Rai, J.)

1. Heard Sri Vishal Khandelwal, learned counsel for the petitioners, Sri Abhishek Kumar Srivastava, learned Additional Chief Standing Counsel for the State and Sri Avinash Chandra Srivastava, learned counsel for the Gram Sabha.

2. Brief facts of the case are that petitioners were granted benefit of Section 122 B (4-F) of the U.P. Zamindari Abolition Land Reforms Act, 1950 (herein after referred to as the U.P.Z.A. & L.R. Act) in respect to plot no. 430 situated in village -Sikandarpur Kotwar, Tehsil-Firozabad, District-Firozabad vide order dated 31.01.1994 and 20.01.1994. Against the order dated 31.01.1994/20.01.1994 granting the benefit of Section 122B (4-F) of the U.P.Z.A. & L.R. Act in favour of the petitioners, the recall application has been filed on 14.09.1994 by District Government Counsel. Sub-Divisional Officer vide order dated 17.09.1994 allowed the aforementioned application setting aside the order dated 31.01.1994 and restored the proceeding to its original number. Against the order dated 17.09.1994 passed by Sub-Divisional Officer, petitioner filed three revisions before the Commissioner, which were registered as revision no. 1 of 1994, 2 of 1994 & 3 of 1994 under Section 333A of the U.P.Z.A. & L.R. Act. Additional Commissioner (Judicial), Agra Division, Agra vide order dated 19.09.1995 sent the reference before the Board of Revenue for

allowing the revisions, setting aside the orders dated 17.09.1994 passed by the Sub-Divisional Officer in three cases and for fresh disposal of restoration applications. The references were registered as Reference Nos. 15, 16, 17 of 1995-96. Board of Revenue vide order dated 25.01.1996 rejected the references. Hence this writ petition on behalf of the petitioners for the following reliefs:-

□□□□□□

(i) *to issue a writ, order or direction in the nature of certiorari, quashing the order dated 25.01.1996, passed by Board of Revenue in all the references 15 to 17 of 1995-96 as well as order passed by the Sub Divisional Officer, Firozabad dated 17.09.1994.*

(ii) *to pass any further orders, which this Hon'ble Court may deem proper & appropriate under the facts and circumstances of the case."*

3. This Court entertained the matter and granted the interim protection on 08.05.1996 staying the operation of the impugned orders.

4. In pursuance of the order dated 08.5.1996, affidavits have been exchanged between the parties.

5. Learned counsel for the petitioners submitted that petitioners belong to Scheduled Caste Community and petitioners were found in possession over the plot□ in question before the relevant date accordingly, benefit of Section 122B (4-F) of the U.P.Z.A. & L.R. Act was granted to the petitioners in proper manner. He further submitted that on the basis of the order dated 31.01.1994/20.01.1994 granting the benefit of Section 122B (4-F) of the U.P.Z.A. & L.R. Act, the name of

the petitioners were accordingly recorded in the revenue record. He placed the copy of the 'Khatauni' annexed as annexure no. 1 to the instant petition in order to demonstrate that in the remark column particular of the order granting the benefit of Section 122B (4-F) of the U.P.Z.A. & L.R. Act has been mentioned to record the name of the petitioners as 'Bhoomidhar' with non transferable rights. He next submitted that the recall application has been filed against the order dated 31.01.1994 in place of initiating proper proceeding as held by this Court in the **Case reported in 2018(141) R.D. 750 Navmi Lal Vs. State of U.P. through Secretary and Others as well as Case reported in 2014 (122) RD 677 Smt. Reshma Devi and others** Versus Commissioner and others. He submitted that in view of the ratio of law laid down by this Court in **Smt. Reshma Devi (Supra) & Navmi Lal (Supra)**, the Recall/Restoration Application cannot be entertained against the order granting the benefit of Section 122B (4-F) of the U.P.Z.A. & L.R. Act. He further submitted that Additional Commissioner has rightly sent the reference for allowing the revision, but Board of Revenue has rejected the references in arbitrary manner. He next submitted that petitioners are still in possession over the plot in question on the basis of the order dated 31.01.1994/20.01.1994 granting the benefit of Section 122B (4-F) of the U.P.Z.A. & L.R. Act, as such the impugned order should be set aside and the order dated 31.01.1994/20.01.1994 granting the benefit of Section 122B (4-F) of the U.P.Z.A. & L.R. Act should be maintained.

6. On the other hand, Sri Abhishek Kumar Srivastava, learned Additional Chief Standing Counsel for the State and

Sri Avinash Chandra Srivastava, learned Counsel for the Gaon Sabha submitted that the recall application has been rightly filed on behalf of the Gaon Sabha by District Government Counsel against the order dated 31.01.1994/20.01.1994 on the ground that the order was passed in exparte manner without affording any opportunity of hearing to the Gaon Sabha. They further submitted that Sub-Divisional Officer has set aside the order dated 31.01.1994/20.01.1994 and restored the proceedings for afresh decision in accordance with law, as such no interference is required against the impugned order dated 25.01.1996 as petitioners have full opportunity to participate in the proceedings before the Court in pursuance of the order of Sub-Divisional Officer dated 17.09.1994. They next submitted that Board of Revenue has rightly rejected the reference sent by the Additional Commissioner, as such no interference is required. They further placed the reliance upon the judgment of this Court **reported in 2023 (9) □ ADJ 208 Basdev Versus State of U.P. and Others** in order to demonstrate that recall or restoration application can be filed at any time, if the order has been passed in exparte manner in respect to the Gaon Sabha/State Land. They submitted that no interference is required and writ petition is liable to be dismissed.

7. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

8. There is no dispute about the facts that petitioners belong to the scheduled Community and petitioners were granted benefits of Section 122B (4-F) of the U.P.Z.A. & L.R. Act on 31.01.1994/20.01.1994. There is also no

dispute about the facts that on the basis of restoration application, the order dated 31.01.1994/20.01.1994 have been recalled and proceeding has been restored to its original number. There is no dispute about the fact that in revision filed by the petitioners references were sent before the Board of Revenue for allowing the revision, but Board of Revenue has dismissed the reference sent by Additional Commissioner.

9. In order to appreciate the controversy involved in the matter perusal of Section 122B (4-F) of the U.P.Z.A. & L.R. Act will be relevant, which is as under:-

"[(4F) Notwithstanding anything in the foregoing sub-section, where any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe is in occupation of any land vested in a Gaon Sabha under Section 117 (not being land mentioned in section 132) having occupied it from before [May 13,2007], and the land so occupied together with land, if any, held by him from before the said date as bhumidhar, sirdar or asami, does not exceed 1.26 hectares (3.125 acres), then no action under this section shall be taken by the Land Management Committee or the Collector against such labourer, and [he shall be admitted as bhumidhar with non-transferable rights of that land under Section 195 and it shall not be necessary for him to institute a suit for declaration of his rights as bhumidhar with non-transferable rights in that land.

Explanation.- The expression 'agricultural labourer' shall have the meaning assigned to it in section 198.]"

10. Hon'ble Apex Court in the Case reported in *AIR 2003 Supreme Court 4102 Manorey alias Manohar Vs. Board of Revenue & others* has considered the scope of the proceeding under Section 122-B (4-F) of U.P.Z.A. & L.R. Act. Relevant paragraphs of judgment rendered by the Hon'ble Apex Court in *Moneray* (Supra) will be relevant for perusal which are as under:-

“Thus, sub-Section (4F) of Section 122B not merely provides a shield to protect the possession as opined by the High Court, but it also confers a positive right of Bhumidhar on the occupant of the land satisfying the criteria laid down in that sub-Section. Notwithstanding the clear language in which the deeming provision is couched and the ameliorative purpose of the legislation, the learned single Judge of the High Court had taken the view in Ramdin Vs. Board of Revenue (supra)□ (followed by the same learned Judge in the instant case) that the Bhumidhari rights of the occupant□ contemplated by sub-Section (4F) can only blossom out when there is a specific allotment order by the Land Management Committee under Section 198. According to the High Court, the deeming provision contained in sub-Section (4F) cannot be overstretched to supersede the other provisions in the Act dealing specifically with the creation of the right of Bhumidhar. In other words, the view of the High Court was that a person covered by the beneficial provision contained in sub-Section (4F) will have to still go through the process of allotment under Section 198 even though he is not liable for eviction. As a corollary to this view, it was held that the occupant was not entitled to seek correction of revenue records, even if his case falls under sub-

Section (4F) of Section 122B. We hold that the view of the High Court is clearly unsustainable. It amounts to ignoring the effect of a deeming provision enacted with a definite social purpose. When once the deeming provision unequivocally provides for the admission of the person satisfying the requisite criteria laid down in the provision as Bhumidhar with non-transferable rights under Section 195, full effect must be given to it. Section 195 lays down that the Land Management Committee, with the previous approval of the Assistant Collector in-charge of the Sub Division, shall have the right to admit any person as Bhumidhar with non-transferable rights to any vacant land (other than the land falling under Section 132) vested in the Gaon Sabha. Section 198 prescribes "the order of preference in admitting persons to land under Sections 195 and 197". The last part of sub-Section (4F) of Section 122B confers by a statutory fiction the status of Bhumidhar with non transferable rights on the eligible occupant of the land as if he has been admitted as such under Section 195. In substance and in effect, the deeming provision declares that the statutorily recognized Bhumidhar should be as good as a person admitted to Bhumidhari rights under Section 195 read with other provisions. In a way, sub-Section (4F) supplements Section 195 by specifically granting the same benefit to a person coming within the protective umbrella of that sub-Section. The need to approach the Gaon Sabha under Section 195 read with Section 198 is obviated by the deeming provision contained in sub-Section (4F). We find no warrant to constrict the scope of deeming provision.

That being the legal position, there is no bar against an application being made by the eligible person coming

within the four corners of sub-Section (4F) to effect necessary changes in the revenue record. When once the claim of the applicant is accepted, it is the bounden duty of the concerned revenue authorities to make necessary entries in revenue records to give effect to the statutory mandate. The obligation to do so arises by necessary implication by reason of the statutory right vested in the person coming within the ambit of sub-Section (4F). The lack of specific provision for making an application under the Act is no ground to dismiss the application as not maintainable. The revenue records should naturally fall in line with the rights statutorily recognized. The Sub-Divisional Officer was therefore within his rights to allow the application and direct the correction of the records. The Board of Revenue and the High Court should not have set aside that order. The fact that the Land Management Committee of Gaon Sabha had created lease hold rights in favour of the respondents herein is of no consequence. Such lease, in the face of the statutory right of the appellant, is nonest in the eye of law and is liable to be ignored.

It is surprising that the State of U.P. had chosen to file an appeal against the order of the S.D.O., in tandem with the Gaon Sabha. It seems to be a clear case of non-application of mind on the part of the concerned authorities of the State who are supposed to effectuate the socio-economic objective of the legislation.

The appeal is allowed. The orders of the Board of Revenue and the High Court are set aside. The S.D.O's order is restored. No costs."

11. In the instant matter petitioners belong to Scheduled Caste Community and the authorities have granted benefit of

Section 122B (4-F) of the U.P.Z.A. & L.R. Act in favour of the petitioners on 31.01.1994/20.01.1994, as such the recall application filed by the District Government Counsel cannot be entertained in view of the ratio of law laid down by this Court in the Case of *Navmi Lal (Supra) & Smt. Reshma Devi (Supra)*.

12. This Court in the *Case of Navmi Lal (Supra) & Reshma Devi (Supra)* has held that after granting the benefits of Section 122B (4-F) of the U.P.Z.A. & L.R. Act the proper procedure is to apply under Section 198(4) of the U.P.Z.A. & L.R. Act rather to file the recall/ restoration against the order granting the benefits of Section 122B (4-F) of the U.P.Z.A. & L.R. Act. The petitioners have been granted interim order by this Court in the year 1996 and petitioners are continuing in possession over the plot in question. Paragraph No. 11 of the Judgement rendered by this Court in the case of *Navmi Lal (Supra)* will be relevant for perusal which is as under:-

"11. However, for the purposes of proceedings either under Section 198(4) of the U.P. Z.A. & L.R. Act or under Section 128 of the U.P. Revenue Code, 2006, admission of a person to land vested in Gaon Sabha has been made under Section 195 read with Section 198 or under Section 122-B (4-F) of the U.P. Z.A & L.R. Act, does not make any difference. In both the proceedings, the eligible persons are admitted to Gaon Sabha land and Section 128 of the U.P. Revenue Code, as observed above, is a pari-materia to the provisions contained in Section 198(4) of the U.P. Z.A. & L.R. Act and vests an authority in the Collector to cancel such an allotment or admission after enquiry. 'Allotment of land' as

occurring under Section 128 of the U.P. Revenue Code, 2006 and Section 198 (4) of the U.P. Z.A. & L.R. Act cannot be permitted to be confined to allotment of land under Section 195 read with Section 198 of the U.P. Z.A. & L.R. Act alone; rather it covers in its fold the admission of a person to Gaon Sabha land giving him the benefit of Section 122-B(4-F) of the said Act.”

13. Paragraph No. 11 of the judgment rendered by this Court in the case of Smt. Reshma Devi (Supra) will be also relevant for perusal which is as under:-
□□□

“11.The submission of learned counsel for the petitioner that proceeding of cancellation of the allotment of land under Section 122B(4F) could not be initiated, under Sub-Section 4 of Section 198 is misconceived for the reason that under Section 122B(4F), the person is admitted as bhumidhar with non-transferable right of the land under Section 195 and Section 198 takes care of Section 195 and 197 both, therefore sub-section (4) of Section 198 would be applicable with respect to both i.e. allotment of land under Section 195 or 197 of the Act.”

14. Considering the entire facts and circumstances of the case as well as ratio of law laid down by Hon'ble Apex Court as well as this Court, the impugned order dated 25.01.1996 passed by respondent no. 1/Board of Revenue in reference case nos. 15 to 17 of 1995-96 as well as the order dated 17.09.1994 passed by respondent no. 2/ Sub-Divisional Officer, Firozabad are liable to be set aside and the same are hereby set aside.

15. The writ petition stands allowed and order dated 31.01.1994/20.01.1994 granting the benefits of Section 122B (4-F) of the U.P.Z.A. & L.R. Act in favour of the petitioners is affirmed. The authorities are directed to record the name of the petitioners on the basis of the order granting the benefits of Section 122B (4-F) of the U.P.Z.A. & L.R. Act in the revenue records accordingly.

16. No order as to costs.

(2025) 3 ILRA 246

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 04.03.2025

BEFORE

THE HON'BLE OM PRAKASH SHUKLA, J.

Writ Tax No. 147 of 2023

Ashok Gandhi	...	Petitioner
	Versus	
State of U.P. & Ors.	...	Respondents

Counsel for the Petitioner:

Rajeev Kumar Srivastava

Counsel for the Respondents:

C.S.C.

A. Tax Law – Entertainment Tax – Multiplex Cinema – Incentive Scheme – 10% of the amount of grant-in-aid and interest was directed to be deposited for re-examining the case – Validity challenged – Held, the demand to deposit 10% of the total grant-in-aid concession provided to the petitioner, for hearing of the representation is neither founded in the statute nor the same is at an appellate stage. (Para 9 & 15)

B. Tax Law – Principle of natural justice – Applicability – No opportunity of hearing

was given before directing to deposit 10% of the amount of grant-in-aid – Effect – Held, demand of payment of 10% of the grant-in-aid does give rise to civil consequences and would cause serious prejudice to the rights of the petitioner. In any case, an opportunity of being heard is one of the most important component of 'principle of Natural Justice' – No order prejudicing the interest of a person resulting in civil consequences can be passed without affording an opportunity of hearing. (Para 17 and 18)

Writ petition allowed. (E-1)

List of Cases cited:

1. Kranti Associates (P) Ltd. Vs Masood Ahmed Khan; (2010) 9 SCC 496
2. Dharampal Satyapal Ltd. Vs CCE; (2015) 8 SCC 519 : 2015 SCC OnLine SC 489

(Delivered by Hon'ble Om Prakash Shukla, J.)

(1) Heard Shri Rajeev Kumar Srivastava, learned Counsel for the petitioner and learned Standing Counsel for the State.

(2) This writ petition under Article 226 of the Constitution of India has been filed, assailing the orders dated 24.04.2023 and 26.05.2023 passed by the opposite party No. 3-District Magistrate/Licensing Authority, Saharanpur and opposite party no.1/State, respectively, whereby the petitioner has been directed to deposit 10% of the amount of grant-in-aid and interest (Rs.4,37,50,359/-) i.e. Rs.40,75,035.90 in the head of GST account within a period of one week and submit a copy of the challan so that the Commissioner, State Tax, Uttar Pradesh could be informed.

(3) Petitioner before this Court was running a cinema hall, namely, G.N.G.

Multiplex, at Saharanpur, which was constructed by partnership firm as per terms and conditions of deed of partnership dated 05.03.2008 contained in Annexure no.3 to the petition. He was granted license by the licensing authority to run Audi 1 to 4 Cinema Hall in the aforesaid G.N.G. Multiplex.

(4) The State Government had issued a Government Order dated 03.01.2011, whereby in supersession of earlier Government Orders and also Incentive Scheme, 2005, the State Government had floated new Incentive Scheme for the year 2010 for the purpose opening multiplex cinema hall in the State. This Incentive Scheme of 2010 was effective w.e.f. 31.03.2015. As per the said Scheme of 2010, the benefit of this scheme shall be admissible to all such multiplexes constructed during this period, which have completed the construction of the multiplex after obtaining prior permission for construction from the licensing authority under the rules provided in the UP Cinema Rules, 1951 and have obtained license for cinema screening by 31.3.2015. However, those applicants who, being influenced by the scheme of Government Order dated 27.09.2005, have started construction work of multiplex after obtaining prior permission of District Magistrate under the provisions of UP Cinema Rules, 1951, but have not been able to obtain license for public exhibition of films in the cinema halls of the multiplex till 31.3.2010, such multiplexes which obtain license for exhibition till 31.3.2011, will also be allowed the benefit of this scheme as per the provisions mentioned in Para-2 thereof, on compliance of other conditions mentioned in this Government Order.

(5) The petitioner, a partnership firm, claiming itself to be a licensee of Audi 1 to 4 of GNG Multiplex situated at Saharanpur,

submitted an application before the Licensing Authority/District Magistrate, Saharanpur as per the aforesaid Government Order dated 03.01.2011, which was accorded by the Licensing Authority i.e. District Magistrate, Saharanpur and the petitioner was sanctioned grant-in-aid amounting to Rs. 8,88,74,933.40, vide order dated 20.07.2015 for a period of 5 years i.e. upto 31.03.2020 on certain terms and conditions.

(6) According to the petitioner, he moved an application on 29.02.2020 for renewal of the license for the financial year 2020-21 and also submitted renewal fees of license for Audi 1 to 4 i.e. Rs.2,40,000/- on 21.03.2020 before the Licensing Authority/District Magistrate, Saharanpur. However, owing to the pandemic Covid-19, the District Magistrate, Saharanpur directed all the Multiplex Cinema Hall to close down with effect from 16.03.2020 to 31.03.2020, which came to be extended till 02.04.2020. According to the petitioner, the direction for closure continued till 15.10.2020 and thereafter a SOP issued by the State Government for opening of certain activities including the Cinema Hall and Multiplex. Further, the Commercial Tax Officer/Prabhari Adhikari (erstwhile Entertainment Tax), Saharanpur also issued a general order dated 07.10.2020 to all the licensee to complete all the formalities along with the compliance report upto 14.10.2020.

(7) Apparently, the petitioner also filed an application dated 14.10.2020 for renewal of license and grant-in-aid. It is the case of the petitioner that although, the State Government issued SOP on 15.10.2020 for opening of the Multiplex with the sitting capacity of 50%, however, since the film industry had closed down its

business all over the world during that Covid -19 period, no new films came to be released and unfortunately the District Magistrate without providing any opportunity of hearing passed an order dated 05.02.2021 against the petitioner relating to violation of terms of condition as mentioned in Government Order dated 03.10.2011 and consequently directed the petitioner to deposit/refund Rs. 4,37,50,359.00 being the cumulative amount arrived after the grant-in-aid amount sanctioned of Rs. 2,89,64,466/- and interest of 18% amounting to Rs. 1,47,85,893/-. In the interregnum, the petitioner was also able to obtain the requisite compliance certificate under the UP Cinematograph Rules, 1951 from the Electrical Inspector on 25.03.2021, Medical Officer of Health on 21.03.2021 and Regional Fire Officer on 01.04.2021, leading to renewal of license of Audi 1 to 4 of the petitioner with effect from 05.04.2021 and valid upto 31.03.2024.

(8) The petitioner, admittedly, did not assail the aforesaid order dated 05.02.2021 passed by the District Magistrate, Saharanpur, however, he filed a representation dated 03.12.2021 against the order dated 05.02.2021. Thereafter, the Deputy Secretary, State of U.P from the concerned Commercial Tax Department, Uttar Pradesh had sought various reports from time to time.

(9) The fulcrum of the submission of the petitioner is that although, the matter had been pending active consideration, however, suddenly the impugned order dated 24.04.2023 has been passed by the Joint Secretary, State of U.P, directing the Commissioner, State Tax, U.P to take necessary action regarding deposit of 10% amount as per the recovery order dated

05.02.2021 passed by the District Magistrate, Saharanpur against CNG Multiplex Saharanpur covered under the Incentive Scheme; re-examine the case; and provide his clear report to the Government, consequent of which, the District Magistrate has passed the order dated 26.05.2023, directing the petitioner to deposit 10% of the amount of grant-in-aid and interest (Rs.4,37,50,359/-) i.e. Rs.40,75,035.90 in the head of GST account in pursuance of order dated 05.02.2021 within a period of one week and submit a copy of the challan so that the Commissioner, State Tax, Uttar Pradesh could be informed. It is these orders dated 24.04.2023 and 26.05.2023, which have been assailed in the present writ petition.

(10) The contention of the learned Counsel for the petitioner is that earlier against the order dated 05.02.2021, the petitioner moved an application dated 03.12.2021 before the Licensing Authority/District Magistrate, Saharanpur on various grounds, which is still pending before the State Government since December, 2021 and various report has also been called for in connection with the petitioner's representation, however, without taking any decision on the petitioner's representation, all of a sudden, the Joint Secretary, State of U.P., vide impugned order dated 24.04.2023, directed the Commissioner (State Tax), Government of U.P., to take action for depositing of 10% amount in pursuance of the recovery order dated 05.02.2021, consequent of which, the District Magistrate, Saharanpur, has issued the consequential order dated 26.05.2023. Submission is that the representation had been pending before the State Government since December, 2021 and the impugned order dated 26.05.2023 passed by the District Magistrate,

Saharanpur pursuant to order dated 24.04.2023 passed by the State Government, demanding deposit of 10% amount, after three years, is arbitrary and without any legal basis. According to the learned Counsel, all the licenses had been applied for timely renewal and there was no occasion for abruptly passing the impugned orders as the representation had been pending consideration with the competent Authority since more than 3 years.

(11) On the other hand, leaned Standing Counsel for State, although did not dispute about the facts and events of the present writ petition, however, has strongly objected the manner in which the recovery proceedings are being tried to be stalled by the petitioner. According to him, the petitioner is in clear violation of condition mention in para-7 of the agreement and failed to run the Multiplex in continuation to the grant-in-aid for five years. According to him, the petitioner closed down the Multiplex from 15.10.2020 to 15.04.2021 and caused great revenue loss to the department. The learned Counsel has submitted that the petitioner has been sending representation to various authorities including the Agriculture Minister, Chief Minister through IGRS, Indian Industries Association etc. merely to pressurize the department and eventually delay the recovery proceedings against them.

(12) Having regard to the submissions of the learned Counsel for the parties and gone through the record available before us in the present writ petition, this Court find that although there is no dispute relating to the events during which the concession of the entertainment tax i.e. grant-in-aid was sanctioned and received by the petitioner, however, there is a serious dispute amongst

the parties relating to the issue of breach of terms and conditions of the said concession.

(13) Admittedly, opposite party no.3/Licensing Authority, in exercise of the rights vested in the said Government order dated 03.01.2011, has cancelled the concession and demanded refund of the entire amount from the petitioner along with interest at the rate of 18 per cent vide order dated 05.02.2021, against which a representation dated 03.12.2021 filed by the petitioner is pending. Both parties are at ad-idem that the said representation is in active consideration, however, the petitioner disputes the manner in which the opposite party no.1 and 3 have issued the impugned order dated 24.04.2023 and consequential order dated 26.05.2023, respectively, demanding to deposit of 10% of the total amount sought as a refund of the grant-in-aid, as a condition precedent for re-consideration of the representation of the petitioner.

(14) Since the order for cancellation dated 05.02.2021 of the grant-in-aid sanctioned to the petitioner by the Licensing Authority/District Magistrate, Saharanpur, is not a subject matter of challenge, this Court refrains from commenting on the merits of the said order of cancellation. Consequently, the petitioner is merely aggrieved by the demand of 10% of the total refund amount as a condition for disposal of the representation only. This Court finds that the concept of demanding or depositing of a portion of the demanded money as a pre-condition for hearing is not uncommon in tax laws or under the general laws for that matter as we have the Consumer Protection Act (Please see Proviso to section 19 or section 51 of the Act) or the RERA Act,

2016 (please see section 43(5) of the Act). However, in most of the cases as is prevalent under the Income Tax Laws, GST Laws, or the Customs Laws, these pre-condition for hearing is basically at the stage of an Appellate forum and not before the original adjudicating authority. Further, most significantly these conditions of depositing a portion of demanded money for hearing of the appeal is found to be under specific law, for example we have specific sections for pre-deposit under Section 254 of the Income Tax Act, Section 129E of the Customs Act, 1962 or we had section 35F of the Central Excise Act or section 107(6) or section 112(8) of the CGST Act, 2017. Thus, it can be safely deduced from the said analogy that demand of a portion of demanded money as a pre-condition for hearing is borne from the statute itself and in all the cases the said pre-condition is imposed at the appellate stage, i.e the time when the duty or demand comes to be adjudicated upon by the original administrative or quasi-judicial body and most importantly the demand is not in a fluid state.

(15) In the present case, this Court finds that the demand to deposit 10% of the total grant-in-aid concession provided to the petitioner, for hearing of the representation is neither founded in the statute nor the same is at an appellate stage. Learned Standing Counsel is unable to point out any provision under law under which the State Government/opposite party No.1 would have demanded the pre-deposit for disposal of the representation of the petitioner. Further, this Court is unable to appreciate the conduct of the opposite parties in demanding the said pre-deposit at the belated stage of April, 2023, especially when the representation had been pending since December, 2020.

(16) Further, this Court finds that the impugned order dated 24.04.2023 and consequential order dated 26.05.2023 demanding deposit of 10% of the total amount of grant-in-aid has been passed by the opposite party nos.1 and 3, respectively, without any reasoning or affording any opportunity of hearing to the petitioner. This Court need not burden this Judgment, with various case laws on the subject that reasoning is the soul and hallmark of any judicial or administrative orders and a part of fair procedure. Suffice to say that the Apex Court in the case of **Kranti Associates (P) Ltd. v. Masood Ahmed Khan** : (2010) 9 SCC 496, wherein the Apex Court, while dealing with the requirement of passing reasoned order by an authority whether administrative, quasi-judicial or judicial, has after applying the earlier declarations of law in this regard, summarized as under :-

“...Summarizing the above discussion, this Court holds:

“(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the

decision maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior Courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less

prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and *Anya v. University of Oxford*, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, adequate and intelligent reasons must be given for judicial decisions.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of Due Process. “

(17) Further, this Court finds that opposite parties no. 1 and 3 before passing the impugned orders demanding a deposit of 10% of the grant-in-aid have not afforded a reasonable opportunity of hearing to the petitioner. There is no quarrel on the aspect that a demand of payment of 10% of the grant-in-aid does give rise to civil consequences and would cause serious prejudice to the rights of the petitioner. In any case, an opportunity of being heard is one of the most important component of “principle of Natural Justice”. The Apex Court in **Dharampal Satyapal Ltd. v. CCE : (2015) 8 SCC 519 : 2015 SCC OnLine SC 489** at page 537 has held as under:

“35. From the aforesaid discussion, it becomes clear that the

opportunity to provide hearing before making any decision was considered to be a basic requirement in the court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary.”

(18) Be that as it may, it is a trite law that no order prejudicing the interest of a person resulting in civil consequences can be passed without affording an opportunity of hearing. It is not the case of opposite parties that opportunity of hearing was afforded to the petitioner or that the present case is such wherein notice of hearing is to be dispensed with. This Court finds that no opportunity of hearing was provided to the petitioner before the passing of the impugned order dated 24.04.2023 and consequential order dated 26.05.2023, whereby the petitioner had been directed to deposit Rs. 40,75,035.90 as and towards pre-deposit for hearing of their representation dated 03.12.2021.

(19) As a sequel to above, the impugned order dated 24.04.2023 passed by the opposite party No.1 and consequential order dated 26.05.2023 passed by the opposite party no.3-District Magistrate, Saharanpur, cannot be sustained in the eyes of law and as such the same are hereby quashed. Opposite party no.1 shall consider and decide the representation of the petitioner dated 03.12.2021 filed against the order dated 05.02.2021 by a speaking and reasoned order, without insisting for any pre-deposit from the petitioner, expeditiously, say, within a period of three months from the

date of production of certified copy of this order.

(20) It is made clear that this Court has not expressed any opinion on the merits of the present case in any manner and it is open for the parties to agitate their rights and liabilities, if any, before the competent authority, as may be permissible under law.

(21) The writ petition stands **allowed**.

(2025) 3 ILRA 253
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.03.2025

BEFORE

THE HON'BLE PIYUSH AGRAWAL, J.

Writ Tax No. 1022 of 2021

With

Writ Tax No. 1019 of 2021

With

Writ Tax No. 1020 of 2021

With

Writ Tax No. 1021 of 2021

With

Writ Tax No. 1023 of 2021

M/s Jaya Traders ...Petitioner
Versus
Addl. Commissioner Grade-II & Anr. ...Respondents

Counsel for the Petitioner:

Aditya Pandey

Counsel for the Respondents:

C.S.C.

Civil Law - Goods and Services Tax Act, 2003—Sections 31 & 129—Once the petitioner has failed to prove the true/ actual movement of the goods from West Bengal / Assam to Delhi, the seizure proceedings cannot be said to be unjustified—therefore, accompanying tax invoices

and other documents cannot said to be genuine-glaring example of organized tax evasion- Sec 129 of the GST Act -any person transports any goods - in contravention of the Act - liable to be detained or seized- tax invoice has to be issued in terms of Section 31 of the Act, - intentionally undervalued the goods to take wrong advantage of Rule 138 which dispense the requirement of e-way bill accompany the goods- the seizure proceedings cannot be said to be unjustified.

W.P. dismissed. (E-9)

List of Cases cited:

1. S/s S.K. Trading Co. & anr. Vs Additional Commissioner Grade -2 (Appeal) & anr.(Writ Tax No. 1464 of 2022)
2. M/s Maa Aabe Vs St. of UP, Neutral Citation No. 2024: AHC: 158372-DB
3. M/s Shamhu Saran Agarwal & Co.Vs Additional Commissioner Grade -2, Neutral Citation No. 2024:AHC:15975.
4. K.P. Sugandh Ltd. Vs St. of Chhattisgarh, 2020 NTN (Vol. 74) 372
5. Best Sellers (Cochin) Pvt. Ltd. Vs Assistant St. Tax Officer, 2021 NTN (Vol 75) -360
6. Sameer Mat Industries & anr. Vs St. of Kerala & ors., 2018 NTN (vol 66) -69
7. M/s Ghata Mehandipur Balaji Grinding Works Pvt. Ltd. Vs Commissioner Commercial Tax, UP Govt. Lucknow (Trade Tax Revision No. 15 of 2014) decided on 25.3.2014
8. St. of Karn. Vs M/s Ecom Gill Coffee Trading Pvt. Ltd. (Civil Appeal No. 230 of 2023) decided on 13.3.2023
9. M/s Shiv Trading Vs St. of U.P. & ors. (Writ Tax No. 1421 of 2022) decided on 28.11.2023
10. M/s Radha Fragrance Vs U.O.I.& ors. (Writ tax No. 427 of 2019)

11. Shakti Trading Comp. Vs St. of U.P. & ors. (Writ Tax No. 756 of 2011) decided on 24.5.2011

(Delivered by Hon'ble Piyush Agrawal, J.)

1. Heard Mr. Aditya Pandey, learned counsel for the petitioner and Mr. Ravi Shanker Pandey, learned Additional Chief Standing Counsel for the State-respondents.

2. Similar controversy is involved in all the writ petitions, therefore, with the consent of the parties, all the aforesaid writ petitions are being decided by a common judgement treating Writ Tax No. 1022 of 2021, as leading case.

Writ Tax No. 1022 of 2021

3. By means of this writ petition, the petitioner is assailing the order dated 25.10.2021 passed by respondent no. 1 in Appeal No. GST/110/2020-21 (A.Y. 2021-22) under Section 129 (3) of IGST/CGST Act.

4. Learned counsel for the petitioner submits that petitioner is a proprietorship firm having GSTIN No. 18BPUPT4581B1ZB and is engaged in the business of trading of pan masala and scented tobacco. He submits that in the normal course of business, the petitioner has received an order for supply of pan masala and scented tobacco from various registered dealers situated at Delhi and in pursuance of the aforesaid order tax invoice dated 15.9.2021 was raised on which IGST, cess was charged. Since the value of the goods was less than the prescribed limit, therefore, e-way bill was not generated and through tax invoice nos. 41 to 45 dated 15.9.2021, the goods were transported from West Bengal/ Assam to New Delhi and

during its onward journey the same was transshipped at Kanpur where the same was intercepted. The statement of the truck driver was recorded wherein he stated that the goods were loaded from Kanpur and on the said premise, show cause notice was issued to which the petitioner submitted its reply that crossing challan prescribed under the Act was accompanying the goods showing that the goods were transshipped at Kanpur during its onward journey to Delhi and since the value of the goods was less than Rs. 50,000/- e-way bill was not required to accompany the goods, hence the proceedings cannot be initiated. He submits that the goods were seized on the ground of under valuation, which is beyond the power of the detaining / seizing authority. He submits that against the penalty order, an appeal was filed, which has been dismissed without considering the material on record.

5. He submits that the authorities have misperceived certain facts, which are beyond the record. In the seizure proceeding under Section 129 of the Act, the authority cannot seize the goods on the ground of under valuation.

6. In support of his contention, he relied upon the judgements of this Court in the following cases :-

(i) **S/s S.K. Trading Co. and another Vs. Additional Commissioner Grade -2 (Appeal) and another (Writ Tax No. 1464 of 2022)** decided on 16.3.2023,

(ii) **M/s Maa Aabe Vs. State of UP, Neutral Citation No. 2024: AHC: 158372 -DB**

(iii) **M/s Shamhu Saran Agarwal and company Vs. Additional Commissioner Grade -2, Neutral Citation No. 2024:AHC:15975.**

7. He further relied upon the judgements of other High Court :-

(i) Chhattisgarh High Court in the case of **K.P. Sugandh Ltd. Vs. State of Chhattisgarh, 2020 NTN (Vol. 74) 372;**

(ii) Kerala High Court in **Best Sellers (Cochin) Private Ltd. Vs. Assistant State Tax Officer, 2021 NTN (Vol 75) -360 and Sameer Mat Industries and another Vs. State of Kerala and others, 2018 NTN (vol 66) -69.**

8. *Per contra*, learned Additional Chief Standing Counsel supports the impugned order and submits that it is simply a case of tax evasion. He submits that goods were detained and seized not only on the ground of under valuation but also on the ground of non-genuine documents accompanying with the goods. He submits that on perusal of the documents accompanying with the goods, it shows that the movement of the goods had started from West Bengal / Assam to Delhi but the statement of the driver of the vehicle was that the goods were loaded from Kanpur.

9. He further submits that petitioner has failed to bring any material on record, even before this Court, in order to prove that the actual movement of the goods started from West Bengal / Assam. He further submits that neither any truck number nor any toll receipt has been mentioned/ shown at any stage of the proceeding to prove that actual movement of the goods had taken place from West Bengal / Assam, however when the vehicle was detained at Kanpur then on physical verification, the movement of the goods was not found genuine, therefore, the proceedings were rightly initiated.

10. He further submits that the petitioner has utterly failed to bring on record any cogent material in order to prove the movement of the goods in question from West Bengal / Assam to Delhi. He further submits that the statement of Driver has not been rebutted at any stage of the proceedings.

11. In support of his submission, learned ACSC has relied upon the judgement of this Court in the case of **M/s Ghata Mehandipur Balaji Grinding Works Pvt. Ltd. Vs. Commissioner Commercial Tax, UP Govt. Lucknow (Trade Tax Revision No. 15 of 2014) decided on 25.3.2014.**

12. Rebutting to the aforesaid submission, learned counsel for the petitioner submits that even assuming without admitting that the goods were loaded from Kanpur, still, no adverse inference can be drawn against the petitioner on the ground of under valuation.

13. After hearing learned counsel for the parties, the Court has perused the records.

14. It is admitted between the parties that the goods in question was accompanying with the tax invoice and cross challan but on the statement of the truck driver that the goods were loaded from Kanpur, the proceedings have been initiated. The accompanying document shows the movement of the goods from West Bengal / Assam to Delhi, whereas in the statement of the truck driver the goods were loaded at Kanpur. The record further shows that the petitioner had neither submitted any reply nor contradicted the statement made by the truck driver.

15. It is also admitted that the goods in question was manufactured at Kanpur. In order to prove the genuineness of the document accompanying with the goods, the petitioner was required to complete the chain i.e. the truck / vehicle number on which the goods were transported from West Bengal / Assam, toll receipts of the toll plazas crossed during its journey up to Kanpur.

16. The record further shows that the petitioner has utterly failed to bring on record the actual movement of the goods from the West Bengal / Assam to Kanpur. For claiming the genuineness of the document, the petitioner was duty bound to spell out the detail of mode of transport as well as details of vehicle used for transportation of the goods in question up to Kanpur. In the absence of any detail being furnished by the petitioner, the proceedings cannot be said to be illegal.

17. The record further shows that while issuing MOV-7, findings have been recorded, which are quoted hereunder :-

"वाहन चालक द्वारा दिये गये सशपथ बयान माल के भौतिक सत्यापन एवं प्रपत्रों की जांच के आधार पर निम्नलिखित प्रतिकूल बिन्दुओं पर स्पष्टीकरण अपेक्षित है:-
परिवहन के समय चेकिंग पर प्रस्तुत प्रपत्रों के अनुसार माल का परिवहन असम व पश्चिम बंगाल से दिल्ली हेतु किया जा रहा है जबकि वाहन चालक द्वारा सशपथ बयान में स्वीकार किया गया है कि प्रश्रगत माल उनके द्वारा दादागंज, कानपुर नगर से लोड किया गया है। उल्लेखनीय है कि भौतिक सत्यापन में प्रश्रगत माल गगन ब्रांड पान मसाला एवं सेन्टेड जर्दा के पाउच पर कानपुर के निर्माणकर्ता फर्म सर्वश्री ग्रीन्सवर्थ इण्टरप्राइजेज प्रा० लि० GSTIN-09AAJCG0608CIZZ) पता.C9, A/2, A-5 AND A-6 SIDE-1, PANKI INDUSTRIAL AREA, KANPUR NAGAR अंकित पाया गया है जिससे स्पष्ट है कि प्रश्रगत माल का निर्माण कानपुर में ही किया गया है। इस सम्बन्ध में माल

के परिवहन में प्रयुक्त वाहन की EWAY OFFICER APP पर VEHICLE PASSAGE DETAIL चेक किये जाने पर प्रश्रगत वाहन को इन तिथियों में पश्चिम बंगाल व असम से कानपुर आना प्रदर्शित नहीं पाया गया। उपर्युक्त तथ्यों के आधार पर यह स्पष्ट है कि कानपुर में निर्मित माल पान मसाला एवं सेन्टेड जर्दा को कानपुर से प्रश्रगत वाहन में लोड कर पश्चिम बंगाल एवं असम की फर्मों द्वारा जारी कूटरचित प्रपत्रों के आधार पर दिल्ली की फर्मों को आपूर्ति दिखाते हुए उत्तर प्रदेश माल एवं सेवा कर अधिनियम के अन्तर्गत माल एवं सेवा कर अधिनियम के अन्तर्गत माल एवं सेवा कर अधिनियम 2017 के सुसंगत प्रावधानों का उल्लंघन करते हुए करापवंचन की मंशा से माल का परिवहन किया जा रहा है।⁸

(Emphasis supplied by this Court)

18. Further while passing the order in MOV-6 following findings have been noted:-

"8. माल के स्वामी द्वारा प्रस्तुत आपति का अवलोकन किया गया जिसे निम्न कारणों से स्वीकार/अस्वीकार किया जाता है। जारी नोटिस के क्रम में विक्रेता फर्म सर्वश्री जया ट्रेडर्स असम, GSTIN- 18BPUPT4581B1ZB) के अधिकृत प्रतिनिधि श्री अमित कुमार पुत्र श्री राम गोपाल, निवासी. 133P/105, ट्रांसपोर्ट नगर, कानपुर नगर उपस्थित हुए एवं फर्म की तरफ से जारी अधिकार पत्र, फर्म का REG-06 एवं नोटिस का लिखित उत्तर दाखिल करते हुये 60 बैग गगन पान मसाला एवं 15 बैग गगन सेन्टेड जर्दा माल के स्वामित्व का दावा प्रस्तुत किया। लिखित उत्तर के बिन्दु सं०.1 में विक्रेता फर्म द्वारा प्रश्रगत माल के स्वामित्व का दावा तो प्रस्तुत किया गया है, किन्तु नोटिस में उठाए गए बिन्दु कि प्रश्रगत माल कानपुर में ही निर्मित है एवं वाहन चालक के सशपथ बयान के अनुसार कानपुर से ही लोड किया गया है, के सम्बन्ध में कोई उत्तर दाखिल नहीं किया गया है। कानपुर में निर्मित माल को कानपुर से लोड कर असम में स्थित फर्म द्वारा दिल्ली की फर्म हेतु जारी इनवाइस के आधार पर माल को परिवहित क्यों किया जा रहा है, इस बिन्दु पर उत्तर प्रस्तुतकर्ता मौन हैं, जो कि प्रश्रगत फर्म के कानपुर के नॉन बोनाफाईड डीलर के साथ दुरभि संधि कर छद्म कूटरचित प्रपत्रों का प्रयोग करते हुए करापवंचन की मंशा से माल का परिवहन किए जाने की पुष्टि करता है। दाखिल उत्तर के बिन्दु सं०.2 में कहा गया है कि माल प्रपत्रों के

अनुसार है एवं कोई भिन्नता नहीं है। जारी नोटिस में इंगित तथ्य कि प्रश्नगत माल के भौतिक सत्यापन में माल के कानपुर की निर्माणकर्ता फर्म सर्वश्री ग्रीन्सवर्थ इण्टरप्राइजेज प्रा० लि० (GSTIN-09AAJCG0608CIZZ) पता C9, A/2, A-5 AND A-6 SIDE-1, PANKI INDUSTRIAL AREA, KANPUR NAGAR द्वारा निर्मित होने तथा माल को कानपुर से ही लोड किये जाने के तथ्य, के साथ यह भी इंगित किया गया है कि प्रश्नगत मामले में सुनियोजित ढंग से वास्तविक मूल्य से कम मूल्य घोषित करते हुए कुछ इस प्रकार टैक्स इनवाइस जारी की जा रही है कि क्रेता फर्म को रु० 50000.00 मूल्य से अधिक मूल्य के माल की आपूर्ति भी हो जाए एवं सी०जी०एस०टी० रूल 2017 के नियम 138 के प्रावधानों का उल्लंघन भी न होने पाए। अतः माल की मात्रा तो प्रपत्रों के अनुसार अवश्य है, किन्तु प्रपत्रों में की गई घोषणा के विपरीत न तो प्रश्नगत माल को असम से लोड किया गया है एवं न ही प्रश्नगत माल प्रस्तुत टैक्स इनवाइस के मूल्य से आच्छादित है। इस प्रकार के छद्मकूट्रचित प्रपत्रों की रचना करते हुए प्रश्नगत वाहन में लोड माल की मात्रा भी प्रपत्रों के अनुसार सुनिश्चित करना विक्रेता फर्म की करापवंचना की विधि (MODUS OPERANDI OF TAX EVASION) को स्पष्ट करता है तथा उनके द्वारा यू०पी०जी०एस०टी० व्ही०जी०एस०टी० एक्ट 2017 के सुसंगत प्रावधानों का उल्लंघन करते हुए करापवंचन की मंशा को प्रमाणित करता है।"

(Emphasis supplied by this Court)

19. The record further shows that finding of facts recorded by the respondent authority against the petitioner have not specifically been assailed in the appeal filed by the petitioner. On perusal of the grounds of appeal annexed as Annexure No. 5 of the writ petition, which runs from paragraph no. 1 to 20, it shows that in none of the grounds, any detail of vehicle or mode of transport has been whispered in order to explain as to how the goods were moved from West Bengal / Assam to Kanpur. Once the findings of fact recorded against the petitioner have not been assailed in the appeal, the proceedings cannot be said to be illegal or arbitrary in any manner.

20. The petitioner harped that the proceeding is illegal only on the ground of under valuation but in the present case, the goods were not only detained and seized on the basis of under valuation but also on the statement of the truck driver that the goods were loaded from Kanpur whereas the documents accompanying the goods shows that it was being transported from West Bengal / Assam.

21. Under the taxing statute, in the original proceeding or in the summary proceeding, the primary burden is to be discharged by the assessee by bringing on record the cogent material. The burden of proof is shifting to the department only in the re-assessment proceeding or subsequent proceeding not being the original proceeding. In other words, the assessee in the original proceeding is duty bound to bring the material on record in support of its claim but in the subsequent proceeding i.e. re-assessment proceedings, the burden shifts on the revenue.

22. In the present case, the petitioner has utterly failed to bring on record any cogent material for transporting the goods from West Bengal / Assam to Delhi via Kanpur. Once the petitioner has failed to prove the true/ actual movement of the goods from West Bengal / Assam to Delhi, the seizure proceedings cannot be said to be unjustified.

23. The Hon'ble Apex Court in the case of **State of Karnataka Vs. M/s Ecom Gill Coffee Trading Pvt. Ltd. (Civil Appeal No. 230 of 2023)** decided on 13.3.2023 has held that burden was upon the dealer to prove beyond doubt its claim. Further, the Apex Court has emphasised in the said judgement that if the dealer is claiming any exemption, then burden to

prove the genuineness of the transaction is upon the person claiming the benefit. On that background, the Hon'ble Apex Court has held that dealer has to prove the actual physical movement of the goods.

24. Following the said judgement, this Court in the case of **M/s Shiv Trading Vs. State of UP and others (Writ Tax No. 1421 of 2022) decided on 28.11.2023** has held that onus to prove and establish beyond doubt the actual transaction, physical movement of the goods as well as genuineness of transaction is required.

25. The said judgement passed in **M/s Shiv Trading (supra)** has been confirmed by the Apex Court in **Special Leave to Appeal (C) No. 3345 of 2024** decided on 12.2.2024.

26. In the case in hand, the petitioner was duty bound to establish beyond doubt the actual physical movement of the goods from West Bengal / Assam to Delhi via Kanpur but the petitioner has failed to do so, therefore, accompanying tax invoices and other documents cannot said to be genuine. In other words, it is a clear case of contravention of Act as well as the Rules.

27. It is a glaring example of organized tax evasion. The petitioner has failed to bring on record any material to show actual movement of the goods from West Bengal / Assam. The details of truck number or toll receipt crossed during its journey from West Bengal / Assam to Kanpur have not been filed at any stage.

28. Various findings have been recorded against the petitioner as quoted herein above but the same have not been assailed at any stage even before this Court. **The findings of fact recorded against the petitioner have**

not been assailed and the petitioner chose in its wisdom to assail only some part of the finding i.e. on the ground of under valuation, the seizure cannot be held to be justified.

29. The record further shows that at the time of detention, the truck driver made a statement that the goods were loaded from Kanpur whereas the accompanying documents shows that movement of the goods from West Bengal / Assam thus at the very first instance, the petitioner ought to have produce the material showing the movement of the goods from West Bengal / Assam. Therefore, the statement of the truck driver which was taken at the first instance should be given more sanctity.

30. This Court in the case of **M/s Ghata Mehandipur Balaji Grinding Works Pvt. Ltd. (supra)** has held as under :-

“The Court feels that neither the papers were available with the revisionist nor they were produced within a reasonable period. The statements of the Driver which is obtained at the first instance should be given more sanctity than the explanation which are produced by the managers and proprietors later-on.”

31. The record further shows that orders have not only been passed on the ground of under valuation but otherwise.

32. The petitioner even failed to bring on record any cogent material to show actual movement of the goods. Once the actual journey as claimed by the petitioner was not proved, the proceedings cannot be said to be illegal or arbitrary.

33. Section 129 of the GST Act refers that any person transports any goods while

they are in transit in contravention of the provisions of this Act or the rules made thereunder, the said goods shall be liable to be detained or seized.

34. Under the GST Act, the tax invoice has to be issued in terms of Section 31 of the Act, which prescribes every registered dealer supplying the taxable goods before or at the time of removal of such supply of goods shall issue a tax invoice showing the description, quantity and **value of goods**, the tax charged thereon and such other particulars as may be prescribed.

35. Rule 46 (j) and (k) of GST Rules also prescribe the particulars to be mentioned in the tax invoice i.e. **total value of supply of goods and taxable value of supply of goods**.

36. On bare reading of said Sections as well as the Rules, it clearly shows that the intent of the legislature is that the registered dealer shall **furnish the true and correct value of the goods on the tax invoice**. But failing to declare the true value of the goods would result in the document being held not to be proper in the context of valuation. The legislature has conferred the power of seizure of goods, if the goods in transit are in contravention of the provisions of Act as well as the Rules framed thereunder.

37. Rule 138 empowers for dispensing the requirement of e-way bill along with the goods less than Rs. 50,000/-

38. The record clearly shows that dealer has intentionally undervalued the goods to take wrong advantage of Rule 138 which dispense the requirement of e-way

bill accompany the goods, cannot be spared.

39. This Court in the identical set of facts in the case of **M/s Radha Fragrance Vs. Union of India and others (Writ tax No. 427 of 2019)** has dismissed the petition vide judgement and order dated 14.2.2023 in which the petitioner had challenged the seizure of goods on the ground of under valuation. The relevant paragraphs of the judgement are quoted hereunder:-

“16. The question, which arises for consideration is, whether in the garb of certain protection given under Rule 138 dispensing requirement of E-Way bill for goods valuing below Rs.50,000/-, a dealer who is a manufacturer, can be allowed to send his goods to different consignees undervaluing the goods and the Tax Authorities not to proceed taking action under the Act.

17. ...

18. The Taxing Authorities, on fair valuation, found that the goods, which were in transit both Pan Masala and Tobacco accounted for Rs.7,12,766/- while the proper disclosure was not made by the dealer. It was on this undervaluation of goods that the authorities proceeded and imposed IGST and penalty.

19. The very purpose of downloading E-Way bill is that every goods, which are in transit, is recorded in the Web Portal and the Government has a clear picture of the goods which are manufactured and sold by the dealers either Inter-State or Intra-State.

20. It is only to protect small trade where the value is minimal that the necessity of downloading E-Way bill is dispensed with by the Government. The purpose of dispensing E-Way bill for the goods below Rs.50,000/- does not allow the

dealer to undervalue his goods so as to escape it from bringing to the notice of the Government and the Taxing Authorities by uploading the same on the Web-Portal.

21...

22. *From the transaction carried out by the petitioner it is clear that huge amount of Pan Masala and Tobacco were being transported undervaluing the goods, without downloading the mandatory E-Way bill. In the garb of technicalities, no benefit can be given to a dealer who has intentionally undervalued his goods to escape from the eyes of law.*

23 ...,

24.....

25. *This Court finds that it is a case of grossly undervaluing the 3,84,000 pouches of Pan Masala being sent by the dealer disclosing its price as Rs.69,600/-. The only conclusion, which can be drawn is that to avoid downloading E-Way bill and brining the transaction on record that the goods were undervalued to such an extent.*

26. *Moreover, the Taxing Authorities have also found that one of the consignee situated at Jharkhand was actually registered with the Taxing Authorities disclosing his nature of business as 'Works Contract and Suppliers of Services' and not in the business of trading. These actions of the dealer lead to the only conclusion that the transactions being not recorded with the Revenue so as to escape payment of due tax in the garb that E-Way bill is only required in case value of goods is more than Rs.50,000/-.*

27. *Thus, from the above, it can be safely said that the action of the State Authorities in detaining the goods and imposing tax and penalty, which have been affirmed by the first Appellate Authority, needs no interference of this Court as the dealer cannot be permitted to take shelter*

of the fact that no E-Way bill is required in case of goods valued less than Rs.50,000/-.

28. *It is clear case of undervaluation of goods by the dealer who was transporting huge quantity of Pan Masala and Tobacco showing negligible value of goods."*

40. The record further reveals that purchasing and selling firm have not shown any purchase of Pan Masala / Scented Tobacco in the A.Y. 2021-22. The said fact has been recorded in GST MOV 07 dated 22.9.2021, which is quoted hereunder:-

"प्रश्नगत संव्यवहार में सभी विक्रेता फर्मों की आनलाइन विभागीय पोर्टल पर खरीद विक्री की जांच करने पर पाया गया की वर्ष 2021 -22 में इन फर्मों द्वारा पान मसाले एवं तम्बाकू की कोई खरीद प्रदर्शित नहीं है। प्रस्तुत प्रपत्रों की जांच में यह भी प्रकाश में आया की आसाम व पश्चिम बंगाल के पंजीकृत फर्मों द्वारा दिल्ली के पंजीकृत फर्मों को माल के वास्तविक मूल्य से कम मूल्य घोषित करते हुवे इस प्रकार सुनियोजित ढंग से इनवॉइस जारी किये जा रहे है की प्रत्येक कर्ता फर्मों की रु 50 हजार से अधिक मूल्य के माल की आपूर्ति भी हो जाये एवं सीजीएसटी रूल 2017 के नियम 138 के प्राविधानों का उल्लंघन भी न हो पाए। "

41. Same finding has been recorded in demand order dated 24.9.2021, which is quoted hereunder:-

"प्रश्नगत संव्यवहार में सभी विक्रेता फर्मों की आनलाइन विभागीय पोर्टल पर खरीद विक्री की जांच करने पर पाया गया की वर्ष 2021 -22 में इन फर्मों द्वारा पान मसाले एवं तम्बाकू की कोई खरीद प्रदर्शित नहीं है। "

42. A Division Bench of this Court in the case of **M/s Shiv Shakti Trading Company Vs. State of UP and others (Writ Tax No. 756 of 2011)** decided on 24.5.2011, has an occasion to upheld the seizure of the goods being made on the ground of under valuation. The Division Bench has held that it is incumbent on a

person, who is transporting goods, to declare the true value of the goods and failure to declare the same, would result non proper document in the context of the valuation, therefore, the power of seizure of goods has correctly been exercised against the petitioner. The relevant paragraphs of the said judgement are quoted hereunder:

"2. The petitioner, by means of the present writ petition, has impugned the seizure order dated 07.05.2011 on the following grounds:-

"(i) Section 50 of U.P. Value Added Tax Act does not permit seizure of a consignment being imported into the State of U.P. on the ground of undervaluation; the entire proceedings suffer from an inherent lack of jurisdiction and are void ab initio.

.....

4.....As it was alleged in the notice that the goods were undervalued, the petitioner demanded, from the respondents, the basis for alleging the same. The petitioner denied that the goods were undervalued and contended that the charge of undervaluation was unsustainable. The power to seize goods on the ground of undervaluation was not available under the U.P. VAT Act. It was, therefore, contended that the proceedings are void ab initio.

7. A perusal, therefore, of the above provisions would show that, any person who imports into the State from any place outside the State any goods, shall obtain the prescribed form of declaration in such manner as may be prescribed from the Assessing Authority having jurisdiction over the area, where his principal place of business is situated or, in case there is no such place, where he ordinarily resides. Sub-section (4) of Section 50 confers power in the officer, making the search or inspection under this Section, who finds

any person transporting or attempting or abetting to transport any goods to which this section applies without being covered by the proper and genuine documents referred to in the preceding sub-sections and for the reason to be recorded, if he is satisfied, after giving such person an opportunity of being heard, that such goods were being so transported in an attempt to evade assessment or payment of tax due or likely to be due under this Act, he may order detention of such goods. By virtue of sub-section (5) of Section 50, various provisions of Section 48 of the U.P. VAT Act, which are the machinery provisions, have been made applicable to the goods under sub-section (4). One such provisions is sub-section (7) of Section 48, under which the officer seizing the goods, can release the goods on calling upon the dealer or the person in charge, and indicating the amount not exceeding the amount which will be sufficient to cover the penalty likely to be imposed, to deposit the said amount in cash. Under the first proviso to this sub-section, the Commissioner or such other officer, not below the rank of a Deputy Commissioner, as may be authorised by the Commissioner, for sufficient reasons to be recorded in writing, can direct for release of the goods without any deposit or on depositing such lesser amount, or furnishing security in such form other than cash or indemnity bond, as he may deem fit.

A consideration of this Section would indicate that the goods have to be imported by filling in the prescribed declaration form, and indicating the quantity or measure and value of the goods. This contemplates that the quantity, measure or value are the real quantity, measure or value and not short quantity or measure or being undervalued. If this is so read, then sub-

section (4) of Section 50 can be correctly understood, as the expression used is 'proper and genuine documents'. A document, which does not correctly state the value cannot be said to be a proper document.

8. In our opinion, it would not be possible for us to follow the judgment of the learned Judge in Delhi Calcutta Carrying Corporation (supra) rendered under the provisions of the U.P. Trade Tax Act. The reasons being that it is incumbent on a person, who is importing goods, to declare the true value of the goods. Failure to declare the true value of goods would result in the document being held not to be a proper document in the context of the valuation.

9.....The legislature itself has conferred power of detention in respect of goods being imported under Section 50, if not covered by proper and genuine documents and by virtue of Section 50 (5) has incorporated the machinery provisions of Section 48 into Section 50. We, therefore, have no hesitation to hold that under Section 50 (4) of the U.P. VAT Act, the officer making search has power to detain goods not covered by a proper and/or genuine documents.

We, therefore, have no hesitation in holding that the power to seize goods imported into the State without proper or genuine document is located in Section 50 (4)."

(Emphasis supplied by this Court)

43. Section 129 (3) read with Section 31 of GST Act as well as Rule 46 of GST Rules is analogous of Section 48 and 50 of the VAT Act.

44. If the petitioner wants to take any advantage of tax invoice accompanying the goods then primary duty of movement of goods

from West Bengal / Assam to Delhi have not been discharged.

45. In view of the aforesaid two judgements one by Division Bench in the case of **Shiv Shakti Trading Company (supra)** and other by the co-ordinate Bench of this Court in the case of **Radha Fragnance (supra)**, it has been held that the seizure can be made even on the ground of under valuation, if under valuation is deliberate for the purpose of avoiding payment of tax or to defeat the provisions of the Act.

46. Therefore, the judgements relied upon by the petitioner of Kerala High Court as well as Chhattisgarh High Court are of no aid to the petitioner as the jurisdiction High Court has given the judgement on the issue which squarely covers the present case.

47. Further the other judgments relied upon by the petitioner in the cases of **S.K. Trading (supra)**, **M/s Shamhu Saran Agarwal and company (supra)** has not noticed the earlier judgment given in the case of **M/s Radha Fragnance (supra)**, hence the same are *per incuriam* and of no aid to the petitioner.

48. However, so far as the Division Bench judgment relied upon by the petitioner in the case of **M/s Maa Aabe (supra)** is concerned, it is only for the purposes of release of goods and not in the proceedings under Section 129 (3) of the Act, therefore, the same is not applicable in the facts of the present case.

49. In view of above, no interference is called for by this Court in the impugned order.

50. All the aforesaid writ petition lack merit and same are **dismissed** accordingly.

3 All. M/s Gurunanak Arecanut Traders Vs. Commissioner, Commercial Tax, Lucknow, U.P. & Anr. 263

(2025) 3 ILRA 263

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 05.03.2025

BEFORE

THE HON'BLE ROHIT RANJAN AGARWAL, J.

Writ Tax No. 1177 of 2022

M/s Gurunanak Arecanut Traders
...Petitioner

Versus

Commissioner, Commercial Tax, Lucknow,
U.P. & Anr. ...Respondents

Counsel for the Petitioner:

Ms. Pooja Talwar

Counsel for the Respondents:

C.S.C.

Civil Law - Sate Goods and Service Tax Act, 2017- Section 68 read with Rule 138 & 138A

-E-way bill was generated on the same day after about three hours after the detention of the goods- petitioner was not carrying out the business at the place where the firm was registered- registration of the firm was also suo moto cancelled-post amendment in the Rule, it has become obligatory that goods should be accompanied with e-way bill -an intention to evade the tax - description of goods declared was different-goods declared were taxable @5% while the goods found on verification were taxable @18%..

W.P. dismissed. (E-9)

List of Cases cited:

1. M/s. Modern Traders Vs St. of U.P. & ors., 2018 NTN 187 1287 of 2024

2. Aexpress Logistics India Pvt. Ltd. Vs U.O.I. & ors., 2018 NTN 245

3. Raj Iron and Building Materials Vs U.O.I., 2018 UPTC 217

4. M/s. Falguni Steels Vs St. of U.P. & ors., 2024 UPTC 221

5. Asharaf Ali K.H. Vs The Assistant St. Tax Officer & ors., WRIT TAX No. - 1177 of 2022[3] 2021 UPTC 469

6. M/s. Jhansi Enterprises, Nandanpura, Jhansi Vs St. of U.P. & ors., Writ Tax No. 1081 of 2019, decided on 01.03.2024

7. M/s. Akhilesh Traders Vs St. of U.P. & ors., Writ Tax No. 1109 of 2019, decided on 20.02.2024

(Delivered by Hon'ble Rohit Ranjan Agarwal, J.)

1. Heard Ms. Pooja Talwar, learned counsel for the petitioner and Sri Arvind Kumar Mishra, learned Standing Counsel for State.

2. Through this writ petition, a challenge has been made to order dated 16.06.2022 passed by Commercial Tax Officer, Sector-3 (Mobile Squad), Etah exercising power under Section 129(1) of the State Goods and Service Tax Act, 2017 and order dated 24.06.2022 under Section 129(3) and also quashing has been sought for the demand of tax and penalty of Rs.90,62,400/- as well as appellate order dated 18.08.2022.

3. The brief facts of the case are that petitioner is a registered dealer under State Goods and Service Tax Act, 2017 (*hereinafter called as "the Act of 2017"*). He has sold 400 bags of Arecanut vide tax invoice dated 09.06.2022 to M/s. Jagdamba Enterprises, Nagpur which is also said to be a registered dealer in his respective State. The said Arecanut was being transported from Delhi to Nagpur, Maharastra by M/s. Ravi Goods Transport. The goods were intercepted at Mathura at 4:28 a.m. on

10.06.2022. The goods while in transit were not carrying the e-way bill. The e-way bill was generated on 10.06.2022 at 7:36 a.m. and was valid till 16.06.2022. A physical verification of consignment of goods was carried out. A detention order was passed on 16.06.2022 under Section 129(1) of the Act of 2017. On verification, it was found that the goods which were in transit is *Chikni Bhuni Supari (processed Arecanut)* and is taxable @ 18% and not @5% as declared by the petitioner. A show-cause notice was issued on 16.06.2022. When the show-cause notice remained unattended, respondent no. 2 on 24.06.2022 passed order under Section 129(3) of the Act of 2017 and a demand of tax and penalty of Rs.90,62,400/- was raised against the petitioner. Aggrieved by the said order, petitioner filed Writ Tax No. 933 of 2022 before the Division Bench of this Court which was dismissed on 12.07.2022 on the ground that petitioner has remedy of filing an appeal under Section 107 of the Act of 2017. Thereafter, an appeal under Section 107 of the Act was preferred by petitioner before Additional Commissioner, Grade-II (Appeal), Aligarh which was rejected by order impugned dated 18.08.2022. Hence, the present writ petition.

4. Learned counsel for the petitioner submitted that the detention order dated 16.06.2022 as well as penalty order dated 24.06.2022 have been passed without giving any opportunity of hearing. It is further submitted that first appellate authority has not applied its mind while rejecting the appeal and a non-speaking order has been passed. According to her, the person who had downloaded the e-way bill was not present at the place of detention and the driver of the vehicle had moved out without intimation to the

petitioner. As soon as the driver realised the mistake and informed the petitioner about the non availability of the e-way bill, the same was downloaded without delay and produced before the authorities. Reliance has been placed upon the decision in case of **M/s. Modern Traders vs. State of U.P. and 2 others, 2018 NTN 187** and decision of co-ordinate Bench in case of **Axpress Logistics India Pvt. Ltd. vs. Union of India and 3 others, 2018 NTN 245**. Reliance has also been placed upon decisions rendered in **Raj Iron and Building Materials vs. Union of India, 2018 UPTC 217**, **M/s. Falguni Steels vs. State of U.P. and others, 2024 UPTC 221** and decision of Kerala High Court rendered in case of **Asharaf Ali K.H. vs. The Assistant State Tax Officer & others, 2021 UPTC 469**.

5. It is next contended that the goods have been declared as Arecanut while the authorities are claiming it to be *Chikni Bhuni Supari* (processed Arecanut). According to her, the misclassification of goods cannot be basis of detention of goods in transit. The taxing authorities could at the most detained the goods for purpose of preparing the relevant papers for effective transmission to the judicial assessing officers and nothing beyond.

6. Learned Standing Counsel while opposing the writ petition submitted that there was an intention to evade the tax. He further submitted that goods which were intercepted while in transit were being transported without e-way bill. The vehicle No. NL-01-Q-5655 was intercepted at about 4:28 a.m. while the e-way bill was downloaded after it was issued at 7:36 a.m. on 10.06.2022 i.e. after almost three hours. Further, when the petitioner firm was checked on GST portal, the signature of

proprietor of the firm, Gursen Singh on the rent agreement was different from that of tax invoice issued for the transaction.

7. The driver of the vehicle in his statement stated that goods were taken from other vehicle and it was loaded in the vehicle in Bakauli, Delhi. The firm has neither main place of business nor additional place of business at Bakauli, Delhi. Further, place of dispatch in subsequent e-way bill issued reflects North West Delhi, PIN Code 110041 while PIN Code of Bakauli is 110036. These evidences show that registration is being misused to hide the original source of transportation and clearance of goods. On the basis of GSTIN, deficiencies found in checking of seller firm, M/s. Gurunanak Arecanut Traders, Delhi (petitioner), a letter was sent to Assistant Commissioner, SGST, Zone-5, Ward-62, Delhi for investigation of the firm. An inquiry report dated 14.06.2022 was sent, in which place of business of firm was not found to be traceable and process for suo moto cancellation has been marked against the firm.

8. According to learned Standing Counsel, this clearly proves the evasion of tax due to mismatch between unidentified goods owner in the name of present seller. At the time of investigation, no business activity was found at the seller's shown trading place. Further, verification of goods revealed that chopped smooth roasted betel nut (processed) were loaded while they have been declared as Arecanut-201 goods, while on physical verification goods fall under the category of Betel Nut (HSN Code 21069030) which are taxable @18%, whereas tax was charged @5%. It was further contended that buyer firm M/s. Jagdamba Enterprises, Nagpur, Maharastra

was only registered on 05.01.2022 and has purchased goods from only one firm M/s. Harsh International, Delhi. According to him, the facts reveal that transaction in question was being done with an intention to evade tax by organised group which is in violation of Section 68 read with Rule 138 and 138A of the Act of 2017 and it attracts the provision of Section 20 of IGST Act, 2017 read with Section 129 of UGST/CGST Act. Moreover, the notice was provided on 16.06.2022 to driver of the vehicle and was also sent through e-mail to consignee and consignor on 16.06.2022 but no clarification was received from anyone on their behalf.

9. It was lastly contended that the judgment relied upon by petitioner relate to the period where the detention of goods was prior to April, 2018. According to him, in instances of detention that occurs subsequent to April, 2018, e-way bill is mandatory and required to be carried along with goods. Reliance has been placed upon the decision of co-ordinate Bench in case of **M/s. Jhansi Enterprises, Nandanpura, Jhansi vs. State of U.P. and others, Writ Tax No. 1081 of 2019**, decided on 01.03.2024 and decision rendered in case of **M/s. Akhilesh Traders vs. State of U.P. and others, Writ Tax No. 1109 of 2019**, decided on 20.02.2024.

10. I have heard respective counsel for the parties and perused the material on record.

11. The sole question for consideration is whether carrying e-way bill is mandatory for the movement of goods from one place to another. The question is no more *res integra* after the 14th Amendment of the Uttar Pradesh Goods and Service Tax Rules, 2017 which came into effect from

01.04.2018. Post amendment in the Rule, it has become obligatory that goods should be accompanied with e-way bill. The co-ordinate Bench in **Akhilesh Traders (supra)** had held that in case goods are not accompanied by e-way bill, a presumption may be read that there is an intention to evade tax. Such a presumption of evasion of tax then becomes rebuttable by the materials to be provided by the owner/transporter of the goods. Relevant paras 7 and 8 are extracted hereasunder:-

“7. This Court in umpteen cases where penalties were being imposed under Section 129 of the Act though held that an intention to evade tax should be present, however, in the event the goods are not accompanied by the invoice or the e-way bill, a presumption may be raised that there is an intention to evade tax. Such a presumption of evasion of tax then becomes rebuttable by the materials to be provided by the owner/transporter of the goods.

8. In the present case, one comes to an inexorable conclusion that the petitioner has not been able to rebut the presumption of evasion of taxes, as he has not been able to explain the absence of invoice and the E-Way Bill. Production of these documents subsequent to the interception cannot absolve the petitioner from the liability of penalty as the very purpose of imposing penalty is to act as a deterrent to persons who intend to avoid paying taxes owed to the Government. It is clear that if the goods had not been intercepted, the Government would have been out of its pocket with respect to the GST payable on the said goods.”

12. In **Jhansi Enterprises (supra)**, the co-ordinate Bench following the decision rendered in **Akhilesh Traders (supra)** further held that mere furnishing of

documents subsequent to interception cannot be a valid ground to show that there was no intention to evade tax. The Court further held that reliance placed upon the decision by petitioner therein was of transaction prior to April, 2018 but after April, 2018, those difficulties have been resolved and there is no difficulty in generating and downloading the e-way bill. The Court held as under:-

“11. Mere furnishing of the documents subsequent to the interception can not be a valid ground to show that there was no intention to evade tax. There must be some reasonable grounds to justify the non-production of documents at the proper time.

12. Furthermore, the judgments upon which the petitioner is relying are prior to April 2018, when there were actually some difficulties with the generation of e-way bill. But after April, 2018 those difficulties have been resolved and now there is no difficulty in generating and downloading the e-way bill.

13. The argument raised by the counsel appearing on behalf of the petitioner that the vehicle was parked at the godown for unloading is not supported by the facts. The interception of the vehicle was in a place away from the godown and this entire argument is obviously an afterthought. Accordingly, the application of Section 129(3) of the Act by the authorities is valid and just in law.

14. In light of the above, I am of the view that the petitioner herein has not complied with the provisions of law, hence the steps taken by the respondent authorities are proper and in accordance with the law and require no interference by this court. “

13. In the instant case, it is an admitted case that the goods were intercepted by respondent no. 2 on 10.06.2022 at 4:28 a.m., while the e-way bill was generated on

the same day at 7:36 a.m. after about three hours after the detention of the goods. Moreover, on the inquiry it was found that the petitioner was not carrying out the business at the place where the firm was registered. The registration of the firm was also *suo moto* cancelled.

14. The argument raised by petitioner's counsel that notice was not served before order dated 24.06.2022 was passed is totally against the material on record which not only reveals that notice was served upon the driver but it was also sent through e-mail to both the seller and buyer on 16.06.2022 which remained unattended. Once finding has been recorded by authorities and petitioner firm never participated in the proceedings before the authorities, no case is made out for interference by this Court.

15. Moreover, conduct of the petitioner clearly reveals that an intention to evade the tax is there as not only the goods in transit were not accompanied by e-way bill but also the description of goods declared by petitioner was different which was intercepted by the taxing authorities on 10.06.2022. Goods declared were taxable @5% while the goods found on verification were taxable @18%.

16. Reliance placed upon the Division Bench judgment is distinguishable in the facts of the present case as in those cases, the transaction was prior to April, 2018 where the benefit was given to those assesses. It is mandatory on the part of the seller to download the e-way bill once the goods are put in transit. Subsequent downloading of e-way bill would not absolve the liability under the Act.

17. No case for interference is made out.

18. The writ petition fails and is hereby dismissed.

(2025) 3 ILRA 267
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.03.2025

BEFORE

THE HON'BLE PIYUSH AGRAWAL, J.

Writ Tax No. 1892 of 2024

Surendra Gupta ...Petitioner
Versus
Appellate Authority State GST/Addl.
Commissioner Grade II & Ors.
...Respondents

Counsel for the Petitioner:

Nikhil Kumar, Vagish Yadav

Counsel for the Respondents:

Kaushalendra Nath Singh, Ankur Agrawal,
C.S.C., Gopal Verma

Petitioner paid one time lease rent amounting to Rs.97,18,500/- to the New Okhla Development Authority ('NOIDA') and also paid the GST @ 18%- the NOIDA issued a tax invoice to the petitioner-he furnished his return u/s 39 of the CGST/UPGST Act- due to the mistake on the part of the NOIDA, the same was not reflecting in the form GSTR-3B-proceedings were initiated u/s 61 of the CGST Act-impugned order – appeal-rejected-impugned-petitioner cannot be permitted to suffer to the mistake committed on the part of NOIDA-petitioner paid the legitimate tax to NOIDA, which was not deposited under the proper head -petitioner must be compensated by NOIDA within 15 days.

W.P. disposed. (E-9)

List of Cases cited:

1. Batliboi Environmental Engineers Ltd. Vs Hindustan Petroleum Corp. Ltd. & anr., (2024) 2 Supreme Court cases 375

(Delivered by Hon'ble Piyush Agrawal, J.)

1. Heard Sri Nikhil Kumar, learned counsel for the petitioner, and Sri Ankur Agarwal for the respondent no.4, and Sri R.S. Pandey, learned Additional Chief Standing Counsel for the State-respondents.

2. By means of this writ petition, the petitioner has challenged the order dated 05.09.2024 passed by the respondent no.1 and order dated 15.12.2023 passed by respondent no.2.

3. Learned counsel for the petitioner submits that the petitioner is the head (karta) of the Hindu Undivided Family, whose family is in possession and ownership of building situated at F-16, Sector-18, Noida, Gautam Buddha Nagar. The said property is a commercial four-storey building and as such the petitioner is in the business of renting out the said property. The rent received from the said property, is taxable under the Goods & Services Tax Act, 2017 and therefore, the petitioner has filed its return. The petitioner, being a law abiding person, has paid one time lease rent amounting to Rs. 97,18,500/- to the New Okhla Development Authority (hereinafter referred to as the 'NOIDA') and also paid the GST @ 18%, which amounts to Rs.17,49,330/-, pursuant to which, the NOIDA issued a tax invoice to the petitioner. The petitioner furnishes his return under Section 39 of the CGST/UPGST Act. He further submits due to the mistake on the part of the NOIDA, the same was not reflecting in the form GSTR-3B, however, the tax so

deposited by the petitioner, was accepted by the NOIDA.

4. He further submits that the proceedings were initiated against the petitioner under Section 61 of the CGST Act to which the petitioner submitted his reply and thereafter, the proceedings under Section 73 (1) of the CGST Act was initiated to which the petitioner also submitted a detailed reply supported by documentary evidence showing the payment of tax as well as acknowledgement receipt issued by the NOIDA, but without considering the same, the impugned order has been passed against which an appeal was filed, which was also dismissed without considering the material available on record.

5. He further submits that in the counter affidavit filed on behalf of NOIDA, the fact with regard to deposit of amount of tax by the petitioner has been accepted and same has been deposited in some other head. He further submits that once the NOIDA accepts the payment of tax, the petitioner cannot be penalized twice; once paying the tax to the NOIDA for depositing the same with GST department as per the law and other by facing penal proceedings under Section 73 of the GST Act whereby tax has again been imposed upon the petitioner of equal amount along with penalty of Rs.19,22,778/-. He further submits that the amount of tax and penalty imposed by the impugned order upon the petitioner may be directed to be paid/compensated by the NOIDA to the petitioner.

6. *Per contra*, learned Standing Counsel supports the impugned order by submitting that the proceedings were

rightly initiated against the petitioner as engaged in renting out the commercial building, over which goods and services tax are liable to be paid/deposit, but the same was not deposited.

7. The counsel appearing for the NOIDA admits that the amount was received towards from the petitioner towards the GST payment, but the same was deposited under some wrong head. He further submits that had the same was notified at the proper time, the same would have been rectified. He further submits that it's the mistake on the part of the petitioner in not informing the respondent-NOIDA within time.

8. Upon hearing the parties, the Court has perused the records.

9. The record shows that the petitioner has paid the amount of GST to the NOIDA, which was required to be deposited with the GST Department. The said fact has not been disputed by either of the authorities.

10. The paragraph nos. 3, 4, 5 & 6 of the counter affidavit filed on behalf of the NOIDA would be relevant, which reads as under:-

“3. That it is pertinent to submit here that on 21.09.2017 the petitioner had deposited Rs. 97,18,500/- towards lump sum/one time lease rent amount of the plot situated at F-16, Sector 18, Noida. The Petitioner also paid Rs. 17,49,330/-towards 18% GST for the aforesaid plot with the respondent authority. Copy of the statement of accounts of the petitioner for payment of one-time lease rent alongwith payment of applicable GST and the copy of the payment challan dated 21.09.2017 are

collectively filed herewith as ANNEXURE No. SA1 (colly.).

4. That pertinently since the GST Act was recently enacted and due to non-clarity and on the advise of the tax consultant of the Authority, the said tax was deposited by the Respondent Authority in the head of B2C and subsequently the return was filed. If the Petitioner had approached the Authority at that time, the Authority could have filed the rectification application. But, this fact went unnoticed and resultantly the same could not be rectified in time.

5. That on 18.10.2017, the Respondent Noida Authority deposited the aforesaid payment of GST at 18% amounting to Rs. 17,49,330/- with the State GST Authorities and as such filed its return in Form GSTR-3B dated 18.10.2017 for the Month of September F.Y. 2017-18. Copy of the Return filed by the Noida Authority dated 18.10.2017 for the Month of September F.Y. 2017-18 is filed herewith as ANNEXURE No. SA2.

6. That the Noida Authority vide its return filed in Form GSTR 3B dated 18.10.2017 for the Month of September F.Y. 2017-18 deposited Rs. 14,10,21,036/- towards CGST and Rs. 14,10,21,036/ towards SGST. This amount included the amount of Rs. 8,74,665/- paid by the Petitioner towards CGST and Rs. 8,74,665/ towards SGST. Therefore, as such the tax collected by the Respondent Noida Authority from the Petitioner had been deposited by the Respondent Noida Authority on 18.10.2017 itself with the GST Authorities.”

11. Perusal of the contents of the counter affidavit filed on behalf of NOIDA, show that the payment of GST deposited by the petitioner was accepted by it. Further,

they also admitted depositing of the GST amount under the wrong head. The NOIDA had attributed its mistake upon tax consultant by whom the advise was taken. In turn, the NOIDA accepts its mistake for non-deposit of the due tax so paid by the petitioner under the proper heads.

12. In view of the above categorical statement of admission made in the counter affidavit filed by the NOIDA/respondent no.4, the impugned orders cannot be said to be arbitrary or call for any interference by this Court.

13. Before parting, it will be relevant to notice that the tax amount paid by the petitioner to the NOIDA authorities was accepted, and deposited under the wrong head, hence the petitioner cannot be permitted to suffer to the mistake committed on the part of NOIDA. The petitioner paid the legitimate tax to NOIDA, which was not deposited under the proper head and therefore, on account of that the petitioner has to face not only the proceedings of GST, but also imposition of penalty.

14. In view of the peculiar facts and circumstances, the Court is of the view that the petitioner must be compensated by NOIDA.

15. The Hon'ble Apex Court in the case of *Batliboi Environmental Engineers Limited Vs. Hindustan Petroleum Corporation Limited and Another*, (2024) 2 *Supreme Court cases* 375, has held that computation of compensation should not be whimsical and absurd resulting in a windfall and bounty for one party at the expense of the other and the damages should be commensurate with the loss sustained by the party.

16. Since the quantification against the petitioner along with penalty has been made of Rs.19,22,778/-, which has been confirmed by the appellate authority, a Writ of Mandamus under Article 226 of the Constitution of India is issued to the respondent no.4 i.e. NOIDA to pay/compensate the amount of Rs.19,22,778/- to the petitioner within 15 days from today. After making the said payment to the petitioner, the NOIDA shall intimate about the same to the District Magistrate, Gautam Buddh Nagar within the said period.

17. The NOIDA is at liberty to recover the said amount from the erring officer of its department.

18. In the event of failure of payment of compensation to the petitioner by the NOIDA as mentioned here-in-above, the District Magistrate, Gautam Buddh Nagar is directed to recover the said amount from NOIDA and pay the same to the petitioner within 15 days thereafter.

19. Accordingly, the writ petition is *disposed off*.

20. An affidavit of compliance shall be filed by the NOIDA within a period of one month from today. In the event of failure, the District Magistrate, Gautam Buddh Nagar is directed to file an affidavit of compliance as stated above within a month.

21. List in Chamber on 15.05.2025.

22. The Registrar (Compliance) of this Court is directed to communicate this order to the NOIDA and District Magistrate-Gautam Buddh Nagar, within 24 hours from today.

(2025) 3 ILRA 271
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 20.03.2025

BEFORE

THE HON'BLE MANISH MATHUR, J.

Criminal Misc. Anticipatory Bail Application U/S
 438 Cr.P.C. No. 329 of 2025

Ashok Kumar Verma & Ors. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicants:

Ratnesh Kant Agnihotri, Aparna Dwivedi,
 Utakarsh Pratap Singh

Counsel for the Opposite Parties:

G.A.

Criminal Law-The Code of Criminal Procedure,1973-Section 438- for the last three years the investigation of the case is going on and the applicants are cooperating in the investigation. However, the same is at the concluding stage and the investigating officer by misinterpreting Section 170 of the Cr.P.C. is making all out efforts to apprehend/arrest of the applicants. Applicants are ready to cooperate in the investigation and would remain present before the investigating officer as and when their presence would be required--- Co-accused persons have already been enlarged on bail--- protection from arrest for limited period of time i.e. till submission of police report under Section 173(2) Cr.P.C., may be granted in favour of the applicants. **(Para 6,8 & 9)**

Anticipatory bail application disposed of.
 (E-15)

List of Cases cited:

Nathu Singh Vs St. of U.P. & ors., 2021(6) SCC 64, MANU/SC/0360/2021

(Delivered by Hon'ble Manish Mathur, J.)

1. Heard learned counsel for applicants, learned Additional Government Advocate appearing on behalf of State and perused the record. In view of order being passed, notices to opposite party no.2 stand dispensed with.

2. First bail application has been filed with regard to Case Crime No.79 of 2021 under Sections 420, 467, 468, & 471 I.P.C., P.S. Ghazipur, District Lucknow.

3. As per contents of first information report, the applicants along with co-accused have allegedly submitted fabricated certificates for the purposes of registration as a Pharmacist.

4. It has been submitted by learned counsel for applicants that first information report has been lodged without verification and scrutinizing all the relevant documents.

5. Further submission of learned counsel for applicants is that the case of the applicants is at par with that of co-accused namely, Jafar Ali, Arvind Kumar Chaurasiya, Mohd. Nadeem Khan, Abhishek Kumar Agarwal, Ankit Kumar Agarwal, Sanjay Kumar Chaudhary, Mohan Singh, Abhishek Saxena, Vikram Singh, Akash Kumar Ray and Sandeep Singh and Dhruv Raj Singh who have been granted anticipatory bail by this Court vide orders dated 5.8.2024, 29.2.2024, 6.8.2024, 2.9.2024, 5.9.2024, 1.10.2024, 12.11.2024, 22.7.2024, 22.10.2024, 22.10.2024, 24.10.2024 and 3.1.2025 passed in CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. numbered - 1737 of 2024, 424 of 2024, 1746 of 2024, 1992 of 2024, 2042 of 2024, 2265 of 2024, 2506 of 2024, 1600 of 2024, 2494 of 2024, 2495 of 2024, 2430 of 2024

and 2792 of 2024 respectively and as such he claims parity.

6. It is submitted that for the last three years the investigation of the case is going on and the applicants are cooperating in the investigation. However, the same is at the concluding stage and the investigating officer by misinterpreting Section 170 of the Cr.P.C. is making all out efforts to apprehend/arrest of the applicants. Applicants are ready to cooperate in the investigation and would remain present before the investigating officer as and when their presence would be required.

7. Learned A.G.A. on the other hand submits that having regard to the manner in which the offence has been committed, the applicants are not entitled for any protection but does not dispute the factual aspects of the matter.

8. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it appears that first information report has been lodged against various persons on the same allegations of submitting forged documents. Co-accused persons have already been enlarged on bail as indicated herein above.

9. Thus, having regard to the law laid down by Hon'ble the Supreme Court in **Nathu Singh v. State of U.P. and Others**, 2021(6) SCC 64, MANU/SC/0360/2021, protection from arrest for limited period of time i.e. till submission of police report under Section 173(2) Cr.P.C., may be granted in favour of the applicants.

10. In result, the anticipatory bail application moved by applicants- **Ashok Kumar Verma, Vinay Kumar, Jayprakash**

Vishwakarma, Pranjal Singh, Akhilesh and Ramlakhan Yadav is finally disposed of with a direction that till the submission of police report under Section 173 (2) Cr.P.C., in the event of arrest of applicants in above-mentioned case, they shall be released forthwith on anticipatory bail on each of them furnishing a personal bond of Rs. 50,000/- and two sureties in the like amount to the satisfaction of the Station House Officer of the Police Station concerned/ Investigating Officer subject to the following conditions:-

(1) The applicants shall make themselves available for interrogation or even for discovery of any fact by a police officer as and when required;

(2) The applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer;

(3) The applicants shall not leave the country without the previous permission of the Court.

11. In case of default of any condition, the investigating officer may approach this Court for cancellation/ modification of this order.

(2025) 3 ILRA 272

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 03.03.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ - A No. 52 of 2025

**Ashwani Kumar Srivastava ...Petitioner
Versus
Central Bank Of India, through its
Managing Director, Mumbai ...Respondent**

Counsel for the Petitioner:
Ritesh Srivastava

Counsel for the Respondent:
Gyan Prakash Srivastava

Transfer-The Disabilities Act, 2016-Transfer order impugned-petitioner’s requests for transfers have been regularly acceded to by the Bank-was repeatedly given postings of his choice-was retained in one zone for more than a decade- was accommodated as a care giver to the greatest extent possible- Bank has rightly examined the extent of the disability suffered by the wife of the petitioner who is an Assistant Teacher -does her daily chores, lives with dignity, and has attained excellence in her chosen profession- transfer of the petitioner does not fall in the category of routine/rotational transfer and disentitles him to claim exemption under the transfer policy.

W.P. dismissed. (E-9)

List of Cases cited:

Neeraj Chaturvedi Vs Central Bank of India & ors., 2022 (4) AWC 3722

(Delivered by Hon’ble Ajay Bhanot, J.)

1. The judgement is being structured in the following conceptual framework to facilitate the discussion:

I	Introduction	
II	Submissions of learned counsels for the parties	
III	Facts	
IV	Statutory Framework/Legal Provisions	
	A.	The Rights of Persons with Disabilities Act, 2016

	B.	Office Memorandum of the Government of India
	C.	Bank Circulars
	D.	Transfer : An incident of service
V	Rights of care givers and obligations of employers in light of interplay of applicable statutory scheme and legal provisions	
VI	Conclusions	

I.Introduction

2. The petitioner has assailed the order dated 06.05.2024 passed by the respondent no. 4 transferring the petitioner from Raniganj Branch, District Pratapgarh (Varanasi Region) to the Central Bank of India, Regional Office, Rajkot.

II. Submissions of learned counsel for the parties:

3. Shri Ritesh Srivastava, learned counsel for the petitioner while assailing the impugned transfer order submits as follows:

I. The petitioner is the care giver of his wife who is a person suffering from disability under the Rights of Persons with Disabilities Act, 2016I.

II. The impugned order is violative of the mandate of the Disabilities Act, 2016. Attention is called to various provisions of the Disabilities Act, 2016.

III. The impugned order of transfer is in the teeth of the Office Memorandum dated 08.10.2018 issued by Government of India, Bank Circular dated 28.06.2022 and transfer policy of the Bank dated 15.03.2024.

IV. The petitioner is entitled to exemption from transfer under the aforesaid provisions of the Disabilities Act, 2016, Office Memorandum dated 08.10.2018 issued by Government of India, Bank Circular dated 28.06.2022 and transfer policy of the Bank dated 15.03.2024.

V. The mother of the petitioner is also suffering from a disability under the Disabilities Act, 2016.

VI. The impugned order suffers from non application of mind and was passed as a matter of routine.

Submissions on behalf of respondents

4. Shri Ashok Khare, learned Senior Counsel assisted by Shri Gyan Prakash, learned counsel for the respondent Bank defended the impugned order by contending as under:

I. Transfer is an incident of service. The office memorandum of the Government of India do not impose a complete ban on transfers of employees who are care givers.

II. The petitioner has misinterpreted the Disabilities Act, 2016. Such misreading will have an adverse impact on the functioning of the institution as a whole.

III. The petitioner has been accommodated over the years to the greatest extent possible by the respondents

keeping in mind his duties as a care giver, and to provide support to his wife who suffers from disability.

IV. The impugned transfer order is not violative of Office Memorandum dated 08.10.2018 issued by Government of India, Bank Circular dated 28.06.2022 and transfer policy of the Bank dated 15.03.2024.

V. No documentation is in the record to support the claim of the mother's disability under the Disabilities Act, 2016.

VI. The impugned order was passed after due consideration of all relevant aspects in the facts and circumstances of the case.

III. Facts

5. The petitioner is an employee in the Central Bank of India (hereinafter referred to as the Bank). The wife of the petitioner suffers from benchmark disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016. The nature of disability of the petitioner's wife as recorded in the disability certificate is extracted hereunder:

“(A) She is a case of Locomotor Disability

(B) the diagnosis in her case in Gradually Progressive Muscular Dystrophy Right Lower Limb

(C) She has 40% (in figure) Forty percent (in words) Permanent Disability in relation to her Right Leg as per the guidelines (Guidelines for the purpose of assessing the extent of specified disability in a person included under RPwD Act,

2016 notified by Government of India vide S.O. 76(E) dated 04/01/2018)”

6. The petitioner claims that his mother is also a person suffering from disability under the Disabilities Act, 2016. However, no certificate of disability of the petitioner’s mother issued by the competent authority is in the record. The respondent Bank has specifically refuted the claim of the petitioner regarding his mother’s disability. The pleadings made by the Bank are untraversed. The claim of the petitioner as regards the disability of his mother is rejected.

7. The petitioner was posted for 10 years in the Varanasi Region, and for 15 years in Lucknow Region. The petitioner was transferred to Allahabad at his own request. His second request for transfer was also acceded to, and he was retained in Varanasi Region w.e.f. 22.07.2021. By the impugned order the petitioner has been transferred to Rajkot Region.

IV. Statutory Framework/Legal Provisions

A. The Rights of Persons with Disabilities Act, 2016

8. The controversy at hands requires an examination of the statute, the Government of India Memorandum and Bank circulars which hold the field.

9. The Rights of Persons with Disabilities Act, 2016² was enacted to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto. The United Nations General Assembly adopted its Convention on the Rights of Persons with Disabilities

on the 13th day of December, 2006. The following principles for empowerment of persons with disabilities were laid down in the Convention and guided the legislative intent of the Rights of the Persons with Disabilities Act, 2016.

(a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

(b) non-discrimination

(c) full and effective participation and inclusion in society

(d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

(e) equality of opportunity;

(f) accessibility;

(g) equality between men and women;

(h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;

10. It would be apposite to extract provisions of the Disabilities Act, 2016 which are germane to the controversy. Section 2(r) of the Disabilities Act, 2016 defines the benchmark disability as under:

“Section 2(r) “person with benchmark disability” means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;”

11. Section 2 (s) of the Disabilities Act, 2016 states the definition of disability thus:

Section 2(s) “person with disability” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;

12. The disability of the petitioner’s wife which is relatable to the above said provision has been discussed above.

13. Section 2(d) of the Disabilities Act, 2016 provides for a “care giver” to support a person with disability and reads as under:

“Section 2(d) “care-giver” means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability.”

14. “Care givers” directly impact the quality of life of persons with disabilities. Care givers are key facilitators who enable persons with disabilities to realize their rights under the Disabilities Act, 2016.

15. The definition of phrase “care giver” is widely worded and inclusive in nature. While the definition prioritizes family members and parents, other care givers also receive equal recognition under the scheme of the Disabilities Act, 2016. Care givers are important support system under the Disabilities Act, 2016 for persons with disabilities.

16. “Establishment” has been defined in Section 2(i) of Disabilities Act, 2016 as follows:

Section 2(i) "establishment" includes a Government establishment and private establishment;”

17. Section 2 (l) of Disabilities Act, 2016 defines “high support”:

Section 2 (l) "high support" means an intensive support, physical, psychological and otherwise, which may be required by a person with benchmark disability for daily activities, to take independent and informed decision to access facilities and participating in all areas of life including education, employment, family and community life and treatment and therapy;”

18. Persons with disabilities are further categorized into persons with disability having high support needs, as provided under Section 2(t) and Section 58 of Disabilities Act, 2016. The provisions are extracted hereunder:

Section 2(t) "person with disability having high support needs" means a person with benchmark disability certified under clause (a) of sub-section (2) of section 58 who needs high support;

Section 58. Procedure for certification—(1) Any person with specified disability, may apply, in such manner as may be prescribed by the Central Government, to a certifying authority having jurisdiction, for issuing of a certificate of disability.

(2) On receipt of an application under sub-section (1), the certifying authority shall assess the disability of the concerned person in accordance with relevant guidelines notified under section

56, and shall, after such assessment, as the case may be,

(a) issue a certificate of disability to such person, in such form as may be prescribed by the Central Government;

(b) inform him in writing that he has no specified disability.

(3) The certificate of disability issued under this section shall be valid across the country.”

19. Section 2 (y) of the Disabilities Act, 2016 serves legislative intent by contemplating “reasonable accommodation” to enable persons with disabilities to enjoy their rights equally with others. The provision is reproduced hereunder:

“Section 2(y) “reasonable accommodation” means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.”

20. With a view to ensuring equality for persons with disabilities, Section 3 of the Disabilities Act, 2016 mandates the appropriate Government to take the required measures. At the same time the provision also underscores the need for reasonable accommodation. The provision is extracted hereunder:

“3. Equality and non-discrimination.—(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality,

life with dignity and respect for his or her integrity equally with others.

(2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.”

21. Section 20 of the Disabilities Act, 2016 prohibits discrimination in employment in Government establishments and also requires the appropriate government to frame policies for posting and transfer of employees with disabilities:

“Section 20. Non-discrimination in employment—(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

(2) Every Government establishment **shall provide reasonable**

accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.”

(emphasis supplied)

“Section 21. Equal opportunity policy— (1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.

(2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be.”

22. The transfer policies expected of appropriate government include policies regarding care givers as well. The said transfer policies have to be aligned with the scheme of the Disabilities Act, 2016.

IV B. Office Memorandum of the Government of India

23. The Government of India in keeping with the intent of the Disabilities Act, 2016 took out Office Memorandum dated 08.10.2018 exempting persons with disability and care givers from routine exercise of transfers/rotational transfer subject to administrative constraints:

“3 With the enactment of the Rights of Persons with Disabilities Act, 2016 on April 17, 2017, the following instructions are issued in supersession of the above-mentioned OMs of even number dated June 6, 2014, November 17, 2014 and January 5, 2016 with regard to the eligibility for seeking exemption from routine exercise of transfer/rotational transfer:

(i) A Government employee who is a care-giver of dependent daughter/son/parents/spouse/brother/sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2 (r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints.

(ii) The term "Specified Disability" as defined in the Schedule to the Rights of Persons with Disabilities Act, 2016, covers (1) Locomotor disability including leprosy cured person, cerebral

palsy, dwarfism, muscular dystrophy and Acid attack victims (ii) Blindness (iii) Low-vision (iv) Deaf (v) Hard of hearing (vi) Speech and language disabilities (vii) Intellectual disability including specific learning disabilities and autism spectrum disorder (viii) Mental illness (ix) Disability caused due to: (a) Neurological conditions such as Multiple sclerosis and Parkinson's disease (b) Blood disorder- Haemophilia, Thalassemia and Sick cell-disease and (x) Multiple disabilities (more than one of the above specified disabilities) including deaf blindness and any other category of disabilities as may be notified by the Central Government.

(iii) The term “Specified Disability” as defined herein is applicable as grounds only for the purpose of seeking exemption from routine transfer/rotational transfer by a Government employee, who is a care-giver of dependent daughter /son /parents /spouse / brother /sister as stated in Para 3 (i) above.

4. All the Ministries/Departments are requested to bring these instructions to the notice of all concerned under their control.”

IV C. Bank Circulars

24. The aforesaid Government of India guidelines granting exemptions to care givers from routine/rotational transfers were adopted by the respondent Bank with the appropriate limitations. The relevant parts of the transfer of policy are extracted hereunder:

“1. General Provision applicable to all types of transfer:

1.1 Notwithstanding, what is stated in these norms, the management at

its own discretion may’ post/transfer any officer at any time to any Station/Region/Zone, irrespective of the period of stay thereat, as per the administrative/ business needs of the Bank or any other reason considered valid by the management in its own opinion.

1.2 In respect of transfer/ posting of physically challenged officer, with benchmark disability and Officer who is caregiver of dependent daughter/son/parents/spouse/ brother/ sister with ‘Specified Disability’ as certified by the certifying authority, as a Person with Benchmark Disability, as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016, in terms of DOPT guidelines O.M.No.42011/3/2014-Estt(Res) dated 8 October, 2018, bank shall follow the guidelines issued by Govt. of India from time to time, subject to administrative constraint.

In order to effectively implement rotational transfer exemptions to Care-givers, it has been decided to bestow precedence to employees who are Care-giver of Dependent Spouse & Dependent Children over other family members.

ROTATIONAL TRANSFERS:

3.1 Officers in Scale I/II/III who have (subject to provisions of para 1.2 and 3.2 & 3.5)

- Completed a stay of 3 years in a Branch shall be rotated to another Branch within the Station /Region

- Completed 5 years of stay in Administrative posting combining immediate previous admin tenure but have not completed continuous 5 years admin

tenure in the present office, shall be posted in a branch/office within the same Region. However, the officer shall be transferred out to another Region on completion of continuous 5 years admin tenure in present region.

Officers posted in CLD/SPBTC/CBOTC/ZAO/ZO/RO/LDM O/CGTMSE CELL and in any other Department/ Offices which is not involved directly in customer dealing shall be treated as administrative posting.

- Completed 6 years of stay in the region as an officer, irrespective of the scale, shall be transferred to another region which could be within the Zone/other Zone.

- Completed 10 years of stay as an officer in a particular zone, irrespective of the scale, shall be transferred to another zone. However based on the Ranking on Performance appraisal in Central Rise, Officers may be retained in the same zone to the extent of fulfilling administrative requirements in order of merit.

- The Officers in Scale I, II & III who have been retained on Promotion in the Present Region/Zone shall be retained in the same Region/Zone till the completion of their term 3 years as the case may be.

- No Officer shall be transferred out of Branch/Administrative office prior to completion of 3 years/5 years tenure respectively without prior approval of GM-HCM Central Office.

- Notwithstanding what is stated above, the transfers will be subject to vacancies, suitability of officers and management exigencies.

- The cutoff date for determining the requisite period of stay in present Region/Zone will be as of 30th of June.

Provided however, officers in JMG Scale I who have been posted to rural branches may be transferred after completion of 2 years of rural stay so as to provide opportunities for other officers who have still to complete the rural stint. Further, officers working at a place declared as Tribal Area by the respective State Government may be given place of their choice out of 3 stations in the same Zone after their stay of 2 years in such Tribal Area.

However, Officers posted as BM in Rural/SU branch should continue for minimum 2 years or upto completion of the stint."

IV D. Transfer: An incident of service

25. Transfer is an incident of service. Transfer is called an exigency of service in service jurisprudence. The employer has a right to transfer the employees subject to statutory provisions and other instruments of law. No employee has a vested right to be posted to any particular place or posting. Transfers expose employees to different situations and environments thus building their capacities and quality of output. Transfers provide opportunities to all employees to serve in different assignments, and prevent creation of vested interests which often result from long continuance of an employee at one place or area. Rational policies of transfer operate to the benefit of the institution, safeguard the interests of employees and also contribute to the efficiency of the organization. Transfers are

made in public interest and to enhance institutional efficiency.

V. Rights of care givers and obligations of employers in light of interplay of applicable statutory scheme and legal provisions:

26. The interplay of the statutory scheme of the Disabilities Act, 2016, the Government of India memorandum and the bank circulars, powers of transfer vested in an employer discussed earlier will determine the rights of care givers, the obligations of the employers and shall finally govern the fate of this case.

27. A conjoint reading of the Disabilities Act, 2016, the Office Memorandum dated 08.10.2018 issued by Government of India, Bank Circular dated 28.06.2022 and transfer policy of the Bank dated 15.03.2024, the right of the employer to transfer an employee has to be made in order to understand the scope of exemptions from transfer for care givers under the said transfer policies. The Government of India Office Memorandum, and Transfer Policy are compatible with the Disabilities Act, 2016 and together they comprise a composite scheme.

28. The Disabilities Act, 2016 contemplates equal opportunities for persons with disabilities in exercise of their rights, enjoyment of life and development of their potentialities. The said legislative enactment envisages that the society at large, appropriate government, governmental institutions and other establishments are fully sensitized to requirements of persons with disabilities and create appropriate support systems and a working ethos for realization of the rights of persons with disabilities.

29. At the same time the Disabilities Act, 2016 also recognizes the limitations of employers which have to be factored in while implementing the beneficent provisions of the Disabilities Act, 2016.

30. The words “reasonable accommodation” as defined in Section 2(y) and applied in Section 3 and Section 20 (2) of the Disabilities Act, 2016 contemplate that establishments/institutions to make necessary policy adjustments to create support systems for persons with disabilities enable to enjoy their rights equally with others. The “care givers” under the Disabilities Act, 2016 are also entitled to the benefit of “reasonable accommodation” under the transfer policies framed by the Government/Government Institutions.

31. However, implicit in the said provisions are the restrictions on the scope of such accommodation/adjustment to be made by the employer.

32. The meaning of “reasonable accommodation” in Black’s Law Dictionary Eighth Edition is as follows:

“reasonable accommodation. 1. An action taken to adapt or adjust for a disabled person, done in a way that does not impose an undue hardship on the party taking the action. Under the Americans with Disabilities Act, an employer must make reasonable accommodations for an employee's disability. Examples of reasonable accommodations that have been approved by the courts include providing additional unpaid leave, modifying the employee's work schedule, and reassigning the employee to a more appropriate, vacant position.”

33. The phrase “reasonable accommodation” is a very clear and an explicit legislative standard for framing and implementation of transfer policies by the concerned establishments. The legislature has created a successful blend of empathy and pragmatism. The legislation obligates establishments to create support systems for persons with disabilities, and limits the application of beneficent measures by being cognizant of the constraints of employers. The provision emphasizes the responsibilities of establishments/employers towards persons with disabilities, and advocates flexibility in policy formulation and execution to achieve fruition of the rights of the said class of persons. The said provision simultaneously precludes claims which impose undue hardships upon the establishments/employers while implementing the beneficent intent of the Disabilities Act. The legislature thus recognizes the limitations of the extent of accommodation that can be made by the employer/establishment.

34. Notably the said legislative mandate for providing support to persons with disabilities and care givers is not cast in absolute or non negotiable terms. Free play in the joints is provided to the establishments to frame policies for “care givers”. The legislative yardstick of “reasonable accommodation” adopts the path of golden mean, and eschews the option of maximum positions.

35. The said Government of India Memorandum, and the Bank circular containing the transfer policy extracted earlier predicate exemptions granted to care givers from routine exercise of transfers/rotational transfers by certain qualifications.

36. The aforesaid Government of India Memorandum while requiring the government employers to frame policies for exemptions to care givers from transfers employed the word “may”, and further limits the applicability of the said policy with the phrase “administrative constraints”. As per the said Government of India Office Memorandum, the employees who are seeking exemptions from transfer have to be “care giver” to their dependant daughter, son, parents, spouse, brother, sister.

37. The phrase “administrative constraints” is also employed in the said Bank circular which regulates the transfers and exemptions for care givers. “Administrative constraints” qualifies the policy of exemptions for care givers, and states the restrictions in the exemptions from transfer granted to them. The said “administrative constraints” includes consideration of public purpose served by the establishment, institutional interests which are catered to by the policy of transfers, and also encompasses the rights of other employees.

38. The composite scheme of Disabilities Act, 2016, the Government of India Office Memorandum dated 08.10.2018 and the bank circular dated 28.06.2022, does not place absolute restraints or perpetual exemptions from transfer for care givers.

39. The reasons for not creating a scheme for complete ban on transfers of care givers are not far to seek. A blanket ban on transfers will fully denude the employer of the power of transfer, and have a disproportionately negative impact on institutional interests. A full embargo on transfers of “care givers” would thus

impose onerous demands on the institution and create a disarray in its functioning or cause disruption in the institutional policies.

40. Such extreme interpretation of the policy of exemptions from transfers will lead to supersession of institutional needs, degrade the capacity of institutions to achieve the public purpose they serve, negate the rights of other employees, and ultimately would be detrimental to public interest.

41. The Disabilities Act, 2016 and the aforesaid Government of India Memorandum and the Bank Circular respectively have to be read in harmony to give effect to the intendment of the legislative enactment and achieve the aim of executive policy. Reasonable accommodation in favour of Care Givers envisages acceding to their requests or adjusting to their needs, but also requires the employers not to neglect institutional interests. The outer limit of “reasonable accommodation” is reached when acceptance of demands of care givers exceeds institutional interests or causes undue hardship to the establishment. Administrative constraints embedded in the transfer policy also prevent the employer from superseding institutional interests or overriding the rights of other employees beyond acceptable limits.

42. Broadly speaking the aforesaid statutory mandate of the Disabilities Act, 2016 the Government of India Office memorandum and the Bank circulars can be implemented by two prolonged actions. Realization of the said goals require accommodation of the exemption claims of care givers in the facts and circumstances of each case. Simultaneously paramount

establishment/institutional purposes and requirements, interests served by the policy of transfers, right of other employees, interests of establishment/institutional efficiency and public interest also merit examination in the process. The decision will have to balance the rights of persons with disabilities and needs of their care givers, and the imperatives of institutional purpose and requirements.

43. In practical terms such exercise would entail a consideration of relevant factors while processing the claim for exemption from transfer made by care giver. Every request for exemption from transfer will have to be dealt with in the peculiar facts and circumstances of the case after due application of mind. The first step in such enquiry would require examination of the condition of the person with disability. The duties of a care giver and the nature of support they³ give to the person with disability would have to be factored in while taking a final decision. Infact the Disabilities Act, 2016 acknowledges different categories of disabilities including those disabilities which have high support needs. The employer will have to determine whether the person with disability is a dependant of the care giver. Empathy towards the persons with disabilities/care givers, and commitment to implement the beneficent provisions of the Disabilities Act, 2016 should be depicted in the actions of the employer. Genuine efforts have to be made by the employer to accommodate the “care giver” at the place of choice or grant exemption from transfer.

44. Institutional purpose and requirements and public interest served by the institution will also be given due weight in the process. Repeated acceptance of exemption requests made by the care giver

and prolonged continuance in a particular region, and need of the employee for a wider exposure are among relevant criteria to be factored in the final decision. Indefinite posting of a care giver employee at a particular place will annul the concept of transfers, permanently foreclose the opportunities of other employees for said assignments and undermine the institutional interests of the bank. These vital aspects cannot be overlooked while implementing the exemption policy.

VI.Conclusions:

45. In wake of the preceding discussion it now remains to be seen whether an exercise of the above nature was undertaken by the respondent Bank in this case.

46. The petitioner's requests for transfers have been regularly acceded to by the Bank. The petitioner repeatedly was given postings of his choice. He was retained in one zone for more than a decade. The petitioner was accommodated as a care giver to the greatest extent possible.

47. Further the Bank has rightly examined the extent of the disability suffered by the wife of the petitioner. The petitioner's wife is an Assistant Teacher in a Primary School. Even though she suffers from disability has been discharging her functions as an Assistant Teacher independently and without blemish. Wife of the petitioner does her daily chores, lives with dignity, and has attained excellence in her chosen profession. The wife of the petitioner has an independent income. The lady is an inspiring example to the society at large.

48. The respondent bank has also accorded appropriate attention to the institutional requirements of transferring the petitioner in the overall interests of the institution and the career profile of the petitioner.

49. Empathetic considerations were made by the Bank on various transfer requests forwarded by the petitioner evidences the approach of an employer who is sensitive to the needs of a person with disability, and is committed to implement the Disabilities Act, 2016, Office Memorandum and Bank circular in regard to exemption of care givers from routine transfers.

50. In these facts and circumstances, the transfer of the petitioner does not fall in the category of routine/rotational transfer and disentitles him to claim exemption under the transfer policy.

51. Competing demands of institutional interests and individual rights have been neatly balanced with due application of mind by the Bank while passing the impugned order. The impugned transfer order has factored in all relevant criteria and is in consonance with the observations made in the judgement. The conduct of the employer/ respondent Bank satisfies the test of "reasonable accommodation" to protect the interests of the petitioner. Denial of the petitioner's claim for further continuance at a place of his choice is within the ambit of "administrative constraints" of the respondent Bank. The impugned order is consistent with the provisions of the Disabilities Act, 2016 Government of India Office Memorandum, Bank circular containing the transfer policy.

52. The judgement rendered by this Court in **Neeraj Chaturvedi Vs. Central Bank of India and others reported at 2022 (4) AWC 3722** and relied upon by the petitioner will now be referenced. **Neeraj Chaturvedi (supra)** is distinguishable and is not applicable to the facts of this case. In **Neeraj Chaturvedi (supra)** the wife of the petitioner was suffering from 100% disability. In **Neeraj Chaturvedi (supra)** the person with disability was neither working nor drawing an independent salary.

53. No infirmity in the impugned order could be established. The impugned transfer order is not liable to be interfered with.

54. In wake of the preceding discussion the writ petition is liable to be dismissed and is accordingly dismissed.

55. Considering the mandate of the Disabilities Act, 2016 it would be pertinent to part with these observations. The critical place of care givers for realizing the rights of persons with disabilities, and also the obligations casts on employers have been discussed at length in the judgement. In case care givers are transferred the concerned employers should explore the feasibility of facilitating alternate care givers for the persons with disability or smooth shifting of the latter to the new place of posting.

56. Copy of this order be placed before the respective employers namely Principal Secretary, Basic Education, Government of UP and Managing Director, Central Bank of India for considering development of a policy in regard to care givers in the above light. In case such policy is evolved the petitioner and his wife will be entitled to its benefits.

(2025) 3 ILRA 285
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.03.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ - A No. 122 of 2025

Smt. Maimuna Begum ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Kalendra Prasad, Dharmendra Kumar

Counsel for the Respondents:
C.S.C.

Petitioner's claim for reimbursement of medical bills has been returned -on the ground that it was not be submitted within 90 days period prescribed under the Rules- if an employee has died during treatment- his wife/heirs should not be harassed for technical reasons-such a rule may at times be put to strict compliance where employee is alive-but where employee has died during treatment- such rules should not be permitted to come in the way of reimbursement of genuine claims of medical bills- the provision is liable to be held directory in nature.

W.P. disposed. (E-9)

(Delivered by Hon'ble Ajit Kumar, J.)

1. Heard learned counsel for the parties and perused the records.

2. The petitioner by means of the present writ petition under Article 226 of the Constitution of India has prayed for reconsideration of the reimbursement of medical bills that have been earlier

forwarded to the Committee, but the same was returned only on the ground of delayed submission.

3. It is submitted by learned counsel for the petitioner that the petitioner being a widow, the authority ought to have taken a pragmatic view of the matter inasmuch as husband of the petitioner having died during treatment, the widow was badly shocked and could recover after sometime only. □

4. From the perusal of the letter dated 17.12.2024, I find that the petitioner's claim for reimbursement has been returned only on the ground that it was not be submitted within 90 days period prescribed under the Rules.

5. In my considered view, if an employee has died during treatment, his wife/heirs should not be harassed for technical reasons. Such a rule that prescribes for submitting medical bills for reimbursement may at times be put to strict compliance where employee is alive but in case of heirs where employee has died during treatment, such rules should not be permitted to come in the way of reimbursement of genuine claims of medical bills. The provision is liable to be held directory in nature.

6. I may further observe that where an employee and his heirs are entitled to certain incidental benefits of service, delay can not be permitted to operate as bar by applying law of limitation. No provision is placed before this Court that claims for reimbursement after 90 days shall be liable to be rejected compulsorily. Thus reason given by the authorities in returning the medical bills, therefore as such, cannot be countenanced.

7. In view of what has been observed and held above, this Court hereby directs petitioner to submit again the medical bills before the Executive Engineer, Public Works Department, Raebareilly within a period of four weeks, and in the event medical bills are submitted as directed hereinabove, the concerned respondent, this time, shall clear the same as per relevant rules by taking appropriate decision within a period of two weeks from the date of presentation of medical reimbursement bills.

8. This petition stands **disposed of** as above.

(2025) 3 ILRA 286

APPELLATE JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 17.03.2025

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE MS. NAND PRABHA SHUKLA, J.

Special Appeal No. 703 of 2024

State of U.P. & Ors. ...Appellants
Versus
Mahendra Paliwal & Anr. ...Respondents

Counsel for the Appellants:
S.C., Tej Bhanu Pandey

Counsel for the Respondents:
Kunal Shah, Prabhakar Awasthi, Shailendra Kumar Gupta

Civil Law – Allahabad High Court Rules, 1952 – Chapter VIII - Rule 5 - Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 – Rule 10 & 10(1) - Intra court Appeal – a sanctioned post of Assistant Teacher (English) fell vacant at Junior High School - The Committee of Management sought permission -

granted by the Basic Education Officer – Advertisement – recruitment initiated – candidates applied – after the selection process, name of the petitioner/respondent no. 1 was recommended by selection committee – The Basic Education Officer declined approval for the selection, citing non-compliance with Rule 10 of Rules, 1978 – The rule required the recommendation of three candidates, but only two names were forwarded – petitioner challenged this decision – writ allowed – application of Legal Maxims – “Doctrine of impossibility – *“Lex Non Cogit Ad Impossibilia”* (the law does not compel the impossible) and *“Nemo Tenetur Ad Impossibilia”* (no one is bound to do the impossible) – court finds that, – the rule is directory, not mandatory, and the Government Order in question was issued much after the Advertisement, therefore not applicable in the case, therefore, it was impossible for the Committee of Management to have sent the names of more than 3 candidates as only one candidate had turned up for the interview – held, the special appeal was dismissed as the earlier judgment had not been challenged, and the propositions of law laid down in it were accepted by the St. – hence, court upheld the validity of the selection process – appeal dismissed, accordingly. (Para – 11, 12, 13)

Appeal Dismissed. (E-11)

List of Cases cited:

1. Neelima Srivastava Vs St. of U.P. reported in AIR 2021 SC 3884 Nishith Rai v. St. of U.P.: (2018) 3 All.L.J. 683,
2. Smt. Rani Vs Deputy Director of Consolidation reported in 1959 RD 102 : AIR 1959 ALL 525,
3. St. of M.P. Vs Narmada Bachao Andolan & anr. reported in AIR 2011 SC 1989.

(Delivered by Hon’ble Siddhartha Varma, J.
&

Hon’ble Ms. Nand Prabha Shukla, J.)

1. When in the institution known by the name of the Junior High School, Sayer,

Maudaha, District - Hamirpur, a sanctioned post of assistant teacher in the subject in English fell vacant, the Committee of Management had sought the permission of the Basic Education Officer to initiate the proceedings for recruitment on the said post. The permission for recruiting on the post of assistant teacher was granted vide order dated 18.5.2018. In pursuance thereof, advertisements were issued in newspapers having wide circulation on 23.5.2018. The petitioner/respondent no.1 along with other candidates applied for interview and after a due process of selection, the petitioner’s name was recommended for selection vide recommendation dated 12.3.2019. The select committee, comprising the principal of the school, Manager of the Committee of Management of the Institution and the Block Education Officer, who was the nominee of the Basic Education Officer, had made the necessary recommendation. However, when the Basic Education Officer had declined on 23rd November, 2021, to grant the approval of the selection of the petitioner/respondent no.1 on the ground that the process of selection as was adopted by the Selection Committee was contrary to the provisions of Rule 10(1) of the Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978, (hereinafter referred to as “the Rules of 1978) stating that only two names were recommended in the panel of selected candidates by the Select Committee instead of 3 names as was mandatorily provided in the Rule 10 of the Rules of 1978, Writ – A No. 404 of 2022 (Mahendra Paliwal vs. State of U.P. & 4 others) was filed.

2. The procedure for selection is provided in Rule 10 (1) of the Rules of

1978 and since the learned counsel for the appellants took the Court through the Rule 10 of the Rules of 1978, it is being reproduced here as under:-

“10. Procedure for selection. (1)

The Selection Committee shall, after interviewing such candidates as appear before it on a date to be fixed by it in this behalf, of which due intimation shall be given to all the candidates, prepare a list containing as far as possible the names, in order of preference, of three candidates found to be suitable for appointment.

(2) The list prepared under clause (1), shall also contain particulars regarding the date of birth, academic qualifications and teaching experience of the candidates and shall be signed by all the members of the Selection Committee.

(3) The Selection Committee shall, as soon as possible, forward such list, together with the minutes of the proceedings of the Committee to the management.

(4) The Manager shall within one week from the date of receipt of the papers under clause (3) send a copy of the list to the District Basic Education Officer.

(5) (i) If the District Basic Education Officer is satisfied that-

(a) the candidates recommended by the Selection Committee possess the minimum qualifications prescribed for the post;

(b) the procedure laid down in the rules for the selection of Headmaster or assistant teacher, as the case may be, has been followed he shall accord approval to

the recommendations made by the Selection Committee and shall communicate his decision to the management within two weeks from the date of receipt of the papers under clause (4).

(ii) If the District Basic Education Officer is not satisfied as aforesaid, he shall return the papers to the management with the direction that the matter shall be reconsidered by the Selection Committee.

(iii) If the District Basic Education Officer does not communicate his decision within one month from the date of receipt of the papers under clause (4), he shall be deemed to have accorded approval to the recommendations made by the Selection Committee.”

3. The writ petition i.e. Writ – A No. 404 of 2022 was after the exchange of affidavits allowed vide order dated 11.7.2022, whereby the order dated 23.11.2021 was quashed and a mandamus was issued to the District Basic Education Officer to revisit the issue pertaining to the grant of approval of the petitioner's selection. After the matter was remanded back, the Basic Education Officer once again decided the issue afresh and by an order dated 14.11.2022 once again disapproved the appointment as was made by the Committee of Management of the Institution. The petitioner again, therefore, filed Writ – A No. 19311 of 2023 challenging the order dated 14.11.2022. When that writ petition on 10.1.2024 was allowed, the instant Special Appeal has been filed by the State of U.P. and others essentially on the following two grounds:-

i. As per the Rule 10 of the Rules of 1978, the Selection Committee after

interviewing the candidates who had appeared before it had to intimate the District Basic Education Officer by means of a select list which had to contain as far as possible, in order of preference, the names of three candidates who were found to be suitable for the appointment on the vacant post.

Learned Standing Counsel who appeared for the appellants stated that the language of the Rule 10 of the Rules of 1978 was mandatory in nature and that if less than three names were sent then it would nullify the entire selection process.

ii. Learned counsel for the appellants Sri Tej Bhanu Pandey also submitted that as per the Government order dated 31.10.2019 since the entire process had undergone a change, the appointment as was made vis-a-vis the advertisement dated 23.5.2018 could not be sustained in the eyes of law.

4. Learned counsel appearing for the petitioner respondent Sri Kunal Shah, however, opposed the Special Appeal and supported the order of the learned Single Judge. He submitted that the Special Appeal was not at all maintainable as earlier the High Court had, vide order dated 11.7.2022, already held that there was no error in the procedure adopted by the respondents in the writ petition. It was held by the High Court that when only two names were available with the Selection Committee then despite their best efforts “three names” could not have been sent and, therefore, he had submitted that the respondents in the Writ Petition once when had accepted the judgment and order of the High Court dated 11.7.2022 and had not filed any Special Appeal etc. against it and had also not filed any Appeal before the

Supreme Court then it was evident that the State - Appellant which was the State of U.P. had accepted the order of the learned Single Judge along with all the propositions of law as were laid down therein by it. He submits that in the judgment and order of the learned Single Judge dated 11.7.2022 it was categorically held that the provisions of Rule 10 of the Rules of 1978 were directory in nature and not mandatory and since on the date fixed for interview out of 7 candidates who had applied for selection when only two candidates had appeared including the petitioner then as per the Rule 10(1) of the Rules 1978, the Selection Committee could have forwarded the names of only two candidates who had appeared for the interview before the Selection Committee. He submits, therefore, that the concept of ‘as far as possible’ stood fulfilled in the said selection process with the recommendation of the names of the two candidates.

5. Learned counsel for the appellants to bolster his argument that the appellant had forfeited his right to file the appeal after it had accepted the judgement and order of the learned Single Judge dated 11.7.2022 passed in Writ – A No. 404 of 2022, relied upon a judgement of the Supreme Court in **Neelima Srivastava vs. State of U.P.** reported in **AIR 2021 SC 3884** and specifically relied upon paragraphs no. 31, 32, 33, 34, 35 and 36 and therefore the same are being reproduced here as under:

“31. The Division Bench of the High Court proceeded as if it was hearing an appeal against the judgment dated 23-1-2006 [Neelima Srivastava v. State of U.P., WP (SS) No. 7890 of 2003, order dated 23-1-2006 (All)] of the learned Single Judge which had already attained finality. The

appeal filed under the Rules of the Court was filed against the judgment dated 15-5-2014 rendered in Neelima Srivastava v. State of U.P. [Neelima Srivastava v. State of U.P., 2014 SCC OnLine All 16618] It is a well-settled principle of law that a letters patent appeal which is in continuation of a writ petition cannot be filed collaterally to set aside the judgment of the same High Court rendered in an earlier round of litigation ignoring the principles of res judicata and doctrine of finality.

32. By a majority, the decision in Naresh Shridhar Mirajkar v. State of Maharashtra [Naresh Shridhar Mirajkar v. State of Maharashtra, 1966 SCC OnLine SC 10 : AIR 1967 SC 1] has laid down the law in this regard as under : (AIR p. 11, para 38)

“38. ... When a Judge deals with matters brought before him for his adjudication, he first decides questions, of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate court.”

33. In Rupa Ashok Hurra v. Ashok Hurra [Rupa Ashok Hurra v. Ashok Hurra, (1999) 2 SCC 103] , while dealing with an identical issue this Court held that reconsideration of the judgment of this Court which has attained finality is not normally permissible. The decision upon a question of law rendered by this Court was conclusive and would bind the Court in subsequent cases. The Court

cannot sit in appeal against its own judgment.

34. In Union of India v. S.P. Sharma [Union of India v. S.P. Sharma, (2014) 6 SCC 351] , a three-Judge Bench of this Court has held as under : (SCC p. 389, para 76)

“76. A decision rendered by a competent court cannot be challenged in collateral proceedings for the reason that if it is permitted to do so there would be ‘confusion and chaos and the finality of proceedings would cease to have any meaning’.”

35. Thus, it is very well-settled that it is not permissible for the parties to reopen the concluded judgments of the court as the same may not only tantamount to an abuse of the process of the court but would have far-reaching adverse effect on the administration of justice.

36. It is undisputed that in compliance of the judgment of the learned Single Judge dated 15-5-2014 [Neelima Srivastava v. State of U.P., 2014 SCC OnLine All 16618] vide order dated 31-10-2015 the respondents regularised the services of the appellant subject to the outcome of the proceedings in the LPA and the appellant now stands superannuated having attained the age of superannuation after about 33 years of continuous service.”

6. Additionally, learned counsel for the respondents submitted that the words "as far as possible" as had been used in Rule 10 of the Rules, 1978, definitely could not specifically mandate the Selection Committee to abandon the Selection if on

the date fixed for interview only two candidates had appeared when 7 candidates had been intimated to appear before the selection committee.

7. Learned counsel for the petitioner-respondents states that the words "as far as possible" would mean that the Selection Committee had to stick to the principle of sending of three names unless it was impossible to send the names of three candidates. In the instant case, learned counsel submitted that since out of 7 persons who had been called for the interview only two had appeared to face the interview then it was impossible for the Selection Committee to send the names of three or more persons. Learned counsel for the petitioner-respondents relied upon a judgement of this Court in **Smt. Rani vs. Deputy Director of Consolidation reported in 1959 RD 102 : AIR 1959 ALL 525** to support this proposition of law. The relevant portion of that judgement is being reproduced here as under:-

“ It is true that each one of the sections contains the qualifying words “as far as possible”. This phrase really means that the principles are to be observed unless it is not possible to follow them in the particular circumstances of a case. This qualification was absolutely necessary in view of the fact that the process of compulsory consolidation is a very difficult and complicated one in the peculiar conditions prevailing in this State. Fragmentation of holdings has, through a process of centuries, reached such a stage that there is no straight road back towards consolidation. What can be done in one village may not be possible in another. Therefore, in view of the fact that consolidation is a pressing necessity, it was necessary to add these qualifying words. ”

8. Learned counsel for the petitioner-respondent also elaborated on the concept of "lex non cogit ad impossibilia" meaning that the law does not compel a man to do what he cannot possibly perform and also relied upon the maxim "impossibillium nulla obligatio est" (the law does not expect a party to do the impossible). He still further relied upon the maxim "Nemo Tenetur ad Impossibilia" meaning that no one is bound to do an impossibility. By bringing to the notice of the Court the three maxims, learned counsel for the petitioner-respondent essentially submitted that the three maxims were such which meant that the Selection Committee when had called for 7 candidates for interview and when only two appeared then it was absolutely impossible to have sent more than two names.

9. In this regard, learned counsel for the petitioner also relied upon a judgement of the Supreme Court in **State of Madhya Pradesh vs. Narmada Bachao Andolan and another** reported in **AIR 2011 SC 1989**. From this judgment of the Supreme Court, learned counsel for the petitioner relied upon heavily on paragraphs no. 36, 38 and 39. The same are being reproduced here as under:

“36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. (See Ram Singh Vijay Pal Singh v. State of U.P. [(2007) 6 SCC 44] , Villianur Iyarkkai Padukappu Maiyam v. Union of India

[(2009) 7 SCC 561] and State of Kerala v. Peoples Union for Civil Liberties [(2009) 8 SCC 46].)

“As far as possible”

38. The aforesaid phrase provides for flexibility, clothing the authority concerned with powers to meet special situations where the normal process of resolution cannot flow smoothly. The aforesaid phrase can be interpreted as not being prohibitory in nature. The said words rather connote a discretion vested in the prescribed authority. It is thus discretion and not compulsion. There is no hard-and-fast rule in this regard as these words give a discretion to the authority concerned. Once the authority exercises its discretion, the court should not interfere with the said discretion/decision unless it is found to be palpably arbitrary. (*Vide Iridium India Telecom Ltd. v. Motorola Inc. [(2005) 2 SCC 145 : AIR 2005 SC 514] and High Court of Judicature for Rajasthan v. Veena Verma [(2009) 14 SCC 734 : (2010) 1 SCC (L&S) 452 : AIR 2009 SC 2938].*) Thus, it is evident that this phrase simply means that the principles are to be observed unless it is not possible to follow the same in the particular circumstances of a case.

“Doctrine of impossibility”

39. The court has to consider and understand the scope of application of the doctrines of *lex non cogit ad impossibilia* (the law does not compel a man to do what he cannot possibly perform); *impossibilium nulla obligatio est* (the law does not expect a party to do the impossible); and *impotentia excusat legem* in the qualified sense that there is a necessary or invincible disability to perform the mandatory part of the law or

to forbear the prohibitory. These maxims are akin to the maxim of Roman law nemo tenetur ad impossibilia (no one is bound to do an impossibility) which is derived from common sense and natural equity and has been adopted and applied in law from time immemorial. Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. (Vide Chandra Kishore Jha v. Mahavir Prasad [(1999) 8 SCC 266 : AIR 1999 SC 3558], Hira Tikkoo v. UT, Chandigarh [(2004) 6 SCC 765 : AIR 2004 SC 3649] and HUDA v. Dr. Babeswar Kanhar [(2005) 1 SCC 191 : AIR 2005 SC 1491]).

10. So far as the second argument of the appellants that there was a Government Order dated 31.10.2019 which had absolutely changed the method of appointment, learned counsel for the petitioner states that while the Writ - A No. 404 of 2022 was being argued, the State had given up that ground. The relevant paragraph stating so is being reproduced here as under:-

“Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that the respondents have given up the ground that the selection process was not in accordance with government order dated 31st October, 2019. Moreover it is settled proposition of law that any administrative of government order issue would be applicable only prospectively until and unless specifically made retrospective. In the present case since the advertisement was issued on 23rd

3 All. Registrar Mahatma Jyotiba Phule Rohilkhand University, Bareilly & Anr. Vs. Firoz Ahmad 293 & Ors.

May, 2018, the respondents have rightly given up the aforesaid proposition."

11. Learned counsel for the petitioner-respondent states that even if that argument had not been given up, definitely the advertisement was made on 23.5.2018 and it was much before the date "31.10.2019" that the selection process was initiated. He also submitted that an administrative government order could only be prospectively applied unless it was specifically made retrospective. In this case, learned counsel for the petitioner-respondent submitted that the Government Order was issued much after the advertisement and, therefore, under no circumstance was the Government Order applicable in the instant case.

12. Having heard the learned counsel for the appellants and the learned counsel for the respondent-petitioners, we are definitely of the view that when the advertisement was published on 23.5.2018 then the Government Order issued on 31.10.2019 could not have any effect on the appointment process. What is more, we find that the State had when the Writ A No. 404 of 2022 was being argued surrendered this argument of theirs. So far as the question with regard to there being three names in the list which had to be sent by the Selection Committee as per the Rule 10 of the Rules of 1978 was there, suffice it to say that on the relevant date of interview, out of 7 candidates who had been called only two had appeared and, therefore, nobody under any law could have compelled the Selection Committee to do an impossible thing and that was to include a 3rd name. The maxim "lex non cogit ad impossibilia" and "Nemo Tenetur ad Impossibilia" applied on all fours in the instant case. Also, we are of the view that

when the proposition of law as had been laid down in the judgment and order dated 11.7.2022 in Writ – A No. 404 of 2022 had not been assailed in any court of law then that proposition could not be challenged in this Special Appeal. We, therefore, categorically hold that the instant special appeal was not maintainable at all.

13. We also hold that it was impossible for the Committee of Management to have sent the names of more than 3 candidates as only one candidate had turned up for the interview. That being the case, we are definitely of the view that there is no merit in the special appeal and it is accordingly dismissed. No interference is warranted in the order dated 10.1.2022 and it is accordingly upheld.

(2025) 3 ILRA 293
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.03.2025

BEFORE

THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE KSHITIJ SHAILENDRA, J.

Special Appeal No. 996 of 2024

Registrar Mahatma Jyotibha Phule
Rohilkhand University, Bareilly & Anr.

...Appellants

Versus

Firoz Ahmad & Ors.

...Respondents

Counsel for the Appellants:

Shambhavi Tiwari for Rohit Pandey

Counsel for the Respondents:

Vijeta Singh, Alok Shukla, C.S.C.

Civil Law – Allahabad High Court Rules, 1952 – Chapter VIII - Rule 5 - U.P. St. University Act, 1973 - Chapter IV - Sections 13(1)(e), 16(4) & 51- Mahatma

Jyotiba Phule Rohilkhand University Ordinance – Ordinance 7(c)(3): - Intra court Appeal – against order of writ court – respondent took admission in three years LLB course – said course is comprised in six semesters – respondent appeared in semester examinations conducted from time to time - the university refused to issue a mark sheet and degree to a student - writ petition – plea taken by the University that the respondent was ineligible due to exceeding the time limit for the course, despite being allowed to appear for the back-paper exam and passing it - writ court allowed the writ petition – with direction to the university to issue the mark sheet and degree - special appeal - court finds that, University failed to scrutinize the respondent's eligibility before issuing the admit card and conducting the exam, - and the respondent had passed the concerned examination and completed the LL.B. course – held, the University being a statutory body, is not supposed to play with the career of a student as per its own convenience – Consequently, the appeal fails and is accordingly, dismissed. (Para –18, 20, 22, 23, 25)

Appeal Dismissed. (E-11)

List of Cases cited:

1. Shri Krishnan Vs The Kurukshetra University, Kurukshetra, (1976) 1 SCC 311,
2. Special Appeal (Defective) No.313/2024 - Mr. Iqtadaruddin Vs 3 St. of U.P. & ors.– Decided on 03.05.2024,
3. Vandana Srivastava Vs Principal, M.L.N. Medical College, 1986 AWC 165 ALL,
4. A.P. Christians Medical Educational Society & ors.Vs Govt. of Andhra Pradesh & ors., (1986) 2 SCC 667,
5. Kedar Lal Verma Vs The Secretary, Board of High School & Intermediate Education & ors., AIR 1980 All 32,
6. Sanatan Gauda Vs Berhampur University & ors., (1990) 3 SCC 23,
7. Ashok Chand Singhvi Vs University of Jodhpur & ors., (1989) 1 SCC 399,

8. Guru Nanak Dev University Vs Sanjay Kumar Katwal & ors., (2009) 1 SCC 610,

9. Shri Krishnan Vs Kurukshetra University, Kurukshetra, (1976) 1 SCC 311,

10. Mithilesh Kumar Chaudhary Vs St. of U.P. & ors., 2024 (5) AWC 4206 ALL,

11. Sukhpal Singh Sharma Vs Vice Chancellor, Gorakhpur University, Gorakhpur, 1982 ALL LJ 1021.

(Delivered by Hon'ble Kshitij Shailendra, J.)

1. Heard Ms. Shambhavi Tiwari, Advocate holding brief of Shri Rohit Pandey, learned counsel for the appellants, Ms. Vijeta Singh, learned counsel for respondent No.1 (writ petitioner) and learned standing counsel for Respondent No. 2 and perused the record.

THE CHALLENGE

2. The instant intra-court appeal assails validity of the order dated 30.09.2024 whereby the learned Single Judge has allowed Writ-C No.36854 of 2023 (Firoj Ahmad vs. State of U.P. and 3 others) and has directed the University to issue requisite mark-sheet to the petitioner therein and also a degree if the petitioner is otherwise eligible for the same.

FACTUAL MATRIX

3. The respondent No.1 (writ petitioner) (hereinafter referred to as 'the respondent') took admission in three years' LL.B. course in academic session 2016-17 in Classic College of Law, Bareilly affiliated to Mahatma Jyotiba Phule Rohilkhand University, Bareilly. The said course is comprised in six semesters. The respondent appeared in semester examinations conducted from time to time

and the dispute in the present appeal is as regards the back paper concerning sixth semester. The respondent appeared in the said back paper examination and even as per the assertions made on affidavit filed in support of stay application in the instant appeal, the respondent passed the same but his result was not declared on the ground that he had already completed maximum duration of the course, i.e., six years. Admittedly, the marks of the respondent were uploaded on the website of the University but mark-sheet was not issued to him and, therefore, the aforesaid petition was filed seeking a writ of mandamus commanding the authorities of University to issue mark-sheet.

ORDER OF THE LEARNED SINGLE JUDGE

4. Learned Single Judge, apart from placing reliance upon judgement of Hon'ble Supreme Court in **Shri Krishnan vs. The Kurukshetra University, Kurukshetra, (1976) 1 SCC 311** which was further considered in a recent Division Bench decision of this Court pronounced on 03.05.2024 in **Special Appeal (Defective) No.313 of 2024 (Mr. Iqtadaruddin vs. State of U.P. and others)**, considered the submission of the University based upon Ordinance 7(c)(3) whereby a student was required to pass three years' LL.B course within a maximum period of six years. Learned Single Judge held that since the University, after the academic session 2021-2022 was over, permitted the respondent to appear in the back paper in sixth semester in the year 2023 even after expiry of six years period, it was not justified in withholding the result.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

5. Learned counsel for the appellants has vehemently argued that Ordinance 7(c)(3) governing the field clearly prescribes that in case a candidate fails to pass the course during the maximum period of six years, he will be deemed to have abandoned the course and shall not be re-admitted. Further submission has been made that the provisional admit card issued to the respondent clearly indicated that the result would be declared subject to eligibility of the candidate and, therefore, when the University examined the candidature of the respondent, it found him 'not eligible' to appear in sixth semester back paper and, consequently, result was rightly detained, inasmuch as, six years maximum period from the date of his admission had expired in academic session 2021-2022 and back paper was held in year 2023. Further submission is that judgement of **Mr. Iqtadaruddin** (supra) was a follow up of the decision of the Hon'ble Supreme Court in **Shri Krishnan** (supra), which was clearly distinguishable on facts, inasmuch as, in that case, the concerned Ordinance contained a requirement to issue a certificate signed by the Principal of the College/Head of the Department concerned certifying that the candidate has attended a regular course of study for the prescribed number of academic years, which certification would be provisional and could be withdrawn at any time before the examination. Submission is that in the present case, no such requirement is found in the Ordinance governing the examinations conducted by the University and a plain and simple reading of Ordinance 7(c)(3) would make it clear that after expiry of maximum period of six years, a candidate would be disqualified to go ahead with the course and, further, since provisional admit card issued to the

respondent contained a clear stipulation regarding declaration of result subject to his eligibility, the respondent has no case and, therefore, learned Single Judge has erred in issuing mandamus which would run contrary to the Ordinance. In support of her submissions, reliance has been placed on following decisions:-

(i). Vandana Srivastava vs. Principal, M.L.N. Medical College, 1986 AWC 165 ALL;

(ii). A.P. Christians Medical Educational Society and others vs. Government of Andhra Pradesh and others, (1986) 2 SCC 667;

(iii). Kedar Lal Verma vs. The Secretary, Board of High School and Intermediate Education and others, AIR 1980 All 32.

SUBMISSIONS ON BEHALF OF THE RESPONDENT (WRIT PETITIONER)

6. On the other hand, learned counsel for the respondent submitted that dates for filling up forms for concerned examinations were notified as w.e.f. 26.05.2023 to 11.06.2023; the respondent filled up form on 28.05.2023; provisional admit card was issued to him on 26.06.2023, concerned examination was held on 01.07.2023 and result was declared on 30.09.2023. Therefore, the University-authorities had ample time to verify the eligibility of the respondent qua his appearance in the concerned paper and once they accepted the form, got fees deposited and permitted him to appear in the back paper in which he also became successful, the appellants cannot withhold result on the pretext that the respondent

was later on found ineligible. Explaining the stipulations indicated in the provisional admit card (Annexure SA-3 to the Supplementary Affidavit dated 09.01.2025 filed in the appeal), it is urged that the clause-4 regarding declaration of result subject to eligibility of the candidate has to be read alongwith other clauses which speak of any fabrication made by the candidate and since it is not the case of the appellants that the respondent fabricated anything, withholding of result is not justified. In support of her submissions, reliance has been placed upon following decisions:-

(i). Sanatan Gauda vs. Berhampur University and others, (1990) 3 SCC 23;

(ii). Ashok Chand Singhvi vs. University of Jodhpur and others, (1989) 1 SCC 399;

(iii). Guru Nanak Dev University vs. Sanjay Kumar Katwal and others, (2009) 1 SCC 610;

(iv). Shri Krishnan vs. The Kurukshetra University, Kurukshetra, (1976) 1 SCC 311;

(v). Mithilesh Kumar Chaudhary vs. State of U.P. and others, 2024 (5) AWC 4206 ALL;

SUBMISSIONS OF APPELLANTS IN REJOINDER

7. Learned counsel for the appellants submits that forms are filled up through online process and it is the College concerned which forwards the same to the University and if the College wrongly forwarded the respondent's form to the University, the same would not supersede Ordinance 7(c)(3), inasmuch as, the University had not granted direct permission to the petitioner to appear in the

examination, rather it was granted provisionally on the basis of verification done by the College at its level. It is further urged with reference to paragraphs 29 and 34 of the affidavit filed in the instant appeal that mistake committed at the end of the College would not create any right in favour of the respondent to further pursue the course and that mere permission granted to the respondent to appear in the examination, would not operate as estoppel against the University.

DISCUSSION, ANALYSIS AND FINDINGS

8. Admittedly, the University is governed by the provisions of Uttar Pradesh State Universities Act, 1973 (Act, 1973) and has to function as per the provisions contained therein. Chapter IV of the Act, 1973 describes various officers of the University including the Vice Chancellor and, as per Section 13(1)(e) thereof, he shall be responsible for holding and conducting the University examinations properly and at due time and for ensuring that results of such examinations are published expeditiously. For a ready reference, Section 13(1)(e) is reproduced as under :-

“13. Powers and duties of the Vice-Chancellor.- The Vice-Chancellor shall be the principal executive and academic officer of the University and shall-

.....

(e). be responsible for holding and conducting the University examinations properly and at due time and for ensuring that the results of such examinations are published expeditiously

and that the academic session of the University starts and ends on proper dates.”

9. Similarly, Section 16(4) of the Act, 1973 indicates duties of the Registrar of the University and is quoted hereunder:-

“16. The Registrar-
.....

.....

(4). The Registrar shall be responsible for the due custody of the records and the common seal of the University. He shall be ex officio Secretary of the Executive Council, the Court, the Academic Council and the Admissions Committee and of every Selection Committee for appointment of teachers of the University, and shall be bound to place before these authorities all such information as may be necessary for the transaction of their business. He shall also perform such other duties as may be prescribed by the Statutes and Ordinances are required, from time to time, by the Executive Council or the Vice-Chancellor but he shall not, by virtue of this sub-section, be entitled to vote.”

10. It is, therefore, apparent that the officers of the University are under statutory obligation to discharge duties and perform functions as per the provisions contained in the Act of 1973. Such functions and duties are prescribed under the Statutes and Ordinances framed under the Act. Ordinances are framed under Section 51 of the Act, relevant sub-Sections whereof are reproduced, as under:-

“51. Ordinances.- (1) Subject to the provisions of this Act and the Statutes, the Ordinances may provide for any matter

which by this Act or the Statutes is to be or may be provided for by the Ordinances.

(2). Without prejudice to the generality of the provisions of sub-section (1), the Ordinances shall provide for the following matters, namely-

.....

(c) the conditions under which students shall be admitted to the examinations, degrees and diplomas of the University and shall be eligible for the award of such degrees and diplomas;

.....

(m) the conduct of examination; ”

11. The concerned Ordinances of the University are titled as “LL.B. Three years (Six Semester) (Applicable from the academic year 2009-10 onwards); (Ordinance; General Rules, Examination Regulations and Course of Study with Amendments).” Ordinance 7(c)(3), as pressed into service by the University, reads as under:-

“7. (c) Ex-Student

.....

(3) A candidate shall be allowed to appear as ex-student/back paper for not more than three attempts in that paper subject to the condition that he will have to clear the LL.B. in maximum of Six Years. If he fails to pass the examination during this period, he will be deemed to have abandoned the course and shall not be readmitted.”

12. During the course of hearing, an order was passed on 04.12.2024 granting time to the appellants’ counsel to indicate the date on which provisional admit card was issued to the respondent and the dates on which examinations were held. Pursuant thereto, a supplementary affidavit was filed stating that the concerned examination forms were filled up from 26.05.2023 to 11.06.2023 and, thereafter, from 14.06.2023 to 15.06.2023; the respondent filled up examination form on 28.05.2023; the examinations commenced from 01.07.2023 prior whereeto, provisional admit cards were issued to all candidates including the respondent. Thereafter, by second supplementary affidavit, date of issuance of provisional admit card was indicated as 26.06.2023.

13. Therefore, even if, for a while, the stand of appellants as regards erroneous or wrongful acceptance of respondent’s examination form by the College and its forwarding to the University after expiry of maximum period of six years is accepted as correct, the same, in our opinion, would not create a ground for the appellants to withhold the result of the respondent taking aid of the indication made in the provisional admit card, i.e., declaration of result subject to eligibility of the candidate. The relevant indications made in the provisional admit card are reproduced as under :-

“(1). Note:-आपके द्वारा परीक्षा फॉर्म में दिए गए अर्हता विवरण में भविष्य में कोई अनियमितता या कूटचिंत तथ्य पाए जाने पर आपका परीक्षाफल निरस्त कर दिया जायेगा।

(2). Students failing to bring this Admit Card alongwith a valid Government issued photo identity proof shall not be allowed to appear in the examination.

(3). This Admit Card is provisional.

(4). The result shall be declared subject to eligibility of the candidate.”

14. Though the admit card has been described as provisional, on a pointed query made by the Court from the learned counsel for the appellants as to whether any Rules etc. framed by the University provide for issuance of provisional admit card, she answered in negative. Therefore, we proceed to examine the implication of issuance of a provisional admit card and test the stand of the University to withhold result.

15. A composite reading of all the aforesaid indications/stipulations made in the provisional admit card would infer that in case any irregularity or fabrication is found to have been made by the candidate as regards his eligibility while submitting the form, his result would be cancelled. The sequence of dates qua the back paper examination in question reflects that after the petitioner submitted the form on 28.05.2023 through online mode, may it be lying with the concerned college or was forwarded to the University, both had sufficient time to scrutinise or adjudge the respondent's eligibility to appear in the back paper. Apparently, provisional admit card was issued after four weeks from the date of submission of the form. If, during the said period of time, the College or the University failed to scrutinise the eligibility of the respondent and proceeded to issue a provisional admit card, the University cannot take a defence out of such inaction qua scrutiny as might be warranted. Not only this, even after issuance of provisional admit card on 26.06.2023, there was a gap of about one week before commencement

of examinations and this period could also be utilized for scrutinising as to whether the respondent should or should not have been allowed to appear in the examination.

16. When the Court raised a pointed query to the learned counsel for the appellants as to what had prevented the University to scrutinize the respondent's eligibility qua concerned examination with reference to the maximum period prescribed under Ordinance 7(c)(3), the answer was that there being large number of candidates appearing in the examinations, it is not possible for the University to scrutinise the candidature and once the examinations are over, the said exercise is undertaken and, then, as per the indication made in the provisional admit card, decision is taken to declare or not to declare the result of the concerned candidate.

17. Further, the instructions dated 25.02.2025 issued from the office of Examination Controller/Senior Assistant were placed before the Court indicating therein that the respondent's form had been filled up through online mode and since the candidates in the LL.B. Course are regular candidates, it is the duty of the College to forward examination forms of only eligible candidates. The instructions further reveal that there is no column in the examination form indicating ineligibility of the candidate. The stand taken in the instructions, when read with the statements on oath made in various affidavits filed on behalf of the appellants, would show that the University is putting a blame on the College in forwarding respondent's form terming the same to be a wrong committed by the College and justifying their decision only by taking shelter of the Note No.4 mentioned in the provisional admit card.

18. We are not impressed by the submissions advanced on behalf of the appellants. The University, being a statutory body, is not supposed to play with the career of a student as per its own convenience. When application forms are admittedly filled up through 'online mode', it was very convenient, rather necessary for the University or the College, as the case may be, to make a provision for a window/box/space on the online form itself or otherwise to check eligibility of a candidate at that very stage so as to either go ahead with the process of examination for a particular candidate or close the chapter to avoid future complications, as have arisen in the present case. If the University or the College took their task so casually and, by all means, allowed the respondent to appear in the back paper examination, they cannot get a defence arising out of their own action/ inaction. Further, admittedly, the petitioner has passed the concerned examination and has completed the entire LL.B. Course.

19. Now coming to the decisions cited on behalf of the appellants, a Co-ordinate Bench of this Court in **Vandana Srivastava** (supra) referred to a previous decision in **Sukhpal Singh Sharma vs. Vice Chancellor, Gorakhpur University, Gorakhpur, 1982 ALL LJ 1021** so as to observe that there could not be any estoppel against law and that the University could not be compelled by a direction of the Court to declare result of the students whose admissions were unlawful. The judgement does not come to the aid of the appellants, inasmuch as, **Vandana Srivastava** (supra) was a case where the concerned candidate had received a letter from the Medical College intimating her selection for admission to first year MBBS Course and calling upon her to appear on

03.09.1985 for examining her physical fitness and, soon thereafter on 11.09.1985 itself, a telegram was sent by the Under Secretary of the State of Uttar Pradesh to the Principal of the concerned Medical College intimating that the candidate's result had been wrongly declared treating her as a Scheduled Caste candidate and, therefore, her selection for admission in MBBS first year was cancelled. It was the said order which was assailed by the candidate Vandana Srivastava through writ petition and this Court dismissed the same by observing that she did not belong to Scheduled Caste category but to a higher caste and, hence, her admission was mistakenly made. The facts of the present case are entirely different and revolve around Ordinance 7(c)(3) read with all attending circumstances, i.e. acceptance of examination form qua the back paper held in last semester at the verge of course, issuance of provisional admit card, permitting the respondent to appear in the examination and then, despite the fact that he has been successful in the concerned paper, result has been detained taking aid of 4th note contained in the provisional admit card.

20. In **A.P. Christians Medical Educational Society** (supra), it was held that the Court cannot direct the University to disobey the Statute to which it owes its existence and the Regulations made by the University itself. It is further observed therein that the students who have been admitted, have not only lost money which they must have spent to gain admission, have also lost one or two years of precious time virtually jeopardising their future career but they themselves are responsible for the said situation as they sought and obtained admission in the College despite the warnings issued by the University from

time to time. The facts of the instant case are entirely different, inasmuch as, the controversy before the Hon'ble Supreme Court had arisen from a situation where the Government of Andhra Pradesh had refused to grant permission to the concerned Society to start a medical college and the writ petition challenging the decision of the Government had been dismissed on the ground that no circumstances existed to justify compelling the Government to grant permission to the Society in view of the restrictions placed by an Expert Body like Medical Council of India that no further Medical College should be started. In the said case, students of a Medical College established by Daru-Salaam Educational Trust were permitted to appear in the examination notwithstanding the fact that affiliation had not been granted to the University. In such background of facts, the Hon'ble Supreme Court had dismissed the appeal filed by the Society and also writ petitions filed by the students. The factual background of the instant case being altogether different where no restriction in running the College or the course or any of the like nature exists, rather the issue before us is as to whether the University or its affiliated college is justified to withhold the result of the petitioner for the reasons stated above.

21. **Kedar Lal Verma** (supra) is also clearly distinguishable on facts. There, a learned Single Judge of this Court was seized of the matter where the concerned candidate had been declared "passed" in the High School mark-sheet given to him on the basis whereof he got admission in an Intermediate College. Later on, when his original mark-sheet was lost, he applied for duplicate one which, when issued, declared him as 'failed' in the High School Examination. Consequently, the writ petition was filed in

which the U.P. Board of High School and Intermediate Education took a defence that previously issued mark-sheet contained a clerical mistake and as per the regulations, a student offering Science subject was required to secure 33% marks, both in practical and theory and since the petitioner had obtained only 19 marks in theory as against required 24 marks, he was rightly declared as "failed". Considering the argument based upon estoppel as raised on behalf of the concerned candidate, the learned Single Judge came to the conclusion that mistake committed by the Authorities would not confer any benefit upon the candidate.

22. The instant case arises out of altogether a different situation where the University is taking a stand that on scrutiny made after the petitioner had passed examination, it stood revealed that his form had been wrongly forwarded by the College after expiry of the maximum period of completion of the course. The Court has already dealt with various stages of issuance of examination form, provisional admit card, conduct of examination, respondent's appearance in the examination, the respondent having passed the entire course vis-a-vis the duty and responsibility of the University and/or College to scrutinize the candidature of the respondent prior to permitting him to appear in the examination. Once they did not perform obligation cast on them, they cannot detain result of the respondent merely on the pretext that the provisional admit card contained an indication regarding declaration of result subject to eligibility. The concerned 4th Note cannot be read in isolation but alongwith other attending circumstances as noted above.

23. In **Guru Nanak Dev University** (supra), relied upon by the respondent, the Supreme Court dealt with a

case where the candidate took admission through the Common Entrance Test during 2004-2005, he was permitted to appear in the first semester examination, he was not found guilty of any suppression or misrepresentation of facts and though he was informed about his ineligibility after he took admission in the first semester examination, he was permitted to continue course and completed the same in 2007. The University had earlier cancelled the admission of the candidate which was challenged before the High Court. The writ petition was allowed by the Punjab and Haryana High Court and the Hon'ble Supreme Court, after placing reliance upon **Shri Krishnan** (supra) and **Sanatan Gauda** (supra) found the action of the University withholding the result on account of candidate's ineligibility as unjust and, accordingly, disposed of the matter in favour of the candidate.

24. In **Sanatan Gauda** (supra), the candidate was admitted in the law college, he was pursuing his studies for two years and was permitted to appear in the concerned examinations and it was only at the stage of declaration of his result that the University raised an objection qua his so-called ineligibility to be admitted to the course. The matter was decided by the Hon'ble Supreme Court in favour of the candidate and against the University and even a direction was issued to the University authorities to frame rules in clear terms so as to avoid multiple interpretations of a rule which may entail cost in terms of several years of life of a student. **Ashok Chand Singhvi** (supra) is also an authority of the Supreme Court on the same lines.

25. In view of the above discussion, we do not find any error in the

order of the learned Single Judge. Consequently, the appeal fails and is, accordingly, **dismissed**.

(2025) 3 ILRA 302

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 11.03.2025

BEFORE

THE HON'BLE PRAKASH PADIA, J.

Writ - A No. 6586 of 2024

Shafique Ahmed ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Gaurav Gautam, Krishna Kant
Vishwakarma, Rajesh Kumar Singh

Counsel for the Respondents:

C.S.C., Pranav Mishra

(A) Service Law - Non-government aided minority Institution - Education - U.P. Non-Government Arabic and Persian Madarsa Recognition Rules, 1987 (amended 2016) - Rule 8 of Government Order dated 29.01.1996 (creation of posts requiring State approval) - Validity of withdrawal of financial approval for appointment/promotion of a teacher in a Madarsa - Approval granted 30 years ago cannot be withdrawn on the ground that the post was not created by the Competent Authority.(Para -23)

Petitioner served as Assistant Teacher Tahtania since 1988 - receiving salary from State Exchequer since 1995 - Promoted to Assistant Teacher Fauquania in 2021 - financial approval granted but salary withheld - Respondent No. 2 withdrew financial approval citing non-sanctioned post creation without State Government permission. (Para - 4 to14)

HELD: - Petitioner was entitled to all consequential benefits. Approval had been granted 30 years ago and could not be

withdrawn on the ground that the post had not been created by the competent authority. Petitioner had not been at fault, and there was no mention of fraud or malpractice against the petitioner, who had served for about 30 years. Impugned order was quashed. (Para -21,23,24)

Petition allowed. (E-7)

List of Cases cited:

1. Radhey Shyam Yadav & anr. Vs St. of U.P. & ors. , A.I.R. 2024 SC 260
2. Shivanandan C.T. & ors. Vs High Court Kerala & ors., (2023) SCC Online SC 994
3. Rajesh Kumar & ors. Vs St. of Bihar & ors., (2013) 4 SCC 690

(Delivered by Hon'ble Prakash Padia, J.)

1. Heard learned counsel for the petitioner, learned Standing Counsel for respondent Nos.1 & 3 and Sri Pranav Mishra, learned counsel for respondent No.2.

2. With the consent of learned counsel for the parties, the present petition is being decided at the admission stage itself.

3. The petitioner has preferred the present petition with the following prayers:-

(I) issue a writ, order of direction in the nature of certiorri quashing the impugned order dated 28.03.2024 passed by respondent Registrar/Inspector (contained in Annexure No.1 to writ petition);

(II) issue a writ, order of direction in the nature of mandamus directing the respondents to continue to pay month to month salary to petitioner for

the post of Assistant Teacher Fauquania Madarsa Jamia Alia Arabia Alinagar, Mau;

(III) issue a writ, order of direction in the nature of mandamus directing the respondents for payment of arrears of difference of salary of the post of Assistant Teacher Tahtania and Assistant Teacher Fauquania alongwith adequate interest;

4. Facts in brief as contained in the writ petition are that the Madarsa Jamia Alia Arabia Alinagar, Mau (hereinafter referred to "Madarsa") is a non-government aided minority Institution imparting education up to Class Fazil (graduation Level). The Madarsa run and managed by a society namely Jamila Alia Arabia, Mau bearing Registration No.645/1982-83 dated 14.09.1982 and the same has been renewed on 14.09.2019 for further period of five years. The affair of the Madarsa in U.P. including the services of teaching and non-teaching staff are being governed by U.P. Non-Government Arabic and Persian Madarsa Recognition Rules, 1987 which was later on amended in the year 2016.

5. The Assistant Director of Education (Basic) forwarded the list dated 29.11.1990, stating that there is 1 post of Principal, 6 posts of Assistant Teacher Alia (Matric), 1 post of Headmaster Fauquania (Class 6 to 8), 3 posts of Assistant Teacher Fauquania, 1 post of Headmaster Tahtania (Class 1 to 5), 11 posts of Assistant Teacher Tahtania I.e. 22 posts of teaching staff and 5 non teaching staff, total 27 posts were approved and working and getting their salary.

6. In view of increased strength of students, respondent/Committee of

Management proceeded with requested of sanctioning more teaching staff. Considering the bonafide need of the institution Director Urdu/Western Language Uttar Pradesh Lucknow vide letter dated 28.9.1995 asked District Basic Education Officer Mau to inquire into the matter and submit report. In compliance of the aforesaid directions, the District Basic Education Officer, Mau inquired the matter through Educational Superintendent Urban Area, Mau, who after proper proceeding/initiatives recommended 7 posts of Assistant Teacher Alia and 14 posts of Assistant Teacher Tahtania in madarsa. District Basic Education Officer, Mau vide letter dated 20.2.1996 sent its recommendation to the Director Urdu/Western Language, U.P. Lucknow for necessary action.

7. Insofar as the present petitioner is concerned, he was working in the Institution in question on the post of Assistant Teacher Tahtania since 1988 and after the posts were sanctioned, he started getting his salary from the State Exchequer on the post of Assistant Teacher Tahtania with effect from 1995. The Deputy Director (Urdu), on behalf of Director (Urdu) Lucknow vide order dated 1.3.1996 directed the Basic Education Officer to do the needful for payment of salary of 13 teachers of Tahtania. In the said list, the name of the petitioner is also included. It is further stated in paragraph 14 of the writ petition that though the petitioner was performing teaching work in the Madarsa as Assistant Teacher in Tahtania with effect from 1998 but he started getting his salary from the State Exchequer in December, 1995.

8. It so happened one Imtiyaz Ahmad Assistant Teacher Fauquania had

retired on 31.3.2021 on attaining the age of superannuation. In order to fill up the aforesaid post, proceedings for promotion were initiated.

9. The petitioner being fully qualified for his promotion on the post of Assistant Teacher, Faukania, the Committee of Management promoted the petitioner on the post of Assistant Teacher Faukania and the petitioner joined his promoted post on 20.06.2021. The papers and documents of promotion on the post of Assistant Teacher Faukania as well as the appointment of Shameem Anwar on the post of Assistant Teacher Tahtania was forwarded by the Manager of the Institution in question before the District Minority Welfare Officer, Mau/respondent No.3 vide letter dated 08.09.2021. The respondent No.3 forwarded the aforesaid papers and documents before the respondent No.2/Registrar/Inspector, U.P. Madarsa Education Board, Lucknow for financial approval vide letter dated 13.09.2021. The respondent No.2 vide order dated 27.09.2021 granted financial approval in respect of the promotion of the petitioner on the post of Assistant Teacher Faukania and the appointment of Shameem Anwar on the post of Assistant Teacher Tahtania from their date of joining. The relevant portion of the aforesaid order reads as follows:-

"अतः उपरोक्त स०अ० फौकानिया के पद पर की गई पदोन्नति एवं स०अ० तहतानिया के पद पर की गई नियुक्ति को सारिणी में अंकित विवरण के अनुसार उनके कार्यभार ग्रहण करने की तिथि से वेतन भुगतान की सहमति निम्नलिखित शर्तों प्रतिबन्धों के अधीन प्रदान की जाती है"

10. It is argued by learned counsel for the petitioner that in spite of the aforesaid order, neither the petitioner was

paid his salary for the post of Assistant Teacher Faukania nor Shameem Anwar was paid his salary on the post of Assistant Teacher Tahtania.

11. Aggrieved by the inaction on the part of the respondents, Shameem Anwar approached this Court by filing Writ A No.6429 of 2022 (Shameem Anwar Vs. State of U.P. and others). The aforesaid writ petition was disposed of by this Court vide judgement and order dated 18.07.2022 directing the respondent No.2 to take a final decision in the matter within three months from the date of production of certified copy of this order. Since the aforesaid order was not complied with, Contempt Application (Civil) No.6323 of 2023 was filed by Shameem Anwar which was disposed of by this Court vide its order dated 13.09.2023 granting one more opportunity to the respondent No.2 to comply with the order dated 17.08.2022. Since the aforesaid order was also not complied with, Shameem Anwar filed another Contempt Application (Civil) No.278 of 2024.

12. After the order was passed by this Court in the aforesaid contempt application, the respondent No.2 passed the order dated 02.02.2024 recalling his earlier order dated 27.09.2021. By the aforesaid order, financial approval granted in favour of the petitioner and Shameem Anwar was recalled. Aggrieved against the order dated 02.02.2024, Shameem Anwar filed Writ A No.2745 of 2024. The said writ petition was duly entertained and the effect and operation of the order dated 02.02.2024 passed by the respondent No.2 has been stayed by this Court vide order dated 23.02.2024.

13. Pursuant to the aforesaid order, an order was passed by the respondent

No.2 on 06.3.2023 directing the respondent No.3 to comply with the order dated 23.02.2024 passed by this Court. Despite the aforesaid order, the salary was not paid, this Court passed an order dated 14.03.2024 directing the respondent No.3 to appear before this Court. The respondent No.3/District Minority Welfare Officer, Mau appeared before the Court on 20.03.2025 and submitted his explanation. The order dated 20.03.2024 passed by this Court reads as follows:-

1. The District Minority Welfare Officer, Mr. Sahitya Nikash Singh has appeared in person before this Court today in compliance of order of the Court passed on 14.03.2024 along with an application seeking exemption from appearance supported by his personal affidavit.

2. In the affidavit it is stated that the Assistant Teacher, Tahtaniya namely Shafiq Ahmad though was promoted as Assistant Teacher, Faukaniya (Junior High School) and approval was also granted but he was not paid salary of promotional post, rather he continued to received salary of Assistant Teacher, Tahtaniya and the question of promotion of Mr. Shafiq Ahmad and his continuance upon a post earlier as Assistant Teacher Tahtaniya is a matter of adjudication pending before UP Madarsa Education Board in which 22nd March, 2024 has been fixed and it is expected that some final orders would be passed by the Board.

3. Plea taken is that so long as Sri Shafiq Ahmad, Assistant Teacher, Faukaniya is getting salary only as Assistant Teacher, Tahtaniya though has been granted financial approval as Assistant Teacher, Faukaniya but petitioner cannot be paid salary as two teachers

cannot be permitted to draw salary against one post. The salary bill has been placed before this Court of the institution in which Sri Shafiq Ahmad is shown to have been drawing salary as Assistant Teacher, Tahtaniya.

4. Counsel for petitioner has sought to dispute the pleadings raised in the compliance affidavit on the ground that unless and until an appointment is set aside even Sri Shafiq Ahmad was entitled to receive salary of Assistant Teacher, Faukaniya and if the respondent authorities have failed to pay him salary and continued to pay him salary as Assistant Teacher, Tahtaniya, petitioner cannot be made to suffer.

5. Sri Rahul Malviya, learned Standing Counsel, at this stage, submits that it would be in the fitness of things and appropriate also that question of payment of salary is taken up again after 22.03.2024 on which date, the District Minority Welfare Officer will be in a better position to apprise the Court about status of payment salary to the two teachers.

6. Let this matter be posted on Board again on 16.04.2024 on which date proper compliance affidavit shall be filed in light of above observations.

7. It is made clear that if by the next date fixed, the Board fails to take any decision, the salary of the petitioner will not be held up any further whether Mr. Shafiq Ahmad is paid salary of the post of Assistant Teacher, Tahtaniya or Faukaniya, may be in the discretion of the District Minority Welfare Officer but certainly there will be no discretion vested with the District Minority Welfare Officer

to withhold payment of salary of the petitioner.

8. Personal appearance of District Minority Welfare Officer is dispensed with subject to his filing of compliance affidavit in the given facts and circumstances and the observations made hereinabove.

14. After the aforesaid order was passed by this Court, the respondent no. 2 passed the order impugned on 28.3.2024 by which he held that the appointment of the petitioner as Assistant Teacher Tahtania was not against the sanctioned post, as such, the financial approval granted to the petitioner for the post of Assistant Teacher Tahtania is withdrawn with immediate effect. It is further ordered that the initial appointment of the petitioner as Assistant Teacher Tahtania was against the rules, as such, the financial approval granted to the petitioner for the post of Assistant Teacher Fauquania is also withdrawn.

15. It is argued that the respondent no. 2 has not recorded any findings as to how the appointment of the petitioner as Assistant Teacher Tahtania was against non- sanctioned post. It is also argued that the District Minority Welfare Officer in his statement has clearly stated that the post was created in the Madarsa in the year 1996, but at the time when the post was created, there was a government order dated 29.1.1996, by which it was provided that for creation of post, permission of the State Government is required. The learned counsel for the petitioner submitted that the petitioner has no role in creation of post in the institution. There is no allegation that either the petitioner or the Committee of Management has played any fraud and has appointed the petitioner against a non-

sanctioned post. The only basis for passing the impugned order is that the post was not created with prior permission of the State Government.

16. The learned counsel for the petitioner has relied upon a judgment of Apex Court passed in the case of ***Radhey Shyam Yadav & another Vs. State of U.P. & others reported in A.I.R. 2024 SC 260.*** Relying on the aforesaid judgment, the learned counsel for the petitioner submits that as the appointment of the petitioner was approved and he was getting salary from December 1996 till February 2024 and financial approval to the appointment of the petitioner was granted, as such, after working for more than 30 years, the State is stopped in law from withdrawing the approval of appointment of the petitioner.

17. A counter affidavit has been filed by the respondent nos. 2 & 3. Based on the aforesaid counter affidavit, the learned counsel for the respondents submit that the State Government has issued a government order dated 29.1.1996. In paragraph no. 8 of the aforesaid government order, it is clearly mentioned that the permission for creation and posts will be made at the level of the Government. The recommendation of District Basic Education Officer dated 20.2.1996 has been admitted by the respondents in the counter affidavit. In paragraph 8 of the counter affidavit it is also admitted that after given approval on 13 posts of Assistant Teacher Tahtania, the petitioner has started getting salary. The submission of documents for promotion of the petitioner is also admitted, however, in paragraph no. 15, it is stated that the approval to the promotion of the petitioner on 27.9.2021 was granted with a condition that before making payment of salary, it be

confirmed that the salary to only those number of persons are being paid, who are working against sanctioned post.

18. Heard learned counsel for the parties. From perusal of the entire record, it is established that the petitioner's appointment as Assistant Teacher Tahtania was approved and he was being paid his salary from December 1996 till February 2024. The letter of Director, Urdu, U.P. Lucknow dated 1.3.1996 is not being disputed by the respondents. It is not the case of the respondents that the petitioner was appointed against sanctioned number of post. The only contention of the respondent is regarding the power to create post, that the post can be created only with approval of the State Government, whereas in the present case, the post was created by the Director Urdu, U.P. Lucknow without prior permission of the State Government.

19. Thus, it is clear that neither the Committee of Management nor the petitioner has played any fraud in creation of post. The post was created and payment of salary to the petitioner and other Assistant Teachers was being made from State exchequer since December 1995 till February 2024. In the impugned order, the District Minority Welfare Officer has raised only objection that the post was created by the Director Urdu without prior permission of the State Government. In the impugned order, the only conclusion has been recorded by the Registrar, respondent no. 2 that the appointment of the petitioner as Assistant Teacher Tahtania was not against the post created by the State Government. There is no whisper regarding any fraud or misrepresentation being made either by the petitioner or by the Committee of Management in creation of post. The Apex Court in case of *Radhey Shyam*

(supra) has affirmed the judgment of ***Shivanandan C.T. & others Vs. High Court Kerala & others reported in (2023) SCC Online SC 994***, wherein it was held that even if the appointment of more than advertised vacancy, after lapse of two decades, the same should be protected. Relevant paragraph 29 of the judgment is as under:

29. More recently, this Court in *Vivek Kaisth (supra)*, following the judgment of the Constitution Bench in *Sivanandan C.T. and Others v. High Court of Kerala and Ors.*, (2023) SCC OnLine SC 994 protected the appointments of the appellants even after finding that their appointments were in excess of the advertised vacancies. This Court held as under:-

"32..... Today, when we are delivering this judgment the two appellants have already served as Judicial Officers for nearly 10 years. Meanwhile, they have also been promoted to the next higher post of Civil Judge (Senior Division). In this process of their selection and appointment (which has obviously benefitted them), nothing has been brought to our notice which may suggest any favouritism, nepotism or so-called blame as to the conduct of these two appellants, in securing these appointments. The High Court in fact notes this factor. While placing the blame on the State Commission it records that "..... there is nothing on record suggestive of the fact that any malafides were behind the selection of respondents Nos.4 and 6....."

"34. The appellants were not entitled for any equitable relief in view of the High Court as they were the beneficiaries of an illegality committed by

the Selection/appointing authority. But then it failed to take this question further, which in our opinion, it ought to have done. What the High Court never answered was as to how much of this blame of "illegal" selection and appointment would rest on the High Court (on its administrative side). Undoubtedly, with all intentions of timely filling of the vacancies, the High Court still can- not escape the blame....."

"36. What is also important for our consideration at this stage is that the appellants in the present case have been working as Judicial Officers now for nearly 10 years. They are now Civil Judge (Senior Division). These judicial officers now have a rich experience of 10 years of judicial service behind them. Therefore, unseating the present appellants from their posts would not be in public interest. Ordinarily, these factors as we have referred above, would not matter, once the very appointment is held to be wrong. But we also cannot fail to consider that the appellants were appointed from the list of candidates who had successfully passed the written examination and viva voce and they were in the merit list. Secondly, it is nobody's case that the appellants have been appointed by way of favouritism, nepotism or due to any act which can even remotely be called as "blameworthy". Finally, they have now been working as judges for ten years. There is hence a special equity which leans in favour of the appellants. In a recent Constitution Bench decision of this Court in *Sivanandan C.T. and Ors. v. High Court of Kerala and Ors.* (2023) SCC OnLine SC 994 though the finding arrived at by this Court was that the Rules of the game were changed by the High Court of Kerala by prescribing minimum marks for the viva voce, which were not existing in the Rules and therefore in essence the

appointment itself was in violation of the Rules, yet considering that those persons who had secured appointments under this selection have now been working for more than 6 years it was held that it would not be in public interest to unseat them." (emphasis supplied)

20. The Hon'ble Apex Court, further held that when the appellants were not party of post creation, they cannot be blamed and suffer. Relevant paragraph 30 is as under:

30. The situation of the appellants in the present case is no different from the individuals whose appointments were protected in the cases cited hereinabove. They had no blameworthy conduct. They were bona fide - applicants from the open market. The alleged mischief, even according to the State, was at the end of the School and its Manager. It will be a travesty of justice if relief is denied to the appellants. Enormous prejudice would also occur to them.

21. In the present case, the petitioner was selected and appointed as Assistant Teacher Tahtania against a post, which was created in the institution. The post was created by the Competent Authority or by an incompetent person, the petitioner or the Committee of Management of the institution has no role in the said creation of post or competence of the person of the authorities, sanctioning the post. Relying upon the documents of sanction of post, the State Authorities have granted financial approval and have made payment of salary to the petitioner from December 1995. For last about 30 years, there was no dispute or any allegation that the petitioner was paid salary against non-sanctioned post. It was open to the Competent Authority, who granted

financial approval and started making payment of salary to the petitioner from the State exchequer to deny the financial approval or payment of salary to the petitioner in the year 1996 itself. The authorities being fully satisfied that the appointment of the petitioner is against the sanctioned post, he had been continuously getting his salary. Thus, the petitioner was not at all in fault. There is no mention of fraud or malpractice against the petitioner, who had served for about 30 years.

22. The Honble Apex Court in case ***of Rajesh Kumar & others Vs. State of Bihar & others, reported in (2013) 4 SCC 690*** has held that innocent party, even if in revaluation do not make the grade, still the appointments ought to be protected. Relevant paragraph 21 is as under:

21. There is considerable merit in the submission of Mr Rao. It goes without saying that the appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result. There is no mention of any fraud or malpractice against the appellants who have served the State for nearly seven years now. In the circumstances, while inter se merit position may be relevant for the appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation. The re-evaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall benefit by such re-evaluation and shall pick up their appointments on that basis according to their inter se position on the merit list.

23. Thus, in view of the facts stated above, the order impugned dated 28.3.2024 is illegal. The approval granted 30 years ago, cannot be withdrawn on the ground that the post was not created by the Competent Authority.

24. The order impugned dated 28.3.2024 is hereby quashed. The petitioner is entitled for all consequential benefits.

(2025) 3 ILRA 310
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.03.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ - A No. 10045 of 2020

Shivakar Singh ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Akash Khare, Hari Om

Counsel for the Respondents:

Abhishek Srivastava, Baleshwar
Chaturvedi, C.S.C.

Civil Law - Service Law - Back wages during the period of imprisonment - Principle of "no work no pay" - Petitioner was imprisoned from 23.01.2015 to 18.12.2018 after a criminal case was registered against him under the Prevention of Corruption Act, 1988, by the Anti-Corruption Department on the complaint of a private electricity consumer. Criminal case was not instituted at the behest of the Corporation/employer. By the impugned order, arrears of salary to the petitioner for the period from 23.01.2015 to 18.12.2018 were declined on the principle of "no work no pay." *Held:* The principle of "no work no pay"

is subject to exception only in rare instances, such as when an employer prevents an employee from discharging duties or creates impediments thereto. In the instant case, the petitioner has no lawful entitlement to back wages during the period of his imprisonment. The Corporation/employer neither created any hindrance nor prevented the petitioner from performing his duties. Granting back wages in violation of the principle of "no work no pay" would amount to unjust enrichment of the petitioner and an unfair loss to the State exchequer. Prayer for grant of back wages rejected; however, the petitioner is entitled to continuity in service for the said period for the purposes of pension. (Para 11)

Dismissed. (E-5)

List of Cases cited:

1. Reserve Bank of India Vs Bhopal Singh Panchal 1994 SCC (1) 541
2. Ranchhodji Chaturji Thakore Vs Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) & anr. (1996) 11 SCC 603
3. U.O.I. & ors. Vs Jaipal Singh (2004) 1 SCC 121
4. Raj Narain Vs U.O.I & ors. (2019) 5 SCC 809
5. Anil Kumar Singh Vs St. of U.P. & ors. 2024 (6) ADJ 223

(Delivered by Hon'ble Ajay Bhanot, J.)

Ref: Civil Misc. Correction
Application No.11 of 2025 Heard.

Correction application is allowed.

Necessary correction has been incorporated in the order dated 06.02.2025. The correct order shall read as under:

“1. Heard Shri Akash Khare, learned counsel for the petitioner, learned Standing Counsel for the respondent No.1-State and Shri Abhishek Srivastava, learned counsel for the respondents No.2 and 3.

2. The petitioner is aggrieved by the order dated 23.04.2020 declining to pay arrears of salary to the petitioner for the period commencing from 23.01.2015 to 18.12.2018. The impugned order records that the petitioner was imprisoned from 23.01.2015 to 18.12.2018 after a criminal case was registered against him under Section 13(1)(b) read with Section 13(1) of the Prevention of Corruption Act, 1988. The F.I.R. was filed by one S.S. Chaudhary, Superintendent of Police, Anti Corruption Department against the petitioner on the complaint received from a private electricity consumer. The salary has been refused on the application of the principle of “no work no pay”.

3. Briefly put the prosecution case in the F.I.R. was that the petitioner had demanded bribes for electricity connection from a consumer. The petitioner was thereafter confined to jail from 23.01.2015 to 18.12.2018 during the course of the trial. The petitioner did not discharge his duties for the aforesaid period of three years. Admittedly, the criminal case was not instituted at the behest of the respondent-corporation. The respondent-corporation who is the employer of the petitioner did not create any hindrance nor prevented the petitioner from working on his post. No departmental proceedings were taken out against the petitioner by the respondent-corporation/his employer in the said case.

4. The question that arises for consideration is that whether the petitioner who was absent from duties for the

aforesaid period of almost three years and had rendered no work during the said period is entitled to backwages and arrears and whether the principle of “no work no pay” is liable to be relaxed in the instant case.

5. The principle of “no work no pay” is a salutary principle of general application in service jurisprudence. The principle is excepted only in rare instances like in the event an employer prevents an employee from discharging his duties or creates impediments in regard thereof.

6. The discussion has the benefit of authorities in point. The Supreme Court in **Reserve Bank of India v. Bhopal Singh Panchal** was faced with the issue of grant of backwages to absentee who was not kept from his duties by his employer, and held as under:

"We have already pointed out the effect of the relevant provisions of Regulations 39, 46 and 47. The said regulations read together, leave no manner of doubt that in case of an employee who is arrested for an offence, as in the present case, his period of absence from duty is to be treated as not being beyond circumstances under his control. In such circumstances, when he is treated as being under suspension during the said period, he is entitled to subsistence allowance. However, the subsistence allowance paid to him is liable to be adjusted against his pay and allowances if at all he is held to be entitled to them by the competent authority. The competent authority while deciding whether an employee who is suspended in such circumstances is entitled to his pay and allowances or not and to what extent, if any, and whether the period is to be treated as on duty or on leave, has to take into

consideration the circumstances of each case. It is only if such employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period. In other words, the Regulations vest the power exclusively in the Bank to treat the period of such suspension on duty or on leave or otherwise. The power thus vested cannot be validly challenged. During this period, the employee renders no work. He is absent for reasons of his own involvement in the misconduct and the Bank is in no way responsible for keeping him away from his duties. The Bank, therefore, cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of 'no work, no pay' and positively inequitable to those who have to work and earn their pay. As it is, even during such period, the employee earns subsistence allowance by virtue of the Regulations. In the circumstances, the Bank's power in that behalf is unassailable." (emphasis supplied)

7. The claim of backwages made by an employee who was involved in a crime in which he was later acquitted was denied by the Supreme Court in **Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and another**² by holding:

"3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is: whether he is entitled to back wages? It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal,

he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceeding and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in its own backdrops. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned single judge and the Division Bench have not committed any error of law warranting interference."

8. In **Union of India and others v. Jaipal Singh**³ the Supreme Court relying on the law laid down in **Ranchhodji Chaturji Thakore (supra)** declined to grant backwages to an employee who was reinstated in service after acquittal on the footing that the criminal case was not at the behest of the department:

"4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon for the appellant is one on merits and for reasons specifically recorded therefore and operates as a binding precedent as well. On going

through the same, we are in respectful agreement with the view taken in [1996] 11 SCC 603 (supra). If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and it after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing re-instatement cannot be sustained and the respondent has to be re-instated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without advertng to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages are liable to be and is hereby set aside.”

9. The judgement relied upon by the learned counsel for the petitioner in **Raj Narain v. Union of India and others**⁴ was rendered in the factual context where the departmental enquiry was initiated against the concerned employee who was also

imprisoned on account of pendency of a criminal case. The petitioner in that case was suspended in contemplation of disciplinary proceedings. Later departmental enquiry proceedings were dropped. In that factual context the backwages for the period of suspension were claimed and were granted. **Raj Narain (supra)** is distinguishable on facts and not applicable to this case.

10. Similarly, the judgement rendered by the learned Single Judge in **Anil Kumar Singh v. State of U.P. and 4 others**⁵ squarely based on the law laid down by the Supreme Court in **Raj Narain (supra)** and hence is of no assistance to the petitioner.

11. In the wake of the facts found in the preceding part of the judgement and position of law discussed above relaxation of the principle of “no work no pay” cannot be countenanced in this case. In fact granting backwages in the teeth of the principle of “no work no pay” will lead to unjust enrichment of the petitioner and unfair loss to the State exchequer. The petitioner does not have any lawful entitlement to any backwages during the period of his imprisonment.

12. Accordingly, the prayer for grant of backwages is rejected.

13. There is no infirmity in the impugned order dated 23.04.2020 to that extent.

14. However, the petitioner shall be entitled to continuity in service for the aforesaid period for purposes of pension.

15. With the aforesaid directions, the writ petition is finally disposed of.”

(2025) 3 ILRA 314
REVISIONAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.03.2025

BEFORE

THE HON'BLE PIYUSH AGRAWAL, J.

Sales/Trade Tax Revision No. 10 of 2025
 With other connected cases

**The Commissioner, Commercial Tax, Up
 Lucknow**

...Revisionist

Versus

S/S Janki Industries Nai Basti, Bareilly

...Opp. Party

Counsel for the Revisionist:

Bipin Kumar Pandey, ACSC

Counsel for the Opp. Party:

Rishi Raj Kapoor

Civil Law - The Value Added Tax Act, 2003

- Section 13 & 15-Opposite party has not sold the purchased goods and there was closing stock-until & unless the last tax period of the assessment year -during which business has been discontinued after adjustment of the tax liability by-passing the assessment order for such assessment year- if any excess amount of ITC is left, then only section 15(5) of the VAT Act will come into play and not otherwise- available ITC can only be refunded after passing of the assessment order for that assessment period in which the business was discontinued after adjustment of tax liability-Once the opposite party – registered dealers, by operation of law, discontinued its business, it was the duty cast upon the opposite party dealer to debit their ITC as contemplated under section 13(6) of the VAT Act.

Revision allowed. (E-9)

List of Cases cited:

1. M/s Sooraj Kirana Comp. Vs Commissioner Commercial Tax [Sales/Trade Tax Revision No. 767 of 2013, decided on 28.10.2013]

2. Tractor & Farm Equipment's Ltd. Vs CCE, Madurai [2015 (320) ELT 357 (Mad.)]

3. Shree Navneet Cotton Co. Vs St. of Guj. [(2024) 22 CENTAX 51 Guj.],

4. Magma Fincorp Ltd. Vs St. of Telangana [(2019) 26 GSTL 7 Telangana]

5. Easwaran Brothers India Pvt. Ltd. Vs Assistant Commissioner (ST) (FAC) Coimbatore [(2023) 4 Centax 135 (Mad.)]

6. Collector of Central Excise, Pune & ors. Vs Daichi Karkaria Ltd. & ors. [(1999) 7 SCC 448].

7. Eicher Motors Ltd. & anr. Vs U.O.I. & ors. [AIR 1999 SC 892]

8. Tractor & Farm Equipment Ltd. Vs the Commissioner of Central Excise [(2014) 11 MAD CK 103]

9. M/s Magma Fincorp Ltd. Vs St. of Telangana [AIR Online 2019 TEL 103].

10. Babu Parasu Kaikadi (Dead) through L.R.'s Vs Babu (Dead) through L.R.'s [(2004) 1 SCC 681]

11. M/s Farooq Agencies Vs Commissioner of Commercial Tax [Sales/Trade Tax Revision No. 397/2013, decided on 16.07.2013];

12. Filco Trade Centre Pvt. Ltd. Vs U.O.I. [2018 (17) GSTL3 (Guj.)]

13. U.O.I. & Another Vs Filco Trade Centre Pvt. Ltd. & anr. [(2023) 1 SCC 562]

14. Ratek Pheon Friction Technologies Pvt. Ltd. Vs Principal Commissioner [2022 (59) GSTL 6 (All.)]

(Delivered by Hon'ble Piyush Agrawal, J.)

1. Heard Shri Bipin Kumar Pandey, learned Additional Chief Standing Counsel for the State, Shri Rishi Raj Kapoor, Shri Suyash Agarwal and Ms. Tanisha Jahangir Monir, learned counsel for the opposite party.

2. Since the issues involved in these connected revisions are similar, therefore, the same are being decided by the common order with the consent of the learned counsel for the parties. Sales/Trade Tax Revision No. 10 of 2025 is taken as a leading case for deciding the controversy involved in these revisions.

SALES/TRADE TAX REVISION
No. - 10 of 2025:

3. The present revision has been filed against the judgement & order dated 27.11.2024 passed by the Commercial Tax Tribunal, Bareilly Division, Bareilly in Second Appeal No. 211 of 2022 for the Assessment Year 2017-18 under section 28(2)(ii) of the VAT Act.

4. The aforesaid revision was admitted by this Court vide order dated 27.01.2025 on the following questions of law:-

“1. Whether on the facts and circumstances of the case the Commercial Tax Tribunal was legally justified in holding that the dealer is entitled for the benefit of I.T.C. As claimed under the provisions of U.P. Value Added Tax Act read with the corresponding provisions of Section 16 as well as Section 140(1) of the GST Act read with Rule 21(1)(y) of the Value Added Tax Rules?

2. Whether on the facts and circumstances of the case the Commercial Tax Tribunal was legally justified in allowing the benefit of I.T.C. to the dealer

when the business has been discontinued by the dealer on 30.06.2017?”

5. Learned ACSC submits that the opposite party is a dealer carrying on the business of purchase and sale of food-grains, pulses, oil-seeds, etc. In the assessment year in dispute, i.e., 2017-18, the opposite party had declared the closing stock on 30.06.2017 and ITC of Rs. 4,65,822/- was claimed. The Assessing Authority, vide order dated 11.02.2021, reversed the Input Tax Credit (in short, 'ITC'). Feeling aggrieved by the order dated 11.02.2021, the opposite party preferred an appeal before the first appellate authority, which was rejected vide order dated 12.09.2022. Still feeling aggrieved, the opposite party preferred second appeal before the Commercial Tax Tribunal, which has been allowed vide impugned judgement & order dated 27.11.2024. Hence, this revision.

6. He further submits that new the Uttar Pradesh Goods & Service Tax Act, 2017 (hereinafter referred to as, '**the GST Act**') came into force on 01.07.2017. Since the Uttar Pradesh Value Added Tax Act, 2008 (hereinafter referred to as, '**the VAT Act**') had the life upto 30.06.2017, any registered dealers, who was having registration under the erstwhile VAT Act come to end with effect from 30.06.2017. In order words, all the registered dealers discontinued their business under the VAT Act on 30.06.2017. Once the registered dealer under the VAT Act discontinued its business by implication of law, the dealer was required to debit ITC in terms of section 13(6) of the VAT Act.

7. He further submits that the dealers, who were registered under the VAT Act, can claim ITC only in terms of condition

provided in section 13(1)(a) of the VAT Act, if the purchased goods are resold inside the State or as a condition therein. It is admitted case of the respondents that the purchased goods were not resold either in the State of U.P. or in course of inter-State trade of commerce or in course of export of goods outside the territory of India.

8. He further submits that rule 21(1)(y) of the Rules framed under the VAT Act also prescribes the same. He further submits that the Assessing Authority, on verification of account, found that the dealer has not complied with section 13(6) of the VAT Act and therefore, has rightly debited/reversed the ITC. He further submits that once the dealer has failed to comply with the provision of the VAT Act, the proceedings cannot be said to be illegal. On the contrary, the Tribunal has mis-directed itself and without any verification of books of account in a general way has referred sections 13 & 14 of the VAT Act as well as Rule 21 of the Rules and made a passing remark stating therein that the provisions of the Act are not applicable.

9. He further submits that the State authority has specifically pointed out the judgement of this Court in the case of *M/s Farooq Agencies Vs. Commissioner of Commercial Tax* [Sales/Trade Tax Revision No. 397/2013, decided on 16.07.2013]; wherein, this Court held that since, by implication of Trade Tax Act having come to end by introduction of VAT Act and it will presume that the dealer has discontinued its business under the erstwhile Act. Similar, analogy will be applicable to the case in hand where the dealer's business is discontinued on the date when the new tax regime, i.e., GST Act, was introduced on 01.07.2017, but the

Tribunal has not given due weightage to it. The Tribunal has erred in allowing the appeals of the opposite party.

10. Per contra, learned counsel for the opposite party, Shri Rishi Raj Kapoor, supports the impugned order and submits that even assuming without admitting that if the business of the opposite party is treated to be discontinued, then in view of section 15(5) of the VAT Act, the excess amount of admissible ITC during which the business has been continued should have been refunded. He further submits that the opposite party has not discontinued the business and therefore, the order passed by the Assessing Authority, which has been confirmed by the first appellate court, has rightly been set aside by the Tribunal by the impugned order. In support of his submission, he has placed reliance on the judgement of this Court in *M/s Sooraj Kirana Company Vs. Commissioner Commercial Tax* [Sales/Trade Tax Revision No. 767 of 2013, decided on 28.10.2013].

11. Shri Suyash Agarwal, learned counsel for the opposite party submits that the opposite party was duly registered dealer and granted valid registration, which entitles for claiming ITC as contemplated under section 13 of the VAT Act. The opposite party has never discontinued its business. On implementation, the GST Act empowers the registration of dealer to migrate from VAT Act to GST Act. He further submits that section 140 of the GST Act empowers transitional arrangement for ITC. Once the new GST Act empowers the existing registered dealer (VAT Act) to migrate for new GST Act as well as transitional arrangements for ITC to be used as per section 140 of the GST Act, the proceedings initiated under the VAT Act

reversing the ITC are bad in law. He further submits that the Assessing Authority has no power to reverse the balance ITC as the same was not availed by misappropriation or fraud and the same is not the case of the Revenue. In support of his submissions, he has placed reliance on the judgement of the Madras High Court in **Tractor & Farm Equipment's Limited Vs. CCE, Madurai** [2015 (320) ELT 357 (Mad.)]. He further submits that unutilized ITC available under the VAT Act can be utilized for the new GST Act by filling the same GST TRANS – 1 form and the benefit cannot be denied legally. In support of his submission, he has placed reliance on the judgements **Shree Navneet Cotton Co. Vs. State of Gujarat** [(2024) 22 CENTAX 51 Guj.], **Magma Fincorp Limited Vs. State of Telangana** [(2019) 26 GSTL 7 Telangana] and **Easwaran Brothers India Private Limited Vs. Assistant Commissioner (ST) (FAC) Coimbatore** [(2023) 4 Centax 135 (Mad.)].

12. He further submits that under the Excise Act, a claim of Modvat was rejected and the same was allowed by the appellate court, against which an appeal was preferred by the Revenue before the Apex Court, which was dismissed by the Apex Court in the case of **Collector of Central Excise, Pune & Others Vs. Daichi Karkaria Limited & Others** [(1999) 7 SCC 448].

13. He further submits that the closing stock on a pointed date, the ITC of the same can be utilized and the opposite party cannot be deprived of its legitimate ITC merely on the ground that the item is exempted under the new regime, i.e., GST Act. In support of his submissions, he has placed relied on the judgement in **Filco Trade Centre Private Limited Vs. Union of India** [2018 (17) GSTL 3 (Guj.)], against

which the Revenue went in appeal before the Apex Court in **Union of India & Another Vs. Filco Trade Centre Private Limited & Another** [(2023) 1 SCC 562], which was disposed of. He further submits that this Court in **Ratek Pheon Friction Technologies Private Limited Vs. Principal Commissioner** [2022 (59) GSTL 6 (All.)] has an occasion to consider with regard to ITC earned under the pre-existing law, which can be utilized by submitting TRANS – 1 form, which could not be uploaded due to technical glitch, where this Court observed in favour of the registered dealers. He further submits that the Tribunal, being the last Court of fact & law, has rightly allowed the appeal.

14. Ms. Tanisha Jahangir Monir, learned counsel for the opposite party submits that the Tribunal has rightly allowed the appeal. The ITC, which accumulated during the period to which the respondent was entitled to avail, even in the new tax regime, was wrongly reversed by the Assessing Authority. She further submits that after implementation of the new tax regime, i.e., GST Act, the registered dealer is entitled to claim benefit of unutilized/unclaimed ITC under the new tax regime. She further submits that section 140 of the GST Act prescribes/entitles the registered dealer to take credit of ITC, which was unutilized/ accumulated in the erstwhile Act, i.e., VAT Act. She further submits that it is not in dispute that the respondent earned legitimate ITC during the VAT Act, which was wrongly reversed by the Assessing Authority. In support of her submission, relied upon the judgement of the Apex Court in **Eicher Motors Limited & Another Vs. Union of India & Others** [AIR 1999 SC 892], judgement of the Madras High Court in **Tractor & Farm Equipment Limited Vs. the Commissioner**

of Central Excise [(2014) 11 MAD CK 103] as well as the judgement of *Telangana High Court in M/s Magma Fincorp Limited Vs. State of Telangana* [AIR Online 2019 TEL 103].

15. She further submits that the ITC earned was never utilized upto 30.06.2017 and the legitimate claim of ITC cannot be denied. She further submits that no provision under the VAT Act prohibits for availing earned ITC under the new tax regime, i.e., GST Act.

16. Per contra, learned ACSC rebuts the arguments advanced by Ms. Monir and refers the order dated 27.01.2023 passed by the first appellate authority (Annexure No. 2) and submits that a clear finding of fact has been recorded by the first appellate authority against the respondent. He further submits that the respondent utilized the ITC on its purchases as per the closing stock. The said finding of fact against the respondent has not been specifically reversed by the Tribunal in the impugned order, while allowing the appeal of the respondent. Therefore, the impugned order passed by the Tribunal is bad and liable to be set aside.

17. Learned ACSC further submits that the aforesaid judgements relied upon by the counsels for the opposite party have no application to the facts of the case in hand and as such, the judgements cited will be of no help to the opposite party.

18. He further submits that the other judgement relied upon is also of no aid to the opposite party as on an identical set of facts, the jurisdiction of the High Court in the case of *M/s Farooq Agencies* (supra) has categorically held that the registered dealer discontinued its business by

implication of law. In other words, if a new Act is being introduced from a particular date, then the business of the registered dealer under the erstwhile Act deemed to be discontinued. He further submits that judgement in *M/s Sooraj Kirana Company* (supra) is of latter date, which has not considered the judgement of this Court in *M/s Farooq Agencies* (supra) and therefore, the same is also of no aid to the opposite party.

19. After hearing learned counsel for the parties, the Court has perused the records.

20. The issue involved in these cases are as to whether after introduction of new GST Act from 01.07.2017, the registered dealers were entitled for the benefit of unutilized ITC accrued under the UP VAT Act though having closing stock.

21. Under the VAT Act, the food-grains were exempted on its purchase, subject to certain conditions and the same were liable to be taxed on its sale. The benefit of ITC can only be availed on fulfillment of certain conditions as contemplated under section 13(1)(a) of the VAT Act. The unutilized ITC has to be debited or carried forward as per the sub-sections of section 13 of the VAT Act. Similar view has been expressed under rule 21(1) of the Rules. For better appreciation, certain provisions of section 13 of the VAT Act are quoted below:-

“Section 13: Input Tax Credit:-

(1) Subject to provisions of this Act, dealers referred to in the following clauses and holding valid registration certificate under this Act, shall, in respect of taxable goods purchased from within the State and mentioned in such clauses,

subject to conditions given therein and such other conditions and restrictions as may be prescribed, be allowed credit of an amount, as input tax credit, to the extent provided by or under the relevant clause:

(a) Subject to conditions given in column 2, every dealer liable to pay tax, shall, in respect of all taxable goods except non-vat goods, capital goods and captive power plant, where such taxable goods are purchased on or after the date of commencement of this Act, be allowed credit of the amount, as input tax credit, to the extent provided in column 3 of the table below:

Sl. No.	Conditions	Extent of amount of Input Tax Credit
(1)	(2)	(3)
1.	If purchased goods are re-sold- (i) inside the State, or (ii) in the course of inter-state trade or commerce; or (iii) in the course of the export of the goods out of the territory of India..	Full amount of input tax.
2.	If purchased goods are used in manufacture of – (i) any goods except non-vat goods and where such manufactured	Full amount of input tax.

	goods are sold in the course of the export of the goods out of the territory of India; or (ii) any taxable goods except non-vat goods and where such manufactured goods are sold either inside the State or in the course of inter-state trade or commerce.	
3.	If purchased goods are – (i) transferred or consigned outside the State otherwise than as a result of a sale; or (ii) used in manufacture of any taxable goods except non-vat goods and such manufactured goods are transferred or consigned outside the State otherwise than as a result of a sale.	Partial amount of input tax, which is in excess of rate prescribed under sub-section(1) of section 8 of the Central Sales Tax Act, 1956 of the purchase price on which the dealer has paid tax either to the registered selling dealer or to the State Government..

(6) In the circumstances referred to in sub-section (5), the amount of difference of full amount of input tax and

admissible amount of input tax credit, shall be debited by the dealer into the account of input tax credit maintained by him on the day on which:

(i) goods, in respect of which credit of full amount of input tax was claimed; or

(ii) goods, manufactured by using goods in respect of which credit of full amount of input tax was claimed; or

(iii) where goods, in respect of which credit of full amount of input tax was claimed, are used or consumed in packing of any goods, such packed goods, are consigned outside the State; or disposed of or dispossessed by the dealer in a manner for which facility of input tax credit is not admissible or such facility is admissible for partial amount of input tax:

Provided that where the dealer discontinues his business, full amount of input tax, which was claimed under sub-section (4), in respect of-

(i) goods held by the dealer in the same form and condition in which those were purchased; or

(ii) goods which have been used in manufacture of any goods held by the dealer, (whether in semi-manufactured or manufactured state);

(iii) goods which have been used or consumed in packing of any goods held by the dealer, in closing stock on the day on which he has discontinued business, shall, before end of the tax period prescribed for submission of the tax return for the tax period in which business is discontinued, shall be debited by the dealer into the account of input tax credit maintained by him."

22. Perusal of section 13(1)(a) of the VAT Act clearly demonstrates that the earned ITC can be utilized on the sale, subject to the conditions as mentioned in

the table. The ITC can only be claimed on fulfillment of certain conditions as contemplated herein-above. Section 13(6) of the VAT Act and rule 21(1)(y) of the UP VAT Rules contemplate that in the event ITC is unutilized and the registered dealer discontinued its business and the closing stock is there, then the dealer has to debit the unutilized ITC. The registered dealer cannot be permitted to utilize earned ITC for the said period.

23. Section 15(5) of the VAT Act is also quoted below:-

"Section 15. Net amount of tax payable and treatment of input tax credit exceeding tax liability:

(5) Notwithstanding anything contained in sub-section (4) where a dealer discontinues business, refund of any excess amount of admissible input tax credit relating to last tax period of the assessment year during which business has been discontinued shall be allowed within Ninety days after the date of passing of assessment order for such assessment year."

24. The aforesaid section contemplates for refund of excess amount of admissible ITC, if it exceeds tax liability relating to last tax period of the assessment year during which the business has been discontinued.

25. The case in hand, it is admitted between the parties that the opposite party has not sold the purchased goods and there was closing stock. Until & unless the last tax period of the assessemnt year during which business has been discontinued after adjustment of the tax liability by-passing the assessment order for such assessment year, if any excess amount of ITC is left,

then only section 15(5) of the VAT Act will come into play and not otherwise.

26. By plain reading of section 15 of the VAT Act, it is clear that the available ITC can only be refunded after passing of the assessment order for that assessment period in which the business was discontinued after adjustment of tax liability. As such, the argument raised by Mr. Rishi Raj Kapoor has no legs to stand on the ground of section 15 for refund of unutilized ITC. Therefore, the same is rejected.

27. The other argument has been advanced on behalf of the opposite party that the Assessing Authority has reversed the ITC only on the pretext that the commodity in question has been exempted under the new regime GST Act and therefore, the ITC has been reversed wrongly. The said argument has no legs to stand on. As on the date of introduction of the new tax law, i.e., GST, the registered dealer under the VAT Act, by implication of the Act, has discontinued its business as held by this Court in the case of **M/s Farooq Agencies** (supra). Once a registered dealer under the erstwhile VAT Act discontinued its business, they were duty-bound to debit the unutilized ITC as per section 13(6) of the VAT Act.

28. This Court in **M/s Farooq Agencies** (supra) had an occasion to consider as to whether the registered dealer under the Trade Tax Act will be treated as discontinued its business on introduction of new UP VAT Act and held that after introduction of VAT Act, the registered dealer of the erstwhile Act stood discontinued its business by operation of law.

29. The relevant paragraph of the judgement in **M/s Farooq Agencies** (supra) is quoted below:-

“It is not in dispute that the assessee had carried on his business under the Trade Tax Act for a period of 9 months only i.e. between 01st April, 2007 to 31st December, 2007. On 31st December, 2007 the Trade Tax Act itself ceased to be applicable in view of enforcement of the VAT w.e.f. 01.01.2008.

In my opinion the business by the assessee therefore stood discontinued under the U.P. Trade Tax Act after expiry of 9 months of the assessment year by operation of law. Therefore, provisions of Section 18 stood attracted in the facts of the case for the purposes of determination of the average turnover. Applying the principle as enumerated under Section 18, tax authorities have found that the aggregate determined turnover of the assessee was more than Rs. 37.50 lacs for a period of 9 months and have accordingly raised the demand of development tax at the rate of 1% under Section 3-H of the Trade Tax Act.

It is no doubt true that the assessee has not discontinued his business. It is also true that because of the Trade Tax Act itself having been rescinded, the business carried on within the ambit of the said Act therefore came to an end on 31st December, 2007. The discontinuation of the business under the Trade Tax Act after 31.12.2007 was by operation of law. It is also not in dispute that for the period 01.01.2008 to 31.03.2008 the assessee has been assessed under the Value Added Tax and his liability for payment of tax has been determined under the said Act itself. The provision of the U.P. Trade Tax Act had not been applied in respect of the said period commencing from 01.01.2008.”

30. The counsel for the opposite party have heavily relied upon the judgement in **M/s Sooraj Kirana Company** (supra),

which also considered the similar issue, observed as under:-

"It is not disputed that the assessee revisionist has not discontinued its business after 31.12.07 and as such Section 18 of the Act would have no application."

31. The said judgement in the case of **M/s Sooraj Kirana Company** (supra) was delivered on 28.10.2013 and the same has not considered/notices the earlier detailed judgement dated 16.07.2013 in **M/s Farooq Agencies** (supra) rendered per incuriam. Therefore, the aforesaid judgement **M/s Sooraj Kirana Company** (supra) is of no aid to the opposite party.

32. The Apex Court, in the case of **Babu Parasu Kaikadi (Dead) through L.R.'s Vs. Babu (Dead) through L.R.'s** [(2004) 1 SCC 681] has held that if earlier precedent of the co-ordinate Bench having not considered, then it would render per incuriam. The relevant paragraphs are quoted as under:-

"14. Having given our anxious thought, we are of the opinion that for the reasons stated; hereinbefore, the decision of this Court in Dhondiram Totoba Kadam (supra), having not noticed the earlier: binding, precedent of the co-ordinate Bench, and, having not considered the mandatory provisions as contained in Section 15 & 29 of the Act had been rendered per incuriam. It, therefore, does not constitute a binding precedent.

15. In Halsbury 'Laws of England, 4th Edition Volume 26 it is stated;

"A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction

which covered the case before it, in which case it must decide which case to follow or when it has acted in ignorance of a House of Lords decisions, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force."

18. Furthermore, this Court, while rendering judgment in Dhondiram Totoba Kadam (supra), was bound by its earlier decision of Co-ordinate Bench in Ramchandra Keshav Adke (supra). We are bound to follow the earlier judgment which is precisely on the point in preference to the later judgment which has been rendered without adequate argument at the bar and also without reference to the mandatory provisions of the Act."

33. This Court in **M/s Farooq Agencies** (supra) has specifically held that by operation of law, the business of the registered dealer stood discontinued and therefore, similar analogy will be applicable in the case in hand. The opposite parties (registered dealers) discontinued its business under the VAT Act after 30.06.2017 by operation of law.

34. But the Tribunal in the impugned order, in its wisdom, has allowed the appeals of the opposite party by referring that the judgement cited by the revisionist, i.e., **M/s Farooq Agencies** (supra), is not applicable to the fact of the case.

35. The Tribunal miserably failed in not following the legal binding precedent given by this Court in the case of **M/s Farooq Agencies** (supra). The Tribunal, further erred in observing that section 13 of the VAT Act and rule 21 of the Rules are also not applicable in the issue under consideration. Section 13 of the VAT Act & Rule 21 of the VAT Rules, referred to

herein-above, clearly contemplate the situation to deal with the closing stock and unutilized ITC of the registered dealers stood discontinued its business, as held herein-above.

36. Further, the opposite party has not brought on record any evidence upto the Tribunal that they have filled TRANS – 1. Once TRANS – 1 form was not filled, the proceedings initiated by the Assessing Authority cannot be said to be bad in law. Once the business under the VAT Act was discontinued on 30.06.2017 by operation of law, it becomes the dealer's duty to reverse/debit the ITC as per section 13 (6) of the VAT Act.

37. Some judgements, relied upon by the counsel for the opposite parties, were in relation to the period when the TRANS – 1 was unable to be uploaded due to technical glitch, where the Court passed orders and some observation was given, which cannot be treated as precedent.

38. The other judgements, which have been cited by the counsels for the opposite parties, pertain to Central Excise Act/MODVAT credit to be availed, but the counsels could not show any provision under the Central Excise Act that are similar to VAT Act. Section 13(6) of the VAT Act, read with rule 21 specifically provides that when the closing stock on the date of discontinuation of business is available, what treatment has given to unutilized/accumulated ITC.

39. A specific provision has been provided under the VAT Act, which is, admittedly, not complied with by the opposite party – registered dealer, nor the Tribunal, being the last court of fact & law, discussed a word about the same while

allowing the appeal in favour of the opposite party – registered dealer.

40. Further, section 13(6) of the VAT Act contemplates debiting of ITC earned/unutilized on the date of discontinuation of the business, but the opposite party utterly failed to adhere to the said section. In absence of any compliance by the opposite party as contemplated under section 13(6) of the VAT Act, the judgements cited herein-above in paragraph nos. 11 to 14, by the counsel for the opposite party are not of any help to them.

41. Once the opposite party – registered dealers, by operation of law, discontinued its business, it was the duty cast upon the opposite party dealer to debit their ITC as contemplated under section 13(6) of the VAT Act. The Tribunal has failed in its duty while allowing the appeal of the opposite party by overlooking the provision of section 13(6) of the VAT Act.

42. In view of the aforesaid facts & circumstances of the case as well as the law laid down by this Court, the impugned judgements & orders passed by Commercial Tax Tribunal in these revisions cannot be sustained in the eyes of law.

43. Accordingly, all the revisions are allowed.

44. The impugned judgements & orders in these revisions passed by the Commercial Tax Tribunal, Bareilly Division, Bareilly are hereby set aside.

45. The questions of law are answered in favour of the Revenue and against the opposite party.

(Delivered by Hon'ble Piyush Agrawal, J.)

THE HON'BLE PIYUSH AGRAWAL, J.

1. Since the similar issues are involved in aforesaid writ petitions, the same are being decided together by this common judgment.

2. For convenience, the facts of the Writ Tax No.1287 of 2024 is being delineated here-in-below:

M/S Solvi Enterprises ...Petitioner
Versus
Additional Commissioner Grade 2 & Anr. ...Respondents

3. Heard Sri Aditya Pandey, learned counsel for the petitioner, and Sri RS. Pandey, learned Additional Chief Standing Counsel for the State-respondents as well as Sri Manish Trivedi, learned counsel appearing for the respondent-Bank.

Counsel for the Petitioner:
Aditya Pandey

4. By means of this writ petition, the following prayer has been made:-

Counsel for the Respondents:
C.S.C.

At the time of transaction- the purchaser i.e. the petitioner and the seller both were registered- registration of the selling dealer was not cancelled from its inception -the transaction was registered - the transaction in question is fully covered by the statutory documents prescribed under the Act- same supplier has filed its returns i.e. GSTR- 01 and GSTR-3B - once the seller was registered at the time of the transaction- no adverse inference can be drawn against the petitioner-impugned order quashed.

“1. Issue a suitable writ, order or direction in the nature of certiorari quashing the impugned order dated 20.10.2023 passed by the respondent no.1 in Appeal No.GST – AD091222030324L/2022 F.Y. 2018-19, under the provisions of Section 74 of the U.P.G.S.T./C.G.S.T. Act (Annexure No.1 to the writ petition).”

W.P. allowed. (E-9)

II. Issue a suitable writ, order or direction in the nature of certiorari quashing the impugned order dated 12.09.2022 passed/issued by the respondent no.2 (Annexure no.4 to the writ petition).

List of Cases cited:

1. St. of Karan. Vs Ecom Gill Coffee Trading Pvt. Ltd., 2023 LiveLaw (SC) 187
2. M/s Rajshi Processors Raebareli Thru. Its Partner Ashok Kumar Lakhotia Vs St. of U.P. Thru. Prin. Secy. Deptt. Of St. Tax, Lko & ors.-Writ Tax No. 128 of 2024
3. M/s Shiv Trading Vs St. of U.P. & ors.-Writ Tax No.1421 of 2022 4.M/S Rama Brick Field Vs Additional Commissioner Grade-2 & ors.-Writ Tax No. 909 of 2022

III.
IV.”

5. Learned counsel for the petitioner submits that the petitioner is a registered dealer, which is engaged in the business of sale and purchase of scraps etc., against which, proceedings under Section 74 of the UPGST Act were initiated by the

respondent no.2 for the tax period December, 2018-19, F.Y. 2018-19 vide notice DRC-01 dated 29.07.2022 to which a detailed reply was submitted by the petitioner, however, without considering the same, the impugned order dated 12.09.2022 was passed in violation of Section 75 (4) of the UPGST/CGST Act. Being aggrieved by the said order, an appeal was filed by the petitioner, which was dismissed vide impugned order dated 20.10.2023.

6. Learned counsel for the petitioner submits that the petitioner purchased the goods from a registered dealer namely M/s. Radhey International (hereinafter referred to as “the seller”), vide tax invoice dated 06.12.2018, which was generated by the seller from the GST Portal.

7. He further submits that the authorities have power under the Act for cancelling the registration with retrospective effect, but in the case at hand, the date of transaction in question is of 06.12.2018 and whereas the registration of the selling dealer has been cancelled with effect from 29.01.2020.

8. The transaction in question is fully covered by the statutory documents prescribed under the Act. He further submits that merely at the subsequent stage, if the selling dealer was not found in a disclosed place of business, or registration has been cancelled, the petitioner cannot be held responsible for the same. He further submits that the selling dealer filed its return therefore, GSTR-2A was auto generated, showing the transaction are genuine. He prays for allowing the writ petition.

9. *Per contra*, learned Standing Counsel supports the impugned order and

submits that the petitioner has failed to bring on record any cogent material about the actual physical motion of the goods and therefore, the impugned order has rightly been passed.

10. In support of his submission, he has placed reliance upon the judgment of the Hon’ble Supreme Court passed in the case of ***State of Karnataka Vs. Ecom Gill Coffee Trading Private Limited, 2023 LiveLaw (SC) 187*** as well as judgments of this Court passed in ***Writ Tax No. 128 of 2024 (M/s Rajshi Processors Raebareli Thru. Its Partner Ashok Kumar Lakhotia Vs. State of U.P. Thru. Prin. Secy. Deptt. Of State Tax, Lko and 2 Others)*** and ***Writ Tax No.1421 of 2022 (M/s Shiv Trading Vs. State of U.P. and 2 others)***. The judgment of ***Shiv Trading (supra)***, decided on 28.11.2023 was challenged before the Hon’ble Apex Court by way of filing S.L.P. (c) No.3345 of 2024, which has been dismissed vide order dated 12.02.2024. He prays for dismissal of the aforesaid writ petitions.

11. To the said submission, learned counsel for the petitioner submits that the case of ***M/s Ecom Gill Coffee (supra)*** is not applicable in the present case as therein, the seller was not registered and had not filed his return, nor GSTR-2A was generated; whereas in the case in hand, the selling dealer was a registered dealer at the time of transaction took place and auto generated GSTR-2A was populated which shows the transaction in question is genuine.

12. Further, the judgment relied upon by the learned Standing Counsel on ***M/s. Rajshi Processors Raebareli (supra)*** is also distinguished by stating that the proceedings were initiated after being

survey conducted at the place of the petitioner i.e. the purchaser in which certain discrepancies in documents were found, on that basis, further, the place of the seller was inspected which was found not in existence.

13. Upon hearing the parties, the Court has perused the records.

14. It is not in dispute that the purchase was made by the petitioner from the firm, which was duly registered under the GST Act at the time when the transaction was made.

15. For deciding the issue in hand, Sections 16 & 74 of the GST Act, 2017 will be relevant, which reads as follows:-

“16. Eligibility and conditions for taking input tax credit.

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation. For the purposes of this clause, it shall be deemed that the

registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961),

the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for

such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order. (10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1. For the purposes of section 73 and this section,?

(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2. For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any

information on being asked for, in writing, by the proper officer."

16. The perusal of the contents of above-quoted Section 16 of the GST Act, 2017 shows that the input tax credit can be claimed only on the fulfilment of conditions mentioned therein. It also clarifies that no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both.

17. The contents of above-quoted Section 74 of the GST Act, 2017 provides for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of fact.

18. Further, the Rule 36 of the GST Rules, 2017 provides for document and condition required for claiming input tax credit, which reads as under:-

"Rule 36. Documentary requirements and conditions for claiming input tax credit.-

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document and the relevant information, as contained in the said document, is furnished in FORM G.S.T.R.-2 by such person:

[Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, G.S.T.I.N. of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.]

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, wilful misstatement or suppression of facts.

[(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished by the suppliers under sub-section (1) of Section 37 [In FORM G.S.T.R.-01 or using the invoice furnishing facility] shall not exceed [5 per cent] of the eligible credit available. In respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of Section

37 [In FORM G.S.T.R.-01 or using the invoice furnishing facility] under sub-

[Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM G.S.T.R.-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above:]

[Provided further that such condition shall apply cumulatively for the period April, May and June, 2021 and the return in Form G.S.T.R.-3B for the tax period June 2021 or quarter ending June, 2021, as the case may be, shall be furnished with the cumulatively adjustment of input tax credit for the said months in accordance with the condition above:]”

19. Perusal of the contents of afore-quoted Rule 36 of the GST Rules, 2017 provides that the required documents for claiming input tax credit should be made available and the same may be reflected in GSTR-3B.

20. From the afore-quoted Sections 16 & 74 of the GST Act, 2017 as well as Rule 36 of the GST Rules, 2017, it is clear that the provisions as provided, certain benefit of input tax credit to the registered person should be provided on the fulfilment of conditions as well as documents required to be provided therein.

21. Furthermore, Section 74 of the GST Act, 2017 provides the power to the State-authorities to proceed against the registered dealer if I.T.C. has wrongly availed or utilized by reason of fraud or wilful misstatement of fact or by means of fraud, and upon the adjudication, can recover the same.

22. In the case in hand, the proceedings were initiated against the petitioner under Section 74 of the GST Act, 2017 as the registration of the seller dealer has been cancelled on subsequent date i.e. with effect from 29.01.2020, thus, the date of transaction was admittedly took place prior to it i.e. on 06.12.2018.

23. Further, the record shows that the GST authorities are empowered to cancel the registration from the date of inception of proceedings, but the authorities in their wisdom cancelled the registration of the seller on a subsequent date i.e. with effect from 29.01.2020.

24. It is not the case of the Revenue that at the time when the transaction took place, the selling dealer was not registered and was not having valid registration under the GST Act.

25. The record shows that the supplier has filed its returns i.e. GSTR-01 and GSTR-3B. It is a matter of common knowledge that after filing of GSTR-01, an auto populated window would be open for filling the GSTR-3B for payment of tax and GSTR-2A can be viewed by the purchaser of the goods in question. Once the said form was generated and the said fact has not been disputed by the authorities below while passing the impugned order, the authorities have failed to consider the fact that GSTR-3B & GSTR-2A, as prescribed under the Act, which was auto populated to which not a single word has been whispered in the impugned orders. On the contrary, an observation has been made against the petitioner that he had failed to bring on record any cogent material that the seller has deposited the tax.

26. At the time when the transaction took place, the purchaser i.e. the petitioner and the seller both were registered, however, at the subsequent time, the seller was found non-existing and the registration of the seller has not cancelled retrospectively i.e. from the date of transaction.

27. The judgment of *M/s Rajshi Processors (supra)*, cited by the Revenue, has been passed on the pretext that the supplier was non-existing dealer and its registration was cancelled from the date of its inception, but in the case in hand, registration of the selling dealer has been cancelled w.e.f. 29.01.2020, which shows that the transaction took place on 06.12.2018 and on the said date, the selling dealer was having valid registration. Thus, on the said facts, the judgment passed in the *M/s Rajshi Processors (supra)* is of no aid to the Revenue.

28. Further, the judgment of *Shiv Trading (supra)* wherein the reliance has also been placed upon the judgment of *Ecom Gill Coffee Trading Private Limited (supra)*, decided on 28.11.2023 was challenged before the Hon'ble Apex Court by way of filing S.L.P. (c) No.3345 of 2024, which has been dismissed and the order dated 28.11.2023 was confirmed vide order dated 12.02.2024. In the said judgment, the finding of GSTR-3B was not taken care of and therefore, the said judgment on facts of the present case is of no aid to the respondents.

29. This Court in the case of *M/S Rama Brick Field Vs. Additional Commissioner Grade-2 and 2 others* (Writ Tax No. 909 of 2022), in paragraph nos. 8, 9 & 10 has held as under:-

“8. It is not in dispute that the petitioner has opted for compounding which has been accepted by the respondent authorities for a period of 1.10.2017 to 21.3.2019. The disputed purchase as shown by the petitioner from Rohit Coal Trader pertains to May 2018 to June 2018, which falls under the aforesaid period of composition. The petitioner in support of his contention has adduced evidence such as tax invoice, e-way bill, G.R., payment receipts etc. to show that the purchases have been made from the registered dealer. It is also admitted that the registration of Rohit Coal Traders has been cancelled vide order dated 24.10.2019 in other words at the time of transaction in question, the seller i.e. Rohit Coal Traders was registered firm under the G.S.T. Act. It has been argued on behalf of petitioner that Rohit Coal Traders has filed his return for A.Y. 2018-19 ie. GSTR-1 and GSTR-3B. It is a matter of common knowledge that after filing of GSTR -1, an auto pop up widow would be opened for filing of Form GSTR 3 B for payment of tax and form GSTR 2 A can be viewed by the purchaser of goods in question. Once the said form was generated and the said fact has not been disputed by the authorities below while passing of the impugned order, which goes without saying that at the time of transaction, purchaser and supplier both were registered. However at the subsequent time if the seller i.e. Rohit Coal Trader was found non-existence, the proceeding can be initiated but the authorities has failed to consider the fact that GSTR returns as prescribed under the Act was filed by the seller to which not a single word has been whispered while passing the impugned order. On the contrary an observation has been made that the petitioner has failed to bring on record any cogent material to show that Rohit Coal

Traders has deposited the tax and therefore proceedings were held to be justified.

9. Under the GST regime all details are available in the portal of GST department. The authorities could have very well verified as to whether after filing of GSTR-1 and GSTR 3 B how much tax has been deposited by the selling dealer i.e. Rohit Coal Traders but the authorities have failed to do so. Thus looking to the said facts, the impugned orders cannot be sustained in the eyes of law.

10. In view of the facts as stated above, the writ petition succeeds and is allowed. The impugned orders are set aside. The matter is remanded to the first appellate authority, who shall pass a fresh order in accordance with law, expeditiously, preferably within a period of two months from the date of producing a certified copy of this order, without granting any unnecessary adjournment to the parties.”

30. Once the seller was registered at the time of the transaction in question, no adverse inference can be drawn against the petitioner. Further, the record shows that the registration of the selling dealer was cancelled retrospectively i.e. w.e.f. 29.01.2020 and not from its inception which goes to show that the transaction between petitioner and seller was registered and having valid registration in his favour.

31. That under the GST regime, all details are available in the GST Portal and therefore, authorities ought to have been verified the same as to whether the filing of GSTR-1A and GSTR-3B, how much tax has been deposited by the seller, but the authorities have failed to do so.

32. Thus, looking to the above facts and circumstances of the cases, the matters require re-consideration.

33. Accordingly, the impugned orders cannot be sustained in the eyes of law and the same are hereby quashed.

34. The writ petitions are **allowed**. The matter is **remanded** to the authority concerned for deciding afresh by passing a reasoned and speaking order, after hearing all the stakeholder, within a period of two months from the date of production of certified copy of this order.

35. Any amount deposited by the petitioner pursuant to the impugned orders, shall be subject to the outcome of the fresh orders to be passed by the authority concerned.

(2025) 3 ILRA 332

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 26.03.2025

BEFORE

THE HON'BLE ATTAU RAHMAN MASOODI, J.
THE HON'BLE AJAI KUMAR SRIVASTAVA-I, J.

Writ - A No. 2359 of 2025

Munna Lal	...Petitioner
Versus	
State of U.P. & Ors.	...Respondents

Counsel for the Petitioner:

Sri Mohd. Nasir, Sri Mohd. Yasir, Sri Navneet Yadav

Counsel for the Respondents:

C.S.C.

CIVIL LAW – Constitution of India, 1950 – Article 226 - Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 - Rule 10(2) - Uttar Pradesh Government Servant's Conduct Rules, 1956- Writ Petition – challenging the Tribunal's

order – Disciplinary proceedings - Dismissal from service in year 2013 – petitioner claimed that he never received the dismissal order - which prevented him from filing an appeal or revision under Rules, 1991 - Representation in year 2016 – Rejection in year 2016 – 1st Claim petition in year 2016 – order for decide the representation of the petitioner – authority rejected the representation in year 2017 – 2nd Claim Petition in year 2018 – Tribunal dismissed said claim petition, on the grounds of delay – writ petition – Petitioner argued that rejection of representation of the petitioner gave rise to a fresh cause of action, invoking the doctrine of merger - The Court observed that, tribunal erred in dismissing the claim petition solely on the ground of limitation without appreciating that the petitioner had diligently pursued his remedies and the doctrine of merger had come into effect – and since the petitioner promptly pursued the remedies upon service of the dismissal order, the claim of the petitioner could not held to be time-barred by overlooking the scheme of statutory Rules – held, the rejection of the claim petition merely on the ground of limitation is legally unsustainable in view of the application of doctrine of merger which followed as a result of non-supply of the order passed in the year 2013 giving rise to representation under Rule 25 of Rules, 1991 – consequently, writ petition is allowed – and the matter is remitted to the Tribunal for deciding it afresh on merits – direction issued accordingly. (Para – 28, 32, 35)

Review Petition Allowed. (E-11)

List of Cases cited:

1. Income Tax Appeal No. 86 of 2015 (Umang Agarwal Vs The Commissioner of Income Tax, Central Circle, Allahabad,
2. St. of West Bengal Vs Confederation of St. Government Employees, (2019) 3 Cal LJ 351,
3. Chhajju Ram Vs Neki , 1922 SCC OnLine PC 11 : (1921-22) 49 IA 144 : AIR 1922 PC 112],
4. Moran Mar Basselios Catholicos Vs Mar Poulouse Athanasius, AIR 1954 SC 526],
5. Lily Thomas Vs U.O.I., (2000) 6 SCC 224 : 2000 SCC (Cri) 1056,

6. Meera Bhanja Vs Nirmala Kumari Choudhury [(1995) 1 SCC 170],

7. Parsion Devi Vs Sumitri Devi reported in (1997) 8 SCC 715,

8. Thungabhadra Industries Ltd. Vs Govt. of A.P. [AIR 1964 SC 1372],

9. Aribam Tuleshwar Sharma Vs Pishak Sharma reported in (1979) 4 SCC 389,

10. Shanti Conductors (P) Ltd. Vs Assam SEB (2020) 2 SCC 677,

11. Perry Kansagra Vs Smriti Madan Kansagra (2019) 20 SCC 753,

12. S. Murali Sundaram Vs Jothibai Kannan & ors., (2023) 13 SCC 515,

13. Pancham Lal Pandey Vs Neeraj Kumar Mishra & ors., AIR 2023 (SC) 948,

14. M/s. Tata Steel Ltd. Vs Commissioner Trade Tax, Lucknow, 2024 (6) ADJ 248,

15. M/s. M.M.I. Tobacco Pvt. Ltd. & anr. Vs Iftikhar Alam, 2024 (5) ADJ 708,

16. Rajendra Singh Vs Lt. Governor, Andaman and Nicobar Islands & ors., (2005) 13 SCC 289,

17. Board of Control for Cricket in India & anr. Vs Netaji Cricket Club & ors., (2005) 4 SCC 741.

(Delivered by Hon'ble Attau Rahman Masoodi, J.)

1. Heard Sri Mohd. Nasir & Sri Abhishek Khare for the petitioner and Sri Praful Yadav, learned Additional Chief Standing Counsel for the State.

2. By means of this writ petition, the petitioner has assailed the judgment/order dated 12.07.2022, rendered by the U.P. State Public Services Tribunal in Claim Petition No. 355 of 2018, by which the claim petition

instituted by the petitioner has been dismissed. The claim petition has primarily been dismissed on the ground of heavy latches.

3. Briefly stated the facts of the case are that disciplinary proceedings were initiated against the petitioner for a major penalty, which ultimately concluded with the passing of the order dated 28.11.2013, whereby the petitioner was dismissed from service. The order of dismissal from service was passed in the backdrop of disciplinary proceedings, which seem to have been initiated against the petitioner, wherein his participation is evident, yet objections from time to time regarding the procedure adopted seem to have been raised by the petitioner. After passing of the final order on 28.11.2013, the petitioner does not seem to have availed of the statutory remedy of appeal available under Rule 20 of the U.P. Police Officer of Subordinate Rank (Punishment and Appeal) Rules, 1991 (here-in-after referred to as "**Rules, 1991**"). Once the appeal was not filed by the petitioner under Rule 20 of the Rules, 1991, the question of filing a revision under Section 23 of the Rules, 1991, never emerged. It was after a period of about two and a half years from the date of passing of the dismissal order on 28.11.2013 that a representation dated 25.04.2016 was filed by the petitioner, addressed to the State under Rule 25 of the Rules, 1991, and in the aforesaid representation, the petitioner made a specific averment as under :-

"उपरोक्त विवादित दण्डादेश की प्रति याची को आज दिनांक तक प्राप्त नहीं कराई गई है। याची को सेवा हटाये जाने एवं अनुपस्थित अवधि दिनांक 09.05.10 से 03-02-13 तक कुल 1027 दिवस का कोई वतन/भत्ता न दिये जाने (दोनों दण्ड) के आदेशों की कार्यवाही याची को अनुपस्थित समय में पूर्ण की गई

है। याची को बचाव का अफसर भी प्रदान नहीं किया गया है। विवादित आदेशों की प्रति प्राप्त न होने के कारण, याची पूर्व में किसी भी अधिकारी को अपील याचिका दायर नहीं की है।"

4. It was a categorical case of the petitioner that the order of dismissal from service based on 28.11.2013 was not served upon him, which prevented him from availing of the remedy of appeal or revision, within the statutory period prescribed under the Rules. Soon after filing the aforementioned representation, it appears that the petitioner approached the U.P. Public Services Tribunal by filing Claim Petition No.1511 of 2016, wherein paragraph no.4(1) of the claim petition reads as under :-

"That the present claim petition is directed against the arbitrary and discriminatory action to terminate the service of the petitioner vide order dated 28.11.2013 under Sub rule A(1) of Rules 14(1) of Punishment and Appeal Rules 1991 and no salary/allowances of his absence for period of 09.05.2010 to 03.02.2013, i.e. 1027 days. It is relevant to state that there was no such punishment order has been provided to the petitioner and entire proceeding for dismissal of the petitioner had been done behind the petitioner. In absence of availability of any punishment order ever passed against the petitioner, the petitioner sought information from the end of Nodal officer, Firozabad vide his application dated 23.01.2016 and the information was made available vide letter dated 09.02.2016 which shows that the entire proceeding for terminating the services of the petitioner was conducted behind his back. In this circumstances, the petitioner had no option except to represent the highest authority of the department and hence he submitted a representation to opposite party no.1 which is still pending. The true copy of

representation dated 25.04.2016 is annexed as Annexure No. 1 to this Claim Petition."

5. It is evident from the paragraph no.4(1) of the claim petition, extracted above, that non-supply of the order of punishment dated 28.11.2013 was specifically pleaded by the petitioner in the claim petition so instituted. The claim petition filed by the petitioner prayed for the following reliefs :-

(i) to direct the opposite parties to consider and decide the petitioner's representation dated 25.04.2016 within stipulated period as fixed by this Hon'ble Tribunal (contained in Annexure No.1)

(ii) to direct the opposite parties to quash Show Cause notice dated 10.09.2013, order dated order dated 28.11.2013 by which the salary for absence period have been withhold being 'No work No pay' and order dated 28.11.2013 through which the petitioner had been dismissed (contented in annexure nos. 2,4&5) with all consequential benefits.

(iii) Any relief or benefits which this Hon'ble Tribunal deems fit and proper including the cost of the application may also be given to applicant.

6. The two distinct reliefs sought by the petitioner ought to have been examined by the learned Tribunal within the domain of its jurisdiction. The learned Tribunal, instead of expressing any opinion on relief clause (ii), chose to dispose of the claim petition in the light of relief clause (i), and the order so passed on 10.08.2016 reads as under :-

"1. Heard the learned counsel for the petitioner. He confines his prayer for disposal of representation dated 25.4.2016

(Annexure-1), which was filed before the opp.party no.1 against the impugned order of dismissal dated 28.11.2013.

2. The main grievance of the petitioner is that he was dismissed from service vide order dated 28.11.2013. The petitioner preferred representation dated 25.4.2016 before the opp.party no.1 which has not yet been disposed of.

3. The prayer of the petitioner is quite innocuous. In the interest of justice, the opp.party no.1 is directed to dispose of representation dated 25.4.2016 (Annexure-1) within a period of two months from the date of receipt of a certified copy of this judgement by a speaking order under communication to the petitioner."

7. It is worthy to note that the learned Tribunal, while passing the above order, did not decide anything on merit insofar as the challenge against the main order dated 28.11.2013 is concerned. This appears to be for the reason that the petitioner had specifically pleaded non-supply of the punishment order to him, regarding which, he had made a representation before the State Government under Rule 25 of the Rules, 1991. Having appreciated the submission of the petitioner on relief clause (i), the Tribunal disposed of the claim petition by issuing a limited direction for deciding the representation dated 25.04.2016.

8. At the first blush, it appears that the tribunal by passing such an order had attempted to do something indirectly which it could not do directly, as the cause against the order dated 28.11.2013 was barred by the period of limitation. This would not be a right understanding of the Tribunal's order. The learned Tribunal rather noticed

the fact that the order of punishment was not communicated to the petitioner, therefore, direction for the disposal of the representation dated 25.04.2016 would serve the ends of justice.

9. For any punitive action taken against an officer of subordinate ranks in the police department, a three-fold remedy is provided under the relevant rules.

10. Firstly, an appeal is provided under Rule 20 of the Rules, 1991, which, for ready reference, is extracted below:

"20. Appeals.— (1) Every Police Officer against whom an order of punishment mentioned in sub-clauses (i) to (iii) of clause (a) and sub-clauses (i) to (iv) of clause (b) of Rule 4 shall be entitled to prefer an appeal against the order of such punishment to the authority mentioned below:—

(a) to the Police Officer who is the immediate jurisdictional superior authority to the Police Officer who passed the order of punishment;

(b) to the Director General of Police who may either decide the appeal himself or nominate any Additional Director General for deciding it;

(c) to the State Government against the order passed under clause (b).]

(2) No appeal shall lie against an order inflicting any of the petty punishments enumerated in sub-rules (2) and (3) of Rule 4.

(3) Every officer desiring to prefer an appeal shall do so separately.

(4) Every appeal, preferred under these rules shall contain all material, statements, arguments relied on by the police officers preferring the appeal, and shall be complete in itself, but shall not contain disrespectful or improper language. Every appeal shall be accompanied by a copy of final order which is the subject of appeal.

(5) Every appeal, whether the appellant is still in service of Government or not, shall be submitted through the Superintendent of Police of the district or in the case of police officers not employed in district work through the head of the office to which the appellant belongs or belonged.

(6) An appeal with not be entertained unless it is preferred within three months from the date on which the police officer concerned was informed of the order of punishment:

Provided that the appellate authority may, at his discretion, for good cause shown extend the said period up to six months.

(7) If the appeal preferred does not comply with the provisions of sub-rule (4) the appellate authority may require the appellant to comply with the provisions of the said sub-rule within one month of the notice of such order to him and if the appellant fails to make the above compliance the appellate authority may dispose of the appeal in the manner as it deems fit.

(8) The Director-General or an Inspector-General may, for reasons to be recorded in writing, either on his own notion or on request from an appellate

authority before whom the appeal is pending transfer the same to any order officer of corresponding rank."

11. A person aggrieved by an order passed by the appellate authority is left with a further opportunity of filing a revision under Rule 23 of Rules, 1991 and the same for ready reference is reproduced hereunder :-

23. Revision — (1) An officer whose appeal has been rejected by any authority subordinate to the Government is entitled to submit an application for revision to the superior authority next to the authority which has rejected his appeal within three months from the date of rejection of appeal as mentioned below:—

(a) to the Police Officer who is the immediate jurisdictional superior authority to the Police Officer who passed the appellate order;

(b) to the Director General of Police who may either decide the revision himself or nominate any Additional Director General for deciding it;

(c) to the State Government against the order passed under clause (b).

On such an application the powers of revision may be exercised only when, in consequent of flagrant irregularity, there appears to have been material injustice or miscarriage of justice:

Provided that the revising authority may on its own motion call for and examine the records of any order passed in appeal against which no revision has been preferred under this rule for the purpose of satisfying itself as to the legality

or propriety of such order or as to the regularity of such procedure and pass such order with respect thereto as it may think fit:

Provided further that no order under the first proviso shall be made except after giving the person effected a reasonable opportunity of being heard in the matter.]

(2) The procedure prescribed for appeal applies also to applications for revision. An application for revision of an order rejecting an appeal shall be accompanied by a copy of the original order as well as the order of appellate authority.

12. There is yet another channel of statutory remedy provided under Rule 25 of Rules, 1991, which for ready reference is also reproduced hereunder :-

25. Powers of Government.—Notwithstanding anything contained in these rules, the Government may, on its own motion or otherwise, call for and examine the records of any case decided by an authority subordinate to it in the exercise of any power conferred on such authority by these rules, and against which no appeal has been preferred under these rules and—

(a) confirm, modify or revise the order passed by such authority; or

(b) direct that a further inquiry be held in the case; or

(c) reduce or enhance the penalty imposed by the order; or

(d) make such other order in the case as it may deem fit:

Provided that where it is proposed to enhance the penalty imposed by any such order the police officer concerned shall be given an opportunity of showing cause against the proposed enhancement.

13. Rule 25 of the Rules, 1991, operates in a different field and for a definite purpose, both for the State as well as for an aggrieved person. Two aspects of the rule are evident. Firstly, the rule provides for a remedy notwithstanding anything envisaged under any other rules of the Rules, 1991. Secondly, this provision is invoked by the State suo moto or otherwise where an appeal is not instituted by an aggrieved person. The power under Rule 25 of the Rules, 1991, has been conferred for definite purposes mentioned in the statutory rules itself, which are of wide import.

14. Learned counsel for the petitioner, in the backdrop of the aforesaid facts, has argued that the representation dated 25.04.2016, which was preferred under Rule 25 of the Rules, 1991, has been decided by the competent authority by passing a detailed and reasoned order on merit. It is, thus, argued that once a statutory representation was decided by the State by passing an order on merit, the principle of merger would apply insofar as the period of limitation against the cause of action, which had initially accrued to him against the order dated 28.11.2013, merged into the order dated 05.06.2017. The submission is that once the competent authority proceeded to decide the representation on merit, the matter was again looked into at the higher level and the whole cause assumed a new frame and form. That being so, the learned Tribunal, while rejecting the claim petition on the ground of limitation computed with effect

from the date of the original order dated 28.11.2013, fell in error, and therefore, the impugned judgment passed by the Tribunal purely on the ground of limitation suffers from an apparent error of law, calling for interference in the exercise of jurisdiction vested in this Court by virtue of Article 227/226 of the Constitution of India.

15. Learned counsel for the petitioner, to buttress his argument, has placed reliance upon a judgment rendered by Hon'ble the Apex Court in the case of **S.S. Rathore vs. State of Madhya Pradesh : (1989) 4 SCC 582**.

16. Per contra, learned counsel for the State, placing reliance upon a Division Bench judgment of this Court rendered in the case of **Amol Kumar Sharma v. Uttar Pradesh Public Service Tribunal, 2021 SCC OnLine All 457**, has argued that once the remedy under Rule 25 of the Rules, 1991, was held to be a non-statutory remedy, the principle of merger, as put forth by the learned counsel for the petitioner, would not be applicable in the facts and circumstances of the present case.

17. Learned counsel for the State, on the basis of instructions, has further argued that a copy of the order dated 18.11.2013 was served upon the wife of the petitioner on 04.12.2013, and any averment to the contrary made in the representation or claim petition is wholly unfounded. It has also been argued that the view taken by the learned Tribunal does not suffer from any illegality and the judgment so rendered deserves affirmation.

18. Considered the submissions made by the learned counsel for the parties and perused the material available on record.

19. The case of the claimant-petitioner is that the dismissal order passed by the competent authority dated 28.11.2013 was not served upon him. In these circumstances, the petitioner preferred a representation dated 25.04.2016 under Rule 25 of the Rules, 1991.

20. In the representation moved by the petitioner on 25.04.2016, a specific plea has been taken by him that in absence of availability of any punishment order ever passed against the petitioner, he sought an information from the Nodal Officer, Firozabad vide his application dated 23.01.2016 and the information was made available on 09.02.2016. Having no option, the petitioner preferred the representation dated 25.04.2016 to the higher authority of the department.

21. When the said representation was not decided, he filed a Claim Petition No. 1511 of 2015 which was disposed of vide order dated 10.08.2016 directing the State Government to decide his representation within a period of two months from the date of receipt of a certified copy of the tribunal's order.

22. It is noteworthy to mention here that apart from praying for a direction to decide his representation by the competent authority, the petitioner had prayed for quashing of the show cause notice dated 10.09.2013, dismissal order dated 28.11.2013 and one more order dated 28.11.2013 by which the salary for the period of absence was withheld on the principle of 'No Work No Pay'. The said representation was rejected vide order dated 05.06.2017 which was challenged before the U.P. Public Services Tribunal by filing Claim Petition No. 355 of 2018. The said petition so filed was rejected by means

of the impugned order dated 12.07.2022 on the ground of limitation. The bar of one year postulated under Section 4 of the Uttar Pradesh Public Service (Tribunal) Act, 1976 was construed from the date of original order dated 28.11.2013.

23. Though it has been acknowledged by the Tribunal that no limitation is provided in Rule 25 of the Rules, 1991, but the claim petition preferred by the petitioner stands rejected solely on the ground that the representation was preferred by the petitioner without availing the statutory remedy of appeal/revision. The representation was held to be non-statutory which on its rejection would not enable the petitioner to claim the benefit of limitation from a subsequent date, the tribunal has opined.

24. The petitioner has evidently approached the Tribunal twice. On one occasion, the Tribunal directed the State Authorities to decide the representation within two months. At this juncture, it is worthwhile to mention that the tribunal instead of issuing a direction for deciding the representation was at liberty to treat the pending representation as non-statutory, and reject the claim petition on the ground of limitation. But while issuing a direction, the tribunal appears to have understood the wider import of statutory rules particularly Rule - 25 of the Rules, 1991.

25. When the petitioner approached the Tribunal second time against the rejection of his representation decided on merit, the claim petition was rejected by computing the period of limitation from the date of original order passed in 2013 rather looking into the consequence of merger, which Rule - 25 of the Rules, 1991 is capable to bring about. Such a provision operates as a residuary

power with the state to nullify the actions which do not stand in conformity with law by taking suo motu notice and exceptionally the jurisdiction is available to the aggrieved person as well in appropriate cases, as at hand.

26. The second claim petition could not be thrown out simply because the petitioner had not availed statutory remedies available under law, inasmuch as, the order dated 28.11.2013 had not been supplied to the petitioner till 09.02.2016 when he approached the Nodal Officer, Firozabad for its supply. Thereafter, the petitioner immediately approached the Tribunal as noted here-in-above. The doctrine of merger came into operation to subsume a lower authority's decision into that of the higher authority when a remedy was pursued and dealt with on merit exhaustively.

27. In this case, the petitioner for want of the supply of punishment order could not file an appeal against the original dismissal order which on being supplied belatedly left him open to make a representation under Rule 25 of Rules, 1991 and the same was decided on merit. Once the competent authority decided the representation on merit, the dismissal order essentially merged with the decision on the representation for it being a remedy prescribed under the Rules.

28. It follows, therefore, that the period of limitation ought to have been reckoned not from the date of the original dismissal order but from the date when the statutory representation was decided. The Tribunal erred in dismissing the claim petition solely on the ground of limitation without appreciating that the petitioner had diligently pursued his remedies and the doctrine of merger had come into effect.

29. The Supreme Court in **Kunhayammed & others v. State of Kerala and another [(2000) 6 SCC 359]**, held that when a superior authority adjudicates a matter on merit, the lower authority's order ceases to have an independent existence. Similarly, in *Union of India v. K. V. Jankiraman [(1991) 4 SCC 109]*, the Court held that once an administrative authority reconsiders an order, limitation should be counted from the date of reconsideration of decision rather than the original order.

30. The rejection of the claim petition by the Tribunal solely on the ground of limitation violates the fundamental principles of natural justice. The petitioner was unaware of his dismissal order until he received an information from the Nodal Officer, Firozabad. It is well-settled principle of procedure that limitation does not begin to run against a party until he has knowledge of the adverse order.

31. A plea has been taken by the respondents that though the dismissal order was alleged to have been served upon the wife of the petitioner on 04.12.2013, but it was not established from the record that it had actually been served upon her. After 2½ years, the Nodal Officer, Firozabad supplied the requisite information on 09.02.2016 that too on the petitioner's application moved on 23.01.2016. Thereafter, on a direction given by the Tribunal, the representation was decided on merit by the competent authority by a detailed order passed on 05.06.2017 against which the petitioner filed a claim petition on 20.02.2018, which ought to have been treated well within time prescribed under the statute.

32. Since the petitioner promptly pursued the remedies upon service of the dismissal order, the claim of the petitioner could not held to be time-barred by overlooking the scheme of statutory Rules understood as above.

33. For the aforementioned reasons, the Court is of the opinion that the rejection of the claim petition merely on the ground of limitation is legally unsustainable in view of the application of doctrine of merger which followed as a result of non-supply of the order passed in the year 2013 giving rise to representation under Rule 25 of the Rules, 1991. Secondly, the petitioner was deprived of an opportunity to contest his dismissal order on merits due to procedural irregularities of service of the order and lastly, limitation cannot run against a party unaware of the adverse action.

34. In view of the foregoing paragraphs, the view taken by the Tribunal is not tenable and calls for interference.

35. Accordingly, the writ petition is **allowed** and the impugned judgment and order dated 12.07.2022 is quashed. The matter is remitted to the Tribunal for deciding it afresh on merits, within a period of six months from the date of receipt of a certified copy of this order, as the matter is lingering since 2013. Parties undertake to co-operate with the proceedings before the Tribunal. No order as to costs.

(2025) 3 ILRA 340
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.03.2025

BEFORE
THE HON'BLE SAURABH SHYAM
SHAMSHERY, J.

Writ - A No. 18801 of 2024 connected with
 other cases

Priyankar Upadhyaya	...Petitioner
Versus	
U.O.I. & Ors.	...Respondents

Counsel for the Petitioner:

Sri R.K. Ojha, Sri G.K. Singh, Sri Pradeep Chandra, Senior Advocates, Sri Shivendu Ojha, Sri Sankalp Narain, Ms. Asha Parihar, Sri Manoj Kumar Singh, Advocates

Counsel for the Respondents:

Sri V.K. Upadhyay, Sri Ajit Kumar Singh, Sri Shashi Prakash Singh, Senior Advocates, Sri Ritvik Upadhyay, Sri Hem Pratap Singh, Sri Manoj Kumar Singh, Sri Purnendu Kumar Singh, Sri Dhananjay Awasthi, Sri Rahul Jain, Advocates

A. Service Law – Constitution of India, 1950 – Article 226 – Writ – Second writ petition – Maintainability – Earlier, writ petition seeking switch back from CPF Scheme to GPF-cum-Pension Scheme was dismissed – Afterward a judgment with different view was passed by Delhi High Court, which got affirmed by the Apex Court too – How far can be ground of maintaining second petition with similar relief – Held, petitioners have wrongly declared that present writ petitions are their first writ petitions on the relief sought. Therefore, Court is of the view that declaration made in present writ petitions is contrary to record – Held further, only on ground that subsequently a different interpretation of law was given by a Single Bench of Delhi High Court, which was affirmed upto Supreme Court and since petitioners were approaching the authorities after these judgments, would not make a ground that said judgment is applicable to petitioners so much as that earlier judgment would not come in the way. (Para 8 and 29)

B. Service Law – Contributory Provident Fund – Office Memorandum dated 01.05.1987 was issued giving option to change over from CPF Scheme to GPF-cum-Pension Scheme with cut off date 09.07.1998 – Option to remain in earlier Scheme was given before fixed cut-off date – Effect – Claim of being deemed to come over in GPF-cum-Pension Scheme was made – Permissibility – Held, any

option given beyond 09.07.1988 would not est, however, on basis of record, none of petitioners have a case that they have opted to remain in earlier CPF Scheme on basis of above cutoff date rather their claim was taken birth only after Banaras Hindu University adopted the Scheme on 09.04.1988 and they have given option before new cut off date, i.e., 09.07.1988, therefore, the benefit of judgment in University of Delhi Vs Smt. Shashi Kiran would not be applicable. [Para 21 and 30(c)]

C. Judgment in rem and Judgment in personam – Applicability of Apex Court judgment of Smt. Shashi Kiran's case, being judgment in rem, was sought – Held, judgment passed by Supreme Court in University of Delhi Vs Smt. Shashi Kiran was a judgment in rem and not in personam, however, facts of each case may have different consequences. (Para 26)

Writ petition dismissed. (E-1)

List of Cases cited:

1. University of Delhi Vs Smt. Shashi Kiran & ors.; 2022(7) SCR 957
2. Neerja Tiku Vs School of Planning & Architecture & anr.; 2024:DHC:2891

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

CORAM : HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. Petitioners, in above referred writ petitions, are retired teaching and non-teaching employees of Banaras Hindu University and they are beneficiaries of Contributory Provident Fund Scheme (hereinafter referred to as "CPF Scheme").

2. Government of India has issued an Office Memorandum dated 01.05.1987 on a

subject "Change over of the Central Government employees from the Contributory Provident Fund Scheme to Pension Scheme-Implementation of the commendations of the Fourth Central Pay Commission". Salient features of said Office Memorandum are reproduced hereinafter:

"The undersigned is directed to state that the Central Government employees who are governed by the Contributory Provident Fund Scheme (CPF Scheme) have been given repeated options in the past to come over to the Pension Scheme. The last such option was given in the Department of Personnel and Training O.M. No. F3(1)-Pension unit/85 dated the 6th June, 1985. However, some Central Government employees still continue under the CPF Scheme. The Fourth Central Pay Commission has now recommended that all CPF beneficiaries in service on January 1, 1986, should be deemed to have come over to the Pension Scheme on that date unless they specifically opt out to continue under the CPF Scheme.

2. After careful consideration the President is pleased to decide that the said recommendation shall be accepted and implemented in the manner hereinafter indicated.

3. All CPF beneficiaries, who were in service on 1.1.1986 and who are still in service on the date of issue of these orders will be deemed to have come over to the Pension Scheme.

3.2. The employees of the category mentioned above will, however, have an option to continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the concerned

Head of Office by 30.09.1987 in the form enclosed if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office by the above date the employees will be deemed to have come over to the Pension Scheme.

3.3. The CPF beneficiaries, who were in service on 1.1.1986, but have since retired and in whose case retirement benefits have also been paid under the CPF Scheme, will have an option to have their retirement benefits calculated under the Pension Scheme provided they refund to the Government, the Government contribution to the Contributory Provident Fund and the interest thereon, drawn by them at the time of settlement of the CPF Account. Such option shall be exercised latest by 30.09.1987.

3.4. In the case of CPF beneficiaries, who were in service on 1.1.1986 but have since retired, and in whose case the CPF Account has not already been paid, will be allowed retirement benefits as if they were borne on pensionable establishments unless they specifically opt by 30.09.1987 to have their retirement benefits settled under the CPF Scheme.

3.5 in the case of CPF beneficiaries, who were in service on 1.1.1986, but have since died. Either before retirement or after retirement, the case will be settled in accordance with para 3.3 or 3.4 above as the case may be. Options in such cases will be exercised latest by 30.09.1987 by the widow/widower and in the absence of widow/widower by the eldest surviving member of the family who would have otherwise been eligible to family pension under the Family Pension Scheme if such scheme were applicable.

3.6 The option once exercised shall be final.

3.7 In the types of cases covered by paragraph 3.3 and 3.5 involving refund of Government's contribution to the contributory provident fund together with interest drawn at the time of retirement, the amount will have to be refunded latest by the 30th September, 1987. If the amount is not refunded by the said date, simple interest thereon will be payable at 10% per annum for period of delay beyond 30.9.1987."

3. In pursuance of above Office Memorandum, the Deputy Registrar (Administration), Banaras Hindu University has made a communication to Secretary, University Grants Commission to sent copies of order on the subject to switch over to CPF Scheme to General Provident Fund-cum- Pension Scheme (hereinafter referred to as "GPF-cum-Pension Scheme") and accordingly Under Secretary of University Grants Commission by communication dated 19.01.1988 sent an Office Memorandum to Registrar of many Central Universities including Registrar of Banaras Hindu University on above referred issue. After due deliberation office of Registrar (Administration), Banaras Hindu University issued an Office Memorandum dated 09.04.1988 on the subject "Change over of the Central Government employees from the Contributory Provident Fund Scheme to Pension Scheme-Implementation of the commendations of the Fourth Central Pay Commission". This communication was addressed to Head of different Departments of Banaras Hindu University. The contents of communication, being relevant for the purpose of adjudication of present cases, are reproduced hereinafter:

"I am directed to inform you that it has been decided to apply the

Government of India orders on the above subject to the employees of the University. Accordingly, all the University employees on CPF/PF Scheme who were in service on 1.1.1986 will be deemed to have come over to Pension Scheme.

2. The employees of the category mentioned above will, however, have an option to continue under the PF/CPF Scheme if they so desire. This option will have to be exercised and conveyed to this office latest by the 9th July, 1988 in the form enclosed. If no option is received by this date the employee will be deemed to have come over to Pension Scheme.

3. The employees who have/subsequent to 1.1.1986 and in whose cases retirement benefits have been paid under the CPF Scheme will also be eligible to come over to Pension Scheme provided they refund the University's contribution and interest thereon drawn by them.

4. In the case of employees who were in service on 1.1.1986 but have since died either before or after retirement, the option to retain the CPF benefits or to come over to Pension Scheme will be exercised by the widow/widower, and, in the absence of widow/widower by the eldest surviving member of the family who would have otherwise been eligible to family pension under the Family Pension Scheme if such scheme were applicable to the employee.

5. The last date for exercising options in all cases will be the 9th July, 1988 and option once exercised will be final.

6. In the cases involving refund of University's contribution to provident fund

(including interest thereon), the amount will have to be refunded latest by the 9th July, 1988, failing which interest thereon @ 10% per annum will be payable for the period beyond this date.

7. The provisions of this Circular do not apply to personnel re-employed in the University or those appointed on contract basis.

8. The Directors/Deans/Principals/Heads etc. are requested to bring the contents of this Circular to the notice of all the employees subscribing to the Provident Fund/Contributory Provident Fund under their control including those on leave or on foreign service terms, so that the ignorance of these orders is not pleaded at a later stage and the options of the employees delivered in this office in time."

4. As referred above, the Office Memorandum of Government of India dated 01.05.1987 wherein the last date for exercising options was fixed as 30.09.1987 was adopted by Banaras Hindu University subsequently on 09.04.1988 and last date for exercising options was fixed as 09.07.1988.

5. At this stage, it would be relevant to mention here that University of Delhi has accepted the recommendation of 6th Pay Commission by notification dated 25.05.1987, i.e., within a very short period of Office Memorandum dated 01.05.1987 issued by Government of India and accordingly cut off date, i.e., 30.09.1987 would be relevant for the purpose of University of Delhi. However, with regard to Banaras Hindu University Court above referred two dates, i.e., 09.04.1988 when Banaras Hindu University adopted the

Scheme and last date for option was fixed to be 09.07.1988 would be relevant

6. Petitioners have declared that in pursuance of above referred communication they have given option to continue in earlier Scheme, i.e., CPF Scheme before cut off date as fixed by Banaras Hindu University, i.e., 09.07.1988. It is also on record that Banaras Hindu University has extended the cut off date of submitting option subsequent to 09.07.1988 also on more than one occasion and some employees have given option thereafter also to remain in CPF Scheme.

7. In aforesaid circumstances, number of petitioners, have earlier filed Writ Petitions No. 32101 of 2004 and 28790 of 2004, wherein they have prayed that they may be allowed to switch back from CPF Scheme to GPF-cum-Pension Scheme, i.e., to withdraw their option to remain in CPF Scheme. The Division Bench of this Court vide order dated 12.08.2011 dismissed both writ petitions and relevant part of said judgment is reproduced hereinafter:

"13. Shri V.K. Upadhyay appearing for the University Grants Commission has relied upon the counter affidavit of Dr. N.K. Jain, Joint Secretary, University Grants Commission, New Delhi. He has reiterated the objections taken by the University as well as the Central Government. He submits that the University Grants Commission had taken up the matter by letter dated 8.8.2001 to the Joint Secretary, Government of India, MHRD to consider to extend the scheme and to notify a clear view of cut off date so that the institutions do not fix their own cut off date. The Ministry of Human Resource Development, Government of India by its

letter dated 22.9.2001 informed the UGC that earlier the matter was examined in consultation with the Ministry of Finance (Department of Expenditure). The Ministry had regretted and expressed its inability to allow one more option to change over from CPF to GPF Scheme to the employees of the UGC and institutions maintained by it. Earlier the Ministry of Human Resource Development, Government of India by letter dated 19.6.2000 had also communicated the matter pertaining to the option in consultation with the Ministry of Finance and had regretted its inability to allow one more option.

14. It is submitted by learned counsel appearing for UGC that Ministry of Human Resource Development by its letter dated 24.12.2002 forwarded a letter to the Vice Chancellor, Banaras Hindu University regarding change of option. After examining the matter UGC informed by its letter dated 23.9.2003 that the options were available only upto 30.9.1987 and as such request of University cannot be considered.

15. So far as discrimination is concerned, learned counsel appearing for UGC submits that the Banaras Hindu University extended the date in the year 1988 and in 1995 on its own, without the approval of UGC. The UGC by its letter dated 23rd September, 2003 informed the University that one more option to change over cannot be accepted. In case of Assam University the employees, who were recruited after 1994 and that at that time only GPF Scheme was available, the Assam University by mistake given CPF to the employees, which was not permissible. In para 8 of the counter affidavit of Dr. M.K. Jain, Joint Secretary, UGC it is stated that IITs at Kanpur, Bombay, Gorakhpur and

Roorki are not covered under the purview of UGC and that Delhi University was not given any permission by UGC to extend the date. By D.O. letter dated 25.5.1999 addressed to the Registrar, University of Delhi, a copy of which was endorsed to all Central University cut of date for change over from CPF to GPF was informed to be 30.9.1987 and the benefit of retirement liabilities for such employees after cut off date was to be treated as unapproved expenditure. On the basis of the reply received from the Delhi University to UGC they suggested to Ministry of Human Resource Development on 3rd September, 2002 to regularise the change for Delhi University upto 31.3.1998 or that the Government of India may instruct UGC with pension liability of the employee be not made by UGC, who have permitted irregular conversion from CPF to Pension Scheme after 30.9.1987. In reference to these letters the Ministry of Human Resource Development informed UGC on 24.10.2002 that since the UGC is funding agency and it itself had extended the government policy on conversion from CPF to GPS to the Central Government and deemed universities receiving 100% maintenance grant, no specific government instructions are warranted to those employees of the University of Delhi, who had not permitted to make conversion from CPF to GPF Pension Scheme after prescribed cut off date. The UGC had not permitted the University for extension of the dates. The conversion was accepted by the Executive Council of the Delhi University, where there is no representative of UGC/ Government of India. The permission for extension to some of the employees by Banaras Hindu University after the cut off date is in violation of the instructions given by the Government of India and UGC.

16. From these facts, we find that the University Grants Commission had never communicated any decision to the Banaras Hindu University to extend cut off date for change of the option. The Ministry of Human Resource Development had requested Ministry of Finance (Department of Expenditure), which did not agree to extend the cut off date for switching over from CPF to GPF Scheme. The Office Memorandum No.4/1/87 dated 1.5.1987 notifying the scheme pertaining to change over from CPF to GPF was never amended. The Vice Chancellor of the Banaras Hindu University, on his own without any authority from University Grants Commission and further without there being any resolution of the Executive Council appears to have extended the date for some of its employees upto 31st December, 1995. The change offered to them was beyond the authority of the Vice Chancellor of the University. The Committee headed by Prof. D.K. Rai had made a recommendation for giving one more opportunity to switch over to GPF, which appears to have been accepted by the Vice Chancellor, without the recommendations of the Executive Council and that finally the Executive Council by its impugned decision regretting its inability to approve the orders of the Vice Chancellor dated 20.3.2001 and 18.1.2002. The Vice Chancellor of the University could not have acted against the directives of the University Grants Commission and Ministry of Human Resource Development as the University is fully funded by the University Grants Commission.

17. We are of the opinion that the Vice Chancellor on his own without there being any approval of the Executive Council, which is in turn bound in the matters of financial discipline, by the

decisions taken by the University Grants Commission, which fully funds the University, did not have any authority to extend the date for option.

18. ***In the present case the question involved is not to extend the date of option but to allow the petitioner to withdraw their option to continue in the CPF Scheme. Under the scheme all the teachers/ employees were allowed the benefit of GPF-Gratuity-Pension Scheme. Only those employees, who had exercised their option to continue under the CPF Scheme were not given the benefit. Rule 3 (iii) of the Central University Retirement Benefit Rules, 1967 were not amended to give authority to the Vice Chancellor to extend the last date. The Vice Chancellor on his own without any valid authority vested in him extended the cut off date in the year 1988 and in 1995. The petitioners did not take benefit of this unauthorised extension policy also. They, therefore, have no right whatsoever to claim further extension. The Executive Council did not commit any mistake in regretting its inability to extend the date following the directives of the UGD and Ministry of Human Resource Development.***

19. The petitioners are teachers and employees of the University. They had fully understood the financial implications of the option exercised by them. The benefits offered by the 5th Pay Commission given w.e.f. 1.1.1996 could not be a ground to allow them to opt for GPF-Gratuity-Pension Scheme almost nine years after the cut off date fixed at 30.9.1987 had expired.

20. The University Grants Commission has given sufficient explanation to the complaint of discrimination. The Guwahati University

employees appointed in 1994 were wrongly offered CPF Scheme and thus they were all brought into GPF Scheme for rectifying the error. The IITs were instructed by UGC/MHRD not to extend cut of date since they are not funded by the U.G.C. Any decision taken by them will not amount to discrimination with the teachers/employees of the Central Universities. The Delhi University continued with an illegality, against the clarifications issued by the UGC and Ministry of Human Resource Development.

21. In Union of India Vs. M.K. Sarkar, (2010) 2 SCC 59 the Supreme Court held where an employee governed by CPF Scheme did not opt for pension scheme, despite several chances given to him, his representation 22 years after his retirement, with willingness to refund the amount cannot be permitted to switch over to pension scheme. If his request is accepted, the effect would be to permit him to secure double benefit. There was no recurring or continuing cause of action to file writ petition after such a long time. If was further held that when he had notice or knowledge of the availability of option he could not be heard to contend that he did not have written intimation of option.

22. We also find that this writ petition was filed on 5.8.2004 challenging the decision of the Executive Council of the University dated 19/20th July, 2002, communicated by the Registrar of the University on 5.9.2002, and much after the new pension scheme had become applicable to all the employees joining Central Government after 1.1.2004. The employees, who were covered by GPF-Gratuity-Pension Scheme were given offer to switch over to new pension scheme and

thus in the year 2004 there was absolutely no justification for the petitioners, many of whom have retired long ago to be offered an opportunity to change their option and to switch back to GPF-Gratuity-Pension Scheme.

8. The above judgment was not assailed further, as such, it has attained finality. In aforesaid circumstances, the present writ petitions seeking similar relief should have declared present writ petitions as second writ petitions on same issue. However, petitioners have wrongly declared that present writ petitions are their first writ petitions on the relief sought. Therefore, Court is of the view that declaration made in present writ petitions is contrary to record.

9. Sri R.K. Ojha, learned Senior Advocate assisted by Sri Shivendu Ojha, Advocate; Sri G.K. Singh, learned Senior Advocate assisted by Sri Sankalp Narain, Advocate; Sri Pradeep Chandra, learned Senior Advocate assisted by Ms. Asha Parihar, Advocate and Sri Manoj Kumar Singh, Advocate for petitioners, have vehemently submitted that subsequently a similar matter was adjudicated with regard to employees of University of Delhi and law was crystallized firstly by Single Bench and thereafter by Division Bench of Delhi High Court and thereafter by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran and others, 2022(7) SCR 957**. Learned Senior Advocates have vehemently referred the judgment passed by Supreme Court to contend that case of petitioners is similar to the case of one of the batch of petitioners therein, i.e., N.C. Bakshi batch, and referred following findings returned by Supreme Court, so far as said batch is concerned:

“15. According to the notification dated 01.05.1987 two situations were contemplated. First, the deeming provision

in terms of which the concerned employee was taken to have 'come over' to GPF. The second situation being where a conscious option was exercised before the cut-off date to continue to be under CPF. R.N. Virmani batch of cases was therefore rightly allowed by the learned Single Judge and the Division Bench of the High Court, as no conscious option was exercised by the cut-off date. Consequently, the concerned employees must be deemed to have 'come over' to GPF. Logically, it would be immaterial whether the concerned employee continued to make contribution assuming himself to be covered under CPF, even though contributions were made by the concerned authorities. The benefit was therefore rightly granted in favour of the employees and the entire contribution was directed to be refunded. The University has chosen not to appeal against that decision and thus the matter has attained finality.

Theoretically, extension of the same principle would be that if no option was exercised before the cut-off date, but an option was exercised after the cut-off date was extended; and if no switchover could be allowed after the cut-off date, the decisions rendered by the learned Single Judge and the Division Bench in the N.C. Bakshi batch of cases were also quite correct. Consequently, irrespective of the fact that the concerned employees had exercised the option to continue to be under CPF, such exercise of option would be non est in the eyes of law. That in fact is the ratio of the decision in S.L. Verma's case. Thus, both these batches of cases were rightly decided by the learned Single Judge and the Division Bench. We, therefore, dismiss the appeal in N.C. Bakshi batch of cases."

10. Learned Senior Advocates further submitted that as soon as Single

Bench of Delhi High Court has passed judgment in the case of employees of Delhi University, petitioners herein have approached the concerned authorities that similar benefit may be granted to them since they have exercised the options after 30.09.1987, i.e., the last for exercising option as fixed by Office Memorandum dated 01.05.1987 issued by Government of India and their option to continue to CPF Scheme would be considered to be non-est and consequently they ought to have deemed to be switch over to GPF-cum-Pension Scheme. Learned Senior Advocates further submitted that petitioners have repeated their request after the judgment passed by Division Bench of Delhi High Court and also after the judgment passed by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** but their representations kept pending on one or other reasons.

11. According to record, in aforesaid circumstances, some of the similarly situated employees of Banaras Hindu University approached this Court by way of filing Writ-A No. 19158 of 2022, which was disposed of vide order dated 29.11.2022 and for reference said order is reproduced hereinafter:

"Heard Sri R.K. Ojha learned Senior Counsel assisted by Sri Shivendu Ojha learned counsel for the petitioners, Sri Arvind Singh learned counsel for the Union, Sri Hemendra Pratap Singh learned counsel for the University and Sri Rijwan Ali Akhtar learned counsel for respondent No. 2.

Petitioners seek a direction upon respondent-University to release GPF and pension to the petitioners under General Provident Fund Scheme. In that regard

reliance has been placed on two decisions of the Delhi High Court as affirmed by the order of the Supreme Court on 10.5.2022.

Without entering into the merits, insofar as the claim made by the petitioners is prima facie tenable and the same is still pending and the University has already forwarded the same to respondent No. 1 on 29.9.2022 who has to take a final decision in the matter, no useful purpose would be served in keeping the petition pending or calling for counter affidavit, pending that decision. Accordingly, writ petition is disposed of with a direction, subject to petitioners filing a copy of this order before respondent No. 1, said respondent shall verify the correct facts and pass appropriate reasoned order, as expeditiously as possible, preferably within a period of three months from the date of compliance shown by the petitioners. Any amount found due and payable to the petitioners may be paid out within a further period of three months, failing which same may attract interest @ 8% from the date amount becoming due till the date of its actual payment.”

12. In pursuance of above order, matter was considered by Government of India and vide communication dated 03.04.2023 addressed to Secretary, University Grants Commission, prayer of petitioners to give benefit of GPF-cum-Pension Scheme, was rejected taking a view that judgment passed by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** was only applicable to employees of Delhi University and not to employees of other Central Universities and Ministry of Education, Department of Higher Education, Government of India has issued an order dated 26.04.2023 taking a

similar view as well as that the Office Memorandum dated 01.05.1987 was applicable to Delhi University since it was adopted by a separate Notification dated 25.05.1987 but Banaras Hindu University has not adopted it in said terms. The interpretation of it would be that the letter dated 09.04.1988 was issued by Deputy Registrar (Administration), Banaras Hindu University to invite options from its employees would not be considered to be a legal adoption of GPF-cum-Pension Scheme. Aforesaid two orders dated 03.04.2023 and 26.04.2023 are impugned in present writ petitions.

13. Learned Senior Advocates have submitted that judgment passed by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** was a judgment in rem and not a judgment in personam and for that they referred a judgment passed by Single Bench of Delhi High Court in the case of **Neerja Tikku vs. School of Planning and Architecture and another, 2024:DHC:2891** that the judgment of Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** would be applicable to School of Planning and Architecture and therefore, on same analogy it would be applicable to similarly situated employees of other Central Universities also and they referred paras 23 and 24 of said judgment, which are reproduced hereinafter:

“23. From an overall reading of the aforesaid judgment of the Supreme Court, it is clear that for those of the employees who had not exercised the option before the cut-off date i.e., 30.09.1987 and had opted beyond that date, such exercise of option would be non est in law. Meaning thereby, if the option was not exercised before the cut-off date or

exercised after the cut-off date, the deeming provision of coming over to the GPF cum Pension Scheme would be applicable to the employees, in both the cases. In coming to such conclusion regarding the effect of deeming provision, this Court draws strength from a judgment of the Supreme Court in State of Bombay Vs. Pandurang Vinayak and others reported in AIR 1953 SC 244. The relevant paragraph is extracted hereunder:

"12. In East End Dwellings Co. Ltd. v. Finsbury Borough Council [East End Dwellings Co. Ltd. v. Finsbury Borough Council, 1952 AC 109 (HL)] , Lord Asquith while dealing with the provisions of the Town and Country Planning Act, 1947, made reference to the same principle and observed as follows : (AC pp. 132-33) "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative, state of affairs had in fact existed, must inevitably have flowed from or accompanied it. ... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

24. In the present case, if one were to apply the aforesaid principle, it is clear that the petitioner had exercised the option to continue with the CPF Scheme on 07.12.1987, which was beyond the cut-off date 30.09.1987. The exercise of such option, according to the Supreme Court in Shashi Kiran (supra), would be non est in law, in which case, the deeming provision of the O.M. dated 01.05.1987 should be given its logical conclusion. In that, the

petitioner would be deemed to have come over to the GPF cum Pension Scheme."

14. At this stage, it would be relevant to mention here that School of Planning and Architecture has issued a Circular dated 17.08.1987 initiating procedure for exercising option by its employees on or before the cut off date, i.e., 30.09.1987, therefore, they have adopted Office Memorandum dated 01.05.1987 before the cut off date and as referred above the case of Banaras Hindu University is factually different since it has adopted the Scheme vide letter dated 09.04.1988 and cut off date for exercising option was fixed as 09.07.1988, i.e., much after the above referred two dates, i.e., 01.05.1987 and 30.09.1987.

15. Learned Senior Advocates for petitioners also submitted that the judgment passed in earlier round of litigation would not come in the way since later on law on the issue was declared and clarified by Supreme Court and its benefit can still be given to petitioners on a factual aspect that their options to continue with CPF Scheme were non-est since it was given after the cut off date, i.e., 30.09.1987 as mentioned in Office Memorandum dated 01.05.1987 issued by Government of India. The date fixed by Banaras Hindu University would have no legal consequence.

16. Sri V.K. Upadhyay, learned Senior Advocate assisted by Sri Ritvik Upadhyay, Advocate and Sri Ajit Kumar Singh, learned Senior Advocate assisted by Sri Hem Pratap Singh, Advocate for Respondent-Banaras Hindu University, have submitted that GPF-cum-Pension Scheme was adopted and the order dated 09.04.1988 issued by Deputy Registrar (Administration), Banaras Hindu

University was sufficient that the Scheme was adopted and its benefits have also been extended. There was no requirement to issue any other notification or make any amendment in relevant Act, Statute or Ordinance.

17. Learned Senior Advocates further submitted that so far as implementation of judgment of Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** is concerned, it would not be applicable in the case of petitioners since not only their earlier similar prayer was rejected but Government of India has taken note of financial aspect also, therefore, at this stage prayer of petitioners cannot be accepted. It was also contended that factual aspects of present cases are different, which was not the issue before Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** since Delhi University has adopted Office Memorandum dated 01.05.1987 in its entirety before the cut off date, i.e., 30.09.1987 and therefore, option was required to be submitted before said date whereas in the case of petitioners, the Banaras Hindu University has adopted Scheme much after the cut off date was over, i.e., on 09.04.1988 and last date for option was fixed as 09.07.1988.

18. Sri Shashi Prakash Sri, learned Senior Advocate/ Additional Solicitor General of India assisted by Sri Manoj Kumar Singh and Sri Purnendu Kumar Singh, Advocates, has supported the impugned orders and submitted that Banaras Hindu University has never adopted the GPF-cum-Pension Scheme in its true sense, since it has not amended its Statute or Ordinance, as the case may be, whereas Delhi University has adopted Scheme by a modification and fixing the

cut off date as fixed in Office Memorandum issued by Government of India, therefore, the judgment passed by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** is distinguishable on facts of present case. He also submitted that in aforesaid circumstances, judgment passed by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** is not applicable so far as Banaras Hindu University is concerned and at this stage if prayer of petitioners is accepted after many years of their retirement and to fix their pension even after return of CPF amount with interest by them, still it would be a huge financial implication on Union Exchequer and it would also become a precedent for other Universities and Institutions also, which is required to be avoided.

19. In rejoinder, learned Senior Advocates appearing for petitioners, have reiterated their submissions and further submitted that Government of India has never objected the nature of order issued by Banaras Hindu University dated 09.04.1988 and since it has already been acted upon and number of employees of Banaras Hindu University have already switch over in GPF-cum-Pension Scheme, therefore, at this stage any dispute on it would be a somersault by Government of India and it would also be against the purport of Office Memorandum issued on the issue.

20. I have heard learned counsel for parties at length and perused the material available on record.

21. The factual aspect of the case which appears to be undisputed is that the Union of India has issued Office

Memorandum dated 01.05.1987 that CPF beneficiaries who were in service on 01.01.1986 and were still in service on the date of issue of Office Memorandum i.e., 01.05.1987 will be deemed to come over in GPF-cum-Pension Scheme, except they have exercised their option to remain in CPF Scheme by 30.09.1987 and interpretation of said Office Memorandum as held by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** so far as case of present petitioners is concerned, is that any option given subsequent to cut off date, i.e., 30.09.1987 to remain in CPF Scheme, would be non-est and according to petitioners since they have not given their option on or before 30.09.1987, therefore, they deemed to have come over to GPF-cum-Pension Scheme despite admittedly they have given option after said date. Court has to consider effect of dates of adoption of Scheme by Banaras Hindu University, i.e., 09.04.1988 and cut off date being fixed as 09.07.1988.

22. Learned Senior Advocates for petitioners have pressed their arguments heavily on an interpretation that petitioners have given their option to remain in CPF Scheme beyond the cut off date, i.e., 30.09.1987, therefore, their options were non-est and they were already deemed to switch over in GPF-cum-Pension Scheme and they are ready that if their prayers are accepted, they will return Union's contribution of CPF within a very short period alongwith reasonable interest. The date fixed by Banaras Hindu University to give option was beyond 30.09.1987, therefore, it would have no legal consequence.

23. The Court is of the view that there is no dispute so far as above referred position of law is concerned and as held by

Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** in very specific words. Therefore, the law so far as option given subsequent to 30.09.1987 as held by Supreme Court has to be followed. However, few facts make present cases still distinguishable.

24. It is not in dispute that in the present case, Banaras Hindu University adopted GPF-cum-Pension Scheme by notification dated 09.04.1988, i.e., much after the cut off date, i.e., 30.09.1988 and it has fixed the cut off date as 09.07.1988 to exercise option to continue in CPF Scheme. Therefore, if the law, as held by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** is applied in present set of facts, any option subsequent to 09.07.1988 would be non-est. According to the case of petitioners they have opted to remain continue in CPF Scheme subsequent to date of adoption of Scheme by Banaras Hindu University on 09.04.1988 and before cut off date fixed, i.e., 09.07.1988.

25. If the Court takes a view that irrespective of fact whether any University or Institution has adopted the Office Memorandum dated 01.05.1987 even after the cut off date, i.e., 30.09.1987, the cut off date would be treated only 30.09.1987 and not any subsequent date fixed, then it would frustrate the very object of Office Memorandum dated 01.05.1987, i.e., giving option to remain continue in CPF Scheme as it would render meaningless. Said issue was not before Supreme Court since admittedly Delhi University has issued notification within a very few days of Office Memorandum dated 01.05.1987 fixing same cut off date, i.e., 30.09.1987. Same was the factual position in a subsequent judgment passed by Single

Bench of Delhi High Court in **Neerja Tiku (supra)** so far as School of Planning and Architecture is concerned.

26. So far as the argument that judgment passed by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** is in rem or *in personam* is concerned, the Court is of the view that it was a judgment in rem and not *in personam* as also held by Single Bench of Delhi High Court in **Neerja Tiku (supra)**, however, facts of each case may have different consequences.

27. Now the Court proceed to deal with the objection of Union of India that Office Memorandum issued by Government of India was not adopted in due process by Banaras Hindu University. In this regard, Court is of the view that objection has no legal basis since such objection was never raised in earlier round of litigation as well as that it has already been acted upon and its benefit has also been granted. Therefore, the Court is also of the opinion that without distinguishing on facts or on law, the stand of Union of India that the judgment of Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** would not applicable to other Universities, would not be a correct legal approach.

28. Any objection with regard to financial implication is also unsustainable since it was the Office Memorandum of Government of India which must have taken care that after said Office Memorandum dated 01.05.1987 it was possible that all beneficiary employees may switch over to GPF-cum-Pension Scheme.

29. Court also takes note that similar prayer of petitioners were already rejected by this Court vide judgment dated

12.08.2011 and only on ground that subsequently a different interpretation of law was given by a Single Bench of Delhi High Court, which was affirmed by Division Bench and thereafter affirmed by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** and since petitioners were approaching the authorities after these judgments, would not make a ground that said judgment is applicable to petitioners so much as that earlier judgment would not come in the way.

30. The outcome of above discussion is that:

(a) The case of employees of Banaras Hindu University is factually on a different footing than the employees of Delhi University.

(b) Banaras Hindu University has adopted the Office Memorandum dated 01.05.1987 issued by Government of India by a notification dated 09.04.1988, i.e., much after the original cut off date, i.e., 30.09.1987, and has fixed the new cut off date, i.e., 09.07.1988 to submit option and since said notification is not under challenge, therefore, while applying the judgment of Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)**, above referred dates rendered it distinguishable.

(c) If the law as held by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** is applied in the facts and circumstances of present cases taking note of above referred dates, the only interpretation would be that any option given beyond 09.07.1988 would not est, however, on basis of record, none of petitioners have a case that they have opted to remain in earlier CPF Scheme on basis

of above cut off date rather their claim was taken birth only after Banaras Hindu University adopted the Scheme on 09.04.1988 and they have given option before new cut off date, i.e., 09.07.1988, therefore, the benefit of judgment in **University of Delhi vs. Smt. Shashi Kiran (supra)** would not be applicable to present petitioners. Any other interpretation would render date of adoption and any subsequent cut off date meaningless.

(d) It is not the case of petitioners or Respondent-Banaras Hindu University or even Union of India that Office Memorandum dated 01.05.1987 was automatically applicable to all Central Universities without being its specific adoption by a particular University and further that issue was not before the Supreme Court in the case of **University of Delhi vs. Smt. Shashi Kiran (supra)**.

31. In aforesaid circumstances, this Court is of the view that relief sought by petitioners cannot be granted. Impugned orders, though are not legally sustainable on grounds mentioned therein, since Banaras Hindu University has adopted the Scheme and that **University of Delhi vs. Smt. Shashi Kiran (supra)** is a judgment in rem not *in personam*, still once the Court is of the opinion that benefit of judgment passed by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** cannot be granted in given circumstances of present cases, being distinguished on facts and as discussed above, therefore, there is no reason to interfere with orders impugned in present petitions.

32. All Writ Petitions are accordingly dismissed.

(2025) 3 ILRA 354

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.03.2025

BEFORE
THE HON'BLE AJAY BHANOT, J.

Writ - A No. 20509 of 2024

Govind Prasad Nishad ...Petitioner
Versus
The State of U.P. & Anr. ...Respondents

Counsel for the Petitioner:
Shreyas Srivastava

Counsel for the Respondents:
K.R. Singh, Ashok Kumar, C.S.C.

A. Service Law – Constitution of India, 1950 – Article 226 – Mandamus – Appointment – Claim made in lieu of acquisition of land – GO dated 21.09.1981, which was, later on, declared invalid, relied upon – Permissibility – Held, no lawful authority has been shown to be vested in the Gorakhpur Development Authority to create an independent policy for grant of employment to land owners beyond the terms of the Government Order dated 21.09.1981 has been shown to the Court – A mandamus cannot be issued to compel St. authorities to act in contravention of law. Judicial discipline and rule of law forbids the Court to do so. (Para 8 and 9)

Writ petition dismissed. (E-1)

List of Cases cited:

1. Ravindra Kumar Vs District Magistrate & ors.; 2005(2)AWC1650

(Delivered by Hon'ble Ajay Bhanot, J.)

Heard Shri Shreyas Srivastava, learned counsel for the petitioner and Shri K. R. Singh, learned counsel assisted by

Shri Triloki Singh, learned counsel for the respondent.

2. The petitioner claims that he is entitled to appointment in lieu of the acquisition of his land by the Gorakhpur Development Authority. The matter is being agitated for more than three decades. This Court deems it appropriate to bring the controversy to a terminus at this stage and decide the issue on merits.

3. The petitioner's claim is made on the footing that a green card was issued on 31.07.1989 by the District Magistrate and Vice Chairman of Gorakhpur Development Authority recording that Smt. Atwari Devi and her family members are entitled for employment in the Gorakhpur Development Authority.

4. The respondent Gorakhpur Development Authority has asserted in the counter affidavit that the petitioner has made a claim for employment in the Gorakhpur Development Authority on the basis of Government Order dated 21.09.1981. By means of the aforesaid Government Order, the State Government had decided to grant employment to land owners whose lands had been acquired for commercial purposes. The affidavit categorically states that there was no independent policy or separate scheme of the Development Authority apart from the Government Order for giving employment to land owners in lieu of acquisition of their lands. The said averments in the counter affidavit have not been specifically refuted by the petitioner. The denial in the rejoinder affidavit is bald and is accordingly rejected.

5. The said Government Order dated 21.09.1981 was declared invalid by the Full

Bench of this Court in **Ravindra Kumar vs District Magistrate And Ors reported at 2005(2)AWC1650** by holding thus:

"20. It is a general rule that appointments in the public services should be made by inviting applications through open advertisement and strictly on merit so that every citizen should get equal opportunity in the matter of appointment. This rule should be adhered to in the matter of any public employment or appointment. Neither the State Government nor its instrumentality nor any public authority can deviate from this common rule of appointment and if any other procedure or mode is adopted, it would be violative of Articles 14 and 16 of the Constitution of India which ensures and guarantees equal opportunity to all citizens in the matter of appointment to any office or of any other employment under the State. However, some exceptions to the general rule for public employment or appointment is also recognized which is commonly known as appointment on compassionate ground which is evolved purely on humanitarian ground and in the interest of justice. This rule was made to meet certain contingencies and to give appointment to a dependant of an employee dying-in-harness to prevent his family from destitution.

21. The Land Acquisition Act is a self-contained Code and provides the procedure to be followed for acquisition as well as for assessment of the valuation and payment of fair and just compensation as per market value of the person whose land is acquired. In addition to that market value of the land interest @ 12% is also given from the date of publication of the Notification vide Section 23(1-A). Besides that, a sum of 30% on such market value is also paid as solatium for distress and for

inconvenience or difficulties caused to the person on account of compulsory acquisition of the land vide Section 23(2) of the Act. Therefore, a person whose land is acquired not only gets adequate compensation as per market value of the land but also gets interest on the amount of compensation (a) 12% from the date of notification under Section 4 of the Act as well as an amount of solatium, which is 30% of the amount of compensation. Neither the Land Acquisition Act nor the regulations provides that in the event of acquisition of the land one of the family members of the landholder shall be given employment in addition to the amount of compensation. Therefore, in the absence of any statutory provision or any promise, the petitioner respondent cannot claim appointment as a matter of right nor can the respondent make such appointment.

22. There is no provision under the Land Acquisition Act under which the Circular dated 28.12.1974 could be issued. Whatever compensation has to be given for acquisition of the land is provided under the Land Acquisition Act itself which is a self-contained Code. Any G.O. providing for any further benefit not mentioned in the Land Acquisition Act would be inconsistent with the intention of Parliament as contained in the Land Acquisition Act. Hence any such G.O. would be violative of the Land Acquisition Act and would hence be invalid. Such a G.O. will also violate Article 16 of the Constitution as already mentioned above.

23. That apart, in our opinion, the aforesaid G.O. is wholly unworkable. The record shows that the petitioner had only 12 biswas and ten biswansi land in his share which was acquired. Thus only about half a bigha of the petitioner's land was acquired

in the present case. If the Circular dated 28.12.1974 is given a literal interpretation it would mean that if even one square yard land of a person is acquired one of his family members would have to be given employment. This would be wholly unreasonable and arbitrary.

24. The number of jobs available in this country is very limited and jobs cannot be given in this manner violating Article 16 of the Constitution.

25. In view of the above we answer the questions referred to us as follows :

1. The Government Orders/Circulars providing employment to one member of a family of a person whose land has been acquired (over and above the compensation awarded under the law) are invalid.

2. The acquiring body for whose benefit the land is acquired are not bound by such Government Order/Circular.

3. No writ can be issued directing the acquiring body to consider the claim in accordance with the aforesaid Order/Government Circular."

6. The following facts have been established before this Court after exchange of pleadings.

7. The State Government by order dated 21.09.1981 provided that members of the family whose land had been acquired would be entitled to employment in the concerned department. The land of the petitioner was acquired by the Gorakhpur Development Authority. The Gorakhpur Development Authority issued a green card

to the petitioner assuring him such employment clearly in pursuance of Government Order dated 21.09.1981. There is no separate or independent policy which was being implemented by the Gorakhpur Development Authority for land owners whose land have been acquired. The green card cannot vest rights in the petitioner beyond the Government Order dated 21.09.1981. The Government Order dated 21.09.1981 has been quashed by the learned Full Bench of this Court in **Ravindra Kumar (supra)**.

8. No lawful authority has been shown to be vested in the Gorakhpur Development Authority to create an independent policy for grant of employment to land owners beyond the terms of the Government Order dated 21.09.1981 has been shown to the Court.

9. In this wake the prayer made by the petitioner to mandamus the Respondent no. 2 Gorakhpur Development Authority to grant employment to the petitioner in pursuance of the said Green Card (Annexure No. 2 to the Writ Petition) cannot be granted, inasmuch as, the same would be in the teeth of the judgement of Full Bench in **Ravindra Kumar (supra)**. A mandamus cannot be issued to compel State authorities to act in contravention of law. Judicial discipline and rule of law forbids the Court to do so.

10. In wake of the preceding discussion, the writ petition is liable to be dismissed and is dismissed.

(2025) 3 ILRA 357

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 24.03.2025

BEFORE

THE HON'BLE MS. NAND PRABHA SHUKLA, J.

Matter Under Article 227 No. 7777 of 2024

Dharm Pal Singh ...Petitioner
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Petitioner:

Dr. Kamlesh Kumar, Rakesh Kumar

Counsel for the Respondents:

G.A.

Criminal Law-The Constitution of India, 1950-Article 227, 20(2)-Doctrine of Double jeopardy- The plea of Double Jeopardy as relied by learned counsel for the respondent No. 2 has no application, because the respondent was neither convicted nor acquitted in any matter previously having the same set of facts--- learned court below instead of taking cognizance under Sections 279, 304A IPC has taken cognizance under Sections 304, 323, 325 IPC instead of Section 302 IPC which is well in accordance with law and is not barred by the doctrine of Double Jeopardy---Impugned order dated 13.03.2024 passed by learned court below is hereby set aside as it is not barred by Article 20(2)- **(Para 23, 25-27)--Petition partly allowed.** (E-15)

List of Cases cited:

TP Gopalakrishnan Vs St. of Kerala (2022) 14 SCC 323

(Delivered by Hon'ble Ms. Nand Prabha Shukla, J.)

1. Heard Dr. Kamlesh Kumar, learned counsel for the petitioner, Sri Shashi Bhushan Rai, learned counsel for the respondent No. 2, Sri Ratan Singh, learned A.G.A.-I for the State and perused the record.

2. By means of the present petition under Article 227 of the Constitution of India, the petitioner has prayed to set aside

the impugned order dated 13.03.2024 passed by learned Additional District and Sessions Judge, Court No. 1, Amroha in Criminal Revision No. 65 of 2023 (Sanjeev Vs. State of U.P. and another) and order dated 05.01.2023 passed by learned Additional Civil Judge (S.D.)/Additional Chief Judicial Magistrate, First, Amroha in Case No. 2319 of 2019 arising out of Case Crime No. 453 of 2017 (State Vs. Sanjeev) under Sections 304, 323, 325 IPC, Police Station-Amroha Dehat, District-Amroha.

3. Briefly stated, the petitioner, Dharm Pal Singh, who is the first informant, lodged an FIR on 15.12.2017 against respondent No. 2 Sanjeev bearing Case Crime No. 453 of 2017 under Sections 279, 304A IPC, P.S.-Amroha Dehat District-Jyotibhaphule Nagar alleging that on 29.11.2017 the respondent No. 2 Sanjeev came to his house and around 6:00 pm took away his son Kapil along with him on his motorcycle to attend a party. On the same night at 9:30 pm respondent No. 2 called the petitioner and informed that Kapil had received injuries and was admitted at Doctor Garg Hospital. The petitioner with his wife Rajwati and his son Sanjeev Kumar went to the hospital and found his son lying soaked in blood. The respondent No. 2 Sanjeev was present at the hospital.

4. Thereafter, Kapil was referred to the Glokul Hospital and then to Kothiwal Hospital and thereafter to Atul Jain Hospital at Moradabad where Kapil breathed his last.

5. The panchayatnama of the deceased was conducted on 15.12.2017 and the autopsy was conducted on 16.12.2017. The FIR was lodged on 15.12.2017 bearing Case Crime No. 453 of 2017 under Sections

279, 304A IPC, P.S.-Amroha Dehat District-Jyotibhaphule Nagar.

6. While its investigation was in progress, the petitioner moved an application dated 04.01.2018 under Section 156(3) Cr.P.C. before the Court of Chief Judicial Magistrate, Amroha against respondent No. 2 Sanjeev and two unknown to lodge fresh FIR under Section 302 IPC alleging the same incident. The said application was allowed on 18.01.2018 directing the Officer In-charge, Police Station-Amroha Dehat to register the case. Thus, another FIR was registered against the respondent No. 2 Sanjeev and two unknown persons on 08.02.2018 bearing Case Crime No. 27 of 2018, under Section 302 IPC, P.S.-Amroha Dehat, District-Amroha.

7. As the allegations in both the FIRs related to the same incident, the investigation of both the case crime numbers i.e. Case Crime No. 453 of 2017 and 27 of 2018 were clubbed together vide CD No. 13 dated 26.02.2018.

8. However, the Investigating Officer submitted the charge sheet in Case Crime No. 453 of 2017 under Sections 279, 304A IPC, P.S.-Amroha Dehat, District-Amroha on 01.03.2018, but due to lack of evidence under Section 302 IPC, therefore, the case crime No. 27/2018 under Section 302 IPC was merged in it.

9. Being aggrieved, the petitioner moved an application on 22.06.2018, under Sections 173(8) and 190(1)(b) of the Cr.P.C. before the Chief Judicial Magistrate, Amroha to further investigate the Case Crime No. 27 of 2018 under Section 302 IPC.

10. The learned Magistrate after considering the entire material on record

allowed the application on 08.05.2019 directing to further investigate the matter. The Investigating Officer after completion of the further investigation had submitted final report on 18.11.2019.

11. Again, the petitioner being dissatisfied, filed an application dated 02.04.2022 against the said Final Report before First Additional Chief Judicial Magistrate, Amroha to pass appropriate order on the basis of material available on record.

12. The learned Additional Civil Judge, (S.D.)/Additional Chief Judicial Magistrate-I, Amroha vide his order dated 05.01.2023 rejected the final report dated 18.11.2019 and took cognizance under Sections 304, 323, 325 IPC summoning the respondent No. 2 to face the trial instead of Section 302 IPC.

13. Now, the respondent No. 2 being aggrieved by order dated 05.01.2023 filed a Criminal Revision bearing No. 65 of 2023 Sanjeev Vs. State of U.P. and another before the Court of Additional District and Sessions Judge, Court No. 1, Amroha which was allowed vide the impugned order dated 13.03.2024.

14. Hence, the petitioner/first informant has challenged the orders dated 05.01.2023 and 13.03.2024 under Article 227 of the Constitution of India.

15. The main submission of learned counsel for the petitioner is that the learned Trial Court has not considered the gravity of the offence and the allegations levelled against the respondent No. 2 and has passed the impugned orders dated 05.01.2023 and 13.03.2024 in a mechanical

and cursory manner and did not take cognizance under Section 302 IPC.

16. *Per contra*, learned counsel for respondent No. 2 has refuted the aforesaid contention on the ground that the proceedings initiated against the respondent No. 2 is barred by the doctrine of Double Jeopardy, hence, respondent No. 2 cannot be prosecuted twice for the same offence.

17. Upon hearing learned counsel for the parties and from the perusal of record, it transpires that the petitioner is the first informant who lost his son Kapil, who was a pillion driver on a motorcycle driven by the respondent No. 2 Sanjeev. According to the post mortem report, the cause of death was Coma due to accidental injury. The FIR was registered against the respondent No. 2 under Sections 279 and 304A IPC on 15.12.2017. During the pendency of the investigation in the said FIR, the petitioner/informant gave an application under Section 156(3) Cr.P.C. on 04.01.2018 to lodge another FIR under Section 302 IPC for the same incident. The said application was allowed and another FIR was registered against the respondent No. 2 bearing Case Crime No.27 of 2018, under Section 302 IPC, P.S.-Amroha Dehat District-Jyotibhaphule Nagar. As both the FIRs related to the same incident, therefore, their investigation were clubbed together and the charge sheet was filed only in Case Crime No. 453 of 2017 under Sections 279 and 304A IPC and as no material was found of committing murder, therefore, the investigation in Case Crime No. 27 of 2018 was merged in Case Crime No. 453 of 2017. At the belated stage, the petitioner moved an application seeking further investigation under Sections 173(8) and 190(1)(b) in Case Crime No. 27 of 2018 under Section 302 IPC which was allowed

and the Investigating Officer was directed to further investigate the matter. After the further investigation in Case Crime No. 27 of 2018, it resulted in submission of a final report. Aggrieved by the final report, the petitioner again moved an application for the passing of the appropriate order in which the learned Additional Civil Judge Senior Division/Chief Judicial Magistrate, Amroha rejected the final report, taking cognizance under Sections 304, 323, 325 IPC instead of Section 302 IPC and summoned the respondent No. 2 to face the trial. The petitioner, being aggrieved by the said summoning order preferred a criminal revision which was allowed vide order dated 13.03.2024 and the summoning order dated 05.01.2023 was set aside.

18. After going through the entire facts and circumstances, it transpires that both the FIRs relate to the same incident which took place on 29.11.2017. As the respondent No. 2 was prosecuted for the same incident in two separate FIRs, therefore, the investigation of both the FIRs were clubbed together but ultimately the chargesheet was submitted in Case Crime No. 453 of 2017 under Sections 279, 304A IPC. Subsequently, on the basis of an application moved by the petitioner and looking to the gravity of the offence, cognizance was taken under Sections 304, 323 and 325 IPC instead of Sections 279 and 304A IPC.

19. From the perusal of the impugned order dated 13.03.2024, it is evident that the revision filed by the respondent No. 2 was allowed on the ground that the revisionist was prosecuted twice for the same offence which is barred by the doctrine of Double Jeopardy.

20. At this juncture, it is necessary to refer Article 20(2) of the Constitution of

India which speaks on the doctrine of Double Jeopardy. The Article reads as under:

"No person shall be prosecuted and punished for the same offence more than once."

21. On a plain reading of Sub Clause (2) of Article 20 of the Constitution of India, it is clear that the said provision bars the second prosecution only when the accused has been both prosecuted and punished for the same offence previously. But this clause does not bar subsequent trial if the ingredients of the offences in the previous and subsequent trials are distinct.

22. Recently, the Hon'ble Supreme Court in **TP Gopalakrishnan vs. State of Kerala (2022) 14 SCC 323 Para 29** has held that *"There are three conditions for the application of the clause. Firstly, there must have been previous proceeding before a court of law or a judicial tribunal of competent jurisdiction in which the person must have been prosecuted. The said prosecution must be valid and not null and void or abortive. Secondly, the conviction or acquittal in the previous proceeding must be in force at the time of the second proceeding in relation to the same offence and same set of facts, for which he was prosecuted and punished in the first proceeding. Thirdly, the subsequent proceeding must be a fresh proceeding, where he is, for the second time, sought to be prosecuted and punished for the same offence and same set of facts. In other words, the clause has no application when the subsequent proceeding is a mere continuation of the previous proceeding, for example, where an appeal arises out of such acquittal or conviction. In order to sustain a plea of double jeopardy, it must*

be shown that all the aforesaid conditions of this clause are satisfied."

25. While applying the aforesaid doctrine in the instant matter, it can be fairly stated that the plea of Double Jeopardy as relied by learned counsel for the respondent No. 2 has no application, because the respondent No. 2 Sanjeev was neither convicted nor acquitted in any matter previously having the same set of facts. Therefore, the order passed by the revisional court has been decided on incorrect application of law.

26. After analysing the matter, it can be concluded that the investigation in both the FIRs were clubbed together and chargesheet was submitted under Sections 279 and 304A IPC but subsequently looking to the gravity of the offence, cognizance was taken by the learned Additional Chief Judicial Magistrate-I/ACJM-I, Amroha on 05.01.2023 under Sections 304, 323, 325 IPC setting aside the final report submitted in Case Crime No. 27 of 2018 dated 18.11.2019.

27. The learned court below in Case Crime No. 253 of 2017 instead of taking cognizance under Sections 279, 304A IPC has taken cognizance under Sections 304, 323, 325 IPC instead of Section 302 IPC which is well in accordance with law and is not barred by the doctrine of Double Jeopardy.

28. Accordingly, the order dated 13.03.2024 passed by learned Additional District and Sessions Judge, Court No. 1, Amroha, is hereby set aside as it is not barred by Article 20(2) of the Constitution of India, the doctrine of Double Jeopardy. The order dated 05.01.2023 does not require any interference. The trial Court is

directed to proceed against respondent No. 2 in accordance with law.

29. The petition is, partly allowed.

(2025) 3 ILRA 361
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 06.03.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE MOHD. AZHAR HUSAIN
IDRISI, J.

Criminal Appeal No. 186 of 1993

Ram Bharosey & Ors. ...Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:

Sri Apul Misra, Sri Devendra Pratap, Sri Vivek Shukla

Counsel for the Respondent:

A.G.A., Sri Ashvani Tripathi, Sri Brijesh Sahai (Sr. Advocate), Sri Jai Singh Yadav, Sri Jitendra Singh, Sri Pradeep Kumar Mishra, Sri Raghuvanshi Misra, Sri Vinay Saran (Sr. Adv.)

Criminal Law - Indian Penal Code, 1860 – Sections 302, 147, 148 & 149 – Conviction based on circumstantial evidence – Murder alleged over property dispute – No recovery of dead body – Doubtful recovery of spectacle frame and blood-stained stick – Forensic reports absent – Key prosecution witnesses turned hostile – Alleged enmity as motive not supported by consistent testimony – Chain of circumstances broken – Trial court erred in conviction – Held, in absence of conclusive chain of circumstances pointing exclusively to guilt of accused, conviction unsustainable – Acquittal directed-Appeal allowed. (Paras 11 to 15, and 22)

HELD:

The law on the issue that the chain of circumstances must be so complete that there was no escape from the conclusion, that within all human probability, the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence as held by Hon'ble Supreme Court in the case of Sharad Birdhichand Sarda Vs St. of Maharashtra, 1984 4 SCC 116. (Para 11)

From the discussion made hereinabove, we are of the opinion that there is absence of the dead body of Babu Singh in the present case. The charge of destroying the evidence was not proved by the prosecution and therefore, the very first link of circumstances is missing and broken; the motive for committing such murder is also missing as once it comes out that her father filed a suit for partition and shares were made and all the accused persons have agreed to the same. The alleged incident of scuffle one day prior to the incident was also not alleged in the first information report, which should have been actually done in case any such scuffle had taken place one day prior to the incident. The recovery of articles, namely, halfbroken spectacle and blood-stained stick of Babu Singh from the spot is also doubtful and PW-3-Durwasa in her Statement had not referred to the stick in the first information report and in any case, same was not sent for chemical examination and in her cross-examination she admitted that she had taken the broken spectacle frame from the spot and does not know as to who has handed over the same to the Investigating Officer and that she had not handed over the same to the I.O., therefore, recovery of said half-broken frame from the spot is not worth belief. No weapon was recovered, and therefore, the empty cartridge also could not be connected with the offence. We therefore, find that the prosecution has miserably failed to prove its case; the chain of circumstances is not complete in the present case, therefore, judgment of conviction is liable to be set aside. (Para 22)

Appeal allowed. (E-14)

List of Cases cited:

1. Sharad Birdhichand Sarda Vs St. of Mah., 1984 4 SCC 116
2. Anjan Kumar Sharma Vs St. of Assam, (2017) 14 SCC 359
3. Pradeep Kumar Vs St. of Chattisgarh, (2023) 5 SCC 350
4. Laxman Prasad Vs St. of M.P., (2023) 6 SCC 399
5. Abdul Nassar Vs St. of Kerala, 2025 LiveLaw (SC) 61
6. Darshan Singh Vs St. of Pun., (2024) 3 SCC 164
7. Shriniwas Vs St. of U.P., 2022 (10) ADJ 202 (DB); 2022 SCC OnLine All 87

(Delivered by Hon'ble Vivek Kumar Birla, J. & Hon'ble Mohd. Azhar Husain Idrisi, J.)

1. Heard Shri Apul Mishra alongwith Shri Vivek Shukla, learned counsel for the appellants, Shri Vinay Saran, learned Senior Counsel assisted by Shri Pradeep Kumar Mishra, Shri Ashvani Tripathi, learned counsel for the informant as well as Shri Rahul Asthana, learned AGA for the State of U.P. and perused the record.

2. Present Criminal Appeal is being preferred against the judgment and order dated 28.01.1993, passed by learned Additional Sessions Judge/Special Judge E.C. Act, Budaun in Sessions Trial No.176/87 convicting and sentencing the appellants- Ram Bharosey and Bankey with life imprisonment, under Section 302 read with section 149 IPC and 5 years Rigorous Imprisonment, under Section 148 IPC, and appellants- Shishu Pal, Yogendra, Bhup Singh, Shiv Lal and Ashok alias Rohtash are sentenced for life imprisonment under section 302 IPC read with Section 149 IPC

and 3 years Rigorous Imprisonment under section 147 IPC.

3. Vide order dated 05.03.2025 the appeal stood abated in respect of appellant no.1-Ram Bharosey son of Vikram Singh and Appellant no.5-Shiv Lal son of Kundal Singh. Now the appeal is surviving only in respect of appellants no.2- Shishupal son of Latoori Singh, appellant no.3-Yogendra son of Latoori Singh, appellant no.4-Bhoop Singh son of Mahendra Singh, appellant no.6-Bankey son of Nita and appellant no.7-Ashok alias Rohitash son of Ragubir Singh.

4. The prosecution story, in brief, is that the complainant-Durwasa, resident of village Raipur married Babu Singh resident of Kurrao, police station Ujhani. The complainant was the sole daughter of her parents. The parents of the complainant had already expired due to which the entire movable and immovable property were inherited by Durwasa, due to which the other family members of the father of Durwasa had an enmity because they were in search to usurp the landed property inherited by Durwasa, but they could not succeed in their aims. Hence Bhoop Singh and others used to remain in search of any opportunity to cause damage to Durwasa and her husband in any manner whatsoever. On 15.04.1984 Babu Singh at about 8.00 p.m. went to attend a Lagun ceremony at the house Ruddar Murao in Village Baholia. After a short distance Chhotey, Ram Bharosey, Shishu Pal, Yogendra, Bhoop Singh, Harinandan Singh, Ashok, and Shiv Lal also followed him accompanying with Bankey Mehtar, who was servant of Bhoop Singh. Out of them Ram Bharosey was armed with his licensee gun, Bankey Mehtar was armed with Gandasa and others were armed with lathis.

The husband of the complainant Babu Singh did not return back to his house till morning. In the morning complainant felt some doubt and sent her son Jogpal Singh to village Baholia to enquire Ruddar Murao in respect of Babu Singh. Ruddar Murao told that Babu Singh did not attend Lagun ceremony. Thus, he could not reach there. Then Jogpal Singh, Dhakan Singh, Udiaivir and Omkar Singh started to make search in jungle (forest) and they found some blood lying at the pathway nearby the field of Thakuri. One empty cartridge was also found there. On further search some fire was seen then all the aforesaid persons reached nearby the fire. When they reached there, they found that one chita (pyre) was burning and a frame of spectacle was also lying there. They became certain that Babu Singh has been murdered by aforesaid persons and has been burnt to destroy the evidence of murder. A Tehrir was got written by Jogpal Singh upon the instructions of complainant -Durwasa. An F.I.R. was lodged in police station Moosajhag on 16.04.1984 at about 12.15 noon. Thereafter, a case under sections 147, 148, 302 read with section 149 and 201 I.P.C. was lodged in police station and investigation was started by the Investigating Officer who investigated the matter and after concluding investigation submitted a charge-sheet against the accused persons.

5. The prosecution has examined as many as nine witnesses, namely, Amba Sahai-P.W.1, Sukhpal-P.W.2, Durwasa-P.W.3, Omkar son of Chiraunji-P.W.4, Omkar son of Hameer Singh-P.W.5, Jogpal Singh- P.W.6, Ram Bharosey son of Bheem-P.W.7, Mishri Lal, Retired S.I., I.O.- P.W.8 and Head Constable- Charan Lal Sharma-P.W.9.

6. The prosecution has also submitted documentary evidences, i.e., Written Report- Ext.Ka-1, Chick F.I.R.-Ext. Ka-2, Site-plans-Ext. Ka-3 and Ka-4, Fards (3) Ext.Ka-5 to Ka-8, F.I.R. Ext.Ka-9, Police Report- Ext. Ka-10, Site-plan Ext. Ka-11, Fards (6) Ext. Ka-12 to Ka-16-A. Copy of General Diary- Ext. Ka-17 and Charge-sheets- Ext. Ka-18 and Ka-19. The prosecution has also submitted material exhibits Broken frame of Chashma Ext 1., Bent -Ext- 2, Empty Cartridge- Ext.3, Blood Stained Earth- Ext. 4, Simple Earth Ext. 5, Bones- Ext.6 and Ashes- Ext.7.

7. Submission of the learned counsel for the appellants is that undisputedly it is a case of circumstantial evidence and the chain of circumstances is completely broken, therefore, the accused appellants could not have been convicted for the charges levelled against them. It is further submitted that virtually it is case of no evidence. The trial court has recorded categorical finding that prosecution has miserably failed to prove the charge under Section 201 IPC against accused persons and all were acquitted from the charge under section 201 IPC. Therefore, clearly the murder of the deceased-Babu Singh could not be proved, hence the entire prosecution has proceeded only on incorrect presumption. Further submission is that PW-1-Amba Sahai, PW-2-Sukhpal, PW-4-Omkar son of Chiraunji and PW-5-Omkar son of Hameer Singh turned hostile and the recovery of articles, namely, half-broken frame of spectacle and blood-stained stick (bent) allegedly belonging to deceased Babu Singh was also not proved. It is next submitted that although recovery of one empty cartridge, blood-stained soil, bone and ashes from pyre has been shown, however, no weapon was recovered and as such, alleged recovery of empty cartridge

(exhibit-6) is of no relevance. The blood-stained soil was not put to forensic laboratory for chemical examination, and it is, therefore, not known that even such blood was human blood apart from the fact that even the dead body was not recovered and was allegedly burned on pyre. Similarly, recovery of blood-stained stick (bent) is also of no relevance as the same was also not put to forensic laboratory for chemical examination. It is further submitted that although PW-8-Investigating Officer, Mishri Lal has stated that the bones and blood were sent to chemical examination, however, there is no such report on record and as such, it was not proved that the bones, ashes or the blood were of alleged deceased Babu Singh, husband of the informant. It is also submitted that there is contradictory statement in respect of motive as the property inherited by the informant is alleged to be the motive to commit the murder whereas the contradictory statement was made by PW-3-Durwasa, informant, who had inherited the property that a suit for partition was filed by her father, however, the same was settled as the accused persons had no objection to the partition. He further pointed out that it has also figured in the statement of PW-6-Jogpal Singh, son of deceased Babu Singh that a suit was filed for partition and shares were demarcated and after partition no other suit was filed. Submission, therefore, is that the motive is also not proved. It is next submitted that the chain of circumstances is completely broken right from the initial stage, therefore, judgment of the trial court convicting and sentencing the appellants-accused cannot be sustained and is liable to be set aside.

8. Per contra, Shri Vinay Saran, learned Senior Counsel for the informant

submitted that PW-3-Durwasa, informant, has categorically proved the first information report and submitted that when her husband Babu Singh left for village Baholia on the invitation of Ruddar Murao, the accused persons, who were having litigation with the deceased, had followed him. Accused Ram Bharosey was carrying licensee gun, Bankey Mehtar was carrying Gandasa and other were carrying lathis and PW-3-Durwasa, informant had seen them going after her husband and when she felt scared, she sent her son Jogpal Singh to resident of Ruddar Murao for village Baholia where he found that Babu Singh had not reached there. Thereafter she along with others started searching her husband and found the blood-stained soil and empty cartridge nearby the field of Thakuri. During search some fire was also seen and when they reached near fire, they found that one chita (pyre) was burning and one broken frame of spectacle of her husband was lying there and she had categorically stated that as the litigation was pending between her and accused persons and due to enmity, they have committed murder of her husband and burned his dead body. She has also named the persons who had seen the accused persons going behind her husband and therefore, it is submitted that last seen evidence is proved in clear terms. Learned Senior Counsel, therefore, submitted that the factum that four witnesses have turned hostile is of no consequence. PW-3-informant submitted that police has recovered half-broken frame of spectacles and blood-stained stick of the deceased as well as blood-stained soil, empty cartridge, burnt bones and ashes, therefore, it is proved that murder of Babu Singh had taken place and evidence has also been destroyed by burning the dead body. It is submitted that in the present case, the chain of circumstances is

complete and conviction of the accused persons warrant no interference.

9. Shri Rahul Asthana, learned AGA for the State has also opposed the appeal by adopting the arguments advanced by the learned Senior Counsel appearing on behalf of the informant.

10. We have considered the rival submissions and perused the records.

11. The law on the issue that the chain of circumstances must be so complete that there was no escape from the conclusion, that within all human probability, the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence as held by Hon'ble Supreme Court in the case of ***Sharad Birdhichand Sarda vs. State of Maharashtra, 1984 4 SCC 116***. Relevant Paragraphs 153, 154, 155 and 156 whereof are quoted as under:-

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

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

It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was

held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047] “Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the

statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in *King v. Horry* thus:

Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for.

156. Lord Goddard slightly modified the expression ‘morally certain’ by “such circumstances as render the commission of the crime certain”.

(Emphasis Supplied)

12. The aforesaid legal position is being consistently followed up till now. However, reference to the some of the latest judgments may be noted:-

(i) *Anjan Kumar Sharma vs. State of Assam*, (2017) 14 SCC 359

(ii) *Pradeep Kumar vs. State of Chattisgarh*, (2023) 5 SCC 350

(iii) *Laxman Prasad vs. State of M.P.*, (2023) 6 SCC 399

(iv) *Abdul Nassar vs. State of Kerala*, 2025 LiveLaw (SC) 61

13. A three Judge Bench in *Darshan Singh vs. State of Punjab*, (2024) 3 SCC 164 has held in paragraphs 9 and 37 as follows:-

“9. There is no eye-witness to the incident. The case of the

prosecution rests on circumstantial evidence. The normal approach in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion, that within all human probability, the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.

37. Seen in this background, we need not go further and consider the evidence qua other circumstances sought to be proved by the prosecution since the failure to prove a single circumstance cogently can cause a snap in the chain of circumstances. There cannot be a gap in the chain of circumstances. When the conviction is to be based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. If there is a snap in the chain, the accused is entitled to benefit of doubt. If some of the circumstances in the chain can be explained by any other reasonable hypothesis, then also the accused is entitled to the benefit of doubt.” (Emphasis Supplied)

14. The same view was taken by several Division Benches of this Court

including the case of ***Shriniwas vs. State of U.P., 2022 (10) ADJ 202 (DB); 2022 SCC OnLine All 87***, of which one of us (Justice Vivek Kumar Birla) is a member.

15. The judgment of ***Sharad Birdhichand Sarda (supra)*** has been considered in the latest judgement of Hon’ble Apex Court in Abdul Nassar vs. State of Kerala (supra), also, wherein the Hon’ble Apex Court has held that courts must adhere to following principles while appreciating and evaluating evidence in cases based on the circumstantial evidence. Paragraph 30 of the said judgment reads as under:-

“30. We deem it essential to enunciate the principles that courts must adhere to while appreciating and evaluating evidence in cases based on circumstantial evidence, as follows:

(i). The testimony of each prosecution and defence witness must be meticulously discussed and analysed. Each witness's evidence should be assessed in its entirety to ensure no material aspect is overlooked.

(ii). Circumstantial evidence is evidence that relies on an inference to connect it to a conclusion of fact. Thus, the reasonable inferences that can be drawn from the testimony of each witness must be explicitly delineated.

(iii). Each of the links of incriminating circumstantial evidence should be meticulously examined so as to find out if each one of the circumstances is proved individually and whether collectively taken, they forge an

unbroken chain consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

(iv). The judgment must comprehensively elucidate the rationale for accepting or rejecting specific pieces of evidence, demonstrating how the conclusion was logically derived from the evidence. It should explicitly articulate how each piece of evidence contributes to the overall narrative of guilt.

(v). The judgment must reflect that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.

(Emphasis Supplied)

16. The trial court has acquitted all the accused persons of the charge under section 201 IPC, their acquittal under Section 201 IPC is not under challenge. This is the first link of circumstances which it is not proved by proving beyond doubt that in fact the bone and ashes recovered from the pyre are of Babu Singh, husband of the informant, allegedly murdered by the accused persons. It may be noted that there was no examination of the blood-stained soil or at least no report is on record although investigating officer, PW-8 Mishri Lal had stated that blood-stained soil was sent for chemical examination. Admittedly, there is no recovery of weapon, therefore, recovery of empty cartridge (exhibit-6) loses its importance as the use of the same in the murder of Babu Singh is also not proved as there was no recovery of any bullet or pellets from the pyre or on the

spot. In the absence of murder of Babu Singh having been proved, the charge of murder of Babu Singh is also not proved.

17. The prosecution has sought to prove the murder of Babu Singh by connecting the same with the recovery of half-broken frame of spectacle of right eye and broken blood-stained stick(bent) of Babu Singh from the spot. The recovery memo of half-broken frame of spectacle is exhibit Ka-8, dated 16.04.1984. In the first information report, it has been stated that the same was lying near the pyre and it has been shown to have been recovered from the spot by the Investigating Officer, whereas PW-3-Durwasa, the informant had stated that she had taken away the half-broken frame of spectacle with her from the spot and she had not handed over the same to the Diwanji (Investigating Officer) and that she was not aware who has given the same to Investigating Officer, therefore, recovery of half-broken frame of spectacle of the deceased from the spot also become doubtful.

18. Insofar as the recovery of blood-stained stick allegedly belonging to the deceased Babu Singh is concerned, it was stated by Jogpal Singh, PW-6, son of deceased Babu Singh that there was no specific mark in the stick belonging to Babu Singh. Moreover, the blood-stained stick was also not chemically examined, as such, the recovery of blood-stained stick is not enough to indicate that the body, which was burned on pyre, was of deceased and the accused were involved in the offence.

19. Insofar as the motive is concerned, it is not in dispute that PW-3-Durwasa has received the property belonging to her father by inheritance. In her cross-examination, she has stated that

there was no land dispute with the accused persons. She has further stated that her father had filed a suit for partition so that separate shares may be made to which all the accused persons have agreed and no further litigation in this regard with the accused persons have taken place and after death of her father, her name was mutated in the revenue records and the accused persons have not raised any objection in this regard. There was no allegation in the first information report that on the previous night any scuffle took place between the deceased and the accused persons or any other person, however, it was asserted by her and PW-6- Jogpal while making statement that one NCR was lodged in respect of scuffle that had taken place on the previous night on 15.04.1984 and this was the reason that Babu Singh was eliminated by the accused persons. Further, as already noticed earlier PW-6-Jogpal Singh, son of Babu Singh had also stated that after partition shares were demarcated and no other suit was pending. We, therefore, are of the opinion that this story was developed subsequently. The relevant police station is Musajhag, District Budaun whereas the NCR was lodged on 15.04.1984 in a different police station, i.e., Police Station Civil Lines, Budaun a copy whereof was handed over to Investigating Officer. We find that in case any such incident had at all taken place just one day before the alleged murder of Babu Singh, this should have been the first fact to have been mentioned in the first information report. Therefore, clearly this story has been developed subsequently to attribute some kind of motive behind the murder of Babu Singh.

20. PW-1-Amba Sahai and PW-2-Sukhpal were stated to be the witnesses of burning of the body of the deceased Babu

Singh on pyre by the accused persons. They have denied the same and were declared hostile and nothing came out from their examination. PW-4 Omkar s/o Chiraunji was also declared hostile as he had stated that the police had not brought the accused Bankey in custody/arrest and stick of deceased-Babu Singh was not recovered in his presence. PW-5 Omkar s/o Hameer Singh was also declared hostile. In his cross-examination, PW-6 Jogpal Singh s/o deceased Babu Singh had stated that he along with his brother Alok and mother Durwasa (informant-PW-3) have gone upto the door to see off his father-deceased Babu Singh. However, his real brother Alok was not examined as prosecution witness. It is pertinent to note that Jogpal Singh-PW-6, stated that he had gone to some relation on 16th April and his brother Alok had not gone to the police station for lodging the first information report although he and his brother Alok were present in the village on the date of incident. It is also worth noting that on one hand, allegedly his father was murdered on 15th April whereas on 16th itself after he had gone to the house of Ruddar Murao in village Baholia and found that Babu Singh had not reached there, he returned home and informed his mother about this and thereafter he had left the village to visit some relative, which is absolutely unexpected from a son whose father is missing and he had seen the pyre. Insofar as the recovery of broken spectacles of the deceased is concerned, in his cross examination he has stated that he did not remember as to whether his mother had taken the same to police station, while she had gone for lodging report. He has further stated that the entire body was turned into ashes and certain bones were left but the same was not recovered by the police in his presence. Therefore, nothing came out from his statement to complete the chain of

circumstances. PW-7 Ram Bharosey son of Bhim had stated that he had seen the accused persons abusing Babu Singh and threatening him not to turn his head towards the land in Raipur or he would be killed. He was, however, not the named witness and stated in his cross-examination that he had come on his own to make the statement. PW-8 Mishri Lal, Investigating Officer had stated in his cross examination that the informant never told him that Babu Singh had any dispute/scuffle between the accused persons one day prior to the incident.

21. We have also gone through the statements of accused persons recorded under Section 313 Cr.P.C. Nothing incriminating could be noticed.

22. From the discussion made hereinabove, we are of the opinion that there is absence of the dead body of Babu Singh in the present case. The charge of destroying the evidence was not proved by the prosecution and therefore, the very first link of circumstances is missing and broken; the motive for committing such murder is also missing as once it comes out that her father filed a suit for partition and shares were made and all the accused persons have agreed to the same. The alleged incident of scuffle one day prior to the incident was also not alleged in the first information report, which should have been actually done in case any such scuffle had taken place one day prior to the incident. The recovery of articles, namely, half-broken spectacle and blood-stained stick of Babu Singh from the spot is also doubtful and PW-3-Durwasa in her statement had not referred to the stick in the first information report and in any case, same was not sent for chemical examination and in her cross-examination she admitted that

she had taken the broken spectacle frame from the spot and does not know as to who has handed over the same to the Investigating Officer and that she had not handed over the same to the I.O., therefore, recovery of said half-broken frame from the spot is not worth belief. No weapon was recovered, and therefore, the empty cartridge also could not be connected with the offence. We therefore, find that the prosecution has miserably failed to prove its case; the chain of circumstances is not complete in the present case, therefore, judgment of conviction is liable to be set aside.

23. The present appeal is accordingly **allowed**. The impugned judgment and order of the trial court dated 28.01.1993 convicting and sentencing the appellants is hereby set aside and the appellants are acquitted of the all charges levelled against them. Bail bonds are discharged. They need not surrender.

24. Copy of this judgment be sent to the court concerned for necessary compliance.

(2025) 3 ILRA 370
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 25.03.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE MOHD. AZHAR HUSAIN
IDRISI, J.

Criminal Appeal No. 1954 of 1993

Gendan Lal		...Appellant
	Versus	
State of U.P.		...Respondent
Counsel	for	the Appellant:

Sri Praveen Kumar Srivastava, Sri Virendra Kumar Kori, Sri Raj Kumar Vaish, Sri P.K. Srivastava

Counsel for the Respondent:

A.G.A.

Criminal Law - Criminal Procedure Code, 1973 - Sections 161, 164 & 313 - Indian Penal Code, 1860 - Section 307 - Arms Act, 1959 - Section 25 & 25(A)(1) - Criminal

appeal – against conviction and sentence - FIR – alleged that the appellant, due to old enmity, shot injured inside a courtroom during trial proceedings - Investigation - led to recovery of the weapon - chargesheet – Trial - during trial, five prosecution witnesses supported the case and the appellant was convicted and sentenced – Appeal – The Court concluded that the prosecution has convincingly established the guilt of the accused who fired a close-range shot at the victim within a functioning courtroom during ongoing trial proceedings - The accused was immediately apprehended at the scene with the weapon and live ammunition in his possession - The testimonies of PW1 (eyewitness) and PW2, along with corroborative medical and investigative evidence, substantiate the prosecution's narrative - In view of these circumstances, the non-examination of any specific individual as witness bears no consequence - The appeal lacks merit and is therefore dismissed – held, the conviction of the appellant is upheld - As regards the sentence of life imprisonment, it is observed that the offence was committed in broad daylight inside a courtroom in full session while the Presiding Officer was on the dais recording St.ments — This is an exceptional case warranting the maximum punishment, as rightly awarded by the trial court — Consequently, the sentence of life imprisonment, along with other imposed penalties, is affirmed — The appellant is directed to surrender before the court concerned forthwith – Appeal dismissed. (Para – 35, 36, 39, 40, 45, 46)

Criminal Appeal Dismissed. (E-11)

List of Cases cited:

1. St. of U.P. Vs Phool Singh 2022 (4) ADJ 397 (DB),

2. St. of Karnataka Vs Suvarnamma, (2015) 1 SCC 323,

3. Gajoo Vs St. of Uttarakhand, (2012) 9 SCC 532,

4. Balu Sudam Khalde Vs St. of Mah. 2023 13 SCC 365,

5. Rakshpal & anr. Vs St. of U.P. 2025 (2) ADJ 462 (DB),

6. Neeraj Sharma Vs St. of Chhattisgarh, (2024) 3 SCC 125,

7. Kaptan Singh Vs St. of U.P., 2020 (1) ADJ 106 (DB),

8. Pahalwan Singh & ors. Vs St. of U.P., 2020 (6) ALJ 166,

9. Shahaja @ Shahajan Ismail Mohd. Vs St. of Mah., (2023) 12 SCC 558,

10. Baban Shankar Daphal & ors. Vs The St. of Mah., 2025 SCC Online SC 137,

11. Dharnidhar Vs St. of U.P., (2010) 7 SCC 759,

12. Jayabalan Vs U.T. of Pondicherry, 2010 (68) ACC 308 (SC),

13. Satbir Singh & ors. Vs St. of U.P., (2009) 13 9 SCC 790,

14. Pulicherla Nagaraju @ Nagaraja Reddy Vs St. of AP, (2006) 11 SCC 444,

15. St. of A.P. Vs S. Rayappa & ors., (2006) 4 SCC 512,

16. Appabhai & anr. Vs St. of Guj., AIR 1988 SC 696,

17. Darya Singh Vs St. of Pun., AIR 1965 SC 328, Masalti Vs St. of U.P., AIR 1965 SC 202,

18. Krishna Mochi & ors. Vs St. of Bihar (2002) 6 SCC 81,

19. Anil Kumar Vs St. of U.P. LAWS (ALL) 2015 8 274,

20. Ravi Karan Vs St. of U.P. LAWS (ALL) 2019 11 333,

21. Rameshwar Vs St. of U.P. LAWS (ALL) 2022 7 215.

(Delivered by Hon'ble Vivek Kumar Birla, J.)

1. This criminal appeal has been preferred assailing the judgement and order dated 25.10.1993 passed by Special/Additional Sessions Judge, Shahjahanpur in Sessions Trial No. 373 of 1986 convicting and sentencing the appellant under section 307 IPC to undergo imprisonment for life and under section 25 Arms Act to undergo sentence of three years rigorous imprisonment, directing all the sentences to run concurrently.

2. By the order dated 10.11.1993, the appellant was released on bail.

3. The prosecution story, in brief, is that the complainant and the accused persons were residents of Village Kharkari, Police Station Katra, District Shahjahanpur. Accused Gendan Lal was the cousin (mausera bhai) of co-accused Karan Lal and he was the resident of Village Madhra, Police Station Bisalpur, District Pilibhit. Both sides had previous enmity due to which, one person from both sides had been murdered. Injured Ram Bharose was the uncle of complainant Raja Ram. One FIR was lodged for the murder of Balak Ram against accused sides and another FIR was lodged for the murder of Munna Lal (brother of accused Karan Lal) against the complainant side. Both the cases were pending before the Court of District & Sessions Judge-I. Ram Bharose, the injured and his brothers Brijpal and Mahendrapal and one Ram Saran were accused in the said case of murder of Munna Lal.

4. The prosecution version is that on 16.6.1986 at 12.30 p.m. in the Court of District & Sessions Judge-I, Shahjahanpur within the jurisdiction of Police Station Sadar Bazar, the trial of murder of Munna Lal (brother of accused Karan Lal) was going on in which, injured Ram Bharose (PW2), Mahendra Pal, Brij Pal and Ram Saran were standing in the witness box as accused persons. Complainant Raja Ram who was the prosecution witness in the said case was present in the Court for getting his evidence recorded against accused Karan Lal. Accused Karan Lal was the complainant in the case of murder of Munna Lal and his testimony was getting recorded in the Court along with one witness Dafedar. Accused Gendan Lal was also present in the said courtroom to whom accused Karan Lal indicated something by his fingers. On his indication, accused Gendan Lal took out a country-made pistol of 315 bore and fired at the injured Ram Bharose Lal (PW2) which hit him on his back. Accused Gendan Lal then tried to escape from the courtroom but he was caught by the complainant Raja Ram and Court Moharrir Ram Shankar along with his country-made pistol with one fired empty cartridge inside the pistol. Apart from this, five live cartridges were also recovered from the right pocket of accused Gendan Lal. He was taken to the police station by the complainant Raja Ram and Court Moharrir Ram Shankar. The written report was prepared on the way to the police station which is Ex. Ka-1. Accused Gendan Lal and injured Ram Bharose Lal were taken to the concerned police station. Thereafter, a chick report (Ex. Ka-5) was prepared by PW4 Constable Om Prakash Sharma on 16.6.1986 at 12.50 p.m. and he also made GD entry of the said incident which was registered as Case Crime No. 298 of 1986 and 299 of 1986 (Ex. Ka-6).

5. On the basis of written report of the complainant, a first information report was lodged against two accused persons namely, Gendan Lal and Karan Lal being S.T. No. 373/86 under Section 307 IPC. Accused Karan Lal was also charged under Section 307 read with Section 34 IPC while accused Gendan Lal was also charged under Section 25 (A)(1) of the Arms Act in S.T. No. 374/86. Co-accused Karan Lal was later on exonerated by the trial court from the charges levelled against him.

6. In order to establish the prosecution case, five witnesses were examined namely, PW1 Raja Ram, PW2 Ram Bharose Lal, PW3 Dr. Amarlal and PW4 Constable Om Prakash Sharma, P.S. Mal Khana, Sadar, Shahjahanpur, PW5 S.I. Vijendra Prasad Singh Yadav, P.S. Visalpur as ocular evidence.

7. In addition to above, the prosecution produced certain documents, which were exhibited during the trial as under:

(i) FIR Ext. Ka-5; (ii) Written report Ext. Ka-1; (iii) Recovery Memo of country made pistol live and empty cartridge and arrest of accused Ext. Ka-2; (iv) Recovery Memo of blood stained clothes Ext. Ka-3; (v) X-Ray report Ext. Ka-8; (vi) Injury report Ext. Ka-4; (vii) Charge-sheets (Mool) Ext. Ka-10 and Ka-11; (viii) Permission of District Magistrate Ext. Ka-9; and (ix) Site Plan Ext. Ka-7.

8. We have heard Sri Raj Kumar Vaish along with Sri P.K. Srivastava, learned counsel for the appellant and Sri

Om Prakash Dwivedi, learned A.G.A. for the State respondents.

9. Submissions of Sri Vaish, learned counsel for the appellant are mainly that it is a case of defective investigation; the prosecution has withheld its best witness namely, Constable/Head Muharrir Rama Shankar Dwivedi who was instrumental in arresting the accused Gendan Lal inside the courtroom itself and was also witness of fard baramadgi of the weapon and cartridges; there is no ballistic expert report in respect of the weapon so recovered and used and the cartridges so recovered and used to connect the same with the offence so committed; the signatures of the appellants were not taken on the fard baramdagi; the presence of the appellant inside the courtroom by itself is not sufficient to indicate that he had committed any assault or offence as no other employee of the courtroom was examined to prove the prosecution story; PW1 and PW2 are highly interested witnesses as the informant PW1 Rajaram is nephew of the injured and PW2 Ram Bharose Lal himself is injured and belong to the anti party with whom the appellant's side was having cross criminal cases; PW2, the injured states that the fire-arm injury was caused to him from back side and he had seen the accused subsequent to sustaining of the injury by him, therefore, this by itself is not sufficient to prove that the appellant was the assailant; PW5, the Investigating Officer has submitted that he had recorded the statement of the Presiding Officer present in the courtroom but unfortunately he died before recording of the statement, therefore, there should have been a reference to the statement of the Presiding Officer recorded under section 161 Cr.P.C. which, does not find place in the judgment. It is lastly submitted that the

appellant has no previous criminal history, and the prosecution has failed to prove its case beyond reasonable doubt, therefore, in any case, the maximum sentence has incorrectly been awarded in the present case and as he was detained in jail during trial for some time, therefore, the punishment be modified accordingly.

10. Learned counsel for the appellant has placed reliance on the judgments of this Court in the cases of Anil Kumar vs. State of U.P. LAWS (ALL) 2015 8 274; Ravi Karan vs. State of U.P. LAWS (ALL) 2019 11 333; and Rameshwar vs. State of U.P. LAWS (ALL) 2022 7 215.

11. Per contra, learned AGA submitted that date, time and place of the occurrence is not in dispute. Heinous offence has been committed inside the running courtroom with Presiding Officer on the Dias while statements of the witnesses were being recorded. He further submitted that there had been a close range firing as charring and tattooing was present. PW2 Ram Bharose Lal himself is the sufferer of injury and victim and his presence is not in doubt. The informant Rajaram was also admittedly present inside the courtroom in a cross case and is related to the injured Ram Bharose Lal being his nephew. It was submitted that Dr. Amar Lal, PW3, had duly certified the injury suffered by the victim and his testimony could not be dislodged even in cross examination. He further submitted that it is a case of prompt FIR. The incident had taken place at 12:30 p.m. on 16.6.1986 and the report was lodged at 12.50 p.m. i.e. after 20 minutes and the distance of police station is only half a kilometer from the court premises. The accused was arrested on the spot and the key witness in the present case is the injured victim himself

who is still carrying the bullet inside his body and his sole testimony itself was sufficient to convict the appellant.

12. We have perused the record and considered the rival submissions.

13. Before proceeding further, it would be appropriate to refer to various relevant judgements of Hon'ble Apex Court as well as of this Court on related witnesses as well as on injured witnesses.

14. In Krishna Mochi and others vs. State of Bihar (2002) 6 SCC 81, the Hon'ble Apex Court laid emphasis on realistic approach to be adopted by the criminal courts while appreciating evidence in criminal trial, paragraph 32 whereof is quoted as under:

"32. The court while appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower. I find that in recent times the tendency to acquit an accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by a short judgment so as to achieve the yardstick of disposal. Some discrepancy is bound to be there in each and every case which should not weigh with the court so long it does not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbles, the court should tread upon it, but if the same are boulders, the court should not make an attempt to jump over the same. These days when crime is looming

large and humanity is suffering and the society is so much affected thereby, duties and responsibilities of the courts have become much more. Now the maxim "let hundred guilty persons be acquitted, but not a single innocent be convicted" is, in practice, changing the world over and courts have been compelled to accept that "society suffers by wrong convictions and it equally suffers by wrong acquittals". I find that this Court in recent times has conscientiously taken notice of these facts from time to time....."

(Emphasis supplied)

15. In Masalti vs. State of U.P., AIR 1965 SC 202, Hon'ble Apex Court in paragraph 14 observed as under:

"14. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. ... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice."

(Emphasis supplied)

16. In Darya Singh vs. State of Punjab, AIR 1965 SC 328, the Hon'ble Apex Court has also taken the view that related witness does not necessarily mean or is equivalent to an interested witness. A witness may be called interested only when he or she derives some benefit from the result of litigation; a decree in a civil case, or in seeing a person punished in a criminal trial, paragraph 6 whereof is quoted as under:

"6. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars."

17. In Appabhai and another vs. State of Gujarat, AIR 1988 SC 696, the Hon'ble Apex Court in paragraph 11 observed as under:

"11.....Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner."

Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their, course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner....."

(Emphasis supplied)

18. Similar view has been taken in State of A.P. vs. S. Rayappa and others, (2006) 4 SCC 512 wherein it has been observed that it is now almost a fashion that public is reluctant to appear and depose before the court especially in criminal cases and the cases for that reason itself are dragged for years and years, paragraph 6 whereof is quoted as under:

"6.....by now, it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted somehow or the other either because of animosity or some other reasons."

(Emphasis supplied)

19. In Pulicherla Nagaraju @ Nagaraja Reddy v. State of AP, (2006) 11 SCC 444, the Hon'ble Apex Court in paragraph 16 has held as under:

"16. In this case, we find that the trial court had rejected the evidence of PW1 and PW2 merely because they were interested witnesses being the brother and father of the deceased. But it is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or closely related to the deceased, if it is otherwise, found to be trustworthy and credible. It only requires scrutiny with more care and caution, so that neither the guilty escape nor the innocent wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, it can be acted upon. If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted."

(Emphasis supplied)

20. In Satbir Singh and others vs. State of U.P., (2009) 13 SCC 790, the Hon'ble Apex Court in paragraph 26 held as under:

"26. It is now a well-settled principle of law that only because the witnesses are not independent ones may not by itself be a ground to discard the prosecution case. If the prosecution case has been supported by the witnesses and no cogent reason has been shown to discredit their statements, a judgment of conviction can certainly be based thereupon"

(Emphasis supplied)

21. In *Jayabalan vs. U.T. of Pondicherry*, 2010 (68) ACC 308 (SC), the Hon'ble Apex Court in paragraph 21 held as under:

"21. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

(Emphasis supplied)

22. In *Dharnidhar vs. State of U.P.*, (2010) 7 SCC 759, the Hon'ble Apex Court held that there is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case, paragraphs 12 and 13 whereof is quoted as under:

"12. There is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. In the case of *Jayabalan v. U.T. of Pondicherry* [(2010)1

SCC 199], this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim. The Court held as under:

" 23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.

.....

13. Similar view was taken by this Court in *Ram Bharosey v. State of U.P.* [AIR 2010 SC 917], where the Court stated the dictum of law that a close relative of the deceased does not, per se, become an interested witness. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the Court only with that intention and not to further the cause of justice.

The law relating to appreciation of evidence of an interested witness is well settled, according to which, the version of an interested witness cannot be thrown overboard, but has to be examined carefully before accepting the same.

14. In the light of the above judgments, it is clear that the statements of the alleged interested witnesses can be safely relied upon by the Court in support of the prosecution's story. But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons, who are closely related to the deceased. When their statements find corroboration by other witnesses, expert evidence and the circumstances of the case clearly depict completion of the chain of evidence pointing out to the guilt of the accused, then we see no reason why the statement of so called 'interested witnesses' cannot be relied upon by the Court."

(Emphasis supplied)

23. In a very recent judgement rendered by Hon'ble Apex Court in *Baban Shankar Daphal and others vs. The State of Maharashtra*, 2025 SCC Online SC 137 in respect of testimony of witness which should not be discarded merely because of relation with victim, the Hon'ble Apex Court has, in paragraphs 27 and 28, held as under:

"27. One of the contentions of the learned counsel for the appellants is that the eyewitnesses to the incident were all closely related

to the deceased and for prudence the prosecution ought to have examined some other independent eyewitness as well who were present at the time of the unfortunate incident. This was also the view taken by the Trial Court, but the High Court has correctly rejected such an approach and held that merely because there were some more independent witnesses also, who had reached the place of incident, the evidence of the relatives cannot be disbelieved. The law nowhere states that the evidence of the interested witness should be discarded altogether. The law only warrants that their evidence should be scrutinized with care and caution. It has been held by this Court in the catena of judgments that merely if a witness is a relative, their testimony cannot be discarded on that ground alone.

28. In criminal cases, the credibility of witnesses, particularly those who are close relatives of the victim, is often scrutinized. However, being a relative does not automatically render a witness "interested" or biased. The term "interested" refers to witnesses who have a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused due to enmity or personal gain. A "related" witness, on the other hand, is someone who may be naturally present at the scene of the crime, and their testimony should not be dismissed simply because of their relationship to the victim. Courts must assess the reliability, consistency, and coherence of their statements rather than labelling them as untrustworthy.

(Emphasis supplied)

24. In a recent judgement rendered by Hon'ble Apex Court in *Shahaja @ Shahajan Ismail Mohd. vs. State of Maharashtra*, (2023) 12 SCC 558 has observed that the appreciation of ocular evidence is a hard task and has summed up the judicially evolved principles for appreciation of ocular evidence in a criminal case, paragraphs 29 and 30 whereof is quoted as under:

“29. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

29.1 While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

29.2. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this

benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

29.3 When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

29.4. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

29.5. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

29.6. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

29.7. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

29.8. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

29.9. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

29.10. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

29.11. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

29.12. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

29.13. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.

[See *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, 1983 Cri LJ 1096 : AIR 1983 SC 753, *Leela Ram v. State of Haryana*, AIR 1999 SC 3717, and *Tahsildar Singh v. State of UP*, AIR 1959 SC 1012]

30. To put it simply, in assessing the value of the evidence of the eye- witnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and

secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or puts forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.”

(Emphasis supplied)

25. Paragraph 48 of *Pahalwan Singh and others vs. State of U.P.*, 2020 (6) ALJ 166 is quoted under:

“48. Thus, in view of aforementioned decisions of the Supreme Court, it is now a settled position of law that the statements of the interested witnesses can be safely relied upon by the court in support of the prosecution story. But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons who are closely related to the deceased. When their statements find

corroboration by other evidence, expert evidence and the circumstances of the case clearly depict completion of the chain of evidence pointing out to the guilt of the accused, then there is no reason as to why the statement of so-called 'interested witnesses' cannot be relied upon by the Court. It would be hard to believe that the close relatives shall leave the real culprit and shall implicate innocent persons falsely simply because they have enmity with the accused persons.

(Emphasis supplied)

26. Insofar as the testimony of injured witness is concerned, this Court in *Kaptan Singh vs. State of UP*, 2020 (1) ADJ 106 (DB) has, in paragraph 20, observed as under:

“20. Close scrutiny of the evidence shows that the statements of (PW-1) Vimla Devi and (PW-2) Ram Singar Pandey are clear, cogent and credible. They have been subjected to cross-examination, but they remained stick to the prosecution version and no such fact, contradiction or inconsistency could emerge, so as to create any doubt about their testimony. Keeping in view the fact that after incident, deceased as well as injured were taken to hospital and were admitted there and that on the same night deceased Ram Niwas Rao has succumbed to injuries, it is apparent that the first information report of the incident was lodged without any undue delay. Version of (PW-1) Vimla Devi finds corroboration from

testimony of (PW-2) Ram Singar Pandey and is fully consistent with medical evidence. It is also to be kept in mind that (PW-2) Ram Singar Pandey has himself sustained injuries in the same incident. In *Jarnail Singh v. State of Punjab*, (2009) 9SCC 719, the Supreme Court reiterated the special evidentiary status accorded to the testimony of an injured accused. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case, the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon. Similar view was expressed in the case of *Krishan v. State of Haryana*, (2006) 12 SCC 459. Hon'ble Supreme Court in Criminal Appeal Nos. 513-514 of 2014 *Baleshwar Mahto and another v. State of Bihar and another*, decided on 9.1.2017, has reiterated the law as under :

"28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.

"Convincing evidence is required to discredit an injured witness." [Vide *Ramlagan Singh v. State of Bihar* [(1973) 3 SCC 881:1973 SCC (Cri) 563:AIR 1972 SC 2593], *Malkhan Singh v. State of U.P.* [(1975) 3 SCC 311 : 1974 SCC (Cri) 919 : AIR 1975 SC 12], *Machhi Singh v. State of Punjab* [(1983) 3 SCC 470 : 1983 SCC (Cri) 681], *Appabhai v. State of Gujarat* [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696], *Bonkya v. State of Maharashtra* [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113], *Bhag Singh* [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163], *Mohar v. State of U.P.* [(2002) 7 SCC 606 : 2003 SCC (Cri) 121] (SCC p. 606b-c), *Dinesh Kumar v. State of Rajasthan* [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472], *Vishnu v. State of Rajasthan* [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302], *Annareddy Sambasiva Reddy v. State of A.P.* [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] and *Balraje v. State of Maharashtra* [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] 29. While deciding this issue, a similar view was taken in *Jarnail Singh v. State of Punjab* [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107], where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

"28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full

details of the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa v. State of Karnataka* [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

In *State of U.P. v. Kishan Chand* [(2004) 7 SCC 629 : 2004 SCC (Cri) 2021] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan v. State of Haryana* [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the Courts below."

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the

scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein." In this very judgment, relationship between the medical evidence and ocular evidence was also discussed, based on number of earlier precedents, as under: "33. In *State of Haryana v. Bhagirath* [(1999) 5 SCC 96 : 1999 SCC (Cri) 658] it was held as follows: (SCC p. 101, para 15)

"15. The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the Court. If the opinion is bereft of logic or objectivity, the Court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability the Court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject."

In *Shivalingappa Kallayanappa v. State of Karnataka*, 1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694, the Court has held that the deposition of the injured

witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

It has been held that law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

(Emphasis supplied)

27. In a recent judgement rendered by Hon’ble Apex Court in *Neeraj Sharma vs. State of Chhattisgarh*, (2024) 3 SCC 125 in respect of importance of injured witness in a criminal trial, the Hon’ble Apex Court has, in paragraphs 22 and 23, held as under:

“22. The importance of injured witness in a criminal trial cannot be over stated. Unless there are compelling circumstances or evidence placed by the defence to doubt such a witness, this has to be

accepted as an extremely valuable evidence in a criminal Trial.

23. In the case of *Balu Sudam Khalde v. State of Maharashtra* 2023 SCC OnLine SC 355 this Court summed up the principles which are to be kept in mind when appreciating the evidence of an injured eye-witness. This court held as follows:

“26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”
(Emphasis supplied)”

28. Reference may be made to judgment of Co-ordinate Bench of which one of us (V.K. Birla, J.) was a member in the case of Rakshpal and Another vs. State of U.P. 2025 (2) ADJ 462 (DB) wherein the law was considered extensively.

29. Hon’ble Apex Court in the case of ‘Balu Sudam Khalde vs. State of Maharashtra’ 2023 13 SCC 365 has again considered the guidelines for consideration of evidence of injured witness, relevant paragraph 26 whereof is quoted as under:

“26. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

26.2. Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

26.6. The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”
(Emphasis supplied)

30. Apart from the law as discussed above, a reference may be made to the law relating to the effect of defect in investigation.

31. The law relating to the effect of a defect in investigation has been discussed and summarized by the Hon'ble Supreme Court in Gajoo v. State of Uttarakhand, (2012) 9 SCC 532, in the following words :

"20. In regard to defective investigation, this Court in Dayal Singh v. State of Uttaranchal, (2012) 8 SCC 263, while dealing with the cases of omissions and commissions by the investigating officer, and duty of the Court in such cases, held as under: (SCC pp. 280-83, paras 27-36)

"27. Now, we may advert to the duty of the Court in such cases. In Sathi Prasad v. State of U.P., (1972) 3 SCC 613, this Court stated

that it is well-settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the Court to see if the evidence given in Court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in *Dhanaj Singh v. State of Punjab*, (2004) 3 SCC 654, held: (SCC p. 657, para 5)

'5. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.

28. Dealing with the cases of omission and commission, the Court in *Paras Yadav v. State of Bihar*, (1999) 2 SCC 126, enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the Courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

29. In *Zahira Habibullah Sheikh (5) v. State of Gujarat*, (2006) 3 SCC 374, the Court

noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the quality of trial process can be observed from the words of Bentham, who states that witnesses are the eyes and ears of justice. The Court issued a caution that in such situations, there is a greater responsibility of the Court on the one hand and on the other the Courts must seriously deal with persons who are involved in creating designed investigation. The Court held that: (SCC p. 398, para 42)

'42. Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure a fair trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must be given as much importance, if not more, as the interest of the individual accused. In this Courts have a vital role to play.' (emphasis in original)

30. With the passage of time, the law also developed and the dictum of the Court emphasised that in a criminal case, the fate

of proceedings cannot always be left entirely in the hands of the parties. Crime is a public wrong, in breach and violation of public rights and duties, which affects the community as a whole and is harmful to the society in general.

31. Reiterating the above principle, this Court in *NHRC v. State of Gujarat*, (2009) 6 SCC 767, held as under: (SCC pp. 777-78, para 6)

'6. ... "35. ... The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata. The Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice—often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a Court of law in the future as in the case before it. If a criminal Court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the

parties and to the community it serves. The Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the Judges as impartial and independent adjudicators." (*Zahira Habibullah case*, SCC p. 395, para 35)'

32. In *State of Karnataka v. K. Yarappa Reddy*, (1999) 8 SCC 715, this Court occasioned to consider the similar question of defective investigation as to whether any manipulation in the station house diary by the investigating officer could be put against the prosecution case. This Court, in para 19, held as follows: (SCC p. 720)

'19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the investigating officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the Court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently

of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The Court must have predominance and pre-eminence in criminal trials over the action taken by the investigating officers. The criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the Court is convinced that the testimony of a witness to the occurrence is true the Court is free to act on it albeit the investigating officer's suspicious role in the case."

33. In *Ram Bali v. State of U.P.*, (2004) 10 SCC 598, the judgment in *Karnel Singh v. State of M.P.*, (1995) 5 SCC 518 was reiterated and this Court had observed that: (Ram Bali case, SCC p. 604, para 12)

'12. ... In case of defective investigation the Court has to be circumspect [while] evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective.'

34. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The Courts do not merely discharge the function to

ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the Judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the Court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not subverted. For truly attaining this object of a 'fair trial', the Court should leave no stone unturned to do justice and protect the interest of the society as well.

(Emphasis supplied)

32. In *State of Karnataka v. Suvarnamma*, (2015) 1 SCC 323, the Hon'ble Supreme Court held that "It is also well-settled that though the investigating agency is expected to be fair and efficient, any lapse on its part cannot per se be a ground to throw out the prosecution case when there is overwhelming evidence to prove the offence."

(Emphasis supplied)

33. In *State of U.P. vs. Phool Singh* 2022 (4) ADJ 397 (DB) of which one of us (V.K. Birla, J.) was member, the Co-ordinate Bench has also considered the law relating to effect of defect in investigation.

34. We find that in the present case the accused Gendan Lal has caused fire-arm injury to PW2 Ram Bharose Lal, who is the victim as well and real uncle of the informant Raja Ram inside the running courtroom in presence of large number of

persons. Ram Bharose Lal suffered injury on his back and when the accused Gendan Lal tried to run away he was caught on the spot i.e. inside the courtroom by the informant Raja Ram with the help of police constable Ram Shanker. The weapon, country made pistol of 315 bore, was recovered from his hand with an empty cartridge inside the weapon and five live cartridges from his right pocket. Undisputedly, it has also come in evidence that the accused Gendan Lal was relative of Karan Lal who was accused in a murder case whose statement had already been recorded in a sessions trial pending against him and the allegation is that he signalled Gendan Lal to cause fire. It is no doubt that mere preparation of the recovery memo as alleged in the police station which is half a kilometre away from the court premises by itself would not create any doubt on the prosecution story as the incident of firing which took place very much inside the running courtroom with Presiding Officer on the Dias.

35. It is quite natural that under such circumstances, to avoid any panic, accused Gendan Lal arrested on the spot with weapon used in the crime in his hand, was immediately taken to the police station which was only half a kilometre away from the court premises along with the weapon recovered on the spot. It is also admitted case that the bullet was still inside the body of the injured Ram Bharose Lal PW2 when his statement was recorded. It has come in the evidence that there was a cross case also wherein, the Informant in the present case Raja Ram, was the informant in the aforesaid case and was present for recording of his statement. Karan Lal was informant in the other case and his statement had already been recorded and statement of one witness Dafedar was

being recorded. The presence of both the witnesses PW1 as well as PW2 is clearly proved and is more or less admitted to the accused side as well. The old enmity was also admitted as from both sides murders have been committed wherein close relatives of all the accused persons present in the court were involved.

36. PW1 Raja Ram has admitted that Brij Pal and Mahendra Pal were his real brothers. Their father Balak Ram was murdered wherein Karan Lal was the accused and on the same day, Munna Lal, the brother of Karan Lal was also murdered wherein Brij Pal and Mahendra Pal were accused persons. These murders had taken place on 11.11.1984 and because of these two murders both were present as there were cross sessions trial that were being conducted, therefore, presence of PW1 Raja Ram is proved beyond doubt and the presence of PW2 Ram Bharose Lal, who is the victim himself, is not in dispute. The victim PW2 Ram Bharose Lal had clearly stated that the learned Judge was sitting on the Dias and the Peshkar was recording the statement and Head Constable was also present. He was sitting near the cage of the accused persons. Accused Gendan Lal came from behind and he could not see him. Karan Lal was looking at the accused Gendan Lal. PW2 Ram Bharose Lal saw Gendan Lal firing at him and, thereafter, he ran in the direction of the chamber of the learned Judge. PW2 Ram Bharose Lal, the victim himself has also proved the enmity amongst the accused persons present and has stated that the learned Judge who was sitting on the Dias also shouted. PW2, victim Ram Bharose Lal was hospitalized for ten days and the bullet was still inside his body when his statement was recorded.

37. In his cross examination, he has categorically stated that immediately

after he had been fired upon, he had seen Gendan Lal doing this and it is only when accused Gendan Lal ran in the direction of the chamber of the learned Judge, he was caught. He had specifically denied the suggestion that somebody else had fired upon him and had categorically stated that accused Gendan Lal had fired upon him. The doctor has proved the injuries caused to Ram Bharose Lal and has categorically stated that the injuries could have been suffered at 12:30 p.m. on 16.6.1986 by a firearm and there was charring, blackening and tattooing present and, therefore, it was a case of close range firing caused from behind. Investigating officer SI V.P. Singh Yadav had clearly stated that he had recorded the statement of Kunwar Sawal Singh, learned Sessions Judge in whose court, this incident had taken place. He had fully supported the prosecution story which could not be dislodged in his cross examination.

38. We further find that accused Gendan Lal in his statement recorded under section 313 Cr.P.C. has admitted the enmity between the parties and that Karan Lal was inside the courtroom. In his statement, he denied his relationship with accused Karan Lal, however, we find that at page 39 of the paper book he had admitted that accused Karan Lal is his cousin (mausera bhai) and he was present inside the courtroom at the time of the incident. This clearly reflects that he has admitted the enmity and his presence in the courtroom for the purpose of doing pairvi on behalf of his brother Karan Lal who was accused in a cross case. The same suggestion was made to the accused Karan Lal and, therefore, the case of the prosecution that the accused Gendan Lal was close relative of accused Karan Lal was present on the spot and the accused

side and the informant side were having old enmity is not in dispute.

39. We, therefore, find that the prosecution has clearly proved its case beyond doubt. An attempt to murder had taken place inside the courtroom. In view of the law as referred to above, the sole testimony of the injured-victim-witness is sufficient to hold the appellant guilty. In the present case, there were two eye witnesses, one, PW1 Raja Ram, the informant whose presence in the courtroom is not in dispute, who is related to the injured witness and, second, PW2 is the injured Ram Bharose Lal who himself is the victim and was still carrying the bullet inside his body when his statement was recorded and the injuries caused to him were duly proved. There was recovery of weapon from the hands of the accused Gendan Lal who was arrested from the spot itself inside the courtroom. The statement of the learned Presiding Officer was also recorded who, unfortunately, died before recording of this statement in the Court as witness. Therefore, the presence of the injured and accused persons is not in dispute. In other words, the date, time and place is not in dispute. There are categorical statement of the injured victim PW2 Ram Bharose Lal that the Presiding Officer was sitting on the Dias and that of PW5 Vijendra Prasad Singh Yadav, Investigating Officer that statement of the Presiding Officer Kunwar Sawal Singh who was admittedly sitting on the Dias at the time of the incident was recorded in his chamber. Therefore, not taking note of the statement of the Presiding Officer recorded under section 161 Cr.P.C. would be of no consequence.

40. The victim Ram Bharose Lal who is also injured witness PW2, has suffered entry wound of 0.75 cm x 0.5 cm

depth whereof could not be measured, just 3.5 cm above partition of waist with blackening, tattooing and charring. This is undoubtedly vital part of the body. Had this injury been little closer to heart or lungs or any other vital organ, injuring the same it would have definitely caused death, an offence of murder in open Court.

41. Under these circumstances, non-production of any particular person as witness is of no consequence.

42. We have gone through the judgment relied on by learned counsel for the appellant.

43. In view of the discussion made hereinabove, we find that the judgments relied on by learned counsel for the appellant has no applicability in the facts and circumstances of the present case.

44. We, therefore, find that the present appeal is devoid of merits and is accordingly dismissed. The conviction of appellant Gendan Lal is confirmed.

45. In so far as the punishment for life is concerned, we find that the incident had taken place in broad day light inside the running courtroom when statements were being recorded with the Presiding Officer on the Dias. We are of the opinion that this is a fit case where maximum punishment has been awarded by the trial court and we, therefore, affirm the punishment for life along with other punishments, as awarded.

46. Since the appellant Gendan Lal is on bail, his bail bonds are cancelled and the sureties are discharged. He is directed to surrender before the court concerned within

three weeks to undergo the punishments awarded.

47. Lower court record be sent to the concerned Court forthwith.

48. Let a copy of this order be communicated by the Registrar (Compliance) to the Court concerned for compliance and to proceed in accordance with law in case the accused fails to surrender.

(2025) 3 ILRA 391
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.01.2025 &
05.03.2025

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE RAM MANOHAR NARAYAN
MISHRA, J.

Criminal Appeal No. 2696 of 1981

And

Criminal Appeal No. 660 of 1984

Devendra Kumar @ Jhunna & Ors.

...Appellants

Versus

State

...Respondent

Counsel for the Appellants:

Sri S.S. Tewari, Sri Ajay Kumar Pandey, Sri K.K. Srivastava, Sri Roshan Khan, Sri Satish Trivedi

Counsel for the Respondent:

D.G.A., Sri Mayank Bhushan

Criminal Law - Indian Penal Code, 1860 - Section 302-FIR lodged just after two hours of the incident-evidence of injured witness is held on high-pedestal- In prosecution version every accused has been assigned specific weapon-accused persons were prompted by motive - surviving accused had formed unlawful assembly with co-accused-brutal assault- with intention to kill and caused fatal-died instantaneously-no legal or factual error in the

impugned order - trial court has rightly discarded the defense evidence.

Appeal partly allowed. (E-9)

List of Cases cited:

1. Satya Deo @ Bhoorey Vs St. of U.P. AIR 2020 (SC) 4526

2. Chandan Vs The St. (Delhi Admin) 2024 Live Law (SC) 288

(Delivered by Hon'ble R.M.N. Mishra, J.)

1. Criminal Appeal No.2696 of 1981 has been preferred against the judgment and order dated 19.11.1981 passed by VIIth Additional Sessions Judge, (Non-Metropolitan Area) Kanpur Nagar in S.T. No.75 of 1977 and S.T. No.304 of 1977, and Criminal Appeal No.660 of 1984 arose out of judgment and order dated 18.01.1984 passed in S.T. No.75 of 1977, in both the session trials. All the nine appellants have been convicted for charge under Section 147, 148, 302/149, 325/149 and 323/149 IPC, P.S. Derapur, Kanpur.

2. In S.T. No. 75 of 1977 appellant Devendra Kumar alias Jhunna, Jia Lal alias Dadu, Avdhesh and Smt. Ram Piari and in S.T. No.304/1977 accused Ram Pratap, Bhuneshwar, Bhanu Pratap alias Laluna, Shiv Das and Krishna Kumar alias Chuttan were sentenced to undergo imprisonment for life for charge under Section 302/149 IPC. They were also found guilty for charge under Section 325/149 Cr.P.C., for which they were sentenced to one year's rigorous imprisonment. They were further sentenced to six months rigorous imprisonment under Section 323/149 IPC. Accused Devendra Kumar alias Jhunna, Shiv Das, Krishan Kumar Chuttan were sentenced to one years rigorous imprisonment for charge under Section 147

IPC and accused Ram Pratap, Avdhesh, Bhunesh, Dadu and Lalauna were sentenced to one years rigorous imprisonment under Section 148 IPC.

3. Accused Smt. Ram Piyari was sentenced to life imprisonment for charge under Section 302/149 IPC, one year simple imprisonment for charge under Section 325/149 IPC, six months imprisonment for charge under Section 323/149 IPC and one year simple imprisonment for charge under Section 147 IPC. All the sentences were directed to run concurrently.

4. Criminal Appeal No.660 of 1984 arose against the judgment and order dated 18.01.1984 passed by Learned IVth Additional Sessions Judge, Kanpur Dehat in S.T. No.75A of 1977, whereby appellant Rajmun was convicted of charge under Sections 148, 302/149, 325/149 and 323/149 IPC. Accused Rajmun is sentenced to life imprisonment for charge under Section 302/149 IPC, one year rigorous imprisonment for charge under Section 148 IPC, one year rigorous imprisonment for charge under Section 325/149 IPC and six months rigorous imprisonment for charge under Section 323/149 IPC.

5. Both the criminal appeals have arisen out of conviction of appellants for the same offence having arisen out of Case Crime No.118 of 1976, under Sections 147, 148, 302/149, 323/149 and 325/149 IPC, PS. Derapur, Kanpur. As both the criminal appeals have arisen out of same incident and offence and all the appellants have been implicated as co-accused during the trial, both the appeals have been clubbed together and are being decided by a common judgment. The appellants were released on bail by orders of these Criminal

Appeals on direction of this court in their respective criminal appeals.

6. Heard Sri Ajay Kumar Pandey, learned Amicus Curiae on behalf of the appellants, Sri Rahul Asthana, learned A.G.A. for the State and perused the material available on record.

7. The brief facts of the case as culled out from the case of prosecution are that on 29.06.1976 at around 12:00 hours in the day, when the deceased Sheo Narain who was the brother of informant Lalaram was going to his house to take meal from his shop, the accused persons namely Avdhesh, Ram Pratap, Bhuneshwar were armed with spears (Barchhai) , Dadu, Lalauna, Rajmun were carrying (Tabbals), Shiv Das, Jhunna, Chuttan and Smt. Ram Piari carrying lathis, all belonging to informant's village waylaid the deceased and started attacking him by their respective weapons. The deceased raised an alarm, the informant and Smt. Vimla wife of deceased rushed to the spot to rescue the deceased. The accused persons also gave beating to the informant and Smt. Vimla , wife of the deceased. In the meantime, witnesses Jagdish Narain, Ram Chander, Nanhey, Asharfi Lal, Mahadev challenged the accused whereupon they ran away towards east. The deceased died on the spot. The informant Lala Ram and Smt. Vimla had also sustained injuries. The motive of the offence as stated by the informant in FIR is that he was a witness in the murder case of Ram Gopal of the village who had deposed against accused Ram Pratap and others in an earlier murder case. Ram Pratap and others were convicted by court of sessions and were sentenced to 20 years imprisonment. The convicts were enlarged on bail by orders of High Court in Appeal, by this reason

accused persons were harbouring grudge against the informant and his family members.

8. The written report Ext. Ka-3 was filed by Lala Ram PW-2 at the Police Station, Derapur, six miles away from the village Chilauli, where the murder was committed at 2:15 pm. On its basis Chick FIR Ext. Ka-22 was drawn by Head Moharir Ram Raj Singh, PW-9. He also made entry in the general diary at report No.18 dated 29.06.1976 at 02:15 pm, whereof copy is Ext. Ka-23. Injuries found on the person of Lala Ram were also noted in the general diary. The investigation of the case was entrusted to S.I. Sri Ram Singh, PW-8. He left for the scene of the crime immediately. He prepared inquest report Ext. Ka-5 on the dead body of the deceased. Blood stained Dhoti Ext. 2 Shri Ext.3, Baniyan Ext. Ka-4 found on the dead body of Shiv Narain were taken into custody and placed in a sealed cover and Fard Ext. Ka-11 was prepared. He also took into custody blood stained Lathi Ext-5 and blade of Barchi Ext-6 found near the dead body under fard Ext. Ka-12. The Lathi was cut into three pieces and both the items were placed under sealed covers. The Investigating Officer thereupon searched the houses of the accused Ram Pratap, Bhunesh etc. but the accused were not found. Memos of search Ext. Ka-13 to Ka-17 were prepared. Thereafter, the Investigating Officer, prepared a diagram of the dead body Ext. Ka-18, report for postmortem examination Ext. Ka-19 and Ka-20 respectively, and challan lash Ext. Ka-21. The dead body was sealed in a cloth-sheet and was entrusted to constables Sri Subhan Ali and Ram Pal for being taken to the Head Quarters for post mortem examination. Sub Inspector Sri Mata Prasad P.W.7, who had reached there after

the dead body had been sent and he had taken over the investigation. He had also collected in the presence of S.I. Sri Ram Singh, blood stained earth Ext.7 and plain earth Ext.8 from the scene of occurrence and Fard Ext. Ka-8 was prepared in this behalf. S.I. Sri Ram Singh returned to the police station with the sealed bundles. S.I. Sri Mata Prasad recorded the statements of the witnesses and prepared site-plan Ext.Ka-7. He sent the injured Smt. Vimla Devi and Lala Ram for medical examination with letters Ext. Ka-1/1 and Ka-2/1.

9. Head Moharrir Sri Ram Raj Singh P.W.9 had made entry in the general diary at report No.34 on 29.6.1976 at 10:15 P.M. when S.I. Sri Ram Singh returned to the Police Station with five sealed bundles., Copy of the general diary is Ext.Ka-24. These bundles were sent to Chief Medical Officer's Office through Constable Sri Komal Singh for being forwarded to the Chemical Examiner, Agra, on 22.7. 1976 as per entry in the general diary, a report No. 11, copy of which is Ext.Ka-25. As per affidavit Ext. Ka-28, filed by Sri Komal Singh he had brought these bundles, with seals intact on 22.7.1976. Sri Vikram Singh, Clerk of the Office of Chief Medical Officer, Kanpur, has filed affidavit Ext.Ka-27 to the effect that he had received these five bundles and had despatched the same that very day to Chemical Examiner Agra. According to the report of the Chemical Examiner, Agra, Ext. Ka-29, blood-stained earth, shirt, Dhoti, Baniyan, blade of Barchi and pieces of Lathi were found stained with blood. According to the report of the Serologist Ext .Ka-30, the blood-stained earth and Baniyan had human blood of Group- "0" the blood was dis-integrated on Barchi and Lathi.

10. The injured Smt. Vimla Devi was examined by Dr. Surendra Singh (P.W.-1) on 29.6. 1976 at 8 P.M. when he found the following injuries on her person and prepared injury report Ext. Ka-1.

1. Contusion 8 Cm. x 2 Cm. on back, below right scapula region oblique in direction.

2. Contusion 7 Cm. x 2 Cm. on right hand just below the right elbow joint.

3. Contusion 6 Cm. x 2 Cm. on right hand about 4 Cm. above the right wrist joint on lateral aspect.

4. Three contusions in area of 9 Cm. x 5 Cm. on right fore arm about 8 Cm. above the wrist joint on the medial aspect.

5. Contusion 6 Cm. x 2 Cm. on right thigh about 8 Cm. above the right knee joint.

Injuries Nos. 1,2,3 and 5 were found to be simple and injury No.4 was kept under observation for which Xray was advised. The injuries in the doctor's opinion were about half day old and could have been caused by a blunt weapon Like a Lathi.

11. Dr. R.Prakash P.W.3, Radiologist, had taken X-ray of the right fore-arm of Smt. Vimla Devi on 29.6.76 and he found the lower 1/3rd right radius fractured for which he had issued his report Ext. Ka-4.

12. Dr. Surendra Singh P.W.1 had also examined Lala Ram at 8.30 P.M. and issued injury report Ext. Ka-2, Following injuries were found on his persons :-

1. Contusion 6 Cm. x 2 Cm. on right side of back below right scapular region oblique in direction.

2. Contusion 8 Cm. X 1 ½ cm on right upper hand about 7 Cm. below the shoulder joint on lateral aspect.

3. Contusion 6 Cm. X 1 ½ Cm. on right thigh about 10 Cm. above the knee joint on lateral aspect.

13. These injuries were also about half day old according to his opinion and might have been caused, at 12.00 Noon on 29.6.76. Injuries were simple and caused by blunt object.

14. The dead body of the deceased was sent through Constable Sri Subhan Ali and Constable Ram Pal Singh to the mortuary on 29.6.1976 duly sealed for which Constable Sri Subhan Ali has filed his affidavit Ext. Ka-26. He had also identified the dead body before the Medical Officer at the time of its post mortem examination.

15. Dr. B.K. Jain P.W.-6 had performed the post mortem examination on the dead body of the deceased Shiv Narain on 30.6.1976 at 4.30 P.M. He had found that the deceased was about 40 years of age. Death had taken place about one day earlier. Rigor-mortis had passed off and decomposition had just set in. He found the following ante-mortem injuries on the dead body;

(i) Incised wound 6.5 Cm. x 4 Cm. x 4 Cm, brain cavity deep on the front and middle of head 6 Cm. above the bridge of nose,

frontal bone cut under-neath. Brain matter coming out of the wound.

(ii) Incised wound 3 Cm. x 1.5 Cm. x bone cut underneath on the right side front of head 4 Cm. above the right eye-brow.

(iii) Incised wound 2 Cm. x 1 Cm. x muscle deep on the right side face just outer to right eye brow.

(iv) Incised wound 3 Cm. x 1.5 Cm. x bone cut underneath on the right side head 11 Cm. above right ear.

(v) Incised wound 4 Cm. x 1.5 Cm. x bone cut underneath on the right side head 4 Cm. above right ear.

(vi) Incised wound 4 Cm. x 2 Cm. x bone cut underneath on the right side head 3 Cm. behind injury No. (v)

(vii) Incised wound 10 Cm. x 6.5 Cm. x Occipital bone cut underneath on the back of head oblique 3 1/2 Cm. behind right ear.

(viii) Abraised contusion 13 Cm. x 6 Cm. on the back of left Shoulder and outer side left arm.

(ix) Abraised contusion 6 Cm. x 4.5 Cm. on the back of left elbow.

(x) Incised wound 2 Cm. x 1 Cm. x muscle deep on the front of left leg in middle.

(xi) Abraised contusion 9 Cm. x 6 Cm. on the back of right elbow.

(xii) Contusion 19 Cm. x 4 Cm. on the left side back oblique

(xiii) Contusion 21 Cm. x 5 Cm. on the right scapular region and middle of back oblique.

(xiv) Contusion 12 Cm. x 6 Cm. on the left buttock.

16. On internal examination, the Medical Officer had found that the frontal, temporal and right parietal and occipital bones were cut under injuries Nos. 1 to 7. Brain was cut and was coming out. Stomach was empty. Small intestines contained a little digested food and large intestines contained faecal matter. In the opinion of the Doctor, cause of death was shock and hemorrhage as a result of ante-mortem injuries. Dr. Jain had prepared and proved post-mortem report Ext. Ka-6.

17. After completing the investigation, Sub Inspector Sri Mata Prasad P.W.7 submitted the charge-sheet Ext. Ka-9 against the accused Jia Lal alias Dadu, Rajmun, Avdhesh, Devendra and Smt. Ram Piari, on 28.8.1976. They were committed to stand their trial in the Sessions Court by the Chief Judicial Magistrate, Kanpur Dehat, under his order dated 26.3.1977. The police could not apprehend the other accused in spite of issue of proclamation under Section 81 Cr.P.C. and after issuing warrants of attachment as also attachment of the movable properties of Ram Pratap, Bhunesh, Lalauna alias Bhanu Prakash and of Shiv Das, on 5.9.1976 and consequently, charge-sheet Ext. Ka-10 was submitted against the accused Ram Pratap, Bhunesh, Bhanu Prakash alias Lalauna, Krishan Kumar alias Chhuttan, as absconders. They were committed to stand their trial in the Sessions Court by the Chief Judicial Magistrate under his order dated 28.10.1977.

18. Both the Sessions cases were consolidated and S.T. No.75/1977 was made the leading case. All the accused except Rajmun were charged under Sections 147, 148, 302/149, 325/149 and 323/149 I.P.C. to which they pleaded not

guilty. During the trial, the accused Rajmun jumped bail and his case had to be separated from S.T. No.75 of 1977 under order dated 22.7. 1980 vide S.T. No.75 A of 1977. The accused were tried for charge under Sections 147, 325/149, 302/149, 323/149, 148 IPC.

19. In support of its case, the prosecution has examined nine witnesses in all. Of these, Dr. Surendra Singh P.W. 1, Dr. R. Prakash, Radiologist, P.W.3 and Dr.B.K.Jain P.W.6 are the medical Officers and their evidence has already been referred to above, while stating the prosecution case. Sub-Inspector Sri Mata Prasad P.W.7 and Sub-Inspector Sri Ram Singh PW-8 are the Investigating Officers and P.W.-9 Head Moharrir Sri Ram Raj Singh is a formal witness who had prepared check F.I.R. and made entries in the general diary P.W-2 Sri Lala Ram, brother of the deceased, PW-4 Smt. Vimla Devi wife of the deceased and P.W.-5 Jagdish Prasad are the eye-witnesses. The accused persons also examined five witnesses in their defence, including the accused Ram Pratap who has been examined on his request.

20. We may now refer to the evidence of the eye-witnesses examined by the prosecution.

21. Supporting the prosecution case, Sri Lala Ram P.W.-2 brother of the deceased, Sheo Narain, has deposed that Ram Gopal of his village was murdered and the accused Ram Pratap, Bhunesh, Avdhesh, Dadu, Rajmun and others were tried for that murder, for which he had given evidence and these accused were convicted and sentenced to 20 years' rigorous imprisonment by the Sessions Court. At the time of the murder of his brother, these accused had been released on

bail by the Hon'ble High Court during the pendency of their appeal. They bore enmity against him and members of his family.

22. The witness further deposed that about a year and eight months' back, at about 12 noon, his brother Sheo Narain was returning from his shop. He was also following him. When his brother reached in front of the house of Jagdish Narain on the passage, the accused Ram Pratap, Bhunesh, Avdhesh, carrying Barchi (spears), and the accused Dadu, Rajmun Lalauna carrying Tabbals and the accused Sheo Das, Jhunna, Chhuttan and Smt. Ram Piari carrying Lathies, came there. He could not notice from which side they had come. The accused started attacking his brother with Barchi, Tabbals and Lathies. His brother raised an alarm. The witnesses came running to rescue him. The wife of his brother, Smt. Vimla Devi also came there. Jagdish Narain, Nanhey, Asharfi Lal, Mahadeo, Ram Chander had also come. The accused attacked the witness and also Smt. Vimla Devi with Lathies. On the intervention of the witness, the accused ran away towards the east. His brother died on the spot. Smt. Vimla had also suffered injuries. The witness further deposed that he had prepared the report Ext. Ka-3 and had gone to the police Station Derapur, where it was filed. He identified the shirt, Dhoti and Baniyan Exts. 1 to 3 as the clothes worn by the deceased at the time of the incident. He further deposed that at the time of the incident, blood had fallen on the ground where his brother had fallen down after fatally hurt. He further deposed that a Lathi and blade of Barchhi were found near the dead body, which were stained with blood. The witness also stated that the accused Lalauna was a real brother of the accused Ram Pratap, and Sheo Das accused was the cousin of the accused Ram Pratap.

Jhunna and Chhuttan were also related to Ram Pratap. All the other accused belongs to the party of Ram Pratap and were his supporters. Smt. Ram Piari was the mother of the accused Dadu.

23. In his cross-examination, the witness has stated that Jagdish Narain, who was a prosecution witness in this case, was informant of the earlier murder trial against the accused Ram Pratap etc. and the deceased Ram Gopal of the said murder trial was the brother of Jagdish Narain. The accused Ram Pratap was the Pradhan of the village but he did not know if he was a Principal in a School at Ladpur Pad. He also stated that even before the murder of his brother, the accused had tried to Gherao them. He also claimed to have sent an information to the Superintendent of Police Kanpur, but the matter was not pursued further. He admitted that Sri Kalika had filed a complaint against him, his brother u/s 307 I.P.C. Rajjan and the witness Jagdish Narain, who claimed that it was a false complaint and had been dismissed. He admitted that in a case under Section 324 I.P.C. against Hirdaya Narain he had appeared as a witness and the accused was sentenced.

24. He further submitted that his shop was about one furlong away from the scene of occurrence on the road side. On coming towards the village, in some portions agricultural fields were lying on both sides, there are khaliyans. The shop was, however, in the abadi. He denied that there were any bushes along the passage from the shop to his house. The witnesses further deposed that his brother was not an eye witness in the murder of Ram Gopal, brother of Jagdish Narain, but his brother used to do pairvi in the case. He further stated that his brother used to press him for

giving evidence and to state the truth. He admitted that this fact was not mentioned by him in the FIR, but he claimed that he had told about it to the investigating officer. However, his statement under Section 161 Cr.P.C. did not find any mention about it. The witness could not give the date or month of making the application to the Superintendent of Police regarding the attempts of the accused to Gherao them nor to give the names of the witnesses of those incidents. He admitted that no mention about it was made by them in the FIR. He did not remember if he had told about it to the Investigating Officer, but he did not give copy of the application to him. He also testified that he and his brother had only one house in village Chilauli and they live jointly. The land was in the name of their father at the time of incident. Although their father died 3-4 years back, it was only during the consolidation that their chaks were separated after the murder of his brother. He also admitted that he had constructed a separate house in Rura and the deceased had purchased land from Babbu Shukla in his own name, but he denied that he and his brother were living separately since before the incident of this case. He admitted that he had a ration card in Rura also, while his brother had a ration card in village Chilauli. They had a small shop of betel and Cigarettes etc. He admitted that he and his brother were prosecuted by Sheo Datt Bajapi. It was a false case and they had been acquitted. He further stated that he had not noticed the Lathi and the blade of Barchhai before writing the report, but he noticed it when he came out of his house after writing the report. He did not think it necessary to add it in the report before filing it. He claimed that he had sustained injuries on his back and on his waist. Although the hospital was only 40 mts. away from the police Station,

yet he had not been sent for medical examination immediately after the filing of the report. He came with the investigating officer and was medically examined latter in the evening.

25. PW-1 further stated that at the time of incident, Jagdish Baba was 12-14 paces away from the scene of occurrence. He and Nanhey who was also at the same distance had asked the accused to refrain from beating the deceased. The accused had not tried to attack Jagdish. The marpeet took place only for half a minute. The Tabbal was about 4 finger wide and was of the shape of Axe (Kulhari). All the Tabbals were of the same shape. All the accused had attacked from all the sides. The ballam was of the size of 4-5 fingers. Smt. Vimla Devi had wept after the incident, but she had not taken the head of her husband in her lap, neither she had embraced the dead body. The clothes of Smt. Vimla Devi or of the witness were not stained with the blood of the deceased. Apart from the enmity on account of his giving the evidence, the accused bore enmity against them for other reasons also. Ram Pratap had also filed a case under Section 379 IPC in which they were acquitted. They had three houses in the Chulauli. One of the houses had been sold. They have a house adjoining the house of accused Dadu, and in the third house had therein shop. At the time of murder of Ram Gopal, his parents used to live in Phatak Wala house and as they were not keeping good-health, he used to stay with them in that house. But ordinarily, he lived in the house adjoining the the house of the accused Dadu. In his cross examination on behalf of accused Dadu the witness has admitted that in the house of Dadu, there were only two members namely the accused Dadu and his mother Smt. Ram Piari. Dadu had no enmity

against them, except his giving evidence against him in the murder case of Ram Gopal. He denied the suggestion that Dadu and his brother had been implicated with a view to get them punished and their houses may have been usurped by the witnessed.

26. PW-4 Vimla Devi, who is wife of the deceased Sheo Narain. She stated in her evidence that the incident occurred four years and four months back, at about noon, she was present in her house and she was trying to get her infant baby female child aged about two and a half year sleep. When she heard shrieks of her husband Sheo Narain who was crying that he was being killed come fast, she rushed out of the house. She also heard shouts of accused persons. When the witness and other reached at the door of the house of Dadu, accused Smt. Ram Piari and Jhunna who were present in the court at the time of evidence, started beating them. She saw the accused Dadu alias Jiya Lal, Lalauna, Sheo Das, Bhunesh, Aavdhesh, Ram Pratap, Chhuttan, Jhunna and Smt. Ram Piari alongwith Rajmon were attacking her husband. Lalauna, Dadu and Rajmon had Tabbals, while Bhunesh, Avdhesh and Ram Pratap had Barchhai, the remaining accused Lathies. She also deposed that her brother-in-law Lala Ram had come from the western side. The accused Sheo Das and Chhuttan had attacked Lala Ram. Her husband was attacked in front of the door of Jagdish Narain and Jagdish Narain and Nanhey were present in front of the house of Jagdish. 4-5 other accused persons who did not belong to her village had also come. All of them had raised hue and cry when the accused ran towards the east. Her husband had fallen down on the spot and had died instantaneously. She had sustained injury on her hand, on her upper leg, and on her back and at some other places, which were caused

by Smt. Ram Piari and Jhunna. Her brother in-law, Lala Ram had gone to file report at the police station Derapur. The police accompanied him from police station, her brother-in-law had written report and took it to police station. The Sub Inspector had carried out inquest of the body and transmitted the body from the spot. Thereafter another Sub Inspector reached there who recorded her statements of witness and her brother-in-law. Her medico legal examination was conducted at hospital and a temporary posture was drawn on her right hand, it was 09:00 hours in the night, therefore she was sent back to her house with a police personnel. The police took her at Rousla Hospital next day in the morning; but due to power cut X-ray of her hand could not be carried out. She went thereafter at the place where postmortem was being done. She was sent to her parental place at Shastri Nagar by her brother-in-law (Jeth) in the company of a person. X-ray of her hand was conducted thereafter on some date. Accused bore enmity with her husband as it was witness in the murder of his elder brother Ram Gopal.

27. The witness stated in her cross-examination that in her knowledge the accused had no other enmity except that her husband's brother had given evidence against the accused Ram Pratap etc. in the murder case of Ram Gopal. She also stated that her husband used to look after his cultivation and had set up a shop on the road side. Her husband and Lala Ram live jointly in the same house and would jointly cultivate the land. The shop on the road side also belonged to both the brothers. Her parents-in-law were living in Phatak Wala House, but food was cooked only in their house situated near the scene of occurrence. Sometime, her husband also slept at the shop.

28. PW-4 further stated that she and Lala Ram were not beaten in front of the house of Jagdish. She could not remember if she had told the Investigating Officer about their beating in front of the house of Jagdish Narain, though her version before the Investigating Officer is that witness Lala Ram and she herself were beaten in front of the house of Jagdish Narain. When Lala Ram came to rescue the deceased, four or five persons came from the western side and Lal Ram went back four or five paces. He again advanced, thereupon the accused ran away. When Lala Ram had turned back, his face was towards west and he had gone up to the house of Bane and Chhotey which adjoined each other.

29. PW-4 further stated that Barchhi was not pointed, but was flat (chapti) and was 4-5 fingers long and one or two fingers in width. The Tabbal was 4-5 fingers wide and 2-3 fingers deep. The marpeet took place for half a minute after he reached the scene of occurrence. She had not embraced her husband's dead body but had wept sitting by its side. Her clothes were not stained with his blood.

30. She next stated that her husband had gone to the shop after answering the call of nature in the morning at 07:30 am along with Lala Ram. The shop was being filled with earth. She had stated on her own that her husband had gone to the shop without eating anything. She had sent her daughters aged about 10 and 8 years at the shop to convey that food was ready at 11:30 am. Lala Ram's wife had gone to her parents' house those days. Shiv Das and Chhuttan had beaten Lala Ram, when he was coming from the side of the shop. She did not remember if she had told it to the Investigating Officer, but it does

not appear in her statement under Section 161 Cr.P.C. that Lala Ram was beaten by Shiv Das and Chhuttan.

31. The witness denied defence suggestion that her husband was attacked while he was going to answer the call of nature or was returning after easing himself in the darkness. She also denied defence suggestion that she deposed falsely on being tutored by her brother-in-law. She clarified that she had herself witnessed the incident. She is blessed with 5 children and she cannot tell a lie, her children are in front of her. Smt. Ram Piari was healthy at that time, but now she has become old. She also denied the suggestion that she got her injuries manufactured falsely. There was bright sunlight in days of incident. The relationship between the witness and her brother-in-law and husband were cordial. Lathi and Pola were lying near the dead body of her husband which was lying towards north. He was lying on a site of culvert, his legs were eastwards and head was westwards.

32. PW-5 Jagdish Narain, the last eyewitness had deposed that he was sitting in front of his house. Nanhey Tewari was sitting with him. He deposed that at about mid-day, the deceased was coming from west and was proceeding towards his house and had reached in front of the house of witness, when the accused persons came out of the house of accused Dadu, along with Rajmun and attacked the deceased with their arms. The witness attributed the same weapons to the accused persons which are shown in the statements of other eye-witnesses. PW2 Lala Ram and PW4 -Vimla Devi.

33. According to the witness when the deceased had raised alarm, his wife

Smt. Vimla Devi came out of the house when she reached near the house of accused Dadu she was attacked by Smt. Ram Piari. Lala Ram was coming behind the deceased. He challenged the accused whereupon, he was attacked by Shiv Das and Chhuttan near the door of Chhotey. Mahadeo, Asharfi, Ram Chander had also come from the west side. These persons as well as the witness Nanhey asked the accused persons to refrain from killing. Shiv Narain alias Rajjan pleaded to leave him, whereupon the accused persons ran away towards east. Shiv Narain had died on the spot. He had also stated that Nanhey, Mahadev, Asharfi and Ram Chander have colluded with the accused and they intend that the accused be acquitted. The informant Lala Ram came back at around 03:30 pm alongwith police, the witness acknowledged his signature on inquest report, which is marked as Ext. Ka-5. He also stated that the Sub Inspector visited the spot after inquest who recorded his statements. In cross-examination the witness has stated that he was an eye-witness and informant in the murder of his brother Ram Gopal. Raj Narain is not an eye-witness in that case and Nanhey a witness in the present case is real brother of Raj Narayan. Ram Swaroop was a witness in murder case of Ram Gopal, he had given eye-witness account in the murder case of his brother Ram Gopal. He was also informant in the case Ram Pratap, Bhunesh, Avdhesh, Jia Lal alias Dadu, beside Rajmon, Rameshwar and Jagannath (in all seven persons) were tried for murder of his brother. Five were sentenced to life imprisonment and two were sentenced to two year's rigorous imprisonment. He admitted that he and his brother Ram Gopal were tried for having caused hurt to one Chunnu in which Prem Narain father of Ram Pratap accused had given evidence

and they were sentenced to six months' rigorous imprisonment. The witnesses admitted that the litigation had taken place 20 years back, over the house presently occupied by Dadu between Dadu's father Munni Lal and Har Prasad, cousin of witness in which Har Prasad had lost. The witness denied that he wanted to usurp Dadu's house and added that there was no one in his family except the witness himself.

34. He further stated that he was sitting in the Dehri of his house and Nanhey was sitting 4-5 steps away on the Chabutra since about an hour before the incident. Many people were passing on the way. He claimed that 1 and 1/2 or 2 hours before the murder, the accused had gone into Dadu's house in separate manner and were carrying their arms. He had inquired from the accused as to why they were going with the arms. He had not suspected anything wrong. He further stated that although he had become afraid of the accused but had not told any other villager or Nanhey about the assembly of the accused. He had seen Shiv Narain coming at a distance 10-15 paces but he did not call and warn him. He remained in his Dehri thinking that he will go inside the house if there was any danger to him. When the accused started attacking Shiv Narain, he only asked the accused to refrain from doing so and made no other attempt to save his life. Smt. Vimla Devi was beaten, 7-8 steps away from her husband in front of the door of Dadu. The blade of Barchhi was about 4 fingers' long and 3 fingers wide. The Tabbal was of five fingers, circular like an Axe.

35. He further deposed that deceased was a Mahajan while the witness is a Brahmin. The deceased had some land

and did its cultivation himself. The deceased had no mango tree to keep watch over the crop during the night. His fields were situated on two or three sides of the village, some where 6 to 8 furlongs away.

36. The witness also stated that Lala Ram's brother Chunni had died in his childhood and one Savitri had filed objection before the Consolidation Authorities which were dismissed, he added that right since the murder of Ram Gopal the accused Ram Pratap was creating trouble. He admitted that he was a witness of the sale deed in respect of Phatak Wala House executed by Lala Ram, and he had given evidence in the proceedings under Section 145 Cr.P.C., in which the accused Ram Pratap was arrayed as opposite parties. He also admitted that he had opposed accused Ram Pratap in the election.

37. PW-6 Dr. B.K. Jain has stated that injuries Nos. 2,4,5,6 and 7 could be caused by a heavy sharp cutting weapon which includes a Tabbal and injury Nos. 3 and 10 could be caused by a sharp edged weapon whose sharp edge was of about 2 cm. Ballam and Barchhi are included in such instruments. In his opinion, the injuries Nos. 8, 9, and 14 could be caused by a blunt weapon like a Lathi. Instantaneous death was possible from these injuries and the injuries could have been caused on 29.06.1976 at about 12:00 noon.

38. Dr. B.K. Jain PW-6 has stated in his cross-examination that the time of death given by him, on the basis of rigor-mortis and de-composition. He stated that rigor-mortis passed off in upper limbs between 18 to 36 hours de-composition sets in after the rigor-mortis passes off. He has

estimated the time having regard to the fact that it was the month of June and to the climate of Kanpur. He had not mentioned in the report as to in which part of the body, decomposition had started. He admitted that he had not found any punctured or penetrating wound and that Barchhi and Ballam were weapons of piercing. He ruled out that the death could have taken place 36 hours earlier. Injuries Nos. 1, 2,4,5,6, and 7 had been caused. He agreed with the observation of Modi that shape and size of a wound generally corresponds to the weapon used in inflicting the injuries. He also stated the injuries Nos. 11, 12, 13 and 14 and 8 were on the back side of the body and could be caused by a fall on rough and hard surface.

39. Sub-Inspector Sri Mata Prasad PW-7 has stated that he has not shown in the site-plan or in the case diary the place from where the witnesses saw the occurrence. He had also not shown separately the places where Lala Ram and Smt. Vimla Devi were attacked. He admitted that an application dated 02.07.1976 moved by Sri Rajeshwar Prasad Dixit, uncle of Ram Pratap, accused had been sent to him for inquiry and affidavits were also filed by Ram Adhar and Sheetal Prasad. He had learnt in the course of investigation that Sheo Das accused was a dealer of Sugar and the statement of supply Inspector was also recorded by him. The witness also proved in his examination by the Court in the course of his cross-examination, the proclamation issued by the Chief Judicial Magistrate under Section 82 Cr.P.C. against the accused Ram Pratap, Bhunesh and Lalauna on 09.07.1976, marked Ext. C-1/1 to C-1/3. He also deposed that he had made attachment of the property of these accused under Fard Ext. C-2 on 05.09.1981. Warrants issued

against the accused Ram Pratap, Bhunesh, Lalauna Sheo Das, and Ext. 3 to 7 and the reports made by him have also been proved by him. He has also proved the Fard of attachment of the property of accused, Sheo Das, marked Ext. C-10 and their compliance reports marked C-9/1 and C-9/2 have also been proved by the witness. The property of the accused Chhuttan was also attached on 05.09.1976 under Fard C-11. In his cross-examination by the counsel of the accused, he stated that he had not made any report of the sale of the attached property. He denied that the houses of the accused were not searched or the accused Ram Pratap was not absconding.

40. In his further cross-examination, the witness has stated that Lala Ram had not told him that the deceased Sheo Narain used to do Pairvi in the Ram Gopal's murder case, or he used to ask Lala Ram to give evidence. Lala Ram had also not told him that he had made any application to the Superintendent of Police prior to this murder. Lala Ram had also not said in his statement that Lathi and blade of Barcchi were left by the accused on the spot. He had also not told him that the deceased was walking ahead, while he was following him. Smt. Vimla Devi had told him that she and Lala Ram were also attacked in front of the house of Jagdish Narain. She had not told him that Smt. Rama Piari and Chhunna had beaten her, nor had she told him that Lala Ram was beaten by Chuttan and Sheo Das. Smt. Vimla Devi had also not said before him that the accused had said that the deceased should be put to death otherwise, he will also make a statement like Ram Gopal.

41. The prosecution has also filed a certified copy of the judgment passed by the Additional Sessions Judge, Kanpur. Sri M.

Wahajuddin, on 21.12.1972, convicting the accused Ram Pratap, Bhunesh, Jiya Lal, Avdhesh and three others including Rajmun whose case has been separated, under Section 302/149 IPC and sentenced them to imprisonment for life, besides passing a sentence under Sections 147/148 IPC for the murder of Ram Gopal.

42. On conclusion of prosecution evidence the accused persons were examined under Section 313 Cr.P.C. , wherein they admitted that accused Ram Pratap, Avdhesh, Bhunesh and Dadu (as well as Rajmun whose case was separated) from S.T. No.76/76 were tried for committing the murder of Ram Gopal and was sentenced to life imprisonment by court of Session, but they claimed that in appeal their sentence was reduced to six years. The accused also admitted that Lala Ram, brother of the deceased had given evidence in that case, but they denied that the deceased had done pairvi in that case. They also admitted that accused Ram Pratap, Avdhesh, Bhunesh and Lalauna are real brothers and Shiv Das was their cousin. Smt. Ram Piari stated that accused Chhuttan and Jhunna were related to Ram Pratap etc. She claimed that she and her son Dadu had no connection with the other accused. They denied that they bore enmity with the deceased since the time of murder of Ram Gopal. They admitted that on 29.06.1976, the accused who had been sentenced for the murder of Ram Gopal were on bail pending their appeal. They denied having committed murder of Shiv Narain on 29.06.1976 at about noon in front of the house of Jagdish Narain or having caused hurt to Smt. Vimla Devi or Lala Ram when they tried to rescue the deceased.

43. Accused Avdhesh, Ram Pratap and Bhunesh are real brothers. The informant Lala Ram had lodged a false

report at Police Station with regard to murder of Shiv Narain alias Rajjan. This case was instituted due to enmity with the family of his maternal grand-father. He was on bail in Appeal after being convicted in murder case of Ram Gopal. He is not aware of the outcome of Forensic Science Laboratory (FSL) report. The witnesses have deposed falsely against him. The accused did not adduce any evidence in defence, his defence of denial.

44. Accused Jhunna alias Devendra Kumar claimed in his statement under Section 113 Cr.P.C. that he and his father Chhunna alias Krishna Kumar had gone to village Aureri riding motorcycle, as his cousin sister had died and they returned a day after this incident. Accused Krishan Kumar alias Chhuttan has supported the version of Jhunna alias Devendra Kumar.

45. Accused Bhanu Prakash alias Lalauna has stated that his brother Ram Pratap was village Pradhan, he was innocent. The police wanted to file final report, but has been won over by the informant Raja Ram. Therefore, he had surrendered on 28.02.1977. He claimed that police had shown the attachment of his property fictitiously.

46. Accused Shiv Das has claimed that he was a retailer in Sugar and had gone to Derapur on the date of incident, and he was not present in the village at the time of the incident. He surrendered on 28.02.1977 when the police colluded with Raja Ram. Accused Dadu stated that he was a poor man and had been wrongly implicated due to enmity with Jagdish with whom his father had litigation. Bhunesh stated that he was a brother of Ram Pratap who was the village Pradhan and there was a party-faction in the village. On the fateful day, he

claimed that he had gone with Budhi, son-in-law of Jhau Lal for doing pairvi in the case at 06:30 am before the Consolidation Court and remained there the whole day and returned in the evening.

47. The accused Ram Pratap had claimed that he was falsely implicated. He was Principal of a private School in Ladpur Panth and in connection with the report of the school building, he used to go there between 27.06.1976 and 30.06.1976 every day at 07:30 am in the morning and used to return back at 06:00 pm, he was present on the school on the date and time of the incident.

48. Accused Avdhesh has also stated that he had been implicated on account of enmity.

49. The accused persons produced five witnesses in their defence and have filed some documents as well. The accused Ram Pratap has also examined himself after moving an application under Section 315 Cr.P.C.. Accused Ram Pratap had deposed that he was M.A. B.Ed. And Principal of Janata Vidyalaya, Ladpur Panth. He had an old enmity with the informant Lala Ram as well as the eye witness Jagdish Narain. He denied that he was amongst the persons, who committed the murder of Sheo Nasrain alias Rajjan. He also stated that it was wrong to say that Shiv Narain was murdered at 12:00 noon in front of the house of Jagdish Narain. He further stated that between 29.06.1976 and 28.10.1977, he had stayed in the village and had been teaching the children in the school at Ladpur Panth at village Chilauli and had been looking after the work of Gram Pradhan. He remained Gram Pradhan of village Chilauli since May 1972 to till date. He also stated that he handed over the

copies of cashmemo etc. in connection with the repair of the school building to the investigation officer.

50. He stated in the cross-examination that in the murder case of Ram Gopal, he was also convicted and sentenced for life imprisonment alongwith accused Ram Gopal, Avdhesh, Ramesh, Dadu and Rajmun, but the sentence was reduced in appeal by High Court to six years rigorous imprisonment. At the time of murder of Sheo Narain, they were on bail during the pendency of appeal before Hon'ble High Court. He also admitted that Lala Ram had given evidence in the murder case of Ram Gopal and Jagdish Narain was the informant in that case. He, however denied that Shiv Narain had done pairvi in the earlier murder trial. The school of which he was a Principal was 14 Kms. Away and in the month of June, it was closed. He used to go there in connection with the repair work, where Phoos Bangla (thatched bangalow) was being raised. His attendance was not marked in any register.

51. In support of plea of alibi, the accused Ram Pratap had examined DW3 Sheetal Prasad who claimed that he was a Manager of Janta Vidyalaya, in the village Laluapur. The school building was being repaired and the repair-work was being looked after the Ram Pratap, who was then Head Master of the School. The repair work began on 27.06.1976. He also deposed that Ext. Kha-1 bearing dated 22.07.1976 . The account of repairs was maintained by Ram Pratap and the school was situated in his residential house.

52. DW-2 Sidh Nath, who deposed that he was Pradhan of the village Aurandi, Police Station Sikandra, District Kanpur Dehat. He further deposed that Chhuttan

and Jhunna accused of this case had come to his village early in the morning till day evening between 27th June to 30th June 1976. Chuttan and Jhunne are falsely implicated in this case.

53. DW-4 Rajeshdhar Dwivedi, a Supply Inspector, who had deposed that accused Shiv Shankar was not present on the spot on the date and time of incident. Shiv Das was retailer of Sugar and grain in village Chilauli and on 29.06.1976 he had gone to village Chilauli for verification of the stock of Shiv Lal and had made an endorsement on register, marked as Ext. Ka-9. He has also proved his endorsement as Ext. Kha-2 thereon. He reached the spot at 08:30 am in the morning after the verification. Shiv Das had accompanied him to Derapur. He got down from the bus at 11:00 am at Derapur and then they got separated on that date. Shiv Das kept on contacting him through out the day till 04:00 pm from time to time.

54. DW-1 Rameshwar had deposed that early in the morning when he awoke at around 4:30 – 5:00 am he heard a lot of hue and cry in front of his door. He slept in the night in the courtyard of the house, he came out and saw that Jagdish and Lala Ram were laying down Sheo Narain @ Rajjan. The house of Rajjan situates towards east of his house. He reached on the spot and saw that Rajjan had died. On hearing the hue and cry, wife of Rajjan and many villagers reached there. He inquired from Lala Ram about the incident and that he tried to speak something but Jagdish took him away. The police reached after 2-3 hours later and he told the police whatever he had seen. He got up on that day around 05:00 am. The Sub Inspector had interrogated him, but he is not sure as to whether he had recorded his statement. On

noticing the dead body it appeared that he died around one hours earlier. Ram Gopal was killed in the village in the year 1971 and the witness was also convicted and sentenced in that case.

55. The VIIth Additional Sessions Judge, (Non- Metropolitan Area) Kanpur Nagar after considering the submissions of learned counsel for the prosecution and defence and on appreciation of evidence on record recorded verdict of guilt against accused Devendra Kumar alias Jhunna, Jia Lal alias Dadu, Avdhesh, Smt. Ram Piari in S.T. No.75 of 1977 and consolidated S.T. No. 304 of 1977 against Ram Pratap, Bhuneshwar, Bhanu Prakash alias Laluna, Shiv Das and Krishan Kumar alias Chuttan for charges under Sections 147, 148, 302/149, 323/149 and 325/149 IPC and they were sentenced as stated above. All the sentences were directed to run concurrently.

56. Accused Rajmun had absconded during proceedings in S.T. No.75/1977 by order dated 22.07.1980 Learned trial court separated his case from co-accused persons. The accused Rajmun was later on apprehended and he was tried separately in S.T. No.75A of 1977. He was charged by learned trial judge on 01.07.1983 under Sections 148, 302/149, 323/149, 323/149 IPC and charges were read over and explained to him in hindi who pleaded not guilty and claimed to be tried.

57. In support of his case, the prosecution examined Lala Ram, the informant of the case, PW-2 Smt. Vimla Devi the wife of the deceased, PW-3 Jagdish Narain as witnesses. After recording of statements of PW-1, PW-2 and PW-3, learned counsel for the accused Sri

K.G. Pradhan dispensed with the proof of the documents relied by prosecution which were placed on record. He stated that the factum of death of deceased Sheo Narain has been admitted. He also admitted that a postmortem was done on the dead body of the deceased. He did not agitate or dispute the genuineness of any of the documents on record. He admitted that genuineness of all the documents without any reservation and did not like to cross examine any of the formal witnesses.

58. At this juncture learned State Counsel submitted that the prosecution case has been proved because there was no need or necessity of examination of any of the formal witnesses. Learned counsel for the accused had not opposed the prayer of the prosecution and accordingly prosecution evidence was closed.

59. Learned Trial Judge after, hearing the submissions of prosecution and defence and appreciating the evidence on record, recorded a verdict of conviction of accused appellant Rajmun in S.T. No.75A of 1977 for charge under Sections 302/149, 323/149, 325/149 and 148 of IPC and sentenced to life imprisonment for charge under Section 302/149 IPC, one year rigorous imprisonment for charge under Section 148 IPC, one year rigorous imprisonment for charge under Section 325/149 IPC and six months rigorous imprisonment for charge under Section 323/149 IPC.

60. The accused Rajmun in his statement under Section 313 Cr.P.C. stated that he was convicted alongwith co-accused persons in murder trial of Ram Gopal and he was sentenced to 20 years rigorous imprisonment, but the sentence was commuted to six years imprisonment by

High Court. Deceased Sheo Narain was not a pairkar of earlier murder trial.

61. It is noteworthy that during the pendency of instant Criminal Appeal appellant No.2 Jia Lal alias Dadu, appellant No.4 Smt. Ram Piari, appellant No.5 Ram Pratap, appellant No.6 Bhunesh, appellant No.7 Bhanu Prakash alias Laluna and appellant No.8 Shiv Das died in during pendency of Criminal Appeal No.2696 of 1981, therefore appeal was got dismissed against them as abated by orders of this Court.

62. This appeal survives only in respect of appellant No.1 Devendra Kumar alias Jhunna, appellant No.4 Avdhesh and appellant No.9 Krishan Kumar alias Chuttan in Criminal Appeal No.2696 of 1981 and in Criminal Appeal No.660 of 1984 in respect of sole appellant Rajmun.

63. Thus in nutshell, out of ten convicts/appellants six appellants have died during the pendency of their respective appeals and four appellants are surviving.

64. The plea of juvenility was taken by appellants Avdhesh and Devendra Kumar alias Jhunna. This Court vide order dated 14.07.2023 that the juvenility of the accused- appellant no.1 (Devendra Kumar @ Jhunna son of Kishan Kumar) and accused-appellant no.3 (Avdhesh Chandra son of Prem Narain) be determined by the competent Court/Authority under the Juvenile Justice (Care and Protection of Children) Act, 2015 within one month from today. The District Judge, Kanpur Dehat and the Superintendent of Police, Kanpur Dehat shall provide copies of all relevant papers to the Juvenile Justice Board within a week of the communication of this order to them. The Registrar General shall ensure

that a copy of this order is send to the District Judge, Kanpur Dehat within four days for compliance.

65. In compliance of Court's order dated 14.07.2023 the Juvenile Justice Board, Ramabai Nagar, Kanpur Dehat had submitted a report dated 25.08.2023, wherein it is stated that at the time of incident appellant No.3 Avdhesh was juvenile. Similarly vide communication dated 25.09.2023 the Principal Judge, Juvenile Justice Board, Kanpur Dehat has submitted his report, wherein he has stated that at the time of incident dated 29.06.1976 the appellant No.1 Devendra Kumar alias Jhunna was juvenile. On these set of facts, this is obvious that out of four surviving appellant No.1 Devendra Kumar Jhunna and appellant No.3 Avdhesh in Criminal Appeal No.2696 of 1981 are held to be juvenile at the time of incident.

66. Learned counsel for the appellants submitted that according to FIR version it is informant Lala Ram with whom the accused persons were having grudge and harboring animosity, as he had deposed against some of the accused persons in the present case in murder trial of Ram Gopal, the brother of PW-5 Jagdish Narain.

67. PW-3 Lala Ram has assumed role of eye-witness in the case and if he was present on the spot when deceased Sheo Narain was killed, there was no occasion for the accused appellants to spare him. The injuries detected on the person of PW-3 Lala Ram are of simple in nature and can be manufactured. This facts has emerged in the evidence of so called eye-witnesses that three persons had attacked the deceased by Barchhi(spare) which is a pointed weapon, but no punctured wound

was found in the postmortem report of the deceased. The approximate time of death shown in postmortem report suggests that incident occurred in wee hours on the date.

68. He also contended that learned trial courts have not considered the evidence of defence witnesses and brushed aside their evidence in cursory manner, whereas this is settled law that evidence of defence witnesses deserves equal regard as that of prosecution witnesses.

69. He next submitted that PW5 Jagdish Narain is a highly interested witness. He has been a witness in murder trial of Ram Gopal as well as in murder trial of Sheo Narain alias Rajjan. He is real brother of Ram Gopal, the deceased in earlier murder trial and some of the appellants in present appeal were accused and convict in the earlier murder trial. Although their sentence was later on commuted by the High Court. Therefore, PW-5 has every reason to seek conviction of present appellants in murder trial of Sheo Narain, due to strong enmity with them due to murder of his brother. Some accused persons have adduced clinching evidence of alibi and their presence elsewhere at the time of incident, but same has been overlooked by learned trial court while recording conviction against all the accused persons. The conduct of PW-4 Smt. Vimla Devi who is wife of the deceased is highly unnatural as PW-1 and PW-4 both have admitted that she did not try to embrace or touch the deceased even when he was left on the spot after being brutally assaulted by accused persons as she supposed him to be dead. No blood stain of the deceased were found on her clothes.

70. DW-5 deceased Ram Pratap has categorically stated in his evidence that the incident occurred at wee hours on the

date of incident and is is wrongly shown to have occurred at 12:00 noon. He has stated that he saw deceased Sheo Narain lying dead, when he reached the spot after hearing hue and cry at around 05:00 am and he was told by the witnesses that he was killed around one hour earlier. There is old enmity between him and informant Lala Ram and witness Jagdish Narain. He has been falsely implicated in this case due to village partybandi. He has been Gram Pradhan since 29.06.1997 to 28.10.1977. On meticulous analysis of the depositions in cross-examination of witnesses of fact namely Lala Ram, Smt. Vimla Devi and Jagdish Narain, they have claimed that they had seen the incident, becomes highly doubtful. In fact, the deceased was killed in the darkness at early hours of the day on 29.06.1976 and none of the eyewitnesses had seen the occurrence, and subsequently on due deliberations with police the accused persons were named in the FIR due to previous enmity. The informant side had strong motive to falsely implicate the accused persons and for that reason PW-5 Jagdish Narain, the brother of the deceased Ram Gopal who was deceased in earlier murder case has been projected as an eye witness in the present case. This is trite law that evidence of partisan witnesses needs meticulous and close scrutiny. None of the witnesses are independent. According to prosecution version itself there appeared a number of persons at the time of incident, but no independent witness has been produced in support of prosecution case. The medical evidence adduced by PW-6 Dr. B.K. Jain, the author of postmortem report of the deceased is not in conformity with the eyewitness account and in case of medical inconsistency with eye-witness account the benefit of doubt is liable to be extended to appellants.

71. Per contra, learned A.G.A. submitted that this is a broad day light

murder case and FIR has been lodged just after two hours of the incident by real brother of the deceased. The distance of police station from place of occurrence is 6 mile as per Chick FIR. Therefore, the FIR has been lodged with utmost promptness which fortifies the authenticity of prosecution version. The accused persons have strong motive to commit the offence. PW-2 and 4 who are brother and wife of deceased had themselves received injuries due to assault caused by accused persons when they tried to rescue the deceased. Therefore, the injuries are proved by evidence of doctor who conducted medico legal examination, therefore, their presence on the spot cannot be disbelieved. The deceased had suffered as many as 14 external injuries and serious injuries were found in internal examination of the deceased also, which corroborates the facts that a number of persons were involved in causing fatal assault on deceased. Blood stained Blade and Barchhi were found on the spot by investigating officer.

72. He further contended that even in cross-examination of eye-witnesses no such fact emerged which would cause a reasonable doubt on authenticity of prosecution case. Learned trial judge have recorded the convictions of the accused appellants and sentenced them in accordance with law. The impugned judgments are based on proper appreciation of evidence on record. No significant infirmity in the impugned judgments could be shown in contention raised on behalf of the appellants. The impugned judgments need no interference and the same deserve to be affirmed by this Hon'ble Court.

73. We have re-appreciated the evidence on record in the light of

submissions made by leaned counsel appearing for the parties.

74. In the instant case date and time of incident is stated to be 29.06.1976 at 12:00 hours in the day and FIR was lodged at the instance of informant Lala Ram on the same day at 02:15 pm at P.S. Derapur Kanpur. On the basis of written report in Chik FIR Ext. Ka-22, the distance between police station and place of occurrence is shown as six miles. The informant is real brother of the deceased and also an eyewitness alongwith other eye-witnesses Vimla Devi the injured and wife of deceased, Shiv Narayan, Jagdish, Nanahey, Asharfi Lal and Ram Chand. Vimla Devi also received simple and grievous injuries in the incident who has been examined as PW-4 during trial. Keeping in view the facts and circumstances of the case and the fact that FIR was lodged just after two hours of the incident, it may be held that FIR in the case has been lodged with utmost promptitude without any unreasonable delay which increases the reliability in FIR and it rules out any embellishment, after thought or embroidery in prosecution version. There is nothing on record to suggest that FIR is ante timed. Informant Lala Ram and Vimla Devi the wife of Sheo Narain were also examined by government doctor, PW-1 Dr. Surendra Singh at P.S. Derapur on 29.06.1976 at around 08:00 pm to 08:30 pm, their medico legal examination was conducted as police case and no doubt can be raised about authenticity of their injury report which reveals that Smt. Vimla Devi has received five injuries on her person at the time of her medico legal examination, out of which one injury was found grievous which was on her wrist joint. Informant Lala Ram also sustained three injuries which were found simple in his medico

legal examination report. The evidence of injured witness is held on high-pedestal in comparison to evidence of other witnesses, as persons of an injured witness on the place of incident appears more probable than other witnesses. In prosecution version every accused has been assigned specific weapon and this fact has been proved in evidence of witnesses of facts.

75. According to FIR version and evidence of witnesses of facts namely PW-1 Surendra Singh, PW-2 Lala Ram, PW-4 Vimla Devi and PW-5 Jagdish Narayan, this fact is proved that at the time of incident accused, Devendra Kumar alias Jhunna, Shiv Das, Krishna Kumar alias Chuttan and Ram Piari were armed with lathi, Ram Pratap, Avdhesh and Bhunesh were armed with Barchhai (a pointed sharp edged weapon), Dadu, Lalauna and Rajmun were armed with Tabbal (a heavy sharp edged weapon) attacked the deceased Shiv Narain alias Rajjan by surrounding him on public way in the village in front of the house of Jagdish Narain PW-5. The accused persons were prompted by motive to commit the offence, as prior to this incident dated 29.06.1976 one Ram Gopal of the village was killed in which accused Ram Pratap and other were also accused and the informant Lala Ram had testified in that murder case against Ram Pratap and others, in which Ram Pratap and others were convicted and sentenced to twenty years imprisonment, subsequently they were enlarged on bail. This fact is stated in FIR itself that accused persons Ram Pratap and others were hand in gloves with the informant and his family members due to bad enmity. The deceased was going to take meal at his home at the time of incident when he was waylaid by the accused assailants and due

to fatal injuries caused by accused persons in concerted manner, he died on the spot.

76. In postmortem report of deceased Shiv Narayan, he appears to have received as many as fourteen injuries on his person, out of which there are eight incised wounds are found on different parts of head and face. The deceased received six incised wounds on his head and one incised wound on the frond of left leg, other injuries are abrasion and contusion. In internal examination, frontal, right temporal and right parietal and occipital bones cut found, the doctor has also opined that the cause of death was shock and hemorrhage due to ante-mortem injuries. Thus, the medical evidence proves that the injuries of deceased Shiv Narain were sufficient to cause death and all the accused persons armed by their respective weapons on the date time and incident in concerted manner with intention to kill.

77. PW-6 Dr. V.K. Jain had proved postmortem report of the deceased Shiv Narain as Ext. Ka-6 by his evidence. He has stated in his evidence that he performed postmortem examination on the deceased Shiv Narain on 30.06.1976 at 04:40 pm, who had received fourteen injuries on his person, his stomach was empty, semi-digested food was found in small intestine and faecal matter was present in large intestine. He stated in his examination in chief that injury No.1,2,3,4,5,6 and 7 found on the person of the deceased were caused by some heavy sharp edged weapon, in which Tabbal is also included. Injuries No.3 and 10 could also be caused by some sharp edged weapon, which edge is around 2 cm in width in which Ballam and Barchhai may also be included. Injury Nos.

8,9,11 and 14 might have been caused by Lathi. The injuries found on the person of the deceased were sufficient to cause death in the ordinary course of nature. Instantaneous death was probable by such injuries found on the persons of the deceased. In cross-examination he stated that Tabbal is heavy sharp edged weapon and he had not found any punctured or penetrating wound by Tabbal, Barchhai and Ballam are penetrating weapons. Injury Nos.1,2,3,13, 14 and 8 can be caused by fall on hard surface. Therefore, from medical evidence also the mode and manner of the incident, and injuries found on the person of the deceased and injured witnesses Lala Ram and Vimla Devi are proved and the sworn testimony of witnesses of fact/eye witnesses finds corroboration from medical evidence in this case. The doctor has opined in his evidence that the injuries found on person of the deceased were mostly caused by some heavy sharp edged weapon like Tabbal and some injuries would have been caused by a weapon like Barchhai/Ballam. This statement of PW-4 Vimla Devi in cross examination on behalf of the accused persons that Barchhai taken by three accused persons namely Avdhesh, Prem Narain and Munesh were flat and not pointed, cannot be disbelieved. Thus on the basis of arguments of learned counsel for the appellant, it cannot be assumed that only due to the fact that no punctured wound was found on the person of the deceased, the presence of accused persons who were said to be armed with Barchhai cannot be doubted or in other words only on that count their presence on the place of occurrence will be ruled out.

78. PW-5 Jagdish Narain has testified in his evidence that the incident occurred in front of the house and he had

seen the incident. This fact is stated in FIR itself that house of Jagdish Narain lies in front of the place of incident and on that reason his presence on the spot is natural as he is supposed to be a witness of the spot and only on account of prior enmity with some accused persons his evidence cannot be brushed aside.

79. Learned trial court has rightly discarded the defence evidence which has been adduced on the point that occurrence took place in wee hours of the day in the darkness and none of the witnesses had seen the incident and accused persons are named in the FIR due to partybandi and earlier an enmity on account of murder of Ram Gopal which took place some years earlier to this incident. Informant Lala Ram has stated in his evidence that accused persons were planning to kill him and his family members, as he had deposed against them in murder case of Ram Gopal. Accused persons are related together and they are associated with Gram Pradhan, Ram Pratap. Deceased was stated to be on way to home to take his meal in the noon from his shop and the witness was behind him. He could not see that from which direction the accused persons arrived, they attacked his brother by their respective weapons and on hearing his scream he ran towards him, in the meanwhile wife of deceased Vimla Devi and witnesses had also arrived there. Accused persons assaulted him and Vimla Devi by lathis and on interference of witnesses they ran towards east. Only due to fact that informant with whom accused persons had strong enmity was spared in the incident by causing simple injuries and was not assaulted by dangerous weapons, his presence cannot be doubted as he stated in his evidence that he and his sister-in-law Vimla Devi were rescued by witnesses.

PW4 Vimla Devi and PW5 Jagdish Narain have also given eye-witness account of the incident and supported the prosecution version. PW-5 Jagdish Narain has been examined as eye witness and in his evidence this fact has also emerged that some of the accused persons in the present trial were convicted and sentenced by the court in the murder case of Ram Gopal, his brother. A defence suggestion has been given to this witness that he had opposed the accused Ram Pratap in Gram Pradhan election and for that reason he was in opposition to him after he was elected in the election.

80. So far as motive is concerned motive is specifically attributed to accused persons against the informant PW-1 Lala Ram who is real brother of the deceased. Hon'ble Supreme Court in a catena of judgments including a recent judgment in *Chandan Vs. The State (Delhi Admin)* 2024 Live Law (SC) 288 held that lack or absence of motive on the part of the accused is in consequential when direct evidence establishes the crime.

81. On re-appreciation of evidence adduced during trial and giving a meticulous perusal of judgment under appeal, we are of the considered opinion that prosecution has been successful to prove its case where reasonable doubt against surviving accused Devendra Kumar alias Jhunna, Krishna Kumar alias Chuttan, Rajmun and Avdhesh. This fact is proved beyond reasonable doubt that surviving accused had formed unlawful assembly together with co-accused on the date and time of the incident and in prosecution of common objection of the assembly. They brutally assaulted the deceased in concerted manner by their respective weapons with intention to kill him and caused fatal

injuries on his person, which was sufficient to cause death and on account of the injuries sustained in the incident he died instantaneously. This fact is also proved beyond doubt that in prosecution of common object surviving accused and co-accused persons assaulted the informant Lala Ram and wife of deceased namely Smt. Vimla Devi and caused them simple and grievous injuries. Therefore, the charge under Sections 302/149, 325/149 and 323/149,147 IPC is proved against surviving accused persons and charge under Section 148 IPC is also proved against accused Avdhesh. Therefore, we find no legal or factual error in the impugned order passed by learned trial court, whereby surviving accused and co-accused persons were convicted of the aforesaid charges. The prosecution has successfully proved charges framed against appellants beyond reasonable doubt.

82. Accused/appellants Devendra Kumar alias Jhunna and Avdhesh were found juvenile on the date of incident in an inquiry carried out by Juvenile Justice Board, Kanpur Dehat, and on the basis of report of Juvenile Justice Board they are held to be juvenile on the date of incident.

83. Hon'ble Supreme Court in **Satya Deo Alias Bhoorey Vs. State of U.P. AIR 2020 (SC) 4526** considered the claim of juvenility made by an accused taken at the stage of first appeal before High Court where incident had occurred on 11.12.1981. Hon'ble Supreme Court considered the various provisions of Juvenile Justice (Care And Protection Of Children) Act, 2000 and after giving a thoughtful consideration to statutory provisions held in paragraph 15 that it is, thus, manifest from a conjoint reading of Sections 2(k), 2(l), 7-A, 20 and 49 of the Act of 2000, read with Rules 12

and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 that all persons who were below the age of eighteen years on the date of commission of the offence even prior to 1-4-2001 would be treated as juvenile, if the accused claiming plea of juvenility was less than 18 years of age on the date of commission of offence, he is entitled to be treated as juvenile and will be given benefit as per 2000 Act, notwithstanding the fact that the accused was not entitled to the benefit of being a juvenile on the date of offence, under Juvenile Justice Act, 1986 as Act was passed after commissioning of this offence.

84. Accordingly the juvenile in conflict of law in the present case namely Devendra Kumar alias Jhunna and Avdhesh will be dealtwith under the provisions of Juvenile Justice (Care And Protection Of Children) Act, 2000 inspite of the fact that occurrence took place in the year 1976 and during trial of the case Juvenile Justice Act, 1986 was enacted and commenced.

85. Consequently conviction of surviving Appellants for above stated charged recorded by the trial court is affirmed, so sentence awarded to Juvenile accused Devendra @ Jhunna and Avdhesh is quashed. Sentence awarded to appellants Krishna Kumar @ Chuttan and Rajmun is affirmed.

86. However, on the basis of foregoing reasons the accused Devendra Kumar alias Jhunna and Avdhesh having being held as juvenile in conflict of law on the date of incident by Juvenile Justice Board concerned, their conviction is upheld for said charges, but their sentence is set-aside.

87. In the light of aforesaid judgment the appellants Devendra Kumar

alias Jhunna and Avdhesh are liable to be dealtwith under Section 15 of Juvenile Justice (Care and Protection of Children) Act, 2000 which is reproduced as under:-

15. Order that may be passed regarding juvenile

(1)Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it so thinks fit,

(a)allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;

(b)direct the juvenile to participate in group counselling and similar activities;

(c)order the juvenile to perform community service;

(d)order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e)direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(f)direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the

juvenile for any period not exceeding three years;

(g) make an order directing the juvenile to be sent to a special home for a period of three years: [Substituted by Act 33 of 2006, Section 12, for Clause (g) (w.e.f. 22-8-2006).

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

(2)The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an order.

(3)Where an order under clause (d), clause (e) or clause (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law:Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution

under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

(4)The Board shall while making a supervision order under sub-section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be under whose care the juvenile has been placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.

Prior to its substitution, Clause (g) read as under:-(g) make an order directing the juvenile to be sent to a special home,-(i) in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years;(ii) in case of any other juvenile for the period until he ceases to be a juvenile:Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit."

88. As the appellants Devendra Kumar alias Jhunna and Avdhesh have attained the age of majority many decades ago, no purpose of law will be served to keep them in special and juvenile home.

89. Apart from that the appellants Devendra Kumar alias Jhunna and Avdhesh

are directed to deposit Rs.50,000/- fine before the court concerned, which will be payable as compensation to Vimla Devi-PW-4 the wife of the deceased Shiv Narain and in case of her death, the said amount will be paid to her legal heirs to the satisfaction of trial court.

90. Appeal stands partly allowed in respect of appellants Devendra Kumar @ Jhunna and Avdhesh, as the sentence awarded to them by trial court is quashed and they have been dealt with under Section 15 of Juvenile Justice (Care and Protection of Children) Act, 2000. Appeal is dismissed in respect of convict Krishna Kumar @ Chuttan and Rajmun.

91. As conviction and sentence passed by learned court below in respect of accused Krishan Kumar alias Chuttan and Rajmun is affirmed in present appeal by this judgment and they have been enlarged on bail during the pendency of appeal, they are directed to surrender before the trial court to serve the sentence awarded by court below in impugned judgment within two weeks and in case of their non-appearance the trial court shall ensure their arrest by issuing appropriate process against them, and on their appearance they will be sent to jail custody for undergoing the sentence as awarded by trial court and affirmed by this Court.

92. Let a copy of this judgment be sent to court below/ Session Judge, as the case may be for necessary compliance.

93. This court appreciates the valuable assistance and hard work which has been put in by Sri Ajay Kumar Pandey, learned Amicus Curiae, we quantify his fee as Rs.25,000/- which shall be paid to him by the High Court Legal Services Authority, Allahabad High Court. Learned Registrar

General of the High Court will oversee the payment.

CRIMINAL APPEAL No. -2696 of 1981

Appellant :- Devendra Kumar @ Jhunna And Others

Respondent :- State of U.P.

Counsel for Appellant :- Ajay Kumar Pandey, Arvind Kumar Tripathi, Ashish Kumar, K.K. Srivastava, Roshan Khan, Satish Trivedi

Counsel for Respondent :- Mayank Bhushan Nath Tripathi

Hon'ble Siddhartha Varma, J.

Hon'ble Ram Manohar Narayan Mishra, J.

Criminal Misc. Correction Application No.4 of 2025 :

Heard learned counsel for the parties. .

On the first page of the judgment dated 21.1.2025, the names of Hon'ble Judges i.e. "Hon'ble Siddharth Varma, J." and "Hon'ble Ram Manohar Narain Mishra, J." shall now be read as "Hon'ble Siddhartha Varma, J." and "Hon'ble Ram Manohar Narayan Mishra, J.".

The application is, accordingly, allowed.

(2025) 3 ILRA 415

APPELLATE JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 06.03.2025

BEFORE

**THE HON'BLE SIDDHARTH, J.
THE HON'BLE SUBHASH CHANDRA
SHARMA, J.**

Criminal Appeal No. 3376 of 2010

And

Criminal Appeal Nos. 3122 of 2010, 3168 of 2010 & 3507 of 2010

Ram Sujan

State of U.P.

Versus

...Appellant

...Respondent

Counsel for the Appellant:

Sri Kamleshwar Singh, Sri Raj Karan Yadav, Sri Jitendra Singh

Counsel for the Respondent:

G.A.

Criminal Law – Common object – Testimony of interested witnesses – Unexplained delay in test identification parade – Conviction under Sections 302/149, 148 IPC and 10/12 Dacoity Affected Area Act – Marriage party attacked by assailants resulting in death of six persons and injuries to others – FIR initially lodged against unknown persons – Prosecution story later evolved to implicate named accused through St.ments of witnesses and test identification – Delay in recording witness St.ments and holding of TIP remained unexplained – TIP held after more than four months from incident – Validity – Delay of over four months – Not explained satisfactorily – Identification after accused were shown to witnesses during custody and transit – Not reliable evidence for conviction Allegations of witness tutoring and improper investigation – Trial court convicted accused under multiple charges – High Court found serious discrepancies in prosecution case including non-disclosure of names in initial stages, contradictions in testimonies, delayed identification, and lack of motive – Prosecution failed to establish guilt beyond reasonable doubt – Conviction set aside and appellants acquitted. (Paras 52, 54, 56 to 61, 66, and 67)

HELD:

The implication of the appellants has been made on the basis of test identification parade conducted after more than a month. The Apex Court in the case of Rajesh Govind Jagesha Vs St. of Maharastra AIR 2000 SC 160 has held that where identification parade was conducted after inordinate delay of five weeks from arrest of the accused and there was no trustworthy explanation of delay, implication of the accused on the basis of such test identification was not

justified and the accused was entitled to benefit of doubt... (Para 52)

Facts which establish the identity of an accused person are relevant under S. 9 of the Indian Evidence Act. As a general rule, the substantive evidence of a witness is a St.ment made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances he came to pick out the particular accused person and the details of the part which the accused played in the crime in question with reasonable particularity. The purpose of a prior test identification, therefore, seems to be to test and strengthen the trustworthiness of that evidence. It is accordingly. considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceeding. There may, however, be exceptions to this general rule, when, for example, the court is impressed by a particular witness, on whose testimony it can safely rely, without such or other cor-roboration. The identification parades belong to the investigation stage. They are generally held during the course of investigation with the primary object of enabling the witnesses to identify persons concerned in the offence, who were not previously known to them. This serves to satisfy the investigating officers of the bona fides of the prosecution witnesses and also to furnish evidence to corroborate their testimony in court. Identification proceedings in their legal effect amount simply to this: that certain persons are brought to jail or some other place and make St.ments either express or implied that certain individuals whom they point out are persons whom they recognise as having been concerned in the crime. They do not constitute substantive evidence. These parades are essentially governed by s. 162, Cr. P.C. It is for this reason that the identification parades in this case seem to have been held under the supervision of a Magistrate. Keeping in view the purpose of identification parades the Magistrates holding them are expected to take all possible precautions to eliminate any suspicion of

unfairness and to reduce the chance of testimonial error. They must, therefore, take intelligent interest in the proceedings, bearing in mind two considerations : (i) that the life and liberty of an accused may depend on their vigilance and caution and (ii) that justice should be done in the identification. Those proceedings should not make it impossible for the identifiers who, after all, have, as a rule, only fleeting glimpses of the person they are supposed to identify. Generally speaking, the Magistrate must make a note of every objection raised by an accused at the time of identification and the steps taken by them to ensure fairness to the accused, so that the court which is to judge the value of the identification evidence may take them into consideration in the appreciation of that evidence. The power to identify, it may be kept in view, varies according to the power of observation and memory of the person identifying and each case depends on its own facts, but there are two factors which seem to be of basic importance in the evaluation of identification. The persons required to identify an accused should have had no opportunity of seeing him after the commission of the crime and before identification and secondly that no mistakes are made by them or the mistakes made are negligible. The identification to be of value should also be held without much delay. The number of persons mixed up with the accused should be reasonably large and their bearing and general appearance not glaringly dissimilar. The evidence as to identification deserves, therefore, to be subjected to a close and careful scrutiny by the Court. (Para 60)

The Apex Court in the case of *Rajesh Govind Jagesha vs St. Of Maharashtra*, AIR 2000 SUPREME COURT 160 has held that the physical appearance of the suspect produced for identification parade should not be changed. Where the suspect was having beard and long hairs at the time of lodging of F.I.R. and no person with beard and long hairs was included in the parade, but the witness identified the suspect even after his changed appearance, the possibility of the witness having seen the said accused between the date of arrest and test identification parade cannot be ruled out. The Apex Court also held in this case that delay in holding of such parade is fatal for the prosecution where there is no justifiable reason

shown before the court justifying the delay. Apex Court has also held that where the ocular testimony of the witnesses is clear, cogent and reliable, the questions of motive is of no importance. (Para 61)

In view of the above consideration, we are of the view that the prosecution has failed to prove the case against the appellants beyond reasonable doubt. Since the recording of the statements of the witnesses under section 161 Cr.P.C. to their statements recorded before court none of the witnesses pointed out to any special features of any of the accused. All the witnesses saw the miscreants for a very short while. Test identification parade of accused took after 4 to 7 months. It cannot be said with certainty that the witnesses had correctly identified the accused. In such circumstances court should not have recorded their conviction on the basis of such evidence. (Para 67)

Appeals allowed. (E-14)

List of Cases cited:

1. *Rajesh Govind Jagesha Vs St. of Mah.* AIR 2000 SC 160
2. *Asharfi & anr. Vs St. (Allahabad) of U.P.* 1961 AIR (Allahabad) 153
3. *Md. Sajjad @ Raju @ Salim Vs St. of W.B.* (Criminal Appeal No. 1953 of 2010)

(Delivered by Hon'ble Siddharth, J.)

2. The above noted criminal appeals have been filed against the judgment and order dated 20.04.2010 passed by Special Judge, (Dacoity Affected Area) Act, Banda in Special Sessions Trial No. 53 of 2023, State vs. Anurag Mishra and Another; Special Sessions Trial No. 74/2023, State Vs. Ramji Vs. Another and Special Sessions Trial No. 76/2003, State Vs. Chhota @ Rajesh and Another, by which appellants have been convicted and sentenced to one year's rigorous

imprisonment and Rs. 500/- fine under Section 148 IPC and in default of payment of fine to undergo two months additional rigorous imprisonment. Appellants have been further convicted under Section 302 IPC read with Section 149 IPC for life imprisonment and Rs. 5,000/- fine and in default of payment of fine to undergo one year's additional rigorous imprisonment.

3. Prosecution case is that the informant, Chhedi Lal Dwivedi, lodged the F.I.R stating that on 22.01.2003 baarat of son of his brother-in-law (sadhu), Santosh @ Chota Gautam, had gone from District Banda to District Panna in Madhya Pradesh at the house of Vansh Pratap Pathak. On the next day i.e., 23.01.2023 at about 7 a.m the members of the marriage party, namely, Chhedi Lal, the informant, Madan Mohan, Niranjana Verma, Sudhir Kumar Pandey, Ram Sundar Dwivedi, Shailendra Tiwari, Neelu Dwivedi, left in one marshal car, driven by Breznev Kumar @ Guddu, for having darshan of Neelkanth Mahadev Temple, in Kalinjar fort. In the second marshal jeep behind the first jeep, Ashok Kumar Tiwari, his daughter, Shweta, Gandharva Singh Bundela, Puneet Tiwari, Shikhar Pandey, aged about 3 years, Kumari Rashi Pandey, aged about 5 years and Kumari Puja Bundela, aged about 11 years, were accompanying them and it was being driven by, Pintu Chaurasia. When they were returning in two vehicles at about 09:00 a.m., they were surrounded by miscreants and both the drivers stopped the vehicles because of fear. All the persons were directed to come out of vehicles and to turn back and run. When the above noted persons turned back and started running upwards towards the hill, the miscreants abused them and fired from behind from rifles and guns. The informant in order to save himself fell on the ground and came

rolling down from the height. Because of firing of the miscreants Ram Sundar Dwivedi, Shailendra @ Shalu, Ashok Kumar Tiwari, Kumari Shweta Tiwari, Gandharva @ Bundela, Sudhir Kumar Pandey, died. Puneet Tiwari, Madan Mohan and Breznev Kumar @ Guddu, suffered injuries. The injured were taken to Banda Hospital in two vehicles. Informant also suffered injuries because of falling and rolling from the height.

4. On the basis of aforesaid report made to the police, F.I.R. was lodged against 5 unknown accused. Investigating officer conducted investigation of the case and after completing the formalities, charge sheet was submitted against Anurag Mishra, Ram Sujan, Ramji @ Ram Lal, Raj Karan @ Pappu, Chota @ Rajpal and Kuber Singh. The trial court framed charges against them under Sections- 148, 307/149, 302/149, 504 IPC and 10/12 Dacoity Affected Area Act. All the accused denied charges and sought trial.

5. In order to prove the prosecution case, the prosecution produced P.W.-1, informant, Chhedi Lal; P.W.-2, Breznev @ Guddan; P.W.-3, Niranjana; P.W.-4, Raja; P.W.-5, Deendayal Sahu; P.W.-6, Constable Bare Lal; P.W.-7, Dr. B.K. Saxena; P.W.-8, Dr. Rauf Siddhiqui; P.W.-9, Inspector Tulsi Ram Sakyavar; P.W.- 10, Sub-Inspector Mahendra Singh Yadav; P.W.-11, Sub-Inspector Ravindra Kumar Mishra; P.W.-12, Constable 236 Bare Lal; P.W.-13, Constable Shiv Bardan; P.W.-14, Sub-Inspector Chandrabhan Singh; P.W.-15, Bal Mukund Pandey; P.W.-16, Ram Narayan, Joint Secretary Development Authority; P.W.-17, S.D.M., Nandan Chakravarti; P.W.-18, Head Constable Jagdish Babu and P.W.-19, Sub-Inspector, Ram Das Chaudhary.

6. The statements of accused were recorded under Section 313 Cr.P.C., wherein they pleaded innocence and stated they have been implicated on account of enmity in this case. Defence side produced, D.W.-1, Sita Ram Patel, D.W.-2, Suraj Chaturvedi and P.W.-3, Mata Prasad Patel.

7. P.W.-1 in his examination-in-chief repeated the contents of the F.I.R. He further stated that after two vehicles were stopped by the miscreant, one of them came with the a rifle and pointed it towards the vehicles. He asked everyone to come out of the vehicles. The aforesaid miscreant was Pappu Yadav present in court. Thereafter four miscreants came armed with double barrel guns and the others were having single barrel guns. All of them directed the informant and his companions to run because they wanted to teach them lesson. All started firing together and four of them, namely, Pappu, Arun Mishra, Ram Sujan and Vijay @ Chota, are present in court. Six persons, namely, Ashok Tiwari, Gandharva Singh Bundela, Shailendra @ Shalu, Ram Sunder Diwedi and Sudhir Kumar Pandey and Kumari Shweta Tiwari, died on the spot after suffering gun shot injuries. Madan Mohan, Puneet, Breznev @ Guddan, were injured. Thereafter, Niranjana Verma and the two drivers who were hiding in the bushes came out took the deceased and the injured to the hospital in the two vehicles. Later, injured, Madan Mohan and Puneet Tiwari also died during treatment.

8. P.W.-1, went to the police station in a jeep without having any registration number. In the way he met Raja Gautam and Prabha Shankar Tripathi, who had also come in the Barat. He informed them about the incident. He took paper and pen from the shop and Prabha Shankar Tripathi and wrote the application. He

himself got the F.I.R. lodged on his oral statement and identified accused in District Jail, Banda. His injuries were medically examined and his statement was recorded by the investigating officer.

9. In cross-examination, P.W.-1, stated that he is the eldest among his three brothers. House of his parents-in-law is at Simariya Kushal, near Attara. Santosh Gautam is not his real brother-in-law (sadhu). Ashok Kumar Tiwari, is the brother-in-law (sala) of Santosh Gautam, uncle (mama) of Sudheer Kumar and brother-in-law (sala) of his elder brother, Sudheer Kumar Pandey and resides in Tindwari which is his nani's place. His mother was a teacher and resided there. Relationship of Sudheer Kumar Pandey with his parents was normal. He expressed ignorance about the father of Sudheer keeping another woman and was unwilling to give any property to Sudheer. He also expressed ignorance about the fact that Ashok Kumar Tiwari helped Sudheer. There was minor dispute between Santosh Gautam and his brother, Ashok Gautam. Ashok Gautam, had not come in the marriage at Kalinjer. He never informed reasons of the incident to the investigating officer nor he informed the Diwan of the police station about the dispute between Santosh Kumar Gautam and Ashok Kumar Gautam. He only informed that some dispute is going on between Santosh Gautam and his brother, Ashok Kumar Gautam. They are not at talking terms and Ashok Kumar Gautam had not come in the marriage. After lodging of the F.I.R. a constable took him for medical examination. He remained in the police station for the whole day on 23.01.2003. His statement under section 161 Cr.P.C was recorded immediately. The programme of going to have darshan at Neelkanth

Mahadev Temple was made on the earlier night in the presence of witness, Gopal, who accompanied them on a motorcycle. He had reached the temple after 15-20 minutes alongwith his younger brother, Virendra Pandey. They went inside the temple with him and also came back with him. He denied that Gopal came to the temple after P.W.-1 and his companions had taken Gopal and Virendra, both in the jeep and they were also sitting in their jeep. Gopal and Virendra, left on motorcycle before them. When the jeeps were stopped on the threat of the miscreants, Gopal was not seen anywhere nor any other person from public was there. In the report made at police station, he had not mentioned the names of Mithlesh Narayan Garg, Dinesh Tiwari and his younger brother on account of nervousness and fear. He had mentioned the name of Kr. Dimpri Tiwari and Pushkar @ Saurabh, but if it is not mentioned in F.I.R, he could not tell the reason. He had not mentioned in the F.I.R. that Mithlesh Kumar Garg, was driver of the vehicle, but stated that Breznev Kumar was driving the same. Whether he informed the investigating officer about this fact or not, he is not clear. In examination-in-chief, P.W.-1, stated that Kamlesh Garg was driver the vehicle, but it was being driving by Mithlesh Garg. Mithlesh Garg had brought the injured from the place of incident in his vehicle accompanied by Niranjana Verma and Bindesh. From Baheri to Kalinjer, vehicle no. U.P. 90 A 7133 was brought by Breznev @ Guddan. Mithlesh Kumar Garg is not related to him and Niranjana Verma is not a driver. Mithlesh Garg was his childhood friend, who stated that he does not knows driving hence, Breznev @ Guddan, drove the vehicle. In the incident, Guddan, got injured and, thereafter, Mithlesh Garg brought the vehicle. The vehicle belongs to Lalji Kuril

and it was taken on hire by Breznev @ Guddan. Permanent driver, Mithlesh Narayan Garg, also accompanied Breznev, who did not had driving license and he had suffered injury on his right hand by fire arm.

10. P.W.-1, did not informed the investigating officer about accused (Pappu) pointing gun for the first time rather he stated that one miscreant armed with rifle came out. He did not recognized, Pappu, therefore, he could not tell his name. After test identification parade, he came to know that the name of the aforesaid miscreant was Pappu. He could not tell when the identification parade took place. He could not identify Pappu in test identification parade because patches were put on his face at number of places. He recognized him only when he saw him in court. Neelu, identified Pappu who came to the court on 19.02.2024 and he told him that this miscreant is Pappu. After test identification parade, he came to know that these are the accused involved in the accident. Pappu Yadav, is involved in the incident. During test identification parade names of the accused were informed and it was told that these persons are to be identified. He had seen names of number of accused in newspapers also. Santosh used to come his village 3-4 years prior to his marriage. He does not knows his elder brother, Ashok. Murder of father of Santosh, namely, Lala Ram Kishore, was committed by his real Fufa, Buddh Vilash. Buddh Vilash, was murdered by Ashok and Indraprakash got injured in the incident. He denied knowledge that Ashok was punished with the sentence of hanging till death in the abvoe murder case and was pardoned on mercy petition by the President of India. He also denied knowledge that Ashok was convicted for seven years imprisonment in

a case of dacoity in Madhya Pradesh and has been released only about 2-3 years ago. He also denied the knowledge that son of the Buddha Vilash was a member of Santu Gang. His brother, Madan Mohan, died in the way. He had suffered scratches on his right knee and left leg. The test identification parade of the accused did not take place together. On 14.05.200, Anurag and Ram Sujan, were identified and on 05.07.2003 Vijay and Pappu were identified. No other accused was identified. He denied that Anurag Mishra and Ram Sujan were taken to Kalinjer and police got their photographs taken there. He also denied that police got them identified by him. He also denied that he was in the second jeep and no incident took place with him.

12. P.W.-2, Breznev @ Guddan, stated that on 23.01.2003 at 09:00 a.m., the incident took place on the slope of Kalinjer Fort, near culvert. He had come in village, Baheri, on 22.01.2003 in a Barot from village, Mahotra. On 23.01.2003 at 07:00 a.m., he alongwith others went to Kalinjer in two marshal jeeps. In both the jeeps, there were 18-20 passengers. One marshal jeep was being driven by him wherein Chhedi Lal, Niranjana Verma, Sudhir Kumar Pandey, Neelu, Sheelu and Madan Mohan were sitting. His jeep was ahead. Second marshal jeep was being driven by Pintu Chaurasiya. After having darshan of Neelkhanth Mahadev Temple in Kalinjer Fort, they started driving back for Baheri at about 09:00 a.m. His jeep was ahead while the other jeep was behind. On the slope of the fort, one person armed with rifle was standing. He pointed out the same towards the jeep and asked him to stop the jeep which he stopped because of fear. Thereafter, 4-5 people further came armed with guns. They got the passengers down

from the jeep and asked them to run and scale the slope. When the passengers and P.W.-1 started running fast the miscreants started firing from behind and people started falling. He suffered injuries on his right hand and jumped from the hill. On account of suffering gun shot injuries, Sudhir Kumar Pandey, Ashok Kumar Tiwari, Gandharv Singh Bundela, Ram Sundar Dwivedi, Sheelu and Kumari Sweta died. He got injured. Madan Mohan and Pintoo also got injured and were taken to Hospital. Niranjana Verma also suffered injuries. P.W.-2 recognized, Anurag Mishra, Ram Sujan and lastly Pappu Yadav, who got the vehicles stopped.

13. In cross-examination, P.W.-2, stated that the other vehicle was 4-6 steps away. He saw one miscreant who came with the rifle and, thereafter, 4-5 other miscreants came. He saw 5-6 miscreants whose faces were open. He suffered injuries on his hand while jumping from the hill and after falling suffered injuries on his legs. After incident, his statement was recorded by the investigating officer. He denied that the police brought Ram Sujan at the police station and, thereafter, statements of the witnesses were recorded by calling them at police station. He further stated that after 2-3 days of the incident, he came to know that Pappu gang is involved in the incident. He went to jail for identification of the miscreants twice. He identified them on the first occasion and not on the second occasion. On the second occasion, he identified Pappu @ Jaikaran. He did not know his name at that time, but heard his name in the court for the first time. He could not say when he suffered gun shot injuries, how many others too had suffered the same nor he can say which miscreants caused firing and which did not. After the miscreants escaped, he reached the place of

incident where police force had arrived. P.A.C. Camp was on a main road.

14. P.W.-3, Niranjan Verma, stated that about 20-22 persons had gone to Kalinjer Fort for darshan. One vehicle was being driven by Breznev @ Guddan and Neelu, Sheelu, Cheddi Lal, Mithlesh and Madan Mohan were also there in their jeep. His jeep was ahead when the incident as alleged in the F.I.R. took place. After firing by miscreants, he fell down and came rolling down from the hill from 20-25 feet and hide himself in bushes. After the miscreants went away, he came out and took the injured to the hospital. Madan Mohan and Puneet Tiwari died on the way to hospital. All the miscreants were aged about 25, 30 and 35 years. In test identification parade, he identified, Pappu, Vijay, Anurag and Ram Sujan. Pappu was clearly identified by P.W.-3 and he also identified, Ram Lakhan and Ram Sujan.

15. In cross-examination, P.W.-3, stated that the marshal jeep was taken by Breznev on hire and it was being driven by Mithlesh. When they came to Nareni Hospital, jeep was driven by Pintu Chaurasiya. He stated that one miscreant first came and, thereafter, 4-5 others came. He could not count how many miscreants were there. They had not covered their faces. Eleven persons were sitting his jeep, who were fired upon from behind. First of all, Ram Sujan, fired from his double barrel gun, thereafter, Pappu, exhorted that kill all of them fast. Thereafter, all of them fired. He denied that he was not present on the spot and because of being friend of Breznev @ Guddan, he is giving false statement before this Court. He stated that he had informed the investigating officer that first miscreant, who pointed out rifle, was Pappu and if it was not mentioned by

the investigating officer in his statement, he cannot tell the reason. After the incident people of Kalinjer Fort informed him that person who first pointed out rifle was Pappu. He could not identify Pappu in jail because Chippi was pasted on all the persons who were produced in identification parade. Since he is now in court he has identified him. He had informed investigating officer that first firing was made by Ram Sujan by his double barrel gun, but if it is not mentioned in the statement, he cannot tell the reason.

16. P.W.-4, Raja, stated in his examination-in-chief, that on 23.10.2003 at about 09:00 a.m., he had gone to Kalinjer Fort to meet his brother, Fulla, who is employed there in the Archaeological Department. When he was coming back after meeting his brother, Fulla, he saw two marshal jeeps going down from the fort. When the vehicles reached the culvert above Patalganga he heard the sound of firing. 7-8 persons were firing. He recognized, Pappu, who is present in court. He could not recognize others because their backs were in front of him. P.W.-4, was declared hostile. In cross-examination he stated that he saw all the miscreants from distance. Pappu was having rifle and he had not informed the name of anyone except Pappu to the investigating officer. He further stated that in his cross-examination that he recognized, Pappu, Chhota and Anurag, but he did not saw them earlier. They belong to his village. They were not involved in the incident. He never gave any statement to the investigating officer in this regard.

17. P.W.-5, Deen Dayal Shahu, stated that he had gone to take bath in the Kalinjer Fort and when he was returning he met Raja and Fulla, near the 7th Gate of the

Fort. He saw two jeeps coming and as soon as jeeps reached near the culvert in the way, Pappu, came out from the bushes armed with rifle. He got the passengers down from the jeep. Pappu was accompanied by Chhota, Anurag, Dhyyan, Vijay and others whom he did not recognized. Pappu directed all the persons in the jeep to come out and run above the hill and when they started running Pappu and his companions started firing on them from behind. Five persons had died on the spot, including a girl, and two got injured. Thereafter, he stated that the girl was the sixth person who died apart from the five persons. In cross-examination he stated that accused, Dhayyan, son of Babloo Yadav, is not present in court. Brother-in-law (Sadhu) of his elder brother, Neelkaant, was murdered and F.I.R. was lodged against unknown accused. At the time of incident, he got frightened and hide himself in the bushes. Total miscreants were 8-10 and they included the persons named by him. He cannot say how in his statement, the names of other accused have been mentioned by the investigating officer when he never informed him in this regard. One jeep was having number plate while other was without number plate. After the incident he went to Satna and came back after 20-22 days. During this period, he did not informed anyone about the incident. The investigating officer had come to his house and he informed him about the incident. Pappu was not involved in the murder of his brother, Neelkant. Dhyyan is cousin of Pappu. He denied that he is police informer and has cooked up story of his bathing at Kalinjer Fort. He stated that the accused made about 10-11 fires. Faces of some miscreants were hidden while the faces of the others were open. He was hiding with Raja Mali and Fullu

for one hour. He denied that because of enmity with Pappu, he is giving statement against him.

19. P.W.-6, Constable, Bare Lal, proved the application given by the informant at the police station.

20. P.W.-7, Dr. V.K. Saxena, proved the post mortem report of deceased, Madan Mohan; Punit son of Ashok Kumar; Kumari Shweta Tiwari, daughter of Ashok Kumar Diwedi; Sahilendra @ Sheelu Diwedi son of Madan Mohan and Gandharv Singh Bundela.

21. P.W.-8, Dr. Rauf Siddique, proved that he conducted the post mortem of the body of the deceased, Sudhir Kumar Pandey and Ram Sundar Diwedi.

22. P.W.-9, Tulsiram, proved that he was posted as S.H.O. at Police Station-Kalinjer Fort, at the time of alleged offence and he conducted the investigation of this case. He stated in his examination-in-chief that on 23.01.2003, he was posted as S.H.O., Police Station- Kalinger, when the case in dispute was registered at the police station. He himself started investigation after getting the copy of the F.I.R. He examined the place of incident and made search of the accused. Got the inquest proceedings of the dead bodies conducted and got the inquest reports prepared. He proved the documents in this regard before the trial court and got them exhibited. He further proved the preparation of site plan; collection of bloodstained and plain earth from the place of incident; recovery of empty cartridges; preparation of necessary memos; recovery of the belongings of the deceased and preparation of their memorandums of recoveries. On

24.01.2003, he came to know from the informer that the incident in dispute was caused by Pappu Yadav Gang; on 25.01.2003, he recorded the statements of witnesses, Saurabh Gautam; driver, Pintu Chaurasiya; Gudiya; Budela, etc., who testified seeing the incident. Two vehicles involved were given in the possession of respective owners. He prepared the necessary parchas. On 04.02.2003, he recorded the statements of the witnesses, Fullu Mali and Raja, who gave eye witness account of the incident involving Pappu @ Kamal Yadav, Chhota, Vijay Yadav, Jaikaran @ Pappu, Santa Yadav, Ram Sujan Yadav, Kuber Singh Thakur, Chimpa and two others. He further stated that earlier the witnesses of public had named the aforesaid persons. He recorded the statement of Deen Dayal Sahu, who stated that they have seen the members of the Pappu Gang committing the offence. They also named, Anurag Mishra and Ram Ji @ Ram Lakhan, thereafter, he was transferred. In his cross-examination, P.W.-9, stated that the statement of the informant was recorded on the same day at about 04:00 p.m. He was asked three questions in reply to which he stated that he had come in the Barat of son of his brother-in-law (Sadhu); there is enmity going on between his brother-in-law and elder brother of his brother-in-law, Ashok. There was small family dispute between them and Ashok had not come in the Barat. He did not said anything about the incident and stated that on 24th of January, 2003 he came to know that Pappu Yadav is involved in the incident from the informer. There was no evidence against the accused at that time. He knew Pappu Yadav by his name and prior to the incident he had challaned him and tried to him in connection with another incident. He also knew the Ram Sujan against whom case is pending at police

station. P.A.C. camp was situated at distance of 1.5 kilometre from the place of incident. The enmity between Santosh Gautam and Ashok Gautam came to his knowledge in the statement of the informant and the First Information Report, but he did not considered it as the motive of crime since other information had come to his knowledge. At the time of incident he did not had the list of members of Pappu Gang, but it was present in the police station. Prior to the incident, it is not in his knowledge that Pappu committed any other offence. He recorded the statement of Deen Dayal Sahu on 14.02.2003. Prior to recording of his statement and the incident taking place, he never met Deen Dayal. Deen Dayal Sahu stated that all the accused came out armed with guns. Witness, Fullu, named Deen Dayal as the person who saw the incident. He also stated that Raja Mali too saw the incident. The names of the accused came to light from the statements of Fullu Mali, Raja Mali and Deen Dayal. He denied that Raja Mali and Deen Dayal are witnesses set up by him. P.W.-9, denied that he is not aware whether Raja Mali and Deen Dayal had any enmity with Pappu Yadav prior to the incident or not. Fullu informed the names of Pappu @ Kamal, Chhatta, Vijay Yadav, Jaikaran, Ram Sujan, Kuber, Ram Narayan and Raja Mali had informed the name of Pappu Yadav, Chhota, Vijay Yadav, Jaikaran, Ram Sujan and Kuber. Both the witnesses did not named Ram Lakhan @ Ram Ji. P.W.-9 denied that he has falsely arrested and implicated Ram Lakhan @ Ram Ji in this case. Ram Lakhan had no criminal history recorded in his police station at that time. Prior to the incident in dispute, Pappu Yadav Gang had not committed any heinous offence. Prior to the incident, mother and sister of the Pappu Yadav were challaned in a criminal case. Niranjan did

not gave statement that the first miscreant who got the vehicle stopped by pointing rifle was Pappu. Witness, Cheddi Lal, did not informed him that Mithlesh Garg was driving one of the vehicle rather he informed that at that time Guddan son of Madan Mohan was driving the same. P.W.-9, further sated in his cross-examination that he was not shown the place of coming out of the witnesses, Deen Dayal Sahu, Fullu and Raja out from the Kalinjer Fort and they are hiding because the information came later. He did not prepared any site plan later. He further stated that on 03.07.2003 at about 09:00 a.m. he had gone to the house of the accused, Ram Sujan and broken his house and arrested his brother Ram Jiyawan and kept him in a lockup till 02.08.2003. He also denied that he threatened these person of false implication. He denied that on 03.08.2003, Ram Jiyawan gave affidavit before the C.M.O., Banda, regarding medical examination of injuries caused to him by P.W.-9. He also denied that father of Ram Jiyawan gave application to higher authorities and Human Right Commission with regard to the incident. He denied that he falsely implicated Ram Jiyawan and Ram Sujan.

23. P.W.-10, Investigating Officer, Mahendra Singh, proved the part of the investigation conducted by him. P.W.-10, stated that he took over the investigation of this case on 05.04.2003. He got the information of arrest of accused, Chhota, at Tikamgarh and recorded his statement. He admitted his involvement in this case in his statement. He further stated that on 10.05.2003, he came to know that recovery of arms of Pappu @ Kamal Yadav has been made from Barkola on 09.05.2003. Thereafter, he went to Ajaygarh and recovered one rifle factory made, one

DBBL gun factory made, another DBBL gun factory made 12 bore, SBBL gun 12 bore, one country made rifle and number of live cartridges belonging to Kamal Yadav Gang. Case crime no. 88/2003, under section 25/27 Arms Act and case crime no. 90/2003, under sections- 212/216 IPC were registered. Statements of accused, Nandu @ Rajauli and the Dadua @ Daddu, were also recorded wherein they admitted the recovery of aforesaid arms as of Pappu Yadav @ Kamal Yadav. On 14.05.2003 proceedings of test identification parade of Anurag Mishra and Ram Sujan was conducted and its details were mentioned in the case diary. Finding sufficient evidence against them charge-sheet were submitted by him before the trial court. Statement of accused, Jaikaran @ Pappu was recorded in district jail on 24.05.2003 and on 31.05.2003 application for taking him in police remand was made when his statement was recorded. On 05.06.2003 accused, Chimpa @ Rajnarayan, was reportedly killed and entry to this effect was made in the case diary. On 10.06.2003 test identification parade of accused, Jaikaran, was done and he was identified by witnesses. On 11.06.2003, statements of accused, Pappu, Vijay and Ram Lakhan @ Ram Ji were recorded in Central Jail, Satna. They admitted to their involvement in alleged offence. The clothes of the deceased were sent to F.S.L. Agra. Charge-sheet was filed against Jaikaran @ Pappu, in court. An application was given for transfer of accused, Kamal, Vijay and Ram Lakhan @ Ram Ji, from Satna Jail to Banda. An application was also given for conducting their test identification parade. Test identification parade was conducted and its details were mentioned in the case diary. On 15.07.2003 statements of informant, Cheddi Lal, Neelu, Brejneev, Nirranjan Verma, Brijendra Kumar and

Pushkar Saurabh were recorded. On 18.07.2003 charge-sheet was filed against accused, Anurag Mishra, Kamal, Vijay, Ram Ji @ Ram Lakhan. On 30.07.2003 after accused, Chhota @ Rajesh, came to Banda, he gave application for his test identification parade. Its details were mentioned in the case diary. In his cross-examination, P.W.-10, stated that the statements of the witnesses were recorded by the earlier investigating officer. None of the witnesses stated that they knew the accused prior to the incident. He recorded their statements for the second time only to ascertain the motive of the crime. He did not record the statements of Raja Mali, Fullu Mali and Deen Dayal Sahu because their statements were recorded earlier by the investigating officer. When he over took the investigation of this case, the names of the accused had come to light and, therefore, he did not conduct investigation in any other direction. He did not find any motive of the elder brother of informant, Ashok, in commission of the alleged offence. There was no such evidence which may connect Ashok to this crime. He denied that the photograph of Pappu @ Kamal, shoot by Station House Incharge, Dharmpur, Ashok Chaurasiya on 31.05.2003 was given to him. He further denied that he got test identification parade of Pappu @ Kamal done after showing this photograph to the witnesses. Pappu @ Kamal, Vijay and Ram Lakhan were in Banda court on 03.07.2003. He does not remember whether they were baparda or not. He denied that he had got the accused identified by the witnesses on 03.07.2003 itself. Nanhu and Daddu are not accused in this case nor they were arrested in police encounter. They were normally arrested. On 10.06.2003 witnesses, Guddan @ Brejneev, Neelu and Pushkar participated in the test identification parade, thereafter,

their statements were recorded. After identification they were informed about the names of the accused. After test identification, he asked witnesses, how they know the names of the accused then they informed that they came to know of their names during test identification proceedings. He got the accused, Anurag Mishra, also identified in test identification parade and recorded the statements of the witnesses. Witnesses had informed the names of the accused. He denied that the witnesses were informed about the names of the accused prior to the test identification parade.

24. P.W.-11, proved that after the transfer of P.W.-10 he conducted the remaining investigation of this case. P.W.-11, stated that on 16.02.2003, he was posted as S.H.O. at Police Station- Kalinjer. Prior to that the investigation of this case was being done by P.W.-9, Tulsi Ram. After his transfer, he overtook the investigation. He went through the parchas made earlier in the case diary. He recorded the statement of accused, Anurag Mishra in jail wherein he admitted the commission of alleged crime. He recorded his statement for affecting recovery of the weapons of the gang. Thereafter, the properties of accused, Pappu, were attached. He was taken on remand. Accused, Pappu, was taken in handcuffs baparda to his house where he got a 12 bore single barrel gun recovered from a box kept in his house alongwith two live cartridges. He admitted that he committed the alleged crime alongwith his accomplices, Pappu and others, with the help of this gun. After seeing the accused, Pappu, baparda, the people of the locality closed the doors and windows of their houses and went inside. Anil, Shyam Sundar and Kharika, who met in the way refused to give their statements because

fear had engulfed Kasba of Anurag Mishra. He could not show the license of the gun recovered. The gun and cartridges recovered from the spot were sealed and sample was made. He proved the arms recovered by him from the accused before the Court. He proved the signatures of the Sub-inspector, R.N. Lal, on the inquest reports of the deceased besides other documents. He further stated that he submitted charge-sheet against Ram Sujan, Anurag Mishra, Pappu and others and, thereafter, he was transferred from the police station, Kalinjer. Earlier investigation was carried out by P.W.-10, Mahendra Singh Yadav. During cross-examination, P.W.-11, stated that he was not aware whether Sub-inspector, R.N. Lal, has retired or not. Accused, Anurag Mishra, is lodged in Chitrakoot Jail where he admitted that he committed the alleged offence. He did not had any other evidence against Anurag Mishra. He stated that when he took accused, Anurag Mishra, in custody on 28.02.2003, he got the recovery of arms made on his pointing out. He denied that he had shown fake recovery of arms. He stated that in Kasba, Kalinjer and the area around, there is great terror of accused, Anurag Mishra, and, therefore, no one agreed to give statement against him at the time of recovery of arms on his pointing out. He further stated that he does not remembers whether accused, Anurag Mishra, was implicated in any other case prior to this case or not.

25. P.W.-12, Bare Lal, proved that he was posted as constable clerk at Police Station- Kalinjer Fort, and prepared the memo of recovery of the SBBL gun on the pointing out of the accused, Anurag Mishra.

26. P.W.-13, Shiv Bardani, proved that he got the SBBL gun recovered from

the accused, Anurag Mishra, alongwith cartridges. Anurag Mishra was taken from the Banda Jail for the above purpose.

27. P.W.-14, S.I. Chandrabhan Singh, stated that he registered the Case Crime No. 18/2003, under section- 25 of the Arms Act and conducted the investigation regarding the SBBL gun recovered on the pointing out of the accused, Anurag Mishra.

28. P.W.-15, Mukund Pandey, proved that the report regarding the case under section 25 of the Arms Act was registered by him on oral dictation by C.P. Singh.

29. P.W.-16, Ram Narayan, proved that he got test identification parade conducted on 10.06.2003, while working as City Magistrate ,of accused, Jaikaran @ Pappu. He was identified by witnesses, Brijendra Kumar and Neelu. He proved the identification memo prepared by him. P.W.-16, stated that on 10.06.2003, he was posted as City Magistrate in District-Banda. When he got the test identification parade of accused, Jaikaran @ Pappu, conducted in his presence. Ten jail inmates of similar physcial features were made to stand together with accused, Jaikaran @ Pappu and he was identified by Brijendra Kumar and Neelu. Identification memo were prepared which bears his handwriting and signature. However, he stated that there is nothing mentioned in the identification memo at what places on the face of accused, Pappu @ Jaikaran, chippi was put. On the first occasion Guddan @ Brejnev, did not recognized Jaikaran. Pushkar @ Saurabh, also did not identified him. He denied that the test identification parade was done illegally under the direction of the police.

30. P.W.-17, Nandan Chakravarti, stated that he was posted as Pargana Magistrate on 14.05.2003 in District-Banda, and got the test identification parade of accused, Anurag Mishra and Ram Sujan conducted. They were identified by the witnesses and got the identification memo prepared and signed by him. The identification of accused, Chhota @ Rajesh, was done on 06.08.2003 and he prepared the identification memo. Anurag Mishra was identified by the witnesses. He admitted that in his cross-examination that he got the identification of accused, Vijay Yadav, Ram Lakhan by Chheddi Lal, Niranjana Verma and Brijendra Kumar done on 05.07.2003. P.W.-17 stated that on 05.07.2003 he got the test identification parade of accused, Pappu @ Kamal, Vijay yadav, Ram Lakhan @ Ram Ji, who were identified by Cheddi Lal, Niranjana Verma, Brijendra Kumar and Neelu correctly. In cross-examination, he stated that he does not know whether summons were sent for conducting test identification parade or not. It is not mentioned in the memo that persons having similarities with accused, Ram Lakhan, were made to stand with Ram Lakhan and test identification parade.

31. P.W.-18, Constable, Jagdish Babu, proved the test identification register maintained in the police station. He stated in his statement that on 14.05.2003 that he was posed as Pargana Magistrate in Banda when test identification parade of accused, Anurag Mishra and Ram Sujan was conducted. Nine persons of similar height and weight were put for test identification with them. After test identification he made his signature on the memo. On 06.08.2003 identification of accused, Chhota @ Rajesh, was done in District Jail, Banda, in the presence of D.K. Mishra, A.P.O. Witnesses, Cheddi Lal, Pushkar @ Saurabh, identified accused,

Chhota @ Rajesh. He proved his signature and handwriting on the memo. In cross-examination, he stated that accused, Anurag Mishra, was taken to jail on 29.01.2003 and his test identification parade was conducted on 14.05.2003. Anurag Mishra was clearly identified by all the witnesses. He admitted that there is no mention in the identification memo about the number of jail inmates put for test identification alongwith Anurag Mishra. He stated that the procedure of identification adopted in the case of Anurag Mishra was also adopted in the test identification of accused, Chhota @ Rajesh.

32. P.W.-19, Ram Das Chaudhary, proved that he got the inquest report of deceased, Punit @ Lal, prepared and sent his dead body for post mortem.

33. The statement of the witnesses were recorded under section 313 Cr.P.C. wherein they stated that they were arrested and brought to the police station in a false case of police encounter and were got identified by the witnesses at police station. Accused, Chhota, said that he was brought on warrant "B" from Satna Jail to Banda and identified by the witnesses during transit. Similar statement was given by the accused, Ramji @ Ram Lakhan. Accused, Anurag Mishra, stated that because of enmity with his enemies, planted recovery was shown against him and he was falsely implicated. Accused, Pappu, also stated that he was taken in police custody and, thereafter, shown to the witnesses. He is innocent and has been falsely implicated in this case.

34. D.W.-1, Sitaram, stated that he was present in his agricultural field on the date of incident and no such incident took place on the date of incident.

35. D.W.-2, proved that he remained in his agricultural field from

about 09:00 a.m to 10:00 a.m on 23.01.2003. The younger brother of Ram Sujan was arrested by the police and beaten. Ram Sujan gave application to higher authorities in this regard and hence the police was annoyed with him. He saw Ram Sujan from 08:00 a.m on 30.01.2003 in the village when he was watering his crops.

35. D.W.-3, Mamta Patel, also testified the fact that Ram Sujan was irrigating his field on 23.01.2003 from 07:00 a.m. to 10:00 a.m.

36. The trial court after considering the evidence on record convicted and sentenced the appellants by the judgment and order of conviction dated 20.04.2010 and hence the above noted appeals have been preferred by the appellants.

37. Learned counsel for the appellants submits that first information report was lodged against five unknown persons on 23.1.2003 at 09.30 a.m. regarding the alleged incident dated 23.01.2003 which took place at about 09:00 a.m., at a place which is situated at a distance of 4 kilometres from the police station.

38. P.W.-1, Chhedilal, the complainant, was examined before the trial court and according to him in the first information report five unknown miscreants are mentioned while during course of investigation the investigating officer has made 9 persons as accused which shows possibility of false implication of several innocent persons in the present case.

39. In statement-in-chief of the P.W.1, Chhedilal, stated that 5 persons were

involved in the incident but in his statement before the court he named five accused persons for the first time when he did not mentioned the names of accused persons in the first information report as well as in his statement under section 161 Cr.P.C. recorded by the Investigating officer.

40. During cross examination, P.W-1, stated that there was marriage of Sandeep son of Santosh Gautam and there is dispute between Santosh Gautam and his real brother, Ashok Gautam and they are not on talking terms, therefore, Ashok Gautam had not participated in the marriage of his son.

41. P.W.2, Breznev alias Guddu, was examined before the trial court and he stated that about 5 to 6 accused persons had participated in the aforesaid crime.

42. P.W.3, Niranjana Verma, was examined before the trial court and he stated firstly that there were 4-5 accused persons, but thereafter he stated that there were 7 accused persons who participated in the aforesaid crime.

43. P.W.-4, Raja, was examined before the trial court but he did not supported the prosecution story therefore he was declared hostile.

44. P.W.5, Din Dayal Sahu, was examined before the trial court who stated 8-10 accused participated in the aforesaid crime.

45. The P.W.5, Din Dayal Sahu, has named, Anurag Mishra, and Pappu Yadav and Chhota, due to his previous enmity with them.

46. P.W.9, Tulsi Ram Sakyawal, was examined before the trial court and he

stated that on 4.2.2002 statement of Phullu Mali and Raja Mali was recorded by him under section 161 Cr.P.C., in which they have named the accused, Pappu alias Komal, Chhota, Vijay Yadav, Jai Karan, Santa, Ram Sujan, Kuber Singh, Chimpa and 2 unknown persons but they did not name, Anurag Mishra. There was no explanation why these two witnesses Phullu Mali and Raja Mali, kept mum for 14 days and they did not inform anyone about the aforesaid occurrence.

47. The statement of P.W.5, Din Dayal Sahu, was recorded under section 161 Cr.P.C. on 14.3.2003 after about 22 days of incident and there is no explanation of the delay in recording of his statement.

50. On 4.02.2002 statements of Phullu Mali and Raja Mali were recorded under section 161 Cr.P.C. in which for the first time Chhota alias Rajesh and Ram Sujan were named as accused. In the statement of Din Dayal, P.W.-5, recorded under section 161 Cr.P.C., name of Anurag Mishra came to light for the first time and the prosecution did not produce the alleged eye witness, Fullu Mali, before the trial court and Raja Mali P.W.4 has not supported the prosecution story therefore story of the prosecution to this extent is not credible.

51. Test identification parade was conducted on 14.5.03 at District Jail, Banda and there was suggestion that photograph of appellant, Ram Sujan, was taken at Police station and it was got recognised by witness.

52. The implication of the appellants has been made on the basis of test identification parade conducted after more than a month. The Apex Court in the

case of **Rajesh Govind Jagesha Vs. State of Maharashtra AIR 2000 SC 160** has held that where identification parade was conducted after inordinate delay of five weeks from arrest of the accused and there was no trustworthy explanation of delay, implication of the accused on the basis of such test identification was not justified and the accused was entitled to benefit of doubt. For a ready reference paragraph no. 4 of the aforesaid judgment is quoted hereinbelow:-

“This Court in State of Andhra Pradesh v. Dr. M. V. Ramana Reddy & Ors., AIR (1991) SC 1938, held that where there is unexplained delay in holding the identification parade, the evidence of the prosecution regarding identity of an accused cannot be held absolutely reliable and in such a case the accused is entitled to the benefit of doubt. The explanation for delay in holding the identification parade offered by the prosecution in the instant case is not trustworthy. The non-availability of a Magistrate in a city like Bombay for over a period of five weeks from the date of the arrest of Accused Nos. 1 and 2 and three weeks from the arrest of accused Nos. 3 and 4 cannot be accepted. It is not denied that scores of Magistrates are available in the city of Bombay and that the investigating agency was not obliged to get the parade conducted from a specified Magistrate. The High Court was not justified in holding that the parade could not be held early on account of alleged difficulties of the Special Executive Magistrate. It

was not for the defence to prove that the parade held was suffering from the legal infirmities because, admittedly, the onus of proof in criminal case never shifts as the accused is presumed to be innocent till proved otherwise, beyond all reasonable doubts, by the prosecution. In cases where a person is alleged to have committed the offence and is not previously known to the witnesses, it is obligatory on the part of the investigating agency to hold identification parade for the purposes of enabling the witnesses to identify the person alleged to have committed the offence. The absence of test identification may not be fatal if the accused is known or sufficiently described in the complaint leaving no doubt in the mind of the court regarding his involvement. Such a parade may not be necessary in a case where the accused person is arrested on the spot immediately after the occurrence, The evidence of identifying the accused person at the trial, for the first time, is from its very nature, inherently of a weak character. This Court in Budhen & Anr. v. State of U.P., [1970] 2 SCC 128, held that the evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances the complainant or the witnesses came to pick out the accused person and the details of the part which such persons played in the crime in question with reasonable particularity. The test identification is considered as a safe rule of prudence for corroboration.

Though the holding of the identification proceedings may not be substantive evidence, yet such proceedings are used for corroboration purposes in order to believe or not the involvement of the person brought before the Court for the commission of the crime. The holding of identification parade being a rule of prudence is required to be followed strictly in accordance with the settled position of law and exeditiously. The delay, if any, has to be explained satisfactorily by the prosecution. ”

53. Learned AGA-Ist appearing for prosecution has vehemently opposed the submissions made by learned counsel for the appellants. She has submitted that it is case of gruesome murder of eight of innocent persons. Merely on the ground of delay in conducting test identification parade accused cannot be absolved of all charges. She has also relied upon the case of Rajesh Govind Jagesha (Supra) and has submitted that the the case rests on its own facts, and mere delay in holding the test Identification parade cannot be the sole reason for rejecting the identification.

54. After hearing the rival contentions, we find in the present case that there is no motive of crime assigned, alleged or proved by the prosecution. From the prosecution case, it is clear that after causing the murder of six persons, the miscreants did not looted anything, if they are considered to be dacoits. Therefore, the prosecution got the test identification parade of the accused conducted.

55. Before proceeding to consider this case, a look at the relevant provisions

regarding conducting of test identification parade is required.

56. In paragraph 116 of the U.P. Police Regulations, the procedure for conducting test identification parade of suspects is provided which is quoted hereinbelow:-

“Identification parade of suspects.- In all cases in which there is any likelihood that suspects will at any stage have to be paraded for identification by witness, the investigating officer must take steps from the very beginning of his investigation to ensure that witnesses are given no opportunity of seeing the suspects before identification proceedings are held. Such proceedings should whenever possible, be postponed until they can be held in the jail under the provisions of the Manual of Government Orders and Paragraph 31 of these regulations, for the due observance of which, as far as the police are concerned, the Public Prosecutor will then be responsible. When identification proceedings cannot be held in the jails, owing to there being no sufficient evidence on which the suspects can be arrested for any other reason, the instructions referred to above must be followed by the investigating officer as far as they can be made applicable. In such cases the proceedings should take place before a Magistrate, as they would if they were held in the jails or if no magistrate is available before two respectable and impartial persons who should be asked to satisfy themselves that the

proceedings are fair both to witnesses and to accused. In any case of importance, when no Magistrate is available to conduct identification proceedings not held in the jails, a gazetted police officer should arrange to attend.”

57. Paragraph No. 416 of Jail Manual further provides for the procedure for conducting test identification parade which is quoted hereinbelow:-

“ 443. Procedure in the case of undertrial prisoners who have to be subsequently identified. (a) When an undertrial prisoner who may have to be subsequently put up for identification by witnesses is admitted to jail, the Superintendent of police or some police officer not below the rank of an inspector shall inform the jail in writing at the time of admission or as soon thereafter as possible, that the prisoner will be put up for identification: Provided that prisoners who are to be identified be not selected for being mixed up at the identification parades.

(b) When such intimation has been received the Superintendent of jail shall issue instructions with a view to preventing the prisoner from disguising himself or changing his appearance in such way as to make recognition difficult. Such prisoners shall be required to keep their hair in the same condition until convicted or discharged, e.g., if the prisoner is clean shaven he must not be allowed to grow a beard and vice versa. At the time of the identification parade the

prisoner shall wear the same clothing as he was wearing at the time of admission. If he cannot wear his own clothes he shall wear clothes of a similar kind, eg., if he is a field labourer he should not be dressed in the white clothes of a city man or vice versa. In all cases of doubt the orders of the Magistrate conducting the identification should be taken. Before the proceedings begin, the prosecuting inspector and counsel for the defence, who shall be permitted to be present, may satisfy themselves that all the rules in this paragraph have been fully observed. The proceedings shall also be attended by a jail officer who shall carry out any orders given to him by the Magistrate conducting the identification.

(c) The prisoner to be identified shall be placed among a number of prisoners as similar to him as possible in dress, stature and appearance and shall not be allowed to conceal his face or stature so as to impede recognition: Provided that prisoners who are to be identified be not selected for being mixed up at the identification parades.

(d) When a prisoner who is wearing fetters is to be identified the prisoners paraded with him should be selected from among those who are wearing fetters. Conversely, if the prisoner to be identified is not wearing fetters none of those paraded with him should be wearing fetters. Where this is impracticable the method of concering up all prisoners in the parade, whether wearing fetters or

not, up to the waist with blankets may be adopted.

Note. Further provisions regarding the conduct of identification pro-ceedings by Magistrates will be found in paragraph 842 of the Manual of Government Orders and Chapter VIII. Rule 9 of the General Rules (Criminal), High Court, and Chapter VIII, Rule 11 of the Oudh Criminal Rules.”

58. There is also a memorandum of identification proceedings of suspects provided in **General Rules (Criminal) 1976** which is as follows:-

“Memorandum of identification proceedings of the following accused conducted on.....at.....

Nam e, pare ntag e and resid ence of the accu sed, state ment if any mad e by him and his sign	Off enc e	Any disti nctiv e mar ks likel y to affec t	Step (if any) taken by the Magi strate cond uctin g the proce eding s regar ding Colu mn 3	Date of adm issio n into the jail (or on bail)	Nam e, perc enta ge and resid ence of the witn ess

taken on the memo.(5)Did the counsel for accused, if present, point out any other mark not noted by you?(6)Any other point. Dated.....20 .Magistrate

N. B. - It is very useful to note whether the witness knew the name of the person he had come to identify or he only described him in some such way as the man who was standings at the door at the time of the dacoity. The witness is not to be asked in a general way.

"Identify whomsoever you know" "

59. Division Bench of this Court in the case of **Asharfi and another Vs. State (Allahabad) of U.P. 1961 AIR (Allahabad) 153** has very elaborately considered the conditions necessary for accetable identification evidence in paragraph 33 onwards which are quoted hereinbelow:-

**“33. CONDITIONS
NECESSARY FOR
ACCEPTABLE
IDENTIFICATION EVIDENCE:**

The Court is bound to follow the rule that evidence as to the identification of an accused person must be such as to exclude with reasonable certainty the possibility of an innocent person being identified. In the very recent case of State of Madhya Pradesh v. Manka, 1980 MFC 216, a Division Bench of the Madhya Pradesh High Court, after examining some Indian English and American rulings, held:

"The evidence of identity must be thoroughly scrutinised, giving benefit of all doubt to the accused; but if after a thorough scrutiny there appears to be

nothing on the record to suspect the testimony of the identification witnesses, the Court ought not to fight shy of basing a conviction on such evidence alone, because of the bare possibility that there could be honest though mistaken identification."

With great respect we agree with their Lordships.

The following twelve questions are apt to arise and must be answered by the Court to its satisfaction before it can accept the evidence:--

(1) Did the identifier know the accused from before?

(2) Did he see him between the crime and the test identification?

(3) Was there unnecessary delay in the holding of the test?

(4) Did the Magistrate take sufficient precautions to ensure that the test was a fair one?

(5) What was the state of the prevailing light?

(6) What was the condition of the eye-sight of the identifier?

(7) What was the state of his mind?

(8) What opportunity did he have of seeing; the offenders?

(9) What were the errors committed by him?

(10) Was there anything outstanding in the, features or conduct of the accused which impressed him?

(11) How did the identifier fare at other test identifications held in respect of the same offence?

(12) Was the quantum of identification evidence sufficient?

60. Facts which establish the identity of an accused person are relevant under S. 9 of the Indian Evidence Act. As a general rule, the substantive evidence of a witness is a statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances he came to pick out the particular accused person and the details of the part which the accused played in the crime in question with reasonable particularity. The purpose of a prior test identification, therefore, seems to be to test and strengthen the trustworthiness of that evidence. It is accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceeding. There may, however, be exceptions to this general rule, when, for example, the court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the investigation stage. They are generally held during the course of investigation with the primary object of enabling the witnesses to identify persons concerned in the offence, who were not previously known to them. This serves to satisfy the investigating officers of the bona fides of the prosecution witnesses and also to furnish evidence to corroborate their testimony in court. Identification proceedings in their legal effect amount simply to this: that certain persons are brought to jail or some other place and make statements either express or implied that certain individuals whom they point out are persons whom they recognise

as having been concerned in the crime. They do not constitute substantive evidence. These parades are essentially governed by s. 162, Cr. P.C. It is for this reason that the identification parades in this case seem to have been held under the supervision of a Magistrate. Keeping in view the purpose of identification parades the Magistrates holding them are expected to take all possible precautions to eliminate any suspicion of unfairness and to reduce the chance of testimonial error. They must, therefore, take intelligent interest in the proceedings, bearing in mind two considerations : (i) that the life and liberty of an accused may depend on their vigilance and caution and (ii) that justice should be done in the identification. Those proceedings should not make it impossible for the identifiers who, after all, have, as a rule, only fleeting glimpses of the person they are supposed to identify. Generally speaking, the Magistrate must make a note of every objection raised by an accused at the time of identification and the steps taken by them to ensure fairness to the accused, so that the court which is to judge the value of the identification evidence may take them into consideration in the appreciation of that evidence. The power to identify, it may be kept in view, varies according to the power of observation and memory of the person identifying and each case depends on its own facts, but there are two factors which seem to be of basic importance in the evaluation of identification. The persons required to identify an accused should have had no opportunity of seeing him after the commission of the crime and before identification and secondly that no mistakes are made by them or the mistakes made are negligible. The identification to be of value should also be held without much delay. The number of persons mixed up with the

accused should be reasonably large and their bearing and general appearance not glaringly dissimilar. The evidence as to identification deserves, therefore, to be subjected to a close and careful scrutiny by the Court.

61. The Apex Court in the case of **Rajesh Govind Jagesha vs State Of Maharashtra, AIR 2000 SUPREME COURT 160** has held that the physical appearance of the suspect produced for identification parade should not be changed. Where the suspect was having beard and long hairs at the time of lodging of F.I.R. and no person with beard and long hairs was included in the parade, but the witness identified the suspect even after his changed appearance, the possibility of the witness having seen the said accused between the date of arrest and test identification parade cannot be ruled out. The Apex Court also held in this case that delay in holding of such parade is fatal for the prosecution where there is no justifiable reason shown before the court justifying the delay. Apex Court has also held that where the ocular testimony of the witnesses is clear, cogent and reliable, the questions of motive is of no importance.

62. The undisputed facts of the case are that six persons died on the spot, namely, Ram Sundar Dwivedi, Shailendra @ Sheelu, Ashok Kumar Tiwari, Kumari Shweta, Gandharv Singh Bundela and Sudhir Kumar Pandey and two persons namely, Puneet Tiwari and Madan Mohan, died on the way to the hospital. The only injured witness in this case is Breznev @ Guddan, who was produced as P.W.-2 before the trial court. No one was named as accused in the First Information Report lodged against five miscreants. Total eight accused were charge-sheeted and two of

them namely, Kamal @ Pappu and Vijay, died during trial. Only four appellants namely, Ram Sujan, Anurag Mishra, Choota @ Rajesh and Ram Ji @ Ramlakhan, have been tried and convicted. Appellant, Anurag Mishra, was acquitted by the trial court of all charges under sections 504, 307/149 IPC; section 10/12 of Dacoity Affected Area Act and Section 25 of Arms Act and the remaining three appellants have been acquitted of charges under sections 504, 307, 149 and section 10/12 of Dacoity Affected Area Act. Two accused, namely, Jaikaran @ Pappu and Kuber Singh, were acquitted of all charges. The eye witness, P.W.-1 and the injured witness, P.W.-2, have not been assigned any specific role of firing on any of the accused-appellant nor any incriminating recovery of the weapons was made from their possession or their pointing out. P.W.-4 was declared hostile. There was no motive of the crime committed. The dispute of Santosh Gautam, whose son was getting married, with his brother, Ashok Kumar Gautam, could have been cause of incident, but no evidence in this regard was led before the trial court.

63. We further find that in the F.I.R. five persons were made accused while during course of investigation nine persons were implicated in this case as accused but chargesheet was submitted only against eight of them. P.W.-1 did not name any of the accused in the F.I.R. or in his statement recorded under section 161 Cr.P.C. P.W.-1 stated before the investigating officer that his real brother, Ashok Kumar Gautam, is not on talking terms with him and, therefore, he did not participate in the marriage of his son. The accused are said to have threatened that all the passengers in two vehicles are required to be taught lesson. The investigating

officer has not investigated the possibility of involvement of Ashok Kumar Gautam in this case at all. There is inconsistency in the number of accused involved in the incident apparent from the statements of the witnesses. While P.W.-1 implicated 5 persons in the F.I.R. and also before the court, P.W.-2 implicated 4-5 persons who came on the scene of incident armed with guns and stopped the vehicles. P.W.-3 stated that one miscreant came first of all and, thereafter, 4-5 others came. P.W.-4, stated that 7-8 persons were making firing while P.W.-5 stated that total miscreants were 8-10 in numbers. Therefore, it is clear that besides names of the accused involved in this case, there is also discrepancy in the number of accused involved.

64. Clearly, the incident took place on 23.01.2003 and test identification parade of the accused, Kamal, Vijay and Ram Ji @ Ramlakhan, was conducted on 15.07.2003. Test identification parade of accused, Chhota @ Rajesh, was conducted on 06.08.2003. Test identification parade of accused, Anurag Mishra and Ram Sujan was conducted on 14.05.2003. Test identification parade of accused, Jaikaran @ Pappu, was conducted on 10.06.2003.

65. P.W.-16, the City Magistrate, who got the test identification parade conducted in his presence admitted before the court that he can not tell at what place on the face of accused, Pappu @ Jaikaran, chippi was put. He only stated that ten jail inmates of similar physical features were made to stand together for identification, but did not stated whether they were asked to stand in a circle as per General Rule (Criminal), 1976. It is provided under the Jail Manual and General Rule (Criminal) that Superintendent of Jail shall ensure that the accused who are to be put for

identification should not change their appearances in such a way as to make their recognition difficult. The hairs and beard should be kept in the same position at the time of test identification parade and the accused should wear the same clothing as he was wearing at the time of commission of alleged offence. All the accused mixed with other under trial prisoners/persons are required to stand in a circle and not permitted to change their places. There is no evidence of compliance of these mandatory conditions in the statements of P.W.-10 and P.W.-11, the investigating officers, who put the deceased for test identification parade or P.W.-16 and P.W.-17, the Magistrates, involved in conducting of the test identification parade of the accused persons. In this case there is no explanation on behalf of prosecution regarding the delay of 4 to 7 months in conducting the test identification parade of the accused persons. There is also no evidence led by the prosecution to prove that during the period prior to test identification parades, the accused were not exposed to public view and were always kept away from being seen by anyone. Accused, Chhota, was brought on Warrant-B from Satna Jail to Banda and there is no evidence that he was kept baparda in transit.

66. Learned counsel for appellants has relied upon paragraph nos. 15 to 18 of the judgment of Apex Court in the case of **Md. Sajjad @ Raju @ Salim Vs. State of West Bengal (Criminal Appeal No. 1953 of 2010)** and has submitted that none of the witnesses deposed about the physical features, height, weight, etc., of the accused which would have been a pointer to involvement of the accused in this case. For ready reference following relevant paragraphs are reproduced hereinbelow:-

“15. In the case in hand, apart from the fact that there was delay in holding the Test Identification Parade, one striking feature is that none of the concerned prosecution witnesses had given any identification marks or disclosed special features or attributes of any of those four persons in general and the accused in particular. Further, no incident or crime had actually taken place in the presence of those prosecution witnesses nor any special circumstances had occurred which would invite their attention so as to register the features or special attributes of the concerned accused. Their chance meeting, as alleged, was in the night and was only for some fleeting moments.

16. In Subash Vs. State of U.P.(1987 (3) SCC 331) the aspects of delay as well as absence of any special features for identification and the effect thereof were considered by this court in paragraphs 8 and 9 as under:-

“8. Apart from this infirmity we further find that Shiv Shankar was not put up for test identification parade promptly. The identification parade has been held three weeks after his arrest and no explanation has been offered for the delay in holding the test identification parade. There is, therefore, room for doubt as to whether the delay in holding the identification parade was in order to enable the identifying witnesses to see him in the police lock-up or in the jail premises and make a note of his features.

9. Over and above all these things there remains the fact that a sufficiently long interval of time had elapsed between the date of occurrence when the witnesses had seen Shiv Shankar for a few minutes and the date of the test identification parade. It is, no doubt, true that all the three witnesses had correctly identified Shiv Shankar at the identification parade but it has to be borne in mind that nearly 4 months had elapsed during the interval. It is relevant to mention here that neither in Exhibit Kha-1 nor in their statements during investigation, the eyewitnesses have given any descriptive particulars of Shiv Shankar. While deposing before the Sessions Judge they have stated that Shiv Shankar was a tall person and had “sallow” complexion. If it is on account of these features the witnesses were able to identify Shiv Shankar at the identification parade, they would have certainly mentioned about them at the earliest point of time because their memory would have been fresh then.

Thus in the absence of any descriptive particulars of Shiv Shankar in Ex. Kha-1 or in the statements of witnesses during investigation, it will not be safe and proper to act upon the identification of Shiv Shankar by the three witnesses at the identification parade and hold that he was one of the assailants of Ram Babu. As pointed out in Muthuswami v. State of Madras (AIR 1954 SC 4), where an identification parade was held

about 2½ months after the occurrence it would not be safe to place reliance on the identification of the accused by the eyewitnesses. In another case *Mohd. Abdul Hafeez v. State of A.P.* (AIR 1983 SC 367). It was held that where the witnesses had not given any description of the accused in the first information report, their identification of the accused at the sessions trial cannot be safely accepted by the court for awarding conviction to the accused. In the present case there was a long interval of nearly 4 months before the test identification parade was held and it is difficult to accept that in spite of this interval of time the witnesses were able to have a clear image of the accused in their minds and identify him correctly at the identification parade.”

17. Similarly the issue of delay weighed with this court in *Musheer Khan vs. State of M.P.* (2010 (2) SCC 748) in discarding the evidence regarding test identification as under:

“8. Insofar as the identification of A-5 is concerned that has taken place at a very delayed stage, namely, his identification took place on 24-1-2001 and the incident is of 29-11-2000, even though A-5 was arrested on 22-12-2000. There is no explanation why his identification parade was held on 24-1-2001 which is after a gap of over a month from the date of arrest and after about 3 months from the date of the incident. No reliance ought to have been placed by the courts below or the High Court on such

delayed TI parade for which there is no explanation by the prosecution.”

18. In the instant case none of the witnesses had disclosed any features for identification which would lend some corroboration. The identification parade itself was held 25 days after the arrest. Their chance meeting was also in the night without there being any special occasion for them to notice the features of any of the accused which would then register in their minds so as to enable them to identify them on a future date. The chance meeting was also for few minutes. In the circumstances, in our considered view such identification simplicitor cannot form the basis or be taken as the fulcrum for the entire case of prosecution. The suspicion expressed by PW 8 Saraswati Singh was also not enough to record the finding of guilt against the appellant. We therefore grant benefit of doubt to the appellant and hold that the prosecution has failed to establish its case against the appellant.”

67. In view of the above consideration, we are of the view that the prosecution has failed to prove the case against the appellants beyond reasonable doubt. Since the recording of the statements of the witnesses under section 161 Cr.P.C. to their statements recorded before court none of the witnesses pointed out to any special features of any of the accused. All the witnesses saw the miscreants for a very short while. Test identification parade of accused took after 4 to 7 months. It cannot be said with certainty that the witnesses

had correctly identified the accused. In such circumstances court should not have recoded their conviction on the basis of such evidence.

68. In this case it is admitted that one of accused was transferred from one jail to the other. There is nothing in the evidence which shows that accused were kept baparda in the process of transit.

69. Most of the conditions enumerated by this Court necessary for acceptance of identification evidence by this Court in the case of **Asharfi and Anr. (supra)** have not be fulfilled by the prosecution.

70. All the appellants have undergone about fourteen years of incarceration in jail from the date of judgment of the trial court. They must have been in jail earlier also without there being any reliable evidence against them.

71. All the Criminal Appeals are **allowed**. The appellants shall be set at liberty forthwith, if not wanted in any other case.

72. Let this judgment be notified to the trial court and record of trial court be returned within two weeks.

(2025) 3 ILRA 441

REVISIONAL JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 17.03.2025

BEFORE

**THE HON'BLE RAM MANOHAR NARAYAN
MISHRA, J.**

Criminal Revision No. 1449 of 2024

Akash & Ors.

...Revisionists

Versus

State of U.P. & Ors.

...Respondents

Counsel for the Revisionists:

Sri Ajay Kumar Vashistha

Counsel for the Respondents:

G.A., Sri Indra Kumar Singh

Criminal Law — Attempt to Rape — Indian Penal Code, 1860 - Section 376 — Protection of Children from Sexual Offences Act, 2012 - Section 18 — Summoning order passed under Section 376 IPC and Section 18 POCSO — Allegation that revisionists forcibly caught hold of minor victim, pressed her chest, and attempted to disrobe her — No act suggestive of determination to commit rape — Held, mere act of touching or disrobing, without further overt act or intent to perform sexual intercourse, not sufficient to constitute 'attempt to rape' — Summoning under Section 376 IPC and Section 18 POCSO modified. (Paras 21, 24, 25, 27, 29)

Criminal Law — Outrage of Modesty — Indian Penal Code, 1860 - Section 354B — Protection of Children from Sexual Offences Act, 2012, Sections 7, 9(m), 10 — Alleged acts constitute sexual assault and aggravated sexual assault — Victim a minor girl below 18 years — Sufficient prima facie material for summoning under Section 354B IPC and Sections 9/10 POCSO — Held, Trial Court erred in summoning for graver offence of rape; modified summoning upheld under appropriate provisions. (Paras 18, 23, 26, 28)

Criminal Procedure Code, 1973 — Sections 200 & 202 — Summoning of Accused — Magistrate required to apply judicial mind to nature of allegations and supporting material — Mere reproduction of complainant's St.ment without examining whether offence alleged is made out not permissible — Re-evaluation of summoning order proper in revision jurisdiction. (Paras 16, 21)

HELD:

The allegation of Section 376 IPC and Section 18 of POCSO Act is levelled against accused Pawan and Akash. The offence under Section 376 IPC and Section 18 of POCSO Act has been attributed against accused Pawan and Akash and offence under Sections 504 and 506 IPC is alleged against accused Ashok who is father of main accused Pawan. In the impugned order learned court below has summoned the accused Pawan and Akash under Section 376 IPC, but said charge is readwith Section 18 of POCSO Act which provides for punishment for attempt to commit an offence. Thus, instead of invoking Section 376/511 IPC against these accused learned court below has invoked Section 376 readwith Section 18 of POCSO Act. Thus, it appears that learned court below has found the prima facie case against these accused for attempt to rape, or attempt to commit penetrative sexual assault within the purview of POCSO Act. (Para 18)

Section 354 (B) IPC provides punishment for assaults or uses criminal force against any woman with the intent to disrob which shall not be less than three years but which may extend to seven years, and shall also be liable to fine. Section 354 IPC provides punishment for assault of criminal force to women with intent to outrage her modesty which shall not be less than one year but it may extend to five years. (Para 19)

In section 376 IPC punishment for rape has been provided. Section 376 (AB) IPC describe punishment for rape on woman within twelve years of age, imprisonment shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or both. (Para 20)

After giving a thoughtful consideration and meticulous examination of the facts of the case, this court is of the considered opinion that mere fact that according to prosecution version two accused Pawan and Akash grabbed the breasts of the victim and one of them namely Akash broke the string of her pyjama and tried to drag her beneath the culvert and in the meanwhile on interference of passersby/witnesses the accused persons fled away from the spot leaving

the victim behind, is not sufficient to hold that a case of Section 376, 511 IPC or Section 376 IPC readwith Section 18 of POCSO Act has been made out against the accused persons. (Para 26)

With foregoing discussion, this court finds that the finding of the learned court below with regard to offence of attempt to rape in respect of revisionist Pawan and Akash in the impugned summoning order is not sustainable and instead they are liable to be summoned for minor offence under Sections 354(b) IPC readwith Section 9/10 of POCSO Act. The impugned summoning order stands modified accordingly. The learned court below is directed to issue fresh summoning order in respect of the revisionists Pawan and Akash, under modified sections. (Para 29)

Revision Application partly allowed. (E-14)

List of Cases cited:

1. Lal Kumar Singh & ors. Vs St. of Mah.
2. Rex Vs James Lloyd (1836) 7C and P 817 :173 ER 141

(Delivered by Hon'ble Ram Manohar Narayan Mishra, J.)

1. Instant Criminal Revision has been preferred against the summoning order dated 23.06.2023 passed by learned Special Judge POCSO Act, Kasganj in Complaint Case No.23 of 2022, P.S. Patiyali, District Kasganj. Whereby the revisionist Nos.1 and 2 namely Akash and Pawan have been summoned to face trial for charge under Sections 376 IPC readwith Section 18 of POCSO Act, and also summoned revisionist No.3 Ashok for charge under Sections 504 and 506 IPC.

2. Heard Sri Ajay Kumar Vashistha, learned counsel for the revisionists, Sri Indra Kumar Singh, learned counsel for the respondent No.2

and learned A.G.A. for the State-respondent and perused the material available on record.

3. The factual matrix of the case in brief are that informant “X” (identification masked) filed an application under Section 156(3) Cr.P.C. bearing date 12.01.2022 before the court of Special Judge, POCSO Act, with allegation that on 10.11.2021 at around 05:00 pm she was returning from the home of her sister-in-law (nanad) alongwith her minor daughter aged about 14 years. Accused Pawan, Akash and Ashok met her on the way on muddy road and asked her from where she was coming, as they are her co-villagers. When she stated that she was coming from the place of her sister-in-law accused Pawan offered a lift to her daughter with assurances that he would drop her at residence and placing reliance on his assurance, she permitted her daughter to company him on his motorcycle. The accused persons had stopped their motorcycle on muddy way, on way to her village they started grabbing her breasts and Akash dragged her and tried to take her beneath the culvert and broke the string of her pyjama. The witnesses Satish and Bhurey who were coming behind on a tractor reached the spot on hearing cries of her daughter. The accused persons threatened him with life by pointing a country made pistol to them and fled away from the place. When the applicant came to the place of Pawan to make a complaint, his father Ashok abused and threatened her with life, she went to police station to lodge an FIR on next day, but no action was taken.

4. Learned court below vide order dated 21.03.2022 treated the application as complaint and proceeded with the case as a complaint case. Learned court below after

recording statements of the complainant under Section 200 Cr.P.C. and her witness Satish under Section 202 Cr.P.C. summoned the accused Pawan and Akash under Sections 376 IPC readwith Section 18 of POCSO Act and accused Ashok under Section 504 and 506 IPC. The accused persons feeling aggrieved by the summoning order has filed present revision before this Court.

5. Learned counsel for the revisionist submitted that revisionist No.1 is a cousin (mausera bhai) of revisionist No.2 and nephew of revisionist No.3, revisionist No.2 is the son of revisionist No.3 so both are son and father. As the revisionists are closely hit family members, commission of such type of incident by them does not look natural. In fact mother of revisionist No.1 Smt. Ranjana has lodged an FIR against four persons namely Rajeev, Shailendra, Sukhveer, and Videsh vide Case Crime No.209 of 2021 under Sections 354 (b), 504 506 IPC at P.S. Patiyali, District Kashganj on 17.10.2021. In said FIR an allegation was made by said Ranjana the mother of revisionist No.1 Akash that named accused persons molested and torn her clothes on 04.11.2021 at around 11:00 am when she had gone to her agricultural field alongwith her son Akash to make kyari (seed plot), they also engaged in marpeeth with her son and abused him. The victim who is mother of revisionist No.1 had supported the FIR version in her statement under Section 161 Cr.P.C. and chargesheet has been filed against named accused persons under Section 354 kha, 504, 506 IPC.

6. He further submitted that as Sukhveer who is brother-in-law the informant “X” (identification masked) in said police case and real uncle of the victim

in the present case is an accused in said case, the revisionists have been maliciously framed by informant and victim in this false criminal case to save skin of Sukhveer who is their family member. Present FIR has been lodged after filing of chargesheet in said police case against Sukhveer and others as a counter blast of earlier case lodged at the instance of the mother of revisionist No.1.

7. Learned counsel for the revisionist submitted that present FIR has been lodged only to wreck vengeance against the revisionist on account of said FIR. It is highly improbable that where there was a prior and recent enmity between both sides, the mother of the victim will permit her daughter to accompany the son and a relative of the informant in earlier case even after filing of chargesheet against informant side.

8. He next submitted that learned court below has failed to appreciate this fact that no offence under Section 376 IPC is made out against accused Pawan and Akash even if complaint version is taken on its face value, the case as produced by prosecution does not go beyond the extent of Section 354, 354(b) IPC and relevant provisions of POCSO Act.

9. Learned counsel for the revisionist further submitted that neither the complainant nor victim has levelled any allegation regarding commission of rape against the revisionists, even then two accused persons have been summoned inter alia under Sections 376 IPC. This fact itself reflects that summoning order was passed in a casual and cavalier manner without application of mind. Ingredients of offence under Section 375 IPC are not made out in the case. He lastly submitted that

summoning order is liable to be set-aside, and at least matter should be remanded to the court below for decision afresh and application for discharge filed by the revisionist.

10. Per contra learned counsel for the respondent No.2 submitted that at the stage of framing of charge trial court is not supposed to sift and weigh the evidence and material collected during investigation in meticulous manner. As at that stage only a prima facie case is to be found out for putting the accused persons on trial. No mini trial can be held at the stage of summoning the accused persons in a complaint case. The learned court below has summoned main accused persons under Section 376 IPC read with Section 18 of POCSO Act which is tantamount to an offence under Section 376/511 IPC.

11. Learned counsel for the revisionist placed reliance on recent judgment of the Hon'ble Supreme Court in ***Lal Kumar Singh and others Vs. State of Maharashtra*** in a Criminal Appeal preferred against order passed by Single Judge of Bombay High Court dismissing the criminal writ petition filed by the accused appellants against the order of issuance of process by the learned CJM concerned and the order passed by learned Session Judge dismissing the Criminal Revision preferred by the appellants.

12. Hon'ble Court observed in the above judgment as under:-

The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such

an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. The case of Sunil Bharti Mittal vs. Central Bureau of Investigation (2015) 4 SCC 609, which reads as under: -

“51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate (2015) 4 SCC 609 taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.”

29. A similar view has been taken by this Court in the case of Ashoke Mal Bafna (supra).

30. In the present case, leaving aside there being no reasons in support of the order of the issuance of process, as a matter of fact, it is clear from the order of the learned Single Judge of the High Court, that there was no such order passed at all. The learned Single Judge of the High Court, based on the record, has presumed that there was an order of issuance of process. We find that such an approach is unsustainable in law. The appeal therefore deserves to be allowed.”

13. Section 375 IPC defines rape as under:-

A man is said to commit “rape” if he—

1. penetrates his penis, to any extent, into the vagina, mouth,

urethra or anus of a woman or makes her to do so with him or any other person; or

2. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

3. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

4. applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

First.- Against her will.

Secondly- Without her consent.

Thirdly- With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly- With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly- With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and

consequences of that to which she gives consent.

Sixthly- With or without her consent, when she is under eighteen years of age.

Seventhly- When she is unable to communicate consent.

Explanations:-

1. For the purposes of this section, "vagina" shall also include labia majora.

2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act;

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exceptions

1. A medical procedure or intervention shall not constitute rape.

2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

14. Section 18 of POCSO Act, provides punishment for attempt to commit an offence. Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of

imprisonment provided for that offence or with fine or with both.

15. Section 7 of POCSO Act defines Sexual Assault. Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

16. Section 8 of POCSO Act provides punishment for sexual assault. Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

17. In the present case, learned court below has observed in the impugned order that according to academic documents of the victim issued by primary school from where she passed class IV, her date of birth is mentioned as 12.02.2002. Whereas the alleged incident occurred on 10.11.2021, thus the victim was more than 11 years of age on the date of incident and thus she was minor. This fact has not been denied by the revisionist that victim was not minor on the date of incident, but they have taken plea of false implication due to an earlier incident which has been reported by mother of revisionist No.1 against family members of the complainant in the present case.

18. The allegation of Section 376 IPC and Section 18 of POCSO Act is levelled against accused Pawan and Akash. The offence under Section 376 IPC and Section 18 of POCSO Act has been

attributed against accused Pawan and Akash and offence under Sections 504 and 506 IPC is alleged against accused Ashok who is father of main accused Pawan. In the impugned order learned court below has summoned the accused Pawan and Akash under Section 376 IPC, but said charge is readwith Section 18 of POCSO Act which provides for punishment for attempt to commit an offence. Thus, instead of invoking Section 376/511 IPC against these accused learned court below has invoked Section 376 readwith Section 18 of POCSO Act. Thus, it appears that learned court below has found the prima facie case against these accused for attempt to rape, or attempt to commit penetrative sexual assault within the purview of POCSO Act.

19. Section 354 (B) IPC provides punishment for assaults or uses criminal force against any woman with the intent to disrob which shall not be less than three years but which may extend to seven years, and shall also be liable to fine. Section 354 IPC provides punishment for assault of criminal force to women with intent to outrage her modesty which shall not be less than one year but it may extend to five years.

20. In section 376 IPC punishment for rape has been provided. Section 376 (AB) IPC describe punishment for rape on woman within twelve years of age, imprisonment shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or both.

21. In the present case, the allegation against accused Pawan and Akash is that they grabbed the breasts of the victim and Akash tried to bring down

lower garment of the victim and for that purpose they had broken string of her lower garments and tried to drag her beneath the culvert, but due to intervention of witnesses they left the victim and fled away from the place of incident. This fact is not sufficient to draw an inference that the accused persons had determined to commit rape on victim as apart from these facts no other act is attributed to them to further their alleged desire to commit rape on the victim.

22. In the present case the allegation against the revisionists has appearing from the statement of the complainant and victim is that the accused Pawan had got victim seated on pillion of his motorcycle, when the accused Pawan and Akash made a complaint when she was on way alongwith her daughter on date and time of incident, on giving her assurance they stopped the motorcycle on the way near the culvert grabbed her breast and Akash tried to dragged her beneath the culvert and broke the string of her pyjama (lower garment). On hearing her shrieks the witnesses Satish and Bhura emerged on the spot who were coming behind on a tractor and challenged the accused persons who fled away after giving the witnesses threat to kill and pointed country made pistol towards them. The allegation against accused Ashok who is father of accused Pawan is that when the complainant approached him after the incident alongwith the victim at his residence, he abused and threatened her and for that reason accused Ashok has only been summoned for charge under Section 504 and 506 IPC, and there is no allegation made against him as to molestation or attempt to rape.

23. There is no allegation in the complaint or in statement of the witnesses

recorded under Sections 200/202 Cr.P.C. that the accused Akash himself got unrest after breaking the string of lower garment of the minor victim. The specific allegation against Akash is that he tried to drag the victim beneath the culvert and broke the string of her pyjama. It is also not stated by witnesses that due to this act of the accused the victim got naked or got undressed. There is no allegation that accused tried to commit penetrative sexual assault against the victim.

24. The allegations levelled against the accused Pawan and Akash and facts of the case hardly constitute an offence of attempt to rape in the case. In order to bring out a charge of attempt to rape the prosecution must establish that it had gone beyond the stage of preparation. The difference between preparation and actual attempt to commit an offence consists chiefly in the greater degree of determination.

25. In **Rex v. James Lloyd (1836) 7C and P 817 : 173 ER 141** while summing up the charge to the jury, Justice Patterson observed :

"In order to find the prisoner guilty of an assault with intent to commit a rape, you must be satisfied that the prisoner, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person but that he intended to do so at all events and notwithstanding any resistance on her part".

In Express v. Shankar, (1881) ILR 5 Bom 403 the accused was charged for an attempt to commit rape. There the observations of M. Malvill J.,

which as quoted below, are very pertinent :

"We believe that in this country indecent assaults are often magnified into attempts at rape, and even more often into rape itself; and we think that conviction of an attempt at rape ought not to be arrived at unless the Court be satisfied that the conduct of the accused indicated a determination to gratify his passions at all events and in spite of all resistance."

26. After giving a thoughtful consideration and meticulous examination of the facts of the case, this court is of the considered opinion that mere fact that according to prosecution version two accused Pawan and Akash grabbed the breasts of the victim and one of them namely Akash broke the string of her pyjama and tried to drag her beneath the culvert and in the meanwhile on interference of passersby/witnesses the accused persons fled away from the spot leaving the victim behind, is not sufficient to hold that a case of Section 376, 511 IPC or Section 376 IPC readwith Section 18 of POCSO Act has been made out against the accused persons.

27. On facts of the case a prima facie charge attempt to rape is not made out against the accused Pawan and Akash and instead they are liable to be summoned for minor charge of Section 354(b) IPC i.e. assault or abuse a woman with intent to disrobing or compelling her to be naked and Section 9 of POCSO Act provides punishment for aggravated sexual assault on a child victim wherein Section 9 (m) provides that whoever commits sexual assault on a child below twelve years is said to have commit aggravated sexual

assault. Section 10 provides punishment with imprisonment upto seven years winch shall not be less than five years and shall be liable to fine.

28. Section 10 of POCSO Act provides that whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

29. With foregoing discussion, this court finds that the finding of the learned court below with regard to offence of attempt to rape in respect of revisionist Pawan and Akash in the impugned summoning order is not sustainable and instead they are liable to be summoned for minor offence under Sections 354(b) IPC readwith Section 9/10 of POCSO Act. The impugned summoning order stands modified accordingly. The learned court below is directed to issue fresh summoning order in respect of the revisionists Pawan and Akash, under modified sections.

30. . The revision is partly allowed in the manner.

(2025) 3 ILRA 449

**REVISIONAL JURISDICTION
CRIMINAL SIDE**

DATED: ALLAHABAD 11.03.2025

BEFORE

THE HON'BLE MANJIVE SHUKLA, J.

Criminal Revision No. 1965 of 2024

Rajendra Singh

...Revisionist

Versus

State of U.P. & Ors.

...Respondents

Counsel for the Revisionist:

Sri Jitendra Kumar Singh, Sri Srijan Pandey

Counsel for the Respondents:

G.A., Sri Saurabh Chaturvedi, Sri I.K. Chaturvedi

Criminal Law - Criminal Procedure Code, 1973 – Criminal revision under Sections 397 read with Section 401 CrPC-Complaint under Section 156(3) – Rejection of application for direction to register FIR – Revision against – Allegation that deceased (brother of revisionist) was murdered by relatives over demand of share in housing scheme amount and property – Police report silent on key motive aspect – Magistrate rejected application solely relying on police report – Held, where application prima facie discloses cognizable offence, court must direct FIR without preliminary inquiry – Contents of application disclosed motive, threats, and mode of commission of offence – Rejection by court without proper reasoning illegal – Second FIR not barred when version, informant and accused are different – Revision allowed – Magistrate directed to reconsider application afresh. (Paras 29 to 32, 36, 37, 38, and 40)

HELD:

The Hon'ble Supreme Court in its Constitution Bench judgement rendered in the case of Lalita Kumari (Supra) had held that the registration of F.I.R. is mandatory under Section 154 Cr.P.C., if the information discloses commission of a cognizable offence and no inquiry is permissible in such a situation. It has further been held that if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain as to whether cognizable offence is disclosed or not... (Para 29)

This Court finds that the Constitution Bench of the Hon'ble Supreme Court in its judgement rendered in the case of Lalita Kumari (Supra) had created two categories; firstly where the contents of the information disclose commission of the cognizable offence and secondly where the contents, in categorical terms, do not disclose commission of the cognizable offence

but indicates the necessity for an inquiry. In the first scenario, there is no necessity for any preliminary inquiry and registration of the F.I.R. is must but in second scenario, the direction for preliminary inquiry by the police can be given. (Para 30)

Now looking into the facts of the present case, it is quite apparent that the contents of the application, filed by the revisionist under Section 156 (3) Cr.P.C., in unequivocal terms demonstrate the commission of the cognizable offence therefore, in view of the judgement rendered by the Hon'ble Supreme Court in the case of Lalita Kumari (Supra), there was no necessity for the court to call for a police report. In the matter of the revisionist, though in the police report, it had been St.d that the allegations levelled, in his application filed under Section 156 (3) Cr.P.C., have not been found proved but at the same time, the motive to commit crime with the Opposite Party No. 3 has not been ruled out. (Para 31)

In the given facts and circumstances of the case, this Court is of the view that the learned Special Judge (Dacoity Affected Area Act)/Additional Sessions Judge, Banda ought not to have accepted the police report as a gospel truth because the contents of the application filed under Section 156(3) Cr.P.C., disclose commission of a cognizable offence therefore, the court, while rejecting the application filed by the revisionist under Section 156 (3) Cr.P.C., had committed manifest error of law. (Para 32)

The Division Bench of this Court in its judgement dated 26.02.2020 rendered in the case of Deokali (Supra) had held that where, the different version of the incident is reported by a different complainant giving a different set of accused, then the said version would have to be investigated and the said version cannot be termed as second First Information Report of the same offence therefore, on the basis of the second version, second F.I.R. has to be lodged and investigated and further police report is to be filed before the competent court ...(Para 37)

From the aforesaid law laid down by the Hon'ble Supreme Court and by the Division Bench of this Court, it had already been crystallized that where, the different version of the incident is

reported by a different complainant giving a different set of accused, then the second First Information Report for the same incident is permissible under law

Revision Application allowed. (E-14)

List of Cases cited:

1. Lalita Kumari Vs Government of Uttar Pradesh & ors. 2014 (2) SCC 1
2. Upkar Singh Vs Ved Prakash & ors. (2004) 13 SCC 292
3. Surender Kaushik & ors. Vs St. of U.P. & ors. (2013) 5 SCC 148
4. Criminal Misc. Writ Petition No. 24812 of 2019 (Deokali Vs St. of U.P. & ors.)
5. T.T. Antony Vs St. of Kerala, (2001) 6 SCC 181
6. Awadesh Kumar Jha Vs St. of Bihar, (2016) 3 SCC 8

(Delivered by Hon'ble Manjive Shukla, J.)

1. Heard Sri Srijan Pandey and Sri Jitendra Kumar Singh, learned counsels appearing for the revisionist, learned Additional Government Advocate appearing for the State and Sri I.K. Chaturvedi, learned Senior Advocate assisted by Sri Saurabh Chaturvedi, learned counsel appearing for Opposite Parties No. 2 to 4.

2. The instant criminal revision has been filed under Section 397 Cr.P.C. read with Section 401 Cr.P.C. challenging therein, the order dated 11.03.2024 passed by the learned Special Judge (Dacoity Affected Area Act)/Additional Sessions Judge, Banda in Criminal Misc. Case No. 71 of 2024 (Rajendra Singh Vs. Vinod Singh and Others) whereby, the application filed by the revisionist, under Section 156

(3) Cr.P.C. for a direction to the police to register the First Information Report, had been rejected.

3. Facts of the case, in brief, are that brother of the revisionist i.e. Virendra Singh and his wife were found dead in their house in the morning of 07.11.2023. The revisionist informed the police of the Police Station Pailani, District Banda that his sister, Krishna Devi, his cousin, Vinod Singh and one Sanjay Singh have administered poison to his brother and wife of his brother, which had resulted into their death. The police did not register the First Information Report, however the police sent the dead-bodies for post-mortem. In the post-mortem report, it is mentioned that the cause of death could not be ascertained and therefore viscera had been preserved.

4. Since the police did not register the First Information Report, the revisionist went to the police station for lodging the F.I.R. but he was ousted from the police station by using force. Thereafter, the revisionist appeared before the Superintendent of Police, Banda on 21.12.2023 and he also sent his application for lodging F.I.R. to the Superintendent of Police, Banda through registered post on 22.12.2023.

5. Since, in-spite of the aforesaid efforts made by the revisionist, the police did not register F.I.R., he filed an application on 26.02.2024 in the court of learned Special Judge (Dacoity Affected Area Act)/Additional Sessions Judge, Banda. In the said application, the revisionist had stated that his brother, Virendra Singh was sanctioned a house under Pradhan Mantri Housing Scheme and an amount of Rs. 1,20,000/- was credited in his account. The sister of the revisionist i.e.

Krishna Devi, cousin of the revisionist i.e. Vinod Singh and Pradhan Pratinidhi, Sanjay Singh were pressurizing Virendra Singh to hand-over half-land of the house and Rs. 60,000/- from the amount received under the Pradhan Mantri Awas Scheme to them. In the application, it was further stated that the aforesaid Krishna Devi, Vinod Singh and Sanjay Singh extended threat to Virendra Singh to hand over the land and money to them within five to six days otherwise they will kill him. In the application, it had further been stated that the aforesaid Krishna Devi, Vinod Singh and Sanjay Singh on 6.11.2023, in the night, administered poison to Virendra Singh and his wife and killed them. The revisionist, through his application filed under Section 156(3) Cr.P.C., prayed that a direction be issued commanding the police station concerned to register an F.I.R. in the matter and take adequate penal proceedings against Vinod Singh, Krishna Devi and Sanjay Singh.

6. Learned Additional Sessions Judge on the aforesaid application filed by the revisionist under Section 156 (3) Cr.P.C. sought a report from the police station concerned. The Station House Officer, Police Station Pailani, District Banda submitted a report wherein, it was stated that after post-mortem of the dead-bodies, their viscera have been preserved and have been sent to Forensic Science Laboratory (F.S.L.) for the investigation. The other allegations levelled in the application were not found proved by the police.

7. Learned Special Judge (Dacoity Affected Area Act)/Additional Sessions Judge, Banda, had rejected the application filed by the revisionist under Section 156 (3) Cr.P.C. vide impugned order dated

11.03.2024. The revisionist challenged the aforesaid order dated 11.03.2024 by filing the instant criminal revision before this Court on 14.04.2024. The instant revision was entertained by this Court vide order dated 29.04.2024 and notice was issued to Opposite Party No. 2 i.e. to Vinod Singh thereafter, an application for correction in the order dated 29.04.2024 was filed by the revisionist and the said application was registered as Criminal Misc. Correction Application No. 1 of 2024. This Court allowed the correction application vide order dated 02.05.2024 and thereby, in place of notice to Opposite Party No. 2, notices to Opposite Parties No. 2 to 4 were issued. As per the service report available in the order-sheet of this revision, notice of this revision to Opposite Party No. 2 i.e. to Mr. Vinod Singh was served on 07.05.2024.

8. It appears that after service of notice of this criminal revision on Opposite Party No. 2 i.e. on Vinod Singh, an application under Section 156 (3) Cr.P.C. was filed by Smt. Krishna Devi who is Opposite Party No. 3 in this criminal revision wherein, she claimed that the present revisionist i.e. Mr. Rajendra Singh and few other persons have administered poison to her brother, Virendra Singh and his wife and therefore, the First Information Report be lodged against Mr. Rajendra Singh and other persons and they may be punished for the offence in question.

9. A very surprising fact which is note-worthy, at this stage, is that Smt. Krishna Devi i.e. Opposite Party No. 3, in her application filed under Section 156(3) Cr.P.C., has not stated as to on what date, she contacted the police of Police Station Pailani, District Banda for lodging of the F.I.R. and in the application, she has only said that when the F.I.R. was not lodged by

the police, she has sent application to the Superintendent of Police, Banda through registered post on 16.04.2024. It is also noteworthy that the Virendra Singh and his wife were found dead in the morning of 7.11.2023 and Smt. Krishna Devi, for the first time, sent her application for lodging of the F.I.R. to the Superintendent of Police, Banda on 16.04.2024 i.e. after about five months. However, the learned Chief Judicial Magistrate, Banda on the application filed by Smt. Krishna Devi again sought a report from the police of the Police Station Pailani, District Banda and this time again, police submitted almost an identical report which was submitted at earlier point of time. Neither Smt. Krishna Devi nor the police of the Police Station concerned disclosed before the Chief Judicial Magistrate, Banda that earlier an application filed by the revisionist under Section 156(3) Cr.P.C. had been rejected and the order passed on his application is subject matter of the Criminal Revision No. 1965 of 2024.

10. Learned Chief Judicial Magistrate, without considering the fact of delay in filing the application under Section 156(3) Cr.P.C. and without even considering as to on what date, Smt. Krishna Devi for the first time tried to lodge the F.I.R. in respect of the crime in question, straightway passed an order on 03.07.2024 whereby, direction had been issued to the Station House Officer, Police Station Pailani, District Banda to register the First Information Report given by Smt. Krishna Devi. Pursuant to the order dated 03.07.2024, the F.I.R. No. 0150 of 2024 had been registered in the Police Station Pailani, District Banda under Sections 328 and 302 I.P.C. against the present revisionist i.e. Rajendra Singh, Braj Vilas

Singh, Braj Kishore Singh and Manmohan Singh.

11. Sri I.K. Chaturvedi, learned Senior Advocate appearing for Opposite Parties No. 2 to 4 has raised a preliminary objection i.e. since one F.I.R., in respect of the crime in question, had already been registered as F.I.R. No. 0150 of 2024 wherein, the revisionist himself is an accused, the instant revision has lost its relevance, as there cannot be the second F.I.R. in respect of the same crime.

12. Sri Srijan Pandey, learned counsel appearing for the revisionist has argued that if an application is filed under Section 156(3) Cr.P.C. with a prayer that a direction be issued to the police station concerned to register the First Information Report, the court dealing with the application is under obligation to see that whether the contents of the application disclose any cognizable offence and if cognizable offence is disclosed, the court is under obligation to issue a direction to the police station concerned to register the F.I.R. in respect of the crime. It has further been argued that the contents of the application, filed by the revisionist under Section 156(3) Cr.P.C., in unequivocal terms, disclose a cognizable offence and further even the police report filed in the matter states that the viscera has been preserved and has been sent to F.S.L. and Smt. Krishna Devi also wants share in the property of the deceased, hence there was no occasion for the court to reject the revisionist's application filed under Section 156(3) Cr.P.C. but the learned Special Judge (Dacoity Affected Area Act)/Additional Sessions Judge, Banda in absolutely arbitrary manner without assigning any cogent reason, had rejected the said application.

13. Learned counsel appearing for the revisionist has submitted that once the contents of the application filed under Section 156(3) Cr.P.C., in unequivocal terms, disclose commission of the cognizable offence, there is no necessity for the court to direct the police to submit its report and in the present case even in the report filed by the police, it had come that Opposite Party No. 3 i.e. Krishna Devi was also wanting a share in the property of the deceased therefore, there was no occasion for the court to rule out the possibility of the commission of the offence by Opposite Parties No. 2 to 4, as such the court could not have rejected the application filed by the revisionist under Section 156 (3) Cr.P.C.

14. Learned counsel appearing for the revisionist, to buttress his arguments, has relied on the judgement rendered by the Constitution Bench of the Hon'ble Supreme Court in the case of ***Lalita Kumari Vs. Government of Uttar Pradesh and Others 2014 (2) SCC 1*** and has submitted that once contents of the application filed under Section 156 (3) Cr.P.C., in unequivocal terms, disclose commission of the cognizable offence, there is no need for the court to direct the police to submit its report and the court straightway should issue direction to the police station concerned to register F.I.R. and investigate the matter.

15. Learned counsel appearing for the revisionist has argued that the law in respect of the second F.I.R., regarding the same incident, had already been crystallized through series of judgements rendered by the Hon'ble Supreme Court and by this Court wherein, it had been categorically held that the second F.I.R., in respect of the same incident, can be lodged

if the informant is a different person to that of the informant of the first F.I.R., the version of the incident given by the informant is different to that of the version given by the informant in the first F.I.R. and the accused are different persons. It has further been submitted that in the case at hand, informant is the revisionist whereas the informant in the F.I.R. already lodged is Smt. Krishna Devi. The version in respect of the incident given in the application filed by the revisionist under Section 156(3) Cr.P.C. is altogether different to that of the version given by Smt. Krishna Devi in the F.I.R. already lodged and the accused of the crime in the application filed by the revisionist under Section 156 (3) Cr.P.C. are different persons to that of the accused in the F.I.R. lodged by Smt. Krishna Devi.

16. Sri Srijan Pandey, learned counsel appearing for the revisionist has relied on the judgement rendered by the Hon'ble Supreme Court in the case of ***Upkar Singh Vs. Ved Prakash and Others (2004) 13 SCC 292***, judgement rendered in the case of ***Surender Kaushik and Others Vs. State of U.P. and Others (2013) 5 SCC 148*** and judgement and order dated 26.02.2020 rendered by the Division Bench of this Court in ***Criminal Misc. Writ Petition No. 24812 of 2019 (Deokali Vs. State of U.P. and 58 Others)*** and has submitted that in the said judgements, it had categorically been held that second F.I.R., regarding same incident, can be registered if the informants are different persons, the versions of the incident in both the cases are different and the persons accused for the crime are different.

17. Learned counsel appearing for the revisionist has vehemently argued that the peculiar facts of the case, in categorical terms, demonstrate that the F.I.R. lodged by

Smt. Krishna Devi is nothing but a tactic to anyhow save her from the punishment of the offence in question, as it was the revisionist who on the date of incident itself started the proceedings for lodging of the F.I.R. and even he immediately filed application under Section 156 (3) Cr.P.C. therefore, it would be in the interest of justice that this Court may allow this revision and set-aside the impugned order dated 11.03.2024 with a direction to learned Special Judge (Dacoity Affected Area Act)/Additional Sessions Judge, Banda to reconsider the application filed by the revisionist under Section 156(3) Cr.P.C., afresh and issue direction to the police station concerned to register the F.I.R.

18. Sri I.K. Chaturvedi, learned Senior Advocate appearing for Opposite Parties No. 2 to 4 has argued that once an F.I.R. had been registered in respect of one incident, the second F.I.R. for the same incident cannot be registered. Sri I.K. Chaturvedi, learned Senior Advocate has relied on the judgement rendered by the Hon'ble Supreme Court in the case of ***T.T. Antony v. State of Kerala, (2001) 6 SCC 181*** and the judgement rendered in the case of ***Awadesh Kumar Jha v. State of Bihar, (2016) 3 SCC 8***.

19. Sri I.K. Chaturvedi, learned counsel appearing for Opposite Parties No. 2 to 4 has also submitted that the revisionist himself, with the help of few other persons, had administered poison to Virendra Singh and his wife and therefore, just to save himself, he is trying to anyhow get his First Information Report lodged. He has further submitted that there is neither any illegality nor any infirmity in the impugned order dated 11.03.2024 therefore, the instant criminal

revision is liable to be dismissed by this Court.

20. I have considered the rival arguments advanced by the learned counsels appearing for the parties and have perused the documents on record of this criminal revision.

21. Before proceeding to decide the legal issues raised in this criminal revision, this Court finds it appropriate to take note of certain facts of the case which are as under:

22. The Virendra Singh and his wife were found dead in their home in the morning of 7.11.2023. The revisionist on the same day approached to the concerned police station for lodging of the F.I.R. against Opposite Parties No. 2 to 4 but the police ousted him from the police station. The revisionist, immediately on 21.12.2023 appeared before the Superintendent of Police, Banda and sent an application on 22.12.2023 through registered post for lodging of the F.I.R. Since the F.I.R. was not registered by the police, the revisionist immediately filed an application on 26.02.2024 under Section 156 (3) Cr.P.C. The application filed by the revisionist, under Section 156 (3) Cr.P.C., had been rejected vide order dated 11.03.2024. The revisionist challenged the order dated 11.03.2024 by filing the instant Criminal Revision No. 1965 of 2024 which was entertained by this Court and notice was issued to Opposite Party No. 2 vide order dated 29.04.2024. The notice of this revision was served upon Opposite Party No. 2 on 07.05.2024.

23. Till service of notice of this revision upon Opposite Party No. 2, there was absolute silence on the part of

Opposite Parties No. 2 to 4 and after service of notice of this revision upon Opposite Party No. 2, the Opposite Party No. 3 filed an application on 10.05.2024 before the learned Chief Judicial Magistrate, Banda for lodging of an F.I.R. against the revisionist and three other persons for the same incident. The Opposite Party No. 3 did not disclose that the application filed by the revisionist under Section 156 (3) Cr.P.C. had already been rejected. Even otherwise, Opposite Party No. 3, in her application filed on 10.05.2024, did not disclose as to on what date, she actually approached to the concerned police station for lodging of the F.I.R. and in the application, it has been stated that she has given an application on 16.04.2024 to the Superintendent of Police, Banda for lodging of the F.I.R. i.e. after about five months from the date of incident.

24. The facts noted hereinabove, in categorical terms, demonstrate that Opposite Party No. 3 remained silent for about five months and when the application filed by the revisionist under Section 156(3) Cr.P.C. was rejected and the criminal revision against the rejection order was entertained by this Court, the Opposite Party No. 3 filed an application under Section 156 (3) Cr.P.C. and the said application had been allowed and consequently an F.I.R. had been registered bearing F.I.R. No. 0150 of 2024 in Police Station Pailani, District Banda.

25. This Court does not have any occasion to make any comment on the order dated 03.07.2024 passed by the learned Chief Judicial Magistrate, Banda whereby, the application filed by Opposite Party No. 3 under Section 156 (3) Cr.P.C. had been allowed and the F.I.R. had been

registered but the aforesaid facts, prima-facie demonstrate that everything has not been done in accordance with law.

26. Now this Court proceeds to consider the issue, as to whether the contents of the application filed by the revisionist under Section 156 (3) Cr.P.C. disclose commission of a cognizable offence or not. The relevant paragraphs of the application, filed by the revisionist under Section 156 (3) Cr.P.C., are extracted as under:

“2. यह कि प्रार्थी/वादी के बड़े भाई बीरेन्द्र सिंह पुत्र शिवनारायन सिंह के नाम प्रधान मंत्री आवास योजना के तहत कालोनी बनवाने हेतु एक लाख बीस हजार रुपये मिला था। प्रार्थी के परिवारिक चचेरा भाई विनोद सिंह और मेरी सगी बहन कृष्णा देवी ने प्रधान प्रतिनिधि संजय सिंह के कहने पर गुण्डई व दबंगई के दम पर अनर्गल तरीके से कालोनी की जमीन पर आधा हिस्सा बीरेन्द्र सिंह से माँग रहे थे।

3. यह कि प्रार्थी/वादी के बड़े भाई बीरेन्द्र सिंह से परिवारिक चचेरा भाई विनोद सिंह और सगी बहन कृष्णा देवी व प्रधान प्रतिनिधि संजय सिंह ने बीरेन्द्र सिंह को प्रधानमंत्री आवास का मिला आधा रूपया मु० 60,000/- उक्त तीनों लोग मांग रहे थे, लेकिन बीरेन्द्र सिंह ने कालोनी की जमीन का आधा हिस्सा व प्रधानमंत्री आवास का मिला आधा रूपया देने से इन्कार कर दिया।

4. यह कि तभी विनोद सिंह की बीरेन्द्र सिंह की घरौनी आबादी की जमीन गाटा संख्या 97 में प्रधान प्रतिनिधि संजय सिंह जो रिस्ते में विनोद सिंह का सगा भनेज दामाद ने अनर्गल (गलत) तरीके से नाम चढवा दिया। लेकिन जानकारी होने पर बीरेन्द्र सिंह ने एतराज किया, जिसका प्रार्थना पत्र साथ में संलग्न है।

5. यह कि उक्त तीनों विनोद सिंह और कृष्णा देवी व संजय सिंह ने बीरेन्द्र सिंह से कहा कि अभी 5-6 दिन का समय है, तुम्हारे पास कालोनी की आधी जमीन व कालोनी बनाने हेतु मिला आधा 60 हजार रूपया हमें दे दो नहीं तो तुम्हें हम लोग जान से मार देंगे।

6. यह कि उक्त तीनों (विनोद सिंह और कृष्णा देवी व प्रधान प्रतिनिधि संजय सिंह) ने योजना बनाकर योजनाबद्ध तरीके से मुझ प्रार्थी के बड़े भाई बरिन्द्र सिंह व भाभी शान्ती देवी पत्नी बरिन्द्र सिंह निवासी ग्राम लसडा थाना पैलानी जनपद बाँदा को दिनांक 06.11.2023 की रात में जहर खिलाकर मार दिया है, जिनके पोस्टमार्टम की रिपोर्ट साथ में संलग्न है।

7. यह कि वादी के बड़े भाई बरिन्द्र सिंह ने यह बाते करने के पूर्व दिनांक 02.11.2023 के पहले बताया था, इसलिये प्रार्थी को पूर्ण विश्वास हो गया है कि इन्होंने ने ही जहर खिलाकर प्रार्थी के बड़े भाई बरिन्द्र सिंह को मार दिया।

8. यह कि प्रार्थी/ वादी को दिनांक 07.11.2023 को सुबह लगभग 6 बजे हमारी बहन कृष्णा देवी ने अपने बचने के लिये कि मैं न फंसू इसलिये मेरे घर आकर बताया कि भैया बरिन्द्र व भाभी शान्ती देवी खत्म हो गये है। प्रार्थी मौके पर गया और देखा तो दोनों खत्म हो चुके थे। पोस्टमार्टम रिपोर्ट बिसरा प्रिजर्व की जांच हेतु रिपोर्ट भेजी जा चुकी है।

9. यह कि प्रार्थी/वादी की बहन कृष्णा देवी और विनोद सिंह ने मृतक बरिन्द्र सिंह का कालोनी बनवाने हेतु घर में रखा रूपया 35000/- व चाँदी की पायल एक जोड़ी वजन लगभग 100 ग्राम और कान के सुई धागा सोने के वजन लगभग 5 ग्राम व बरिन्द्र सिंह व उसकी पत्नी के मोबाइल व बैंक की पास बुक और आधार कार्ड व अन्य कागजात चोरी कर लूट कर ले गये।

10. यह कि मुझ प्रार्थी/ वादी को उक्त तीनों लोगो ने (विनोद सिंह और कृष्णा देवी व प्रधान प्रतिनिधि संजय सिंह धमकी दिया है कि जैसे उन दोनों को जहर खिलाकर मार दिया है, उसी तरह तुम्हे भी जहर खिलाकर जान से मार देंगे अगर तुमने हमारे खिलाफ कानूनी कार्यवाही किया, क्योंकि प्रधान प्रतिनिधि थाने से लेकर उच्चाधिकारियों व राजनीति में पकड़ बनाये हुये है। तभी मौके पर खडे बूजविलाश व मनमोहन सिंह पुत्रगण सुरजपाल सिंह व गांव व पडोस के तमाम व्यक्तियों ने उक्त लोगो से विरोध करते हुए कहा कि तुम लोग गलत कर रहे हो।"

27. The aforesaid contents of the application filed by the revisionist under Section 156 (3) Cr.P.C. categorically

demonstrate commission of the cognizable offence and the motive for Opposite Parties No. 2 to 4 to kill Virendra Singh and his wife by administering them poison. The revisionist, in Paragraph No. 10 of his application, had categorically stated that Vinod Singh, Krishna Devi and Sanjay Singh have extended threat to him by saying that they will kill him by administering poison as they have done with Virendra Singh and his wife. Once this Court finds that the story of commission of the cognizable offence is there in the application along with motive and further there is an affirmative claim of the applicant that the accused have committed the cognizable offence, there cannot be any doubt that the contents of the application, filed under Section 156(3) Cr.P.C., disclose commission of the cognizable offence. Learned Special Judge (Dacoity Affected Area Act)/learned Additional Sessions Judge, Banda on the application, filed by the revisionist under Section 156 (3) Cr.P.C., called for a police report and the following police report was submitted by the Station House Officer of the Police Station, Pailani, District Banda:

"सादर निवेदन है आवेदक श्री राजेन्द्र सिंह पुत्र शिवनारायन सिंह नि० लसडा थाना पैलानी जनपद बाँदा के प्रा०पत्र की जांच मुझ उ०नि० द्वारा की गयी तो वाक्यात इस प्रकार पाये गये कि आवेदक राजेन्द्र सिंह उपरोक्त का भाई वीरेन्द्र सिंह व भाभी शान्ति देवी को प्रधानमंत्री आवास योजना के अन्तर्गत आवास लगभग 6 माह पूर्व मिला था, जिसकी दो किस्त क्रमशः 40 हजार, 70 हजार रुपये प्राप्त हो चुका है। कालोनी का दीवाल चारो तरफ खडी है। अभी छथ नहीं पडी है शेष 10 हजार रुपये मकान कम्पलीट होने के पश्चात मिलता है। मात्र वही धन शेष है। आवास का प्राप्त धन में से आधा पैसा ग्राम प्रधान प्रतिनिधि व विनोद सिंह के द्वारा माँगने की बात की जाँच से पुष्टि नहीं हुई तथा जेवर पैसा मकान से लेने व चुराने की बात असत्य है क्योंकि घटना के तत्काल बाद स्थानीय पुलिस दिनांक

07.11.2023 को पंचायतनामा की कार्यवाही हेतु मौके पर जाकर पंचायतनामा की कार्यवाही की गयी थी बाद पंचायतनामा, पोस्टमार्टम होने के उपरान्त दोनो मृतकों की पीएम रिपोर्ट में बिसरा प्रिजर्व किया गया है। पंचायतनामा की कार्यवाही मुझ उ०नि० द्वारा ही की गयी थी। घटनास्थल का निरीक्षण से पाया गया कि खुले खण्डहर कच्चा मकान के अन्दर प्लास्टिक पन्नी लगी हुई थी जिसके अन्दर दोनों मृतकों का शव पड़ा था मौके की जांच पड़ताल एवं निरीक्षण से वहां पर ऐसी कोई वस्तु का रखना या होना नहीं पाया गया था क्योंकि खुल्ला बिना दरवाजे का पूरा मकान था प्लास्टिक पन्नी के अन्दर चारपाई के नीचे टीन में थोड़ा सा आटा था। देखने से बहुत गरीब प्रतीत होते थे। उस वक्त वहां मौजूद लोगो द्वारा आर्थिक तंगी की बात बतायी गयी थी। गांव के लोगो का कहना था कि इनके कोई औलाद नहीं थी व आर्थिक तंगी आदि से परेशान होकर वीरेन्द्र की पत्नी शान्ति देवी ने जहर खा लिया था। जिसकी सूचना वीरेन्द्र सिंह ने रात में ही अपने आस पास एवं आवेदक राजेन्द्र को भी दिया लेकिन उस समय कोई उसे बचाने के लिए प्रयास नहीं किया जिससे शान्ति देवी का पति वीरेन्द्र भी निराश होकर हडबडाहट में स्वयं भी जहर खा लिया था। चूंकि आवेदक राजेन्द्र मृतक वीरेन्द्र व उसकी पत्नी शान्तिदेवी से अलग रहते थे। राजेन्द्र की शादी भी नहीं हुई है। आवेदक ने अपने भाई एवं बहन को बचाने का कुछ भी प्रयास नहीं किया था आवेदक की बहन कृष्णा देवी पुत्री शिवनरायन अपने मायके पिता के साथ रहती थी पिता की मृत्यु के पश्चात अपने भाई वीरेन्द्र के सानिध्य में रहती है। चूंकि कृष्णा की शादी के पश्चात ही पति का देहान्त हो गया था ऐसी स्थिति में वह अपने ससुराल नहीं जाती थी। मायके में ही बनी रहती थी। मृतक वीरेन्द्र की कोई औलाद न होने के कारण उसकी सम्पत्ति लगभग 9 बीघा जमीन व कृष्णा भी अपने जीवन यापन के लिए कुछ हिस्सा चाहती है। उक्त सम्पत्ति को आवेदक अपनी बहन कृष्णा को नहीं देना चाहता है। चूंकि आवेदक राजेन्द्र अपने हिस्से की लगभग पूरी जमीन बेच दिया है मात्र 2-3 बीघा बची है। अब आवेदक चाहता है कि मृतक भाई वीरेन्द्र की पूरी 9 बीघा जमीन मुझे अकेले प्राप्त हो जाये परन्तु इस बात से उसकी बहन कृष्णा संतुष्ट नहीं है और अन्य विपक्षीय भी इस बात से सहमत नहीं है। आवेदक द्वारा गांवदारी के कारण मनगढन्त कहानी बनाकर विपक्षीयों पर असत्य आरोप लगाकर प्रा०पत्र अन्तर्गत धारा 156(3) सीआरपीसी दिया गया है। जाँच से प्रा०पत्र में लगाये गये आरोपों की पुष्टि नहीं हुई है।"

28. The aforesaid police report submitted by the Station House Officer, Police Station Pailani, District Banda though states that the allegations levelled by the revisionist in his application, filed under Section 156 (3) Cr.P.C., have not been found proved but at the same time, it states that the deceased was owner of the nine bighas of agricultural land and both i.e. the revisionist and Opposite Party No. 2 i.e. Smt. Krishna Devi wanted to take that land in their possession. From the contents of the police report submitted in the matter, the complicity of Smt. Krishna Devi in the commission of the offence in question cannot be ruled out as she is also having motive.

29. The Hon'ble Supreme Court in its Constitution Bench judgement rendered in the case of **Lalita Kumari (Supra)** had held that the registration of F.I.R. is mandatory under Section 154 Cr.P.C., if the information discloses commission of a cognizable offence and no inquiry is permissible in such a situation. It has further been held that if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain as to whether cognizable offence is disclosed or not. For ready reference, paragraph 120 of the judgement rendered by the Hon'ble Supreme Court in the case of **Lalita Kumari (Supra)** is extracted as under:

"120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no

preliminary inquiry is permissible in such a situation.

120.2. *If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*

120.3. *If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.*

120.4. *The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.*

120.5. *The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*

120.6. *As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:*

(a) *Matrimonial disputes/family disputes*

(b) *Commercial offences*

(c) *Medical negligence cases*

(d) *Corruption cases*

(e) *Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.*

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. *While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks' time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.*

120.8. *Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."*

30. This Court finds that the Constitution Bench of the Hon'ble Supreme Court in its judgement rendered in the case of **Lalita Kumari (Supra)** had created two categories; firstly where the

contents of the information disclose commission of the cognizable offence and secondly where the contents, in categorical terms, do not disclose commission of the cognizable offence but indicates the necessity for an inquiry. In the first scenario, there is no necessity for any preliminary inquiry and registration of the F.I.R. is must but in second scenario, the direction for preliminary inquiry by the police can be given.

31. Now looking into the facts of the present case, it is quite apparent that the contents of the application, filed by the revisionist under Section 156 (3) Cr.P.C., in unequivocal terms demonstrate the commission of the cognizable offence therefore, in view of the judgement rendered by the Hon'ble Supreme Court in the case of Lalita Kumari (Supra), there was no necessity for the court to call for a police report. In the matter of the revisionist, though in the police report, it had been stated that the allegations levelled, in his application filed under Section 156 (3) Cr.P.C., have not been found proved but at the same time, the motive to commit crime with the Opposite Party No. 3 has not been ruled out.

32. In the given facts and circumstances of the case, this Court is of the view that the learned Special Judge (Dacoity Affected Area Act)/Additional Sessions Judge, Banda ought not to have accepted the police report as a gospel truth because the contents of the application filed under Section 156(3) Cr.P.C., disclose commission of a cognizable offence therefore, the court, while rejecting the application filed by the revisionist under Section 156 (3) Cr.P.C., had committed manifest error of law.

33. Now this Court proceeds to consider the second issue involved in this matter, as to whether for the same incident, direction can be issued for lodging of the second F.I.R. This Court finds that the law, in respect of lodging of the second F.I.R. for the same incident, had been crystallized by the Hon'ble Supreme Court in following chain of judgements:

34. The Division Bench of the Hon'ble Supreme Court in its judgement rendered in the case of **T.T. Antony (Supra)** had held that the only first information with regard to commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. therefore, that information has to be registered as First Information Report and there cannot be the second F.I.R. on the subsequent information in respect of the same cognizable offence or the same occurrence or the incident giving rise to one or more cognizable offences. For ready reference, Paragraphs No. 18 & 19 of the judgement rendered in the case of **T.T. Antony (Supra)** are extracted as under:

“18. An information given under sub-section (1) of Section 154 CrPC is commonly known as first information report (FIR) though this term is not used in the Code. It is a very important document. And as its nickname suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 CrPC, as the case may be, and forwarding of a

police report under Section 173 CrPC. It is quite possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 CrPC. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the first information report — FIR postulated by Section 154 CrPC. All other informations made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 CrPC. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of CrPC. Take a case where an FIR mentions cognizable offence under Section 307 or 326 IPC and the investigating agency learns during the investigation or receives fresh information that the victim died, no fresh FIR under Section 302 IPC need be registered which will be

irregular; in such a case alteration of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected; it does not require filing of fresh FIR against H— the real offender — who can be arraigned in the report under Section 173(2) or 173(8) CrPC, as the case may be. It is of course permissible for the investigating officer to send up a report to the Magistrate concerned even earlier that investigation is being directed against the person suspected to be the accused.

19. The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where

during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 CrPC.

35. Later on, the three judge Bench of the Hon'ble Supreme Court had considered the judgement of the Hon'ble Supreme Court rendered in the case of **T.T. Antony (Supra)** in its judgement rendered in the case of **Upkar Singh (Supra)** and it had been held that where, the informant is a different person to that of the informant of the first F.I.R., the version of the incident is different and the accused are different, the second F.I.R. in respect of the same incident can be registered and investigated by the police. For the ready reference, the relevant paragraphs of the judgement rendered in the case **Upkar Singh (Supra)** are being extracted as under:

“1. This Court while granting leave in this appeal doubted the correctness of the judgment of this Court in the case of **T.T. Antony v. State of Kerala [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048]** hence referred this case to the Hon'ble Chief Justice of India for being heard by a larger Bench, in these circumstances this appeal is now before us for final disposal and to consider the correctness of law laid down in the case of **T.T. Antony v. State of Kerala [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048]** .

16. Having carefully gone through the above judgment, we do not think that this Court in the said cases of **T.T. Antony v. State of**

Kerala [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] has precluded an aggrieved person from filing a counter-case as in the present case. This is clear from the observations made by this Court in the abovesaid case of **T.T. Antony v. State of Kerala [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048]** in para 27 of the judgment wherein while discussing the scope of Sections 154, 156 and 173(2) CrPC, this is what the Court observed: (SCC p. 200)

“In our view a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution.”

(emphasis supplied)

17. It is clear from the words emphasised hereinabove in the above quotation, this Court in the case of **T.T. Antony v. State of Kerala [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048]** has not excluded the registration of a complaint in the nature of a counter-case from the purview of the Code. In our opinion, this Court in that case only held that any further complaint by the same complainant or others against the same accused, subsequent to the registration of a

case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence will be prohibited under Section 162 of the Code. This prohibition noticed by this Court, in our opinion, does not apply to counter-complaint by the accused in the first complaint or on his behalf alleging a different version of the said incident.

18. This Court in *Kari Choudhary v. Sita Devi* [(2002) 1 SCC 714 : 2002 SCC (Cri) 269] discussing this aspect of law held: (SCC p. 717, para 11)

“11. Learned counsel adopted an alternative contention that once the proceedings initiated under FIR No. 135 ended in a final report the police had no authority to register a second FIR and number it as FIR No. 208. Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency. Even that apart, the report submitted to the court styling it as FIR No. 208 of 1998 need be considered as an information submitted to the court regarding the new discovery made by the police during investigation that persons not named in FIR No. 135 are the real culprits. To quash

the said proceedings merely on the ground that final report had been laid in FIR No. 135 is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who have committed it.”

(emphasis supplied)

19. In *State of Bihar v. J.A.C. Saldanha* [(1980) 1 SCC 554 : 1980 SCC (Cri) 272 : AIR 1980 SC 326] this Court considering Section 3 of the Police Act and Section 173(8) of the Code held: (SCC p. 568, para 19)

“19. The power of the Magistrate under Section 156(3) to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out hereinbefore. The power conferred upon the Magistrate under Section 156(3) can be exercised by the Magistrate even after submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation. This provision does not in any way affect the power of the investigating officer to further investigate the case even after submission of the report as provided in Section 173(8). Therefore, the High Court was in error in holding that the State Government in exercise of the power of superintendence under Section 3 of the Act lacked the power to direct further investigation into the case. In

reaching this conclusion we have kept out of consideration the provision contained in Section 156(2) that an investigation by an officer in charge of a police station, which expression includes police officer superior in rank to such officer, cannot be questioned on the ground that such investigating officer had no jurisdiction to carry on the investigation; otherwise that provision would have been a short answer to the contention raised on behalf of Respondent I."

20. *This clearly shows that if the police concerned refused to register a counter-complaint, it is open to the Magistrate at any stage to direct the police to register the complaint brought to his notice and investigate the same.*

21. *From the above it is clear that even in regard to a complaint arising out of a complaint on further investigation if it was found that there was a larger conspiracy than the one referred to in the previous complaint then a further investigation under the court culminating in another complaint is permissible.*

22. *A perusal of the judgment of this Court in Ram Lal Narang v. State (Delhi Admn.) [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] also shows that even in cases where a prior complaint is already registered, a counter-complaint is permissible but it goes further and holds that even in cases where a first complaint is registered and investigation initiated, it is possible to file a further complaint by the same*

complainant based on the material gathered during the course of investigation. Of course, this larger proposition of law laid down in Ram Lal Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] is not necessary to be relied on by us in the present case. Suffice it to say that the discussion in Ram Lal Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] is in the same line as found in the judgments in Kari Choudhary [(2002) 1 SCC 714 : 2002 SCC (Cri) 269] and State of Bihar v. J.A.C. Saldanha [(1980) 1 SCC 554 : 1980 SCC (Cri) 272 : AIR 1980 SC 326] . However, it must be noticed that in T.T. Antony case [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048], Ram Lal Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] was noticed but the Court did not express any opinion either way.

23. *Be that as it may, if the law laid down by this Court in T.T. Antony case [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his*

version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code.

24. We have already noticed that in *T.T. Antony* case [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] this Court did not consider the legal right of an aggrieved person to file counterclaim, on the contrary from the observations found in the said judgment it clearly indicates that filing a counter-complaint is permissible.”

36. The Hon’ble Supreme Court in its judgement rendered in the case of ***Surender Kaushik (Supra)*** had held that the second F.I.R. regarding the same incident can be registered and investigated where, a different person to that of the informant of the first F.I.R. has given information in respect of commission of a cognizable offence, the version of the incident is different to that of the version of the incident in the first F.I.R. and the accused are different to that of the accused in the first F.I.R. For ready reference, the relevant paragraphs of the judgement rendered in the case of ***Surender Kaushik (Supra)*** are extracted as under:

“16. In *Upkar Singh* [*Upkar Singh v. Ved Prakash*, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] a three-Judge Bench was addressing the issue pertaining to the correctness of law laid down in *T.T. Antony* [*T.T. Antony v. State of Kerala*, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] . The larger Bench took note of the fact that a complaint was lodged by the first

respondent therein with Sikhera Police Station in Village Fahimpur Kalan at 10.00 a.m. on 20-5-1995 making certain allegations against the appellant therein and some other persons. On the basis of the said complaint, the police had registered a crime under Sections 452 and 307 IPC. The appellant had lodged a complaint in regard to the very same incident against the respondents therein for having committed offences punishable under Sections 506 and 307 IPC as against him and his family members. As the said complaint was not entertained by the police concerned, he, under compelling circumstances, filed a petition under Section 156(3) of the Code before the Judicial Magistrate, who having found a prima facie case, directed the police station concerned to register a crime against the accused persons in the said complaint and to investigate the same and submit a report. On the basis of the said direction, Crime No. 48-A of 1995 was registered for offences punishable under Sections 147, 148, 149 and 307 IPC.

17. Challenging the direction of the Magistrate, a revision was preferred before the learned Sessions Judge who set aside the said direction. Being aggrieved by the order passed by the learned Sessions Judge, a criminal miscellaneous petition was filed before the High Court of Judicature of Allahabad and the High Court, following its earlier decision in *Ram Mohan Garg v. State of U.P.* [(1990) 27 All Cri C

438] , dismissed the revision. While dealing with the issue, this Court referred to para 18 of T.T. Antony [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] and noted how the same had been understood: (Upkar Singh case [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , SCC p. 296, para 11)

“11. This observation of the Supreme Court in T.T. Antony [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] is understood by the learned counsel for the respondents as the Code prohibiting the filing of a second complaint arising from the same incident. It is on that basis and relying on the said judgment in T.T. Antony case [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] an argument is addressed before us that once an FIR is registered on the complaint of one party a second FIR in the nature of a counter-case is not registerable and no investigation based on the said second complaint could be carried out.”

18. After so observing, the Court held that the judgment in T.T. Antony [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] really does not lay down such a proposition of law as has been understood by the learned counsel for the respondent therein. The Bench referred to the factual score of T.T. Antony [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] and explained thus: (Upkar Singh case [Upkar Singh v. Ved Prakash,

(2004) 13 SCC 292 : 2005 SCC (Cri) 211] , SCC p. 297, para 16)

“16. Having carefully gone through the above judgment, we do not think that this Court in T.T. Antony v. State of Kerala [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] has precluded an aggrieved person from filing a counter-case as in the present case.”

To arrive at such a conclusion, the Bench in Upkar Singh case [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] referred to para 27 of the decision in T.T. Antony [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] wherein it has been stated that: (Upkar Singh case [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , SCC p. 297, para 16)

“16.... ‘27.... a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 [of the Code] or under Articles 226/227 of the Constitution.’ (T.T. Antony case [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] , SCC p. 200)”

(emphasis in original)

Thereafter, the three-Judge Bench [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] ruled thus: (Upkar Singh case [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , SCC pp. 297-98, para 17)

“17.... In our opinion, this Court in that case only held that any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence will be prohibited under Section 162 of the Code. This prohibition noticed by this Court, in our opinion, does not apply to counter-complaint by the accused in the first complaint or on his behalf alleging a different version of the said incident.”

19. Be it noted, in the said verdict in Upkar Singh case [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , reference was made to Kari Choudhary v. Sita Devi [Kari Choudhary v. Sita Devi, (2002) 1 SCC 714 : 2002 SCC (Cri) 269] wherein it has been opined that: (Upkar Singh case [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , SCC p. 298, para 18)

“18.... ‘11.... there cannot be two FIRs against the same accused in respect of the same

case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried [out] under both of them by the same investigating agency.’ (Kari Choudhary case [Kari Choudhary v. Sita Devi, (2002) 1 SCC 714 : 2002 SCC (Cri) 269] , SCC p. 717, para 11)”

(emphasis in original)

Reference was made to the pronouncement in State of Bihar v. J.A.C. Saldanha [(1980) 1 SCC 554 : 1980 SCC (Cri) 272] wherein it has been highlighted that the power of the Magistrate under Section 156(3) of the Code to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out under Section 3 of the Police Act.

20. It is worth noting that the Court also dealt with the view expressed in Ram Lal Narang [Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322 : 1979 SCC (Cri) 479] and stated thus: (Upkar Singh case [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , SCC p. 299, para 22)

“22. A perusal of the judgment of this Court in Ram Lal Narang v. State (Delhi Admn.) [Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322 : 1979 SCC (Cri) 479] also shows that even in cases where a prior complaint is already registered, a counter-complaint is permissible but it goes further and holds that even in cases where a first

complaint is registered and investigation initiated, it is possible to file a further complaint by the same complainant based on the material gathered during the course of investigation. Of course, this larger proposition of law laid down in Ram Lal Narang case [Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322 : 1979 SCC (Cri) 479] is not necessary to be relied on by us in the present case. Suffice it to say that the discussion in Ram Lal Narang case [Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322 : 1979 SCC (Cri) 479] is in the same line as found in the judgments in Kari Choudhary [Kari Choudhary v. Sita Devi, (2002) 1 SCC 714 : 2002 SCC (Cri) 269] and State of Bihar v. J.A.C. Saldanha [(1980) 1 SCC 554 : 1980 SCC (Cri) 272] . However, it must be noticed that in T.T. Antony case [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] , Ram Lal Narang case [Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322 : 1979 SCC (Cri) 479] was noticed but the Court did not express any opinion either way.”

Explaining further, the Court in Upkar Singh case [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] observed (in para 23) that if the law laid down by this Court in T.T. Antony [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] is to be accepted to have held that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the

Code, such conclusion would lead to serious consequences inasmuch as the real accused can take the first opportunity to lodge a false complaint and get it registered by the jurisdictional police and then that would preclude the victim to lodge a complaint.

21. In Pandurang Chandrakant Mhatre [Pandurang Chandrakant Mhatre v. State of Maharashtra, (2009) 10 SCC 773 : (2010) 1 SCC (Cri) 413] , the Court referred to T.T. Antony [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] , Ramesh Baburao Devaskar v. State of Maharashtra [(2007) 13 SCC 501 : (2009) 1 SCC (Cri) 212] and Vikram v. State of Maharashtra [(2007) 12 SCC 332 : (2008) 1 SCC (Cri) 362] and opined that the earliest information in regard to the commission of a cognizable offence is to be treated as the first information report and it sets the criminal law in motion and the investigation commences on that basis. Although the first information report is not expected to be an encyclopaedia of events, yet an information to the police in order to be first information report under Section 154(1) of the Code, must contain some essential and relevant details of the incident. A cryptic information about the commission of a cognizable offence irrespective of the nature and details of such information may not be treated as first information report. After so stating, the Bench posed the question whether the information regarding the incident therein entered into general diary

given by PW 5 is the first information report within the meaning of Section 154 of the Code and, if so, would it be hit by Section 162 of the Code. It is worth noting that analysing the facts, the Court opined that information given to the police to rush to the place of the incident to control the situation need not necessarily amount to an FIR.

22. In *Babubhai [Babubhai v. State of Gujarat, (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336]* this Court (in para 21), after surveying the earlier decisions, expressed the view that the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is in the affirmative, the second FIR is liable to be quashed. However, in case, the contrary is proved, where the version in the second FIR is different and they are in respect of two different incidents/crimes, the second FIR is permissible. In case the accused in the first FIR comes forward with a different version or counterclaim in respect of the same incident, investigation on both the FIRs has to be conducted.

23. It is worth noting that in *Babubhai case [Babubhai v. State of Gujarat, (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336]*, the Court expressed the view that the High Court had correctly reached the conclusion that the second FIR

was liable to be quashed as in both the FIRs, the allegations related to the same incident that had occurred at the same place in close proximity of time and, therefore, they were two parts of the same transaction.

24. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter-FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in *Upkar Singh [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211]*, the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible.”

37. The Division Bench of this Court in its judgement dated 26.02.2020 rendered in the case of **Deokali (Supra)** had held that where, the different version of

the incident is reported by a different complainant giving a different set of accused, then the said version would have to be investigated and the said version cannot be termed as second First Information Report of the same offence therefore, on the basis of the second version, second F.I.R. has to be lodged and investigated and further police report is to be filed before the competent court. For ready reference, the relevant paragraphs of the judgement rendered in the case of **Deokali (Supra)** are extracted as under:

"We have considered the rival submissions and have perused the record carefully. Before we deal with the factual aspect of the matter, it would be apposite to notice the law on the issue.

*In **Upkar Singh's case (supra)**, a three-judges bench of the apex court in paragraphs 23, 24 and 25 of its judgment, as reported, observed as follows:-*

"23. Be that as it may, if the law laid down by this Court in T.T. Antony's case is to be accepted as holding a second complaint in regard to the same incident filed as a counter complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given herein below i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question

consequently he will be deprived of his legitimate right to bring the real accused to books. This cannot be the purport of the Code.

24. We have already noticed that in the T.T. Antony's case this Court did not consider the legal right of an aggrieved person to file counter claim, on the contrary from the observations found in the said judgment it clearly indicates that filing a counter complaint is permissible.

25. In the instant case, it is seen in regard to the incident which took place on 20th May, 1995, the appellant and the 1st respondent herein have lodged separate complaints giving different versions but while the complaint of respondent was registered by the concerned police, the complaint of the appellant was not so registered, hence on his prayer the learned Magistrate was justified in directing the police concerned to register a case and investigate the same and report back. In our opinion, both the learned Additional Sessions Judge and the High Court erred in coming to the conclusion that the same is hit by Section 161 or 162 of the Code which, in our considered opinion, has absolutely no bearing on the question involved. Section 161 or 162 of the Code does not refer to registration of a case, it only speaks of a statement to be recorded by the police in the course of the investigation and its evidentiary value."

*In **P. Sreekumar's case (supra)**, after noticing the decision of the Apex Court in **Upkar Singh's***

case (supra), in paragraphs 30, 31 and 32, as reported, the Apex Court held as follows:-

"30. Keeping the aforesaid principle of law in mind when we examine the facts of the case at hand, we find that the second FIR filed by the appellant against respondent No.3 though related to the same incident for which the first FIR was filed by respondent No.2 against the appellant, respondent No.3 and three Bank officials, yet the second FIR being in the nature of a counter-complaint against respondent No.3 was legally maintainable and could be entertained for being tried on its merits.

31. In other words, there is no prohibition in law to file the second FIR and once it is filed, such FIR is capable of being taken note of and tried on merits in accordance with law.

32. It is for the reasons that firstly, the second FIR was not filed by the same person, who had filed the first FIR. Had it been so, then the situation would have been somewhat different. Such was not the case here; Second, it was filed by the appellant as a counter-complaint against respondent No.3; Third, the first FIR was against five persons based on one set of allegations whereas the second FIR was based on the allegations different from the allegations made in the first FIR; and Lastly, the High Court while quashing the second FIR/charge-sheet did not examine the issue arising in the case in the light of law laid down by this Court in two

aforementioned decisions of this Court in the cases of Upkar Singh (*supra*) and Surender Kaushik (*supra*) and simply referred three decisions of this Court mentioned above wherein this Court has laid down general principle of law relating to exercise of inherent powers under Section 482 of the Code."

From the decisions noticed above, it is clear that where a different version of the incident is reported by a different complainant giving a different set of accused then the said version would have to be investigated and the said version cannot be treated as a second first information report of the same offence. As a logical corollary thereof, separate police reports will also have to be submitted after investigation, inasmuch as, in the event of a negative report, the informant would get a right to submit a protest petition.

In view of above noticed legal position, having found that two first information reports, namely, Case Crime No. 78 of 2019 and 133 of 2019, gave different versions of the incident, with different set of accused persons, we, by our order dated 04.02.2020, specifically required the learned A.G.A. to file a detailed affidavit of the state-respondents disclosing whether the statement of the witnesses, who have deposed about the incident in support of the version taken in Case Crime No. 133 of 2019, was recorded as witnesses in support of that case or their statement was recorded as that of accused persons conversant

with the incident reported as case crime no.78 of 2019.

Pursuant to our direction, a compliance affidavit, dated 20.02.2020, of Sri Raj Kumar Tripathi, Circle Officer (City), District Sonebhadra has been filed today.

In paragraphs 4, 5 and 6 of the compliance affidavit, it has been stated as follows:-

"4. That so far as the query made by this Hon'ble Court, whether the statement of witnesses who have been deposed about the incident in support of version in case crime no. 133 of 2019 were recorded separately as witnesses of the prosecution or their statements were recorded as that of accused persons conversant with the incident, it is most humbly submitted that the statements of witnesses namely Nidhi Dutt, Dev Dutt, Pramod, Om Prakash, Asharfi, Rakesh and Dharmendra, were not recorded about the incident in support of version taken in case crime no. 133 of 2019 as witnesses separately, however their statements have been recorded as an accused persons conversant with the incident of case crime no. 78 of 2019 which is evident in parcha/CD No. 2 & 3 dated 18.07.2019.

5. That so far as the query made by this Hon'ble Court whether a separate site plan as per the narration of the incident in case crime no. 133 of 2019 was prepared or not, it is most humbly submitted that there was no separate site plan prepared with regard to the incident of case crime

no. 133 of 2019, however, in fact, the site plan as per narration of the incident in case crime no. 78 of 2019 was prepared on 17.07.2019 which is evident in parcha/CD-1 dated 17.07.2019.

6. That it is humbly submitted that in fact, the statement of witnesses of case crime no. 133 of 2019 were not recorded separately because the date, time and place of both the incident were the same registered as case crime no. 133 of 2019 and case crime no. 78 of 2019, therefore, the investigating officer has not recorded the statement of witnesses in support of version taken in case crime no. 133 of 2019 separately and no site plan has been prepared in respect of narration of the incident in case crime no. 133 of 2019 separately."

From the stand taken in the compliance affidavit, it becomes clear that Case Crime No. 133 of 2019, P.S. Ghorawal, District Sonebhadra has not been investigated separately as an independent case.

As a different version of the incident has been put forth in Case Crime No. 133 of 2019 with a different set of accused than what was put forth in Case Crime No. 78 of 2019, in view of the legal position noticed above, it ought to have been investigated as a separate case.

For the reasons recorded above, the petition succeeds and is allowed to the extent indicated below. The state-respondents 2 and 3, namely, Superintendent of Police and Circle Officer (City),

Sonbhadra shall ensure that Case Crime No. 133 of 2019 is investigated as a separate case and a separate police report is submitted in that case, as per law, preferably, within a period of three months from today.”

38. From the aforesaid law laid down by the Hon’ble Supreme Court and by the Division Bench of this Court, it had already been crystallized that where, the different version of the incident is reported by a different complainant giving a different set of accused, then the second First Information Report for the same incident is permissible under law.

39. Now applying the aforesaid law laid down by the Hon’ble Supreme Court as well as by this Court in the facts and circumstances of the present case, it is apparent that the informant in the First Information Report No. 0150 of 2024 is Smt. Krishna Devi whereas, the revisionist has filed another application under Section 156 (3) Cr.P.C. before the court. The version of the incident in question, in the F.I.R. lodged by Smt. Krishna Devi and in the application filed by the revisionist under Section 156 (3) Cr.P.C., is altogether different. The accused of the crime in the First Information Report lodged by Smt. Krishna Devi are different to that of the accused in the application filed by the revisionist under Section 156 (3) Cr.P.C. Therefore in view of the aforesaid law laid down by the Hon’ble Supreme Court, there is no prohibition/impediment in registering the F.I.R. on the basis of the application filed by the revisionist under Section 156 (3) Cr.P.C.

40. In view of the aforesaid reasons, this criminal revision is hereby

allowed. The impugned order dated 11.03.2024 passed by the learned Special Judge (Dacoity Affected Area Act)/Additional Sessions Judge, Banda, in Criminal Misc. Case No. 71 of 2024 (Rajendra Singh Vs. Vinod Singh and Others), is hereby set-aside.

41. The Special Judge (Dacoity Affected Area Act)/Additional Sessions Judge, Banda is directed to consider and decide, the application filed by the revisionist under Section 156(3) Cr.P.C., afresh in light of the observations made in this order.

42. Since, the First Information Report of Opposite Party No. 3 i.e. Smt. Krishna Devi had already been registered and the investigation is in process, it is expected that the learned Special Judge (Dacoity Affected Area Act)/Additional Sessions Judge, Banda shall hear and decide the application of the revisionist filed under Section 156 (3) Cr.P.C. within one month from the date of the presentation of the certified copy of this order.

(2025) 3 ILRA 473
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 04.03.2025

BEFORE

THE HON’BLE MANJIVE SHUKLA, J.

Criminal Revision No. 4747 of 2023

Baldhir		...Revisionist
	Versus	
State of U.P.		...Respondent

Counsel for the Revisionist:
 Ajay Kumar Tiwari, Sangam Lal Kesharwani

Counsel for the Respondents:
 G.A.

Criminal Law — Narcotic Drugs and Psychotropic Substances Act, 1985 — Sections 60(3) & 63(1) — Confiscation of vehicle — Prerequisite of trial conclusion — Revision against order of Special Judge rejecting release application and confiscating vehicle — Innova Car seized in connection with offence under Section 8/21 NDPS Act — Vehicle confiscated before conclusion of trial — Held, confiscation impermissible prior to conclusion of trial and determination of guilt — Section 63(1) NDPS Act mandates that confiscation can only be ordered when accused is convicted, acquitted or discharged — Trial court erred in mechanically confiscating the vehicle without considering release application on merits — Order set aside-Revision application allowed. (Paras 13 to 16, 18, 19, and 20)

HELD:

This Court finds that Section 60 (3) of the N.D.P.S. Act, 1985 gives power to the trial court to confiscate the vehicle used for carrying narcotic drug or psychotropic substance. Section 63 of the N.D.P.S. Act, 1985 provides the procedure for confiscation and there, it is provided that confiscation of any article can be done under Section 60 of the N.D.P.S. Act, 1985 when the accused is convicted or acquitted or discharged. (Para 13)

The Hon'ble Supreme Court had considered the aforesaid Sections 60(3) and 63(1) of the N.D.P.S. Act, 1985 in its judgement rendered in the case of Bishwajit Dey (Supra) and had categorically held that the vehicle used for carrying the narcotic drug or psychotropic substance can be confiscated only on conclusion of the trial i.e. when the accused is convicted or acquitted or discharged.... (Para 14)

The law laid down by the Hon'ble Supreme Court in the case of Bishwajit Dey (Supra) is very clear and provides that in the matters of offences punishable under the N.D.P.S. Act, 1985, the vehicle involved for carrying the narcotic drug or psychotropic substance can be confiscated only on conclusion of the trial. (Para 15)

So far as the second issue involved in this case that whether in a case where an accused of a crime punishable under the N.D.P.S. Act, 1985, who is owner of the vehicle used in the crime, can claim release of vehicle during the trial, is concerned, the Hon'ble Supreme Court in its judgement rendered in the case of Bishwajit Dey (Supra) had categorically held that normally where the accused himself is owner of the vehicle, the said vehicle should not be released in his favour but the trial court is free to consider and decide the case of release of vehicle on its own merits as there is no straight-jacket formula... (Para 17)

This Court finds that the Hon'ble Supreme Court in the aforesaid judgement rendered in the case of Bishwajit Dey (Supra) had categorized various eventualities and had held that normally where the accused himself is owner of the vehicle used for carrying the narcotic drug or psychotropic substance, the trial court may not release the vehicle in favour of the accused but at the same time, the Hon'ble Supreme Court had also observed that the discussion made in the judgement should not be taken as laying down rigid formula and it will be open to the trial court to take a different view if the facts of the case so warrant. Thus, this Court is of the view that even the Hon'ble Supreme Court had categorically held that it is for the trial court to decide the case of release of vehicle, where owner of the vehicle himself is accused of the crime punishable under the N.D.P.S. Act, on its own merits. (Para 18)

Revision application allowed. (E-14)

List of Cases cited:

Criminal Appeal No. 87 of 2025 (Bishwajit Dey vs The St. Of Assam) arising out of the Special Leave Petition (Crl.)No.13370 of 2024

(Delivered by Hon'ble Manjive Shukla, J.)

1. Heard Sri Sangam Lal Kesharwani, learned counsel appearing for the revisionist and Sri Brijendra Pratap Singh, learned Additional Government Advocate appearing for the State.

2. The instant criminal revision has been filed challenging therein, the judgement and order dated 20.06.2023 passed by the learned Special Judge (N.D.P.S.)/Additional District and Sessions Judge, Court No. 12, Saharanpur whereby, the application filed by the revisionist for release of his Innova Car, bearing Registration No. HR78-3205, had been rejected and the vehicle had been confiscated in favour of the State Government.

3. Facts of the case, in brief, are that the revisionist is registered owner of Innova Car bearing Registration No. HR78-3205. The police recovered ten grams of smack from the aforesaid vehicle while the revisionist was moving in the said vehicle. The police had registered a criminal case as Case Crime No. 509 of 2021 under Section 8/21 of the N.D.P.S. Act, 1985 in Police Station Gangoh, District Saharanpur. The Investigating Officer, after collecting evidence against the revisionist, had filed Charge-Sheet before the competent court in respect of the offence committed by the revisionist punishable under Section 8/21 of the N.D.P.S. Act, 1985.

4. The revisionist filed an application for release of the aforesaid Innova Car bearing Registration No. HR78-3205 in his favour. The police raised objection over the aforesaid application for release of the vehicle on the ground that the revisionist is in habit of committing offences punishable under the N.D.P.S. Act, 1985 and the vehicle in question had been purchased by him out of the money earned by the sale of the contraband substances.

5. Learned Special Judge (N.D.P.S.)/Additional District and Sessions Judge, Court No. 12, Saharanpur had

passed an order on 20.06.2023 whereby, the application filed by the revisionist for release of the vehicle in question had been rejected and simultaneously the said vehicle had been confiscated.

6. Learned counsel appearing for the revisionist has submitted that a vehicle carrying any narcotic drug or psychotropic substance can be confiscated in exercise of power under Section 60(3) of the N.D.P.S. Act, 1985 but the said power is to be exercised as per the procedure prescribed under Section 63(1) of the N.D.P.S. Act, 1985. It has further been submitted that Section 63(1) of the N.D.P.S. Act, in categorical terms, provides that the power of confiscation of any article including the vehicle can be exercised only after the accused is convicted or acquitted or discharged i.e. only on conclusion of the trial whereas in the present case, the trial has yet not been concluded therefore, the order passed by the trial court confiscating the vehicle in question, on its face, is unsustainable.

7. Learned counsel appearing for the revisionist has relied upon the judgment rendered by the Hon'ble Supreme Court in ***Criminal Appeal No. 87 of 2025 (Bishwajit Dey vs The State Of Assam)*** arising out of the ***Special Leave Petition (Crl.) No. 13370 of 2024*** and has submitted that the Hon'ble Supreme Court, in categorical terms, had held that any vehicle seized in connection with the offence punishable under N.D.P.S. Act, 1985 can be confiscated only after conclusion of the trial i.e. when the accused is convicted or acquitted or discharged whereas, in the case of the revisionist, trial has yet not been concluded therefore, the order passed by the trial court confiscating the vehicle in question, on its face, is illegal.

8. Learned counsel appearing for the revisionist has also argued that the Hon'ble Supreme Court in the judgement rendered in the case of *Bishwajit Dey (Supra)* had categorically held that normally, where the accused himself is owner of the vehicle used for carrying the narcotic drug or psychotropic substance, the vehicle may not be released in favour of the accused owner but there is no straight-jacket formula in that regard and therefore, the trial court has to consider the application filed for release of the vehicle on its own merits whereas, in the present case, the vehicle in question had been confiscated straightaway and the application filed by the revisionist for release of the vehicle has not been considered on its own merits.

9. Learned Additional Government Advocate appearing for the State has opposed this revision and has submitted that the revisionist himself is owner of the Innova Car bearing Registration No. HR78-3205 and he has been arrested while carrying ten grams of smack in the aforesaid vehicle. He further submits that the police had submitted a report before the trial court indicating therein that the revisionist is habitual of committing offences punishable under the N.D.P.S. Act, 1985 and in-fact, the vehicle in question had been purchased out of the money earned by the sale of contraband substances and the said vehicle is also being used for committing offences punishable under the N.D.P.S. Act, 1985 therefore, the trial court had rightly exercised power under Section 60(3) of the N.D.P.S. Act, 1985 and thereby had confiscated the vehicle in question.

10. Learned A.G.A. appearing for the State has vehemently argued that there is neither any illegality nor any infirmity in

the impugned order dated 20.06.2023 therefore, the revision filed by the revisionist is liable to be dismissed by this Court.

11. I have considered the arguments advanced by the learned counsels appearing for the parties and have perused the record of the revision.

12. Before proceeding to consider the matter on merits, it would be apt to have a look over the provisions made under the N.D.P.S. Act, 1985 in respect of the confiscation of a vehicle used for carrying the narcotic drug or psychotropic substance. For ready reference, Section 60 and Section 63 of the N.D.P.S. Act, 1985 are extracted as under:

60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.—

(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance or controlled substances lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance or controlled substances

which is liable to confiscation under sub-section (1) and there receptacles, packages and coverings in which any narcotic drug or psychotropic substance or controlled substances, materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance or controlled substances, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

63. Procedure in making confiscations.—*(1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.*

(2) Where any article or thing seized under this Act appears to be liable to confiscation under

section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly:

Provided that no order of confiscation of an article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance controlled substance, the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale."

13. This Court finds that Section 60 (3) of the N.D.P.S. Act, 1985 gives power to the trial court to confiscate the vehicle used for carrying narcotic drug or psychotropic substance. Section 63 of the N.D.P.S. Act, 1985 provides the procedure for confiscation and there, it is provided that confiscation of any article can be done under Section 60 of the N.D.P.S. Act, 1985 when the accused is convicted or acquitted or discharged.

14. The Hon'ble Supreme Court had considered the aforesaid Sections 60(3) and 63(1) of the N.D.P.S. Act, 1985 in its

judgement rendered in the case of **Bishwajit Dey (Supra)** and had categorically held that the vehicle used for carrying the narcotic drug or psychotropic substance can be confiscated only on conclusion of the trial i.e. when the accused is convicted or acquitted or discharged. For ready reference, paragraph 21 of the judgement rendered in the case of **Bishwajit Dey (Supra)** is extracted as under:

“21. Upon a reading of the NDPS Act, this Court is of the view that the seized vehicles can be confiscated by the trial court only on conclusion of the trial when the accused is convicted or acquitted or discharged. Further, even where the Court is of the view that the vehicle is liable for confiscation, it must give an opportunity of hearing to the person who may claim any right to the seized vehicle before passing an order of confiscation. However, the seized vehicle is not liable to confiscation if the owner of the seized vehicle can prove that the vehicle was used by the accused person without the owner's knowledge or connivance and that he had taken all reasonable precautions against such use of the seized vehicle by the accused person.”

15. The law laid down by the Hon'ble Supreme Court in the case of **Bishwajit Dey (Supra)** is very clear and provides that in the matters of offences punishable under the N.D.P.S. Act, 1985, the vehicle involved for carrying the narcotic drug or psychotropic substance can be confiscated only on conclusion of the trial.

16. In the case at hand, it is admitted between the parties that the trial of the crime in question has yet not been concluded therefore, the order whereby the Innova Car bearing Registration No. HR78-3205 had been confiscated, on its face, is illegal.

17. So far as the second issue involved in this case that whether in a case where an accused of a crime punishable under the N.D.P.S. Act, 1985, who is owner of the vehicle used in the crime, can claim release of vehicle during the trial, is concerned, the Hon'ble Supreme Court in its judgement rendered in the case of **Bishwajit Dey (Supra)** had categorically held that normally where the accused himself is owner of the vehicle, the said vehicle should not be released in his favour but the trial court is free to consider and decide the case of release of vehicle on its own merits as there is no straight-jacket formula. For ready reference, relevant paragraphs of the judgement rendered in the case of **Bishwajit Dey (Supra)** are extracted as under:

“29. Though seizure of drugs/substances from conveyances can take place in a number of situations, yet broadly speaking there are four scenarios in which the drug or substance is seized from a conveyance. Firstly, where the owner of the vehicle is the person from whom the possession of contraband drugs/substance is recovered. Secondly, where the contraband is recovered from the possession of the agent of the owner i.e. like driver or cleaner hired by the owner. Thirdly, where the vehicle has been stolen by the accused and contraband is

recovered from such stolen vehicle. Fourthly, where the contraband is seized / recovered from a third-party occupant (with or without consideration) of the vehicle without any allegation by the police that the contraband was stored and transported in the vehicle with the owner's knowledge and connivance. In the first two scenarios, the owner of the vehicle and/or his agent would necessarily be arrayed as an accused. In the third and fourth scenario, the owner of the vehicle and/or his agent would not be arrayed as an accused.

30. This Court is of the view that criminal law has not to be applied in a vacuum but to the facts of each case. Consequently, it is only in the first two scenarios that the vehicle may not be released on superdari till reverse burden of proof is discharged by the accused-owner. However, in the third and fourth scenarios, where no allegation has been made in the charge-sheet against the owner and/or his agent, the vehicle should normally be released in the interim on superdari subject to the owner furnishing a bond that he would produce the vehicle as and when directed by the Court and/or he would pay the value of the vehicle as determined by the Court on the date of the release, if the Court is finally of the opinion that the vehicle needs to be confiscated.

31. This Court clarifies that the aforesaid discussion should not be taken as laying down a rigid formula as it will be open to the

trial Courts to take a different view, if the facts of the case so warrant.”

18. This Court finds that the Hon'ble Supreme Court in the aforesaid judgement rendered in the case of *Bishwajit Dey (Supra)* had categorized various eventualities and had held that normally where the accused himself is owner of the vehicle used for carrying the narcotic drug or psychotropic substance, the trial court may not release the vehicle in favour of the accused but at the same time, the Hon'ble Supreme Court had also observed that the discussion made in the judgement should not be taken as laying down rigid formula and it will be open to the trial court to take a different view if the facts of the case so warrant. Thus, this Court is of the view that even the Hon'ble Supreme Court had categorically held that it is for the trial court to decide the case of release of vehicle, where owner of the vehicle himself is accused of the crime punishable under the N.D.P.S. Act, on its own merits.

19. This Court further finds that the trial court while confiscating the Innova Car bearing Registration No. HR78-3205 vide its order dated 20.06.2023 has not considered the application filed by the revisionist for release of the said vehicle on its own merits therefore, the application filed by the revisionist for release of the vehicle is liable to be considered afresh by the trial court after affording opportunity of hearing to all the concerned parties.

20. In view of the aforesaid reasons, this revision is allowed. The impugned order dated 20.06.2023 passed by the learned Special Judge (N.D.P.S.)/Additional District and Sessions Judge, Court No. 12, Saharanpur, relating

to Case Crime No. 509 of 2021 under Section 8/21 of N.D.P.S. Act, 1985, is hereby set-aside.

21. The learned Special Judge (N.D.P.S.)/Additional District and Sessions Judge, Court No. 12, Saharanpur is directed to reconsider the application filed by the revisionist for release of vehicle i.e. Innova Car bearing Registration No. HR78-3205 on its merits, strictly in accordance with the law laid down by the Hon'ble Supreme Court in the case of *Bishwajit Dey (Supra)*.

(2025) 3 ILRA 480

**REVISIONAL JURISDICTION
CRIMINAL SIDE**

DATED: ALLAHABAD 04.03.2025

BEFORE

THE HON'BLE MANJIVE SHUKLA, J.

Criminal Revision No. 6045 of 2024

Praveen Kumar Agarwal **...Revisionist**
Versus
State of U.P. & Ors. **...Respondents**

Counsel for the Revisionist:
Padmakar Pandey

Counsel for the Respondents:
G.A.

CRIMINAL LAW – Revisional Jurisdiction – Conviction under Section 138 of Negotiable Instruments Act, 1881 – Dismissal of appeal due to non-appearance – Maintainability of revision without surrender – Rule 3(4), Chapter XVIII, Part III of Allahabad High Court Rules, 1952 – Mandatory requirement of surrender before filing revision – No application seeking exemption from surrender filed – Observed, requirement of filing surrender certificate not inconsistent with Sections 397 and 401 CrPC – Convict has to either be in custody or seek exemption based on exceptional

circumstances – Discretionary jurisdiction under revisional powers not to be exercised in absence of compliance or justification – However, liberty granted to file fresh revision upon compliance with rules- Held, revision not maintainable and liable to be dismissed. (Paras 20, 21, 23, 24, 25, 27, 28, 30, 32, 33, and 34)

HELD:

Section 397 Cr.P.C. and Section 401 Cr.P.C. do not provide that the High Court would refuse to entertain the criminal revision if the accused, after his conviction and dismissal of his appeal, has not surrendered before the court concerned. However, it is noteworthy that the remedy in the form of criminal revision is a discretionary remedy and it is the discretion of the High Court to entertain a criminal revision or to refuse to entertain it. (Para 21)

Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 provides that in a case in which sentence of imprisonment has been awarded, the application for revision shall also contain a certificate signed by the Advocate for the applicant or the applicant, stating therein that the accused was not on bail or that, if he was on bail, he has surrendered to it. Rule 2 of Chapter XVIII of Part III of the Rules of 1952 further provides that where the Bench before which a motion is made for the admission of a petition of appeal or an application for revision or other application finds that it is not accompanied by the requisite papers, if any, or is otherwise not in order or has not been presented within time to it, may decline to receive it or reject it or pass such other order as it may consider fit. (Para 23)

From a bare perusal of the language used by the rule making authority in Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952, it is patently manifest that there is a mandatory requirement that if a person had been convicted and had been sentenced for imprisonment, while filing application for revision, he shall file a certificate along with the revision stating therein that either he was not on bail or if he was on bail, he had surrendered to it. The rule making authority knowingly had used the words "shall also contain a certificate" to make it crystal clear that the revisionist to make his revision in order,

has to compulsorily file a certificate of his surrender before the court concerned and once the said requirement is not fulfilled, it would be the discretion of the High Court to reject the revision as per the provisions made in Rule 2 of Chapter XVIII of Part III of the Rules of 1952. Further, the aforesaid Rule 2 of Chapter XVIII of Part III of the Rules of 1952 also gives discretion to the High Court that in exceptional circumstances, the High Court can consider the request for exempting the revisionist from filing such certificate. (Para 24)

This Court is of the view that Rule 2 and Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 are not inconsistent with the provisions made in Section 397 Cr.P.C. and Section 401 Cr.P.C. and if they are read together, they lead to a conclusion that normally the revisionist, while filing a criminal revision, has to file a certificate stating therein that either he was not on bail during trial and appeal or if he was on bail, he had surrendered to it but in exceptional circumstances, the revisionist can come forward and demonstrate those exceptional circumstances before the High Court and can seek exemption from filing such certificate but if such exemption has not been claimed, the revision filed by the convict without surrender before the court concerned would not be entertained by the High Court. (Para 25)

The Hon'ble Supreme Court in the aforesaid judgment rendered in the case of Vivek Rai (supra) had categorically recorded a finding that it is a well known practice that generally a revision against the conviction and sentence of imprisonment is filed after the appeal is dismissed and the convicted person is taken into custody. The Hon'ble Supreme Court in its judgment had further held that the rules framed by the High Court of Jharkhand for regulating its procedure and thereby providing that for filing a criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C., the convict has to first surrender before the court concerned and only thereafter his criminal revision can be entertained by the High Court, are in no way inconsistent with the provisions made in Section 397 Cr.P.C. and 401 Cr.P.C. The Hon'ble Supreme Court in its judgment had also held that there is always a discretion with the High Court that if in extraordinary circumstances, the convict seeks

exemption from surrender, he can file an application before the High Court and that application can always be considered and the discretion can be exercised by the High Court. (para 30)

Now, this Court proceeds to consider the purport of Rule 2 and Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 in the matter of criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C., in the light of the aforesaid judgments rendered by the Hon'ble Supreme Court and the High Court of Madhya Pradesh at Indore. It is apparent that Sections 235, 248 and 353 Cr.P.C. categorically provide that on conviction of an accused, he has to surrender before the court concerned and in his presence, the court would take decision in respect of the sentence. If the provisions made in the different sections of the Code of Criminal Procedure are considered together, it is patently manifest that after conviction, it is obligatory on the convict to surrender before the trial court and if he has not surrendered, it is duty of the court concerned to ensure the surrender of the convict before it. (Para 32)

The Allahabad High Court had framed rules known as Allahabad High Court Rules, 1952. Rule 2 read with Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 categorically provide that a convict should file a certificate along with the criminal revision certifying that, either he was not on bail or if he was on bail, he had surrendered before it and once the said certificate is not accompanied with the revision, it would not be in order and would be liable to be rejected by the High Court. It is noteworthy that the rule making authority in Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 had intentionally used the words "shall also contain a certificate" thereby to make the requirements under the rule mandatory for the revisionist meaning thereby that unless the convict, while filing criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C. gives a certificate that he had surrendered, the criminal revision would not be in order and would not be entertained by the High Court. However, if Rule 2 is read with Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952, that leaves the scope for filing an application seeking exemption from surrender by the

revisionist on the basis of some extraordinary circumstances and if the said exemption is prayed for, the High Court can take into consideration the said application seeking exemption and can pass necessary order. (Para 34)

In view of the aforesaid facts and circumstances, particularly keeping in view the provisions of Rule 2 and Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 and further keeping in view that the remedy of revision provided under Section 397 Cr.P.C. read with Section 401 Cr.P.C. is a discretionary remedy, this Court declines to exercise its discretion to entertain this revision. (para 36)

Revision Application dismissed. (E-14)

List of Cases cited:

1. Vivek Rai & anr. Vs High Court of Jharkhand through Registrar General & anr., (2015) 12 SCC 86
2. Criminal Revision No.1912 of 2024, Devnarayan Vs Prateek Goenka
3. Bihari Prasad Singh Vs St. of Bihar & anr., (2000) 10 SCC 346

(Delivered by Hon'ble Manjive Shukla, J.)

1. Heard Sri Prakash Naik, learned Senior Advocate, assisted by Sri Tapan Thattey and Sri Padmaker Pandey, learned counsels appearing for the revisionist, Sri Brajendra Pratap Singh, learned Additional Government Advocate appearing for the State and Sri Sushil Kumar Shukla and Sri R.K. Singh Chandel, learned counsels appearing for Opposite Party No. 2.

2. The instant revision has been filed under Section 397 Cr.P.C. read with Section 401 Cr.P.C. challenging therein, the judgment and order dated 21.8.2024 passed by the learned Sessions Judge in Criminal Appeal No.105 of 2022 and Criminal Appeal No.177

of 2022 whereby, the appeal filed by the revisionist i.e. Criminal Appeal No.105 of 2022 had been dismissed due to absence of the appellant before the appellate court and Criminal Appeal No.177 of 2022 had been allowed and the fine imposed by the trial court vide order dated 26.8.2022 had been enhanced from Rs.32,31,50,000/- to Rs.64,63,00,000/-.

Brief facts of the case

3. The Opposite Party No.2 filed a complaint case, alleging therein that the revisionist had committed offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to the 'Act of 1881'). The revisionist appeared before the trial court and was enlarged on bail. Later on, the Compliant Case No.6352 of 2016 had been decided vide judgment and order dated 26.8.2022 whereby, the revisionist had been convicted for the offence punishable under Section 138 of the Act of 1881 and had been sentenced for simple imprisonment of two years along with fine of Rs.32,31,50,000/-. The revisionist filed an appeal against the aforesaid order of the trial court dated 26.8.2022 and the said appeal was numbered as Criminal Appeal No.105 of 2022. The Opposite Party No.2 also challenged the order dated 26.8.2022 passed by the trial court by filing Criminal Appeal No.177 of 2022 wherein, the prayer was made for enhancement of the amount of fine imposed by the trial court.

4. The aforesaid both the criminal appeals i.e. Criminal Appeal No.105 of 2022 and Criminal Appeal No.177 of 2022 were connected and heard together by the appellate court.

5. The present revisionist was granted interim bail by the trial court, till he

files the appeal and therefore, he after filing of the appeal, filed an application before the appellate court for suspension of the execution of the sentence awarded by the trial court and on that application, the appellate court passed order on 20.9.2022 directing the appellant to deposit 50% of the amount of fine i.e. Rs.16,15,50,000/- and further provided that the plea of suspension of sentence shall be considered after deposit of the said 50% of the amount of fine. The present revisionist did not comply with the aforesaid order dated 20.9.2022 and challenged the same by filing a petition before this Court under Section 482 Cr.P.C.

6. Ultimately, the appellate court had decided both the aforesaid criminal appeals i.e. Criminal Appeal No.105 of 2022 and Criminal Appeal No.177 of 2022 by a common judgment and order dated 21.8.2024.

7. The appellate court in its judgment and order dated 21.8.2024 had recorded a finding that the appellant i.e. the present revisionist has been continuously absent before the appellate court therefore, the appeal had been dismissed in default. The learned appellate court vide order dated 21.8.2024 had allowed Criminal Appeal No.177 of 2022 whereby, the fine imposed against the present revisionist vide order dated 26.8.2022 passed by the trial court, had been enhanced from Rs.32,31,50,000/- to Rs.64,63,00,000/-

**Submissions on behalf of
Opposite Party No.2**

8. Sri Sushil Kumar Shukla, learned counsel appearing for Opposite Party No. 2, at the very outset, has raised a preliminary objection regarding

maintainability of this revision on the ground that the revisionist has not complied with the provisions of Rule 3(4) of Chapter XVIII of Part III of the Allahabad High Court Rules, 1952 (hereinafter referred to as the 'Rules of 1952') whereunder, it is mandatory that after dismissal of the appeal filed against the order of conviction, the convicted person must surrender before the court concerned and thereafter he may file a criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C. annexing therewith the certificate stating therein that either the revisionist was not on bail or after dismissal of his appeal, he has surrendered before the court concerned but in the revision in hand, no such certificate has been annexed. Sri Sushil Kumar Shukla, learned counsel appearing for Opposite Party No. 2 has also submitted that even the revisionist, while filing the instant criminal revision, has not filed any application seeking exemption from filing of the mandatory certificate to the effect that either the revisionist was not on bail or after dismissal of the appeal, he has surrendered before the court concerned therefore, the criminal revision filed by the revisionist is not maintainable and as such, is liable to be dismissed by this Court.

9. Sri Sushil Kumar Shukla, learned counsel appearing for Opposite Party No. 2 has submitted that Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 provides that a criminal revision shall contain a certificate signed by the Advocate of the revisionist or the revisionist stating therein that the accused was not on bail or if he was on bail, he had surrendered to it. It has further been submitted that the revisionist had been convicted by the trial court for the offence punishable under Section 138 of the Act of 1881 and had been sentenced for simple imprisonment of

two years but the revisionist, in terms of the order of conviction, has not surrendered before the court concerned. The appeal filed by the revisionist against the order of conviction had also been dismissed vide order dated 21.08.2024 but instead of surrendering before the court concerned, the revisionist straightaway had filed the instant criminal revision.

10. Learned counsel appearing for Opposite Party No.2 has argued that the language used by the rule making authority in Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952, makes it mandatory for the accused to surrender before the court concerned and thereafter to file a criminal revision, against the order of the trial court and the order passed by the appellate court, before this Court under Section 397 Cr.P.C. read with Section 401 Cr.P.C. It has further been argued that the common practice in the Hon'ble Supreme Court as well as in different High Courts across the country is that once a person had been convicted by the trial court and his appeal had been dismissed, he has to surrender before the court concerned and only thereafter he can be allowed to file a criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C. or he can avail any other remedy available under law.

11. Learned counsel appearing for Opposite Party No. 2 has emphatically submitted before this Court that the revisionist is anyhow trying to avoid his surrender before the court however, after his conviction by the trial court it is mandatory that he should surrender before the court concerned and if he does not surrender, it is obligatory on the trial court to ensure his surrender. It has further been submitted that the basic principle is that once a person had been convicted and his appeal against the

order of conviction had been dismissed, he must show respect to the orders passed by the courts and should surrender before the court concerned, only thereafter the High Court would exercise its discretionary jurisdiction enshrined under Section 397 Cr.P.C.

12. Sri Sushil Kumar Shukla, learned counsel appearing for Opposite Party No. 2 has relied on the judgment rendered by the Hon'ble Supreme Court in the case of **Vivek Rai and Another Vs. High Court of Jharkhand through Registrar General and another, (2015) 12 SCC 86** and the judgment dated 28.5.2024 rendered by the High Court of Madhya Pradesh at Indore in **Criminal Revision No.1912 of 2024, Devnarayan Vs. Prateek Goenka**. It has been argued on behalf of Opposite Party No.2 that the law laid down in the aforesaid judgments makes it mandatory that the revisionist should first surrender before the court concerned and only thereafter his revision can be entertained and heard by the High Court.

13. It has also been argued on behalf of Opposite Party No.2 that even otherwise the revisionist, while filing the instant revision, has not filed any application seeking exemption from complying with the mandatory requirements under Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 therefore, there is no occasion for this Court to exercise its inherent power to grant exemption to the revisionist from surrendering before the court concerned and to entertain the revision.

Submissions on behalf of the revisionist

14. Sri Prakash Naik, learned Senior Advocate appearing for the revisionist has submitted that the provisions contained in Rule 3(4) of Chapter XVIII of

Part III of the Rules of 1952 are in respect of the contents of the revision but it is nowhere provided that if the certificate mentioning therein that either the revisionist was not on bail or if he was on bail, he had surrendered before the court concerned, is not annexed with the criminal revision, the High Court would not entertain the revision therefore, the preliminary objection raised on behalf of Opposite Party No.2, on its face, is misconceived and is liable to be rejected.

15. Sri Prakash Naik, learned Senior Advocate appearing for the revisionist has argued that the substantive provision regarding the remedy of revision available to the revisionist is Section 397 Cr.P.C. and the said section nowhere provides that the revisionist first has to surrender before the court concerned and only thereafter his revision can be entertained by the High Court therefore, even if the requirements under Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 are missing, this Court cannot refuse to entertain the instant criminal revision on the ground that after dismissal of the appeal, the revisionist has not surrendered before the court concerned. It has further been argued that the appeal filed by the revisionist against the order of conviction and sentence had been dismissed by the appellate court only due to continuous absence of the revisionist before the appellate court i.e. the appeal had been dismissed for want of prosecution whereas, it is well settled proposition of law that the appeal filed against the order of conviction and sentence is to be decided on its own merit and it cannot be dismissed for want of prosecution.

16. Sri Prakash Naik, learned Senior Advocate appearing for the

revisionist has relied on the judgment rendered by the Hon'ble Supreme Court in the case of **Bihari Prasad Singh vs. State of Bihar and another, (2000) 10 SCC 346** and has submitted that the Hon'ble Supreme Court in the said judgment had categorically held that in the Code of Criminal Procedure, there is no such provision which authorizes the High Court to dismiss the application for revision only because the convict has not surrendered.

17. Learned Senior Advocate appearing for the revisionist has thus concluded his arguments and has submitted that the preliminary objection raised on behalf of Opposite Party No.2, regarding maintainability of this criminal revision, is absolutely misconceived and is liable to be rejected by this Court and further the revision may be allowed and the matter may be remanded to the appellate court to consider and decide the appeal filed by the revisionist, on merit.

Analysis of the arguments and conclusions

18. I have heard the arguments advanced by the learned counsels appearing for the parties and have perused the documents filed by the parties before this Court.

19. The revisionist has filed the instant criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C. For ready reference, Section 397 Cr.P.C. and Section 401 Cr.P.C. are extracted as under:-

*“397. Calling for records to exercise of powers of revision.—
(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before*

any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.—All

Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

"401. High Court's powers of revision.—*(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390*

and 391 or on a Court of Session by section 307, and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of Justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

20. The aforesaid Section 397 Cr.P.C. provides that the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself; to the correctness, legality

or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail on his own bond pending the examination of the record.

21. Section 397 Cr.P.C. and Section 401 Cr.P.C. do not provide that the High Court would refuse to entertain the criminal revision if the accused, after his conviction and dismissal of his appeal, has not surrendered before the court concerned. However, it is noteworthy that the remedy in the form of criminal revision is a discretionary remedy and it is the discretion of the High Court to entertain a criminal revision or to refuse to entertain it.

22. The Allahabad High Court had framed Allahabad High Court Rules, 1952 for regulating its procedure. For ready reference, Rule 2 and Rule 3 of Chapter XVIII of Part III of the Rules of 1952 are extracted as under:-

2. Order of Court on motion to admit an appeal or application :- *Where the Bench before which a motion is made for the admission of a petition of appeal or an application for revision or other application finds that it is not accompanied by the requisite papers, if any, or is otherwise not in order or has not been presented within time it may decline to receive it or reject it or pass such other order as it may consider fit.*

Where it finds that such petition or application is in order,

has been presented within time and is accompanied by the requisite papers, if any, it may—

(i) in the case of petition of appeal make an order admitting it and directing notice to be issued; and

(ii) in the case of an application for revision or other application dismiss it or direct notice to be issued or pass such other order as it may deem fit :

Provided that nothing contained in this Rule shall preclude the Bench from dismissing any petition of appeal [under Section 384 of the Code of Criminal Procedure, 1973], or require notice of an application to be issued where notice of such application has already been served upon the other party or his Advocate.”

“3. Contents of petition of appeal or application for revision or other application :- (1) Every petition of appeal or application for revision or other application shall be accompanied by date/eventwise synopsis of the case and shall further state—

(a) the name and, where the appeal or revision is not on behalf of State, the address, of each appellant or applicant;

(b) the name and, where the opposite party is not the State, the address, if available, of each opposite party;

(c) the Court of whose order the appeal or revision is filed and the name of presiding officer of such Court;

(d) the nature of the order passed including the sentence awarded, if any, by such Court;

(e) the provisions of law defining the offence of which the accused person was convicted or acquitted by such Court or under which he was dealt with by such Court;

(f) the ground or grounds, numbered consecutively, of objection to the order from which the appeal or revision is filed;

(g) the relief sought; and shall be signed by the appellant or the applicant, as the case may be, or by an Advocate on his behalf.

(2) If the advocates are relying upon any judgement, they must have three photocopies thereof ready, two for the Judges and one for the other side.

(3) A petition of appeal from an appellate order or acquittal or an application for the revision of an order passed in appeal or revision shall also state the name and description of the Court which tried the case in the first instance and the nature of the order passed by it.

(4) In a case in which a sentence of imprisonment has been awarded the petition of appeal or the application for revision shall also contain a certificate signed by the Advocate for the appellant or the applicant, as the case may be, stating that the accused was not on bail or that, if he was on bail, he has surrendered to it. In a case in which bail has been granted by the Court appealed from order sub-section (3) of Section 389 of the Code of Criminal Procedure, 1973,

the fact shall be stated in the petition of appeal indicating the period for which such bail has been granted."

23. Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 provides that in a case in which sentence of imprisonment has been awarded, the application for revision shall also contain a certificate signed by the Advocate for the applicant or the appellant, stating therein that the accused was not on bail or that, if he was on bail, he has surrendered to it. Rule 2 of Chapter XVIII of Part III of the Rules of 1952 further provides that where the Bench before which a motion is made for the admission of a petition of appeal or an application for revision or other application finds that it is not accompanied by the requisite papers, if any, or is otherwise not in order or has not been presented within time to it, may decline to receive it or reject it or pass such other order as it may consider fit.

24. From a bare perusal of the language used by the rule making authority in Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952, it is patently manifest that there is a mandatory requirement that if a person had been convicted and had been sentenced for imprisonment, while filing application for revision, he shall file a certificate along with the revision stating therein that either he was not on bail or if he was on bail, he had surrendered to it. The rule making authority knowingly had used the words "**shall also contain a certificate**" to make it crystal clear that the revisionist to make his revision in order, has to compulsorily file a certificate of his surrender before the court concerned and once the said requirement is not fulfilled, it would be the discretion of the High Court

to reject the revision as per the provisions made in Rule 2 of Chapter XVIII of Part III of the Rules of 1952. Further, the aforesaid Rule 2 of Chapter XVIII of Part III of the Rules of 1952 also gives discretion to the High Court that in exceptional circumstances, the High Court can consider the request for exempting the revisionist from filing such certificate.

25. This Court is of the view that Rule 2 and Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 are not inconsistent with the provisions made in Section 397 Cr.P.C. and Section 401 Cr.P.C. and if they are read together, they lead to a conclusion that normally the revisionist, while filing a criminal revision, has to file a certificate stating therein that either he was not on bail during trial and appeal or if he was on bail, he had surrendered to it but in exceptional circumstances, the revisionist can come forward and demonstrate those exceptional circumstances before the High Court and can seek exemption from filing such certificate but if such exemption has not been claimed, the revision filed by the convict without surrender before the court concerned would not be entertained by the High Court.

26. The Hon'ble Supreme Court had rendered a judgment in the case of **Bihari Prasad Singh vs. State of Bihar and another, (2000) 10 SCC 346** and had held that there is no provision in the Code of Criminal Procedure that for invoking the revisional jurisdiction of the High Court, the person who had been convicted and his appeal had been dismissed, must surrender before the court concerned.

27. I have carefully gone through the aforesaid judgment rendered by the

Hon'ble Supreme Court in the case of **Bihari Prasad Singh (supra)** and it transpires that the matter which was before the Hon'ble Supreme Court arose from the Patna High Court and it was found that in the Patna High Court, there is no rule requiring a convict to surrender before the court concerned before filing of a criminal revision and further there is no provision in the Code of Criminal Procedure that if a convict had not surrendered, his revision would not be entertained by the High Court. Now, when the aforesaid judgment rendered by the Hon'ble Supreme Court is seen with Rule 2 and Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952, it becomes apparent that the rules applicable in the Allahabad High Court make it mandatory that a convict before filing a criminal revision before the Allahabad High Court must surrender in the court concerned.

28. In view of Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952, this Court is of the view that the aforesaid judgment rendered by the Hon'ble Supreme Court in the case of **Bihari Prasad Singh (supra)** is of no help to the revisionist.

29. The Hon'ble Supreme Court in its judgment rendered in the case of **Vivek Rai and Another Vs. High Court of Jharkhand through Registrar General and another, (2015) 12 SCC 86** had held that Rule 159 of the Jharkhand High Court Rules which provides that a convict before filing a criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C. must surrender before the competent court, is not inconsistent with the provisions made in Section 397 Cr.P.C. and Section 401 Cr.P.C. The relevant paragraphs of the judgment rendered by the Hon'ble Supreme Court in

the case of **Vivek Rai (supra)** are extracted as under:-

"2. The rule in question is as follows:

"159. In the case of revision under Sections 397 and 401 of Code of Criminal Procedure, 1973 arising out of conviction and sentence of imprisonment, the petitioner shall state whether the petition shall be accompanied by a certified copy of the relevant order. If he has not surrendered the petition shall be accompanied by an application seeking leave to surrender within a specified period. On sufficient cause being shown, the Bench may grant such time and on such conditions as it thinks and proper. No such revision shall be posted for admission unless the petitioner has surrendered to custody in the court concerned."

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6. We do not find any merit in the challenge to the validity of the Rule. It is well known practice that generally a revision against conviction and sentence is filed after an appeal is dismissed and the convicted person is taken into custody in the Court itself. The object of the Rule is to ensure that a person who has been convicted by two courts obeys the law and does not abscond. The provision cannot thus be held to be arbitrary in any manner. The provision is to regulate the procedure of the Court and does not, in any manner, conflict with the substantive provisions of the Cr.P.C. relied upon by the petitioners.

7. A similar provision exists in the Supreme Court Rules, 1966. In K.M. Nanavti vs. State of Bombay this Court considered the scope and effect of identical provision of Order XXI Rule 6 of the Supreme Court Rules, then applicable, which read as follows :

"14... 'Where the petitioner has been sentenced to a term of imprisonment, the petition shall state whether the petitioner has surrendered. Unless the court otherwise orders, the petition shall not be posted for hearing until the petitioner has surrendered to his sentence'."

It was observed that the Rule only crystalised the pre-existing practice of this Court and the High Courts. Further, question considered was whether the Rule violated Article 161 of the Constitution which conferred power on Governor to suspend the sentence as in that case, the Governor had suspended the sentence but still the convict was required under the Rule to surrender. This Court held that power of the Governor could not regulate procedure of the Court and if the case was to be heard by this Court, unless this Court granted exemption, the Rule prevailed. We are not concerned with the said question in the present case. Relevant observations in the said judgemnt are :

"14. This Rule was, in terms, introduced into the Supreme Court Rules last year and it only crystallized the preexisting practice of this court, which is also the practice in the High Courts. That

practice is based on the very sound principle which was recognised long ago by the Full Bench of the High Court of Judicature, North Western Provinces, in 1870, in R. v. Bisheshar Pershad. In that case no order of conviction had been passed. Only a warrant had been issued against the accused and as the warrant had been returned unserved a proclamation had been issued and attachment of the property of the accused had been ordered, with a view to compelling him to surrender. The validity of the warrant had been challenged before the High Court. The High Court refused to entertain his petition until he had surrendered because he was deemed to be in contempt of a lawfully constituted authority. The accused person in pursuance of the order of the High Court surrendered and after he had surrendered, the matter was dealt with by the High Court on its merits. But as observed above the Rules framed under Article 145 are only in aid of the powers of this court under Article 142 and the main question that falls for consideration is, whether the order of suspension passed by the Governor under Article 161 could operate when this court had been moved for granting special leave to appeal from the judgment and order of the High Court. As soon as the petitioner put in a petition for special leave to appeal the matter became sub judice in this court. This court under its Rules could insist upon the petitioner surrendering to his sentence as a condition precedent to his being

heard by this court, though this court could dispense with and in a proper case could exempt him from the operation of that Rule. It is not disputed that this court has the power to stay the execution of the sentence and to grant bail pending the disposal of the application for special leave to appeal. Rule 28 of Order 21 of the Rules does not cover that period, but even so the power of the court under Article 142 of the Constitution to make such order as is necessary for doing complete justice in this case was not disputed and it would be open to this court even while an application for special leave is pending to grant bail under the powers it has under Article 142 to pass any order in any matter which is necessary for doing complete justice.

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10. Only further submission put forward is that inherent power of the Court to direct listing of the case by exempting the requirement of surrender has been taken away. It is pointed out that even in the Supreme Court Rules prohibition against listing without surrender is not applicable if the Court otherwise directs. Such exception is not to be found in the impugned Rule.

11. It has not been disputed even by the learned counsel for the High Court that the Rule does not affect the inherent power of the High Court to exempt the requirement of surrender in exceptional situations. It cannot thus, be argued that prohibition against posting of a revision

petition for admission applies even to a situation where on an application of the petitioner, on a case being made out, the Court, in exercise of its inherent power, considers it appropriate to grant exemption from surrender having regard to the nature and circumstances of a case. Thus, the exception as found in corresponding Supreme Court Rules that if the Court grants exemption from surrender and directs listing of a case, the Rule cannot stand in the way of the Court's exercise of such jurisdiction, has to be assumed in the impugned Rule."

30. The Hon'ble Supreme Court in the aforesaid judgment rendered in the case of **Vivek Rai (supra)** had categorically recorded a finding that it is a well known practice that generally a revision against the conviction and sentence of imprisonment is filed after the appeal is dismissed and the convicted person is taken into custody. The Hon'ble Supreme Court in its judgment had further held that the rules framed by the High Court of Jharkhand for regulating its procedure and thereby providing that for filing a criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C., the convict has to first surrender before the court concerned and only thereafter his criminal revision can be entertained by the High Court, are in no way inconsistent with the provisions made in Section 397 Cr.P.C. and 401 Cr.P.C. The Hon'ble Supreme Court in its judgment had also held that there is always a discretion with the High Court that if in extraordinary circumstances, the convict seeks exemption from surrender, he can file an application before the High Court and

that application can always be considered and the discretion can be exercised by the High Court.

31. The High Court of Madhya Pradesh at Indore vide its judgment dated 28.5.2024 rendered in **Criminal Revision No.1912 of 2024, Devnarayan Vs. Prateek Goenka**, had considered Rule 48 of Chapter X of the Madhya Pradesh High Court Rules and Orders, which is similar to Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952, wherein it is provided that a convict, while filing a criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C., shall give a declaration to the effect that he is in custody or had surrendered after the conviction and it had been held that it is mandatory for a convict to surrender before he avails the remedy of criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C. It has further been held that in exceptional circumstances, the discretion lies with the High Court to grant exemption to a convict from surrender but for that, the convict has to make out a case before the High Court that there are some exceptional circumstances in which he should be granted exemption from surrender. The relevant paragraphs of the judgment rendered by the Madhya Pradesh High Court at Indore in the case of **Devnarayan (supra)** are extracted as under:-

"5. Thus, in the aforesaid decision, this court has held that there is no requirement to surrender or to remain in jail for filing criminal revision. On the other hand, so far as the judgment passed by the Gwalior Bench in the case Deepak Sahu (supra) is concerned, it has been held that a revision petition against conviction

is tenable only when it contains a declaration to the effect that the convicted person is in custody or has surrendered after the conviction, except in cases where the sentence has been suspended by the Court below. Relevant paras 1,5,6,7,8,9 & 10 of Deepak Sahu (supra) read as under:-

“1. On 19-1-2012 a question arose before this Court whether this Criminal Revision is tenable despite the fact that petitioners have not surrendered before the Court below at the time of judgment and are still not in custody. In other words, if the convicted person is not in custody or has not surrendered after his conviction and his sentence is not suspended by Court below, whether revision would be tenable.

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5. In Bihari Prasad (supra) the Apex Court held in para 3 as under:

“3. Under the provisions of the Criminal Procedure Code, there is no such requirement though many High Courts in this country have made such provision in the respective rules of the High Court. But it is stated to us that there is no such rule in the Patna High Court Rules. In that view of the matter the High Court was not justified in rejecting the application for revision solely on the ground that the accused has not surrendered.

(emphasis supplied)

6. A bare perusal of this paragraph shows that the Apex Court opined that there is no requirement in the Criminal Procedure Code which makes it

necessary for the accused to surrender after the conviction. However, the Apex Court opined that certain High Courts have made such provisions in their rules. In Kishore Virvani (supra) this Court held that undoubtedly there is no rule which compels the petitioner to surrender before filing the revision in the High Court. However, a microscopic reading of this judgment shows that the relevant provision of High Court Rule was not specifically brought to the notice of this Court. Rule 48 reads as under:-

“48. A memorandum of appeal or revision petition against conviction, except in cases where the sentence has been suspended by the Court below, shall contain a declaration to the effect that the convicted person is in custody or has surrendered after the conviction.

(emphasis supplied)

”7. The basic question is whether as per Rule 48 aforesaid, it is obligatory for the person to surrender on his conviction before filing of the revision.

8. In the considered opinion of this Court, the language employed in Rule 48 makes it crystal clear that a declaration is mandatory for the accused to the effect that he is in custody or has surrendered after the conviction. The only exception provided in the rule is where the sentence has been suspended by the Court below. In other words, except in cases where a sentence was suspended by the Court below itself, in all other cases there has to be a declaration

to the effect that the convicted person is in custody or has surrendered after the conviction. Thus, the intention of rule makers is unambiguous and clear regarding giving of such declaration. Needless to mention that an accused can give such declaration only if he is in custody or surrendered after the conviction. Thus, undoubtedly, the intention of rule is that one has to surrender after conviction or should be in custody except in those cases where sentence has been suspended by the Court. The word "shall" is used to make it mandatory. This is salutary principle of statutory interpretation that when the words of a statute are clear, plain and unambiguous, the Courts are bound to give effect to that meaning irrespective of consequences. Nelson Motis v. Union of India, (1992) 4 SCC 711 : AIR 1992 SC 1981.

9. The Apex Court also held that "if the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver." (page 50 Principles of Statutory Interpretation) (12th Edition 2010 by Justice G.P. Singh). The Apex Court also opined that when language is plain and unambiguous and admits of only one meaning no question of construction of a statute arises, the Act speaks for itself. In the light of this legal position, I have no hesitation to hold that Rule 48

makes it mandatory for the accused to give declaration about his surrender after the conviction or about the fact regarding his remaining in custody.

10. Since Rule 48, in specific, was not brought to the notice of this Court in Kishore (supra), the said judgment is clearly distinguishable on this aspect. On the basis of aforesaid analysis, it is held that a revision petition against conviction is tenable only when it contains a declaration to the effect that the convicted person is in custody or has surrendered after the conviction except in cases where the sentence has been suspended by the Court below."

(emphasis supplied)

32. Now, this Court proceeds to consider the purport of Rule 2 and Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 in the matter of criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C., in the light of the aforesaid judgments rendered by the Hon'ble Supreme Court and the High Court of Madhya Pradesh at Indore. It is apparent that Sections 235, 248 and 353 Cr.P.C. categorically provide that on conviction of an accused, he has to surrender before the court concerned and in his presence, the court would take decision in respect of the sentence. If the provisions made in the different sections of the Code of Criminal Procedure are considered together, it is patently manifest that after conviction, it is obligatory on the convict to surrender before the trial court and if he has not surrendered, it is duty of the court concerned to ensure the surrender of the convict before it.

33. The Allahabad High Court had framed rules known as Allahabad High Court Rules, 1952. Rule 2 read with Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 categorically provide that a convict should file a certificate along with the criminal revision certifying that, either he was not on bail or if he was on bail, he had surrendered before it and once the said certificate is not accompanied with the revision, it would not be in order and would be liable to be rejected by the High Court. It is noteworthy that the rule making authority in Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 had intentionally used the words “**shall also contain a certificate**” thereby to make the requirements under the rule mandatory for the revisionist meaning thereby that unless the convict, while filing criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C. gives a certificate that he had surrendered, the criminal revision would not be in order and would not be entertained by the High Court. However, if Rule 2 is read with Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952, that leaves the scope for filing an application seeking exemption from surrender by the revisionist on the basis of some extraordinary circumstances and if the said exemption is prayed for, the High Court can take into consideration the said application seeking exemption and can pass necessary order.

34. Now coming to the facts of the case in hand, it is apparent from the record that the revisionist after his conviction by the trial court has not surrendered and even during pendency of his appeal before the appellate court, he did not surrender. The revisionist, while filing the instant criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C., has not annexed the

certificate as required under Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 that he has surrendered therefore, the instant criminal revision is not in order and as such, in view of the provisions made in Rule 2 of Chapter XVIII of Part III of the Rules of 1952, the instant criminal revision cannot be entertained and is liable to be rejected.

35. It is also noteworthy that once the revisionist, while filing the instant criminal revision, has not sought exemption from his surrender and has also not narrated the circumstances in which he is not in a position to surrender, there is no occasion for this Court to venture into the issue as to whether the revisionist can be exempted from surrender.

36. In view of the aforesaid facts and circumstances, particularly keeping in view the provisions of Rule 2 and Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 and further keeping in view that the remedy of revision provided under Section 397 Cr.P.C. read with Section 401 Cr.P.C. is a discretionary remedy, this Court declines to exercise its discretion to entertain this revision.

37. In view of the aforesaid reasons, this revision cannot be entertained and is hereby dismissed.

38. However, since the criminal revision filed by the revisionist had been dismissed only on the ground that the mandatory requirements under Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 have not been complied with, this Court leaves it open to the revisionist to comply with the requirements of the aforesaid Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 and file a fresh revision.

of the vehicle was suppressed by the owner of the vehicle while filing the written St.ment. Thus, the judgment of Jai Deo Singh (supra) would have no applicability in the instant case. (Para 25)

Appeal dismissed. (E-14)

List of Cases cited:

1. National Insurance Company Vs Jai Deo Singh & ors., 2010 (28) LCD 499

2. United India Insurance Co. Ltd Vs Gian Chand & ors., (1997) 7 SCC 558

(Delivered by Hon'ble Abdul Moin, J.)

1. Heard Sri Avinash Chandra, learned counsel for the appellant and Sri Rajesh Kumar Sharma, learned counsel appearing on behalf of the respondent no. 1.

2. Learned counsel for the appellant contends that the issue involved in First Appeal From Order No. - 12 Of 2011 (hereinafter referred to as "First Appeal"), First Appeal From Order No. - 529 Of 2011 (hereinafter referred to as "Second Appeal) and First Appeal From Order No. - 10 Of 2011 (hereinafter referred to as "Third Appeal") are the same. As such, the Court proceeds to hear all the appeals together. For the sake of convenience, the facts of first appeal no. 12 of 2011 are being taken.

3. The first appeal no. 12 of 2011 has been filed against the judgment and order dated 24.09.2010 passed in MACP No. 74 of 2007 Inre; Sobaran Lal Vs. Avinash Sharma and Ors, second Appeal has been filed against the judgment and order dated 17.02.2011 passed in MACP No. 75 of 2007 Inre; Avinash Sharma Vs. Vinod Kumar and anr and third appeal has

been filed against the judgment and order dated 24.09.2010 passed in MACP No. 73 of 2007. All these judgments and orders have been passed by the learned Motor Accident Claim Tribunal, Lakhimpur Kheri (hereinafter referred to as "Tribunal").

4. Bereft of unnecessary details, it is indicated that an accident took place on 28.12.2006. The claim petition was filed by the claimants for the injuries that had been suffered by them in the said accident.

5. Learned counsel appearing on behalf of the contesting parties fairly submit that the only question involved pertains to the driver of the alleged vehicle with which the accident took place.

6. It is contended that as the learned tribunal has found that the driver of the vehicle with which the accident occurred was not having a valid driving license consequently, the claim has been allowed against the owner of the vehicle, the appellant herein.

7. Sri Avinash Chandra, learned counsel for the appellant has argued that the learned tribunal had framed the issue no. 2 which was as to "whether at the time of the alleged accident, all papers relating to vehicle in question were valid and effective and the driver of the alleged vehicle had a valid and effective driving license and if so, its effect."

8. Learned tribunal has indicated that although the photocopies of the driving license of one Sri Siraju vide paper no. 43 C has been filed on behalf of the owner of the vehicle/appellant yet from the charge sheet that had been filed in the criminal case that had been lodged, it emerged that the driver of the vehicle was one Sri

Gurupesh Singh @ Gurupesh Singh who was the driver of the vehicle at the time of the alleged incident and that he had no valid and effective driving license on the date of the accident.

9. The argument of Sri Avinash Chandra, learned counsel for the appellant is that once the owner of the vehicle i.e the appellant herein had filed a written statement and had also filed along with the "fehris" (list of documents), the driving license of Sri Siraju which driving license was valid consequently, the learned tribunal has patently erred in not considering the said driving license to be that of the driver of the vehicle and to have placed reliance on the charge sheet to conclude that it was Sri Gurpej Singh @ Gurpesh Singh who was the driver of the vehicle and he having had no valid and effective driving license and the claim has been allowed against the owner of the vehicle.

10. In this regard, reliance has been placed on the judgment of this Court in the case of **National Insurance Company Vs. Jai deo Singh & 2 Ors-2010 (28) LCD 499** to contend that this Court has held that the contents of the charge-sheet or the statement recorded under Section 161 Cr.PC or the First Information Report can not be taken as substantive evidence and thus it is argued that the learned tribunal has patently erred in placing reliance on the charge sheet that had been filed against Sri Gurpresh Singh to hold that he was the driver of the vehicle.

11. On the other hand, Sri Rajesh Kumar Sharma, learned counsel appearing on behalf of the respondent no. 1 has argued that the learned tribunal has specifically observed in its judgment that

while filing the written statement, the owner of the vehicle has not indicated as to who was the driver of the vehicle. It is further argued that although the driving license of one Sri Siraju may have been filed yet no evidence was led by the owner of the vehicle to indicate that in fact it was Sri Siraju who was driving the vehicle on the fateful day and thus there was no evidence to indicate that Sri Siraju was driver of the vehicle and consequently, the learned tribunal has not erred in holding that Sri Siraju cannot be said to be the driver of the vehicle on the said fateful day rather the driver was Sri Gurpesh Singh on the basis of the charge sheet that had been filed by the police to conclude that the driver of the vehicle had no effective and valid driving license on the fateful day.

12. Heard learned counsel appearing on behalf of the contesting parties and perused the records.

13. Perusal of the records it emerges that an accident took place on 28.12.2006 in which the claimants suffered injuries for which they filed the aforesaid claim petition before the learned tribunal.

14. A written statement was filed by the owner of the vehicle in which strangely the name of the driver who was driving the vehicle on the fateful day was not disclosed. In the list of documents which was filed by the owner of the vehicle, the driving license of one Sri Siraju was filed. Incidentally, neither the owner of the vehicle nor any other person led evidence to either prove the said driving license or for that matter to indicate as to who was the driver of the vehicle on the fateful day. The learned tribunal has considered this aspect of the matter and on the basis of the charge sheet which had

been filed against Sri Gurpej Singh @ Gurpesh Singh has held that he was the driver of the vehicle on the fateful day and was not having a valid and effective driving license and consequently, the owner of the vehicle has been held liable for payment of compensation to the claimant.

15. Perusal of the written statement, a copy of which has also been filed as annexure 2 to the appeal would indicate that it has been indicated in the written statement that the vehicle was being driven by an experienced and qualified driving license holder but strangely the name of the driver has been withheld in the said written statement.

16. Along with the list of documents, the driving license of one Sri Siraju was filed yet nobody put in appearance or led evidence to prove the said driving license nor the owner of the vehicle/ appellant herein led any evidence to prove that on the fateful day, it was the in fact Sri Siraju who was driving the vehicle. In the charge sheet that had been filed by the police it emerged that Sri Gurpej Singh @ Gurpesh Singh was the driver of the vehicle. Thus, before the learned tribunal it was only the charge sheet which has been filed by the police which indicated that the driver of the vehicle was in fact Sri Gurpej Singh @ Gurpesh Singh who was driving the vehicle and in the absence of any evidence being led by the owner of the vehicle to indicate that in fact it was Sri Siraju who was the driver of the vehicle consequently, it emerges that the learned tribunal has correctly concluded that the driver of the vehicle was in fact Sri Gurpej Singh @ Gurpesh Singh who was not having a valid driving license on the fateful day.

17. In this regard, the Court may refer to Section 102 of the Evidence Act, 1872 (hereinafter referred to as "Act, 1872") which states that burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side.

18. Section 105 of the Act, 1872 provides for burden of proving the existence of circumstance by the person accused within any of the General Exceptions in the Indian Penal Code or within any special exception or proviso contained in any other part of the same code or in any law defining the offence and the Court shall presume the absence of such circumstances.

19. Section 106 of the Act, 1872 states that when any fact, is especially within the knowledge of any person, the burden of proving that fact is upon him.

20. Thus, the knowledge of the vehicle being driven by Sri Siraju was exclusively within the knowledge of the appellant herein and as such, the burden of proof lay on him to prove such fact. However, no witness ever put in appearance on behalf of the appellant before the learned tribunal to proof the burden of establishing that the vehicle was being driven by Sri Siraju i.e the driver who was having a valid driving license.

21. Having regard to Section 114 illustration (g) of the Act, 1872, if a party abstains from entering witness box and stating his own case and does not offer himself for cross-examination by the other side, a presumption arises that the case set up by him is not correct.

22. In this regard, it would be apt to refer to the judgment of the Apex Court in the case of **United India Insurance Co. Ltd Vs. Gian Chand and Ors- (1997) 7 SCC 558** wherein it has been held as under:-

"10.....it has been clearly held by the Tribunal as well as by the High Court that respondent No.1 who was permitted to drive the vehicle by respondent No.9, the insured, was admittedly not having any driving licence. It was not the case of respondent No.9, the insured, that he did not know that respondent No.1 whom the vehicle was being handed over was not having a valid licence. In fact, once he did not step in the witness box to prove his case, an adverse inference had necessarily to be drawn against him to the effect that the vehicle had been handed over by him for being driven by an unlicensed driver, respondent No.1.....

(emphasis by the Court)

23. From a perusal of the aforesaid judgment it emerges that in case the appellant was asserting that the vehicle was being driven by Sri Siraju who was having a valid driving license consequently, he should have stepped in the witness box to prove his case and not having done so an adverse inference was necessarily to be drawn against him to the effect that the vehicle was being driven by an unlicensed driver.

24. So far as the judgment of this Court in the case of **Jai Deo Singh (supra)** is concerned, suffice it to say that in the said case before the learned tribunal, an

application was filed by the owner of the vehicle per which the owner had indicated the name of the driver as Sri Anuj Kumar Bajpai who was possessing a valid driving license but the learned tribunal did not consider that aspect of the matter but considered the name of driver indicated in the charge sheet.

25. As already indicated above, there was no evidence before the learned tribunal to indicate that the driver of the vehicle on the fateful day was Sri Siraju who was a valid driving license more particularly when the name of the driver of the vehicle was suppressed by the owner of the vehicle while filing the written statement. Thus, the judgment of **Jai Deo Singh (supra)** would have no applicability in the instant case.

26. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the appeal is dismissed.

(2025) 3 ILRA 500

APPELLATE JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 26.03.2025

BEFORE

**THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE KSHITIJ SHAILENDRA, J.**

Income Tax Appeal No. 86 of 2015

Umang Agarwal

...Appellant

Versus

**The Commissioner of Income Tax Central
Circle & Anr. ...Respondents**

Counsel for the Appellant:

Rakesh Ranjan Agarwal, Suyash Agarwal

Counsel for the Respondents:

C.S.C., Shubham Agarwal

Tax Law - Income-tax Act, 1961 - Sections 143 & 263 - Against order of Tribunal - Assessee paid advance tax of Rs.5,71,000/- on 14.03.2002, search operation conducted by Department on 04.09.2002, wherein account books and other documents seized - 31.10.2002 was due date for filing return for Financial Year 2001-2002, (Assessment Year 2002-2003), however, seized materials and books received from Department on 05.07.2004, assessee filed return on 01.09.2004 after obtaining audit report, block assessment order passed on 30.09.2004 - Regular assessment order passed on 29.03.2006, challenged before CIT on 16.08.2005 - Allowed holding that provisions of Section 158 - BB(1)(c) would apply in favour of assessee - Challenged before Tribunal, order modified with certain directions to Assessing Officer - Held, Tribunal failed to examine entire facts and circumstances of case but treated finding of 'non-est' made by High Court as final which was merely an obiter and consequence thereof appears that assessee taxed twice i.e. in regular proceedings and block assessment for relevant period - Impugned order set aside, matter remanded. (Para 4, 10, 15)

Appeal allowed. (E-13)

(Delivered by Hon'ble Kshitij Shailendra, J.)

1. Heard Shri Manish Goyal, along with Shri Rakesh Ranjan Agrawal, both learned Senior Advocates, assisted by Shri Suyash Agarwal and Shri Nitin Kumar Kesarwani for the appellant and Shri Ashish Agrawal, learned counsel for the respondent-Income Tax Department.

2. The instant appeal under Section 260-A of the Income Tax Act, 1961 (in short 'the Act') has been filed by the assessee challenging the judgement and order dated 25.08.2014 whereby the Income Tax Appellate Tribunal, Allahabad Bench, Allahabad has partly allowed ITA

No.464/Alld./2005 for block period w.e.f. 01.04.1996 to 04.09.2002 modifying the order u/s 263 of the Act and with certain directions to the Assessing Officer.

3. We may mention here that the Tribunal has decided the appeal pursuant to an order dated 16.05.2014 passed by this Court whereby Income Tax Appeal No.422 of 2006 [The Commissioner of Income Tax (Central), Kanpur vs. Shri Umang Agarwal] was allowed and the matter was remanded to the Tribunal for fresh consideration. The assessee, being aggrieved by certain observations made in the order of remand, filed a Civil Misc. Review Application No.203788 of 2014 seeking review of the order dated 16.05.2014, however, during the pendency of the review application and in absence of any interim order passed therein, the order of remand was given effect to and, consequently, the Tribunal proceeded to decide the appeal by the order impugned in the instant appeal. We have rejected the aforesaid review application today itself by making certain observations in the light whereof we would decide the instant appeal on its own merits.

4. Brief facts giving rise to the appeal are that the assessee had paid advance tax of Rs.5,71,000/- on 14.03.2002, a search operation was conducted by the Department on 04.09.2002 wherein account books and other documents of the applicant were seized. 31.10.2002 was the due date for filing return for the Financial Year 2001-2002, (Assessment Year 2002-2003), however, since the account books were seized by the Department prior to the said due date and the seized materials and books were received from the Department on 05.07.2004, the assessee filed return under Section 143 of the Act of 1961 on

01.09.2004 after obtaining audit report, whereafter block assessment order was passed on 30.09.2004; regular assessment order was passed on 29.03.2006 which was assailed before the CIT (Central) Kanpur on 16.08.2005 by way of appeal. The appeal was allowed in favour of the assessee on 26.06.2006 holding that provisions of Section 158-BB(1)(ca) would apply in favour of the assessee.

5. The instant appeal was admitted by order dated 19.01.2018 on the questions of law framed in its memo which are reproduced as under:-

“(i) Whether on the facts and circumstances of the case the ITAT was correct to hold that the return for A.Y. 2002-03 filed on 01.09.2004 was non-est, ignoring the delay in filing the return was not attributable to the appellant rather to the department as having supplied photocopies of the seized materials and books of accounts on 05.07.2004, seized on the date of search dated 04.09.2002 under Section 132 of the Act?

(ii) Whether the ITAT was correct to allow the relief for A.Y. 2002-03 to the extent of the advance tax paid amounting to Rs.5,71,000/-, ignoring that the return filed on 01.09.2004 was regularized by the Assessing Officer under Section 143/148 of the Act by order dated 29.03.2006 and charged the interest under Section 234A (Rs.5,51,611/-), 234B (Rs.10,25,118/-) and 234C (Rs.73,418/-) totalling Rs. 16,50,147/- as per computation form of A.O. dated 29.03.2006?”

6. Shri Manish Goyal, learned Senior Advocate submits that the Tribunal has dismissed the appeal for the reason that this Court, by order dated 16.05.2014, had held ITR filed on 01.09.2004 as ‘non-est’ although, in the facts of the case where the seized account books and other materials were released in favour of the assessee on 05.07.2004, prior where to, there was no occasion for the assessee to file return. Submission is that if had the Tribunal analyzed all the material facts and circumstances of the case, the result would have been in favour of the assessee. He has referred to ‘paragraph 8.3’ of the impugned judgement and submits that since the Tribunal could not go beyond the decision of this Court, the assessee had no option but to file a review application as well as the instant appeal and both have to be seen and decided in the light of totality of facts and circumstances including the chain of events that had taken place.

7. Per contra, Shri Ashish Agrawal, learned counsel for the Department submits that the Assessing Officer had made assessment for block period w.e.f. 01.04.1996 to 04.09.2002 by his order dated 30.09.2004, categorically recording that seized materials were handed over by Investigating Wing, Allahabad and on 09.09.2003, whereafter, by an order dated 05.12.2003, assessee was called upon to inspect the seized material and obtain photocopy thereof. The assessment order further records that inspection and photocopying work was carried out w.e.f. 31.12.2003 to 28.05.2004, print outs of CPUs and floppies seized were carried out in the presence of the assessee’s authorized representative and two witnesses, a notice under Section 158-BC was issued to the assessee on 08.06.2004 requiring him to prepare a true and correct return of his total

income in the prescribed form and to deliver the same in the Department's Office within twenty days; such notice was served upon assessee on 09.06.2004; the assessee requested for extension of time for filing return, which extension was granted to him upto 45th day i.e. 24.07.2004, however, no return was filed by that date. Shri Agrawal further submits that the assessee was not co-operative in the proceedings and had taken much time in inspection and photocopying work, which continued for about five months. By referring to the computations made by the Assessing officer in his order dated 30.09.2004, it is urged that in the Assessment Year 2002-2003, total income of the assessee was shown as Rs.1,08,03,703/-, his disclosed income being Rs.53,27,810/- and undisclosed income Rs. 54,75,893/- and, accordingly, the block assessment was done in accordance with law. Referring to the order dated 16.08.2005 passed under Section 263 of the Act, it is urged that CIT (Central) Kanpur found the return under Section 139 as non-est and the assessment order dated 30.09.2004 was set aside on a limited issue of redetermination of the undisclosed income for the Assessment Year 2002-2003. Submission is that the said order was set aside by this Court after considering the entire facts of the case and, since, this Court had remanded the matter to the Appellate Tribunal, the Tribunal was bound to act accordingly and if it has partly allowed the appeal, no error has been committed by it.

8. Having heard learned counsel for the parties, we may mention that while deciding the review application today itself, as far as the observation of this Court in the order dated 16.05.2014 regarding ITR under Section 139 as 'non-est', we have observed as under:-

“14. Insofar as the observation of this court that ITR filed under Section 139 of the Act had become 'non-est', we find that the same was not the ratio or the conclusion drawn by this Court, otherwise there was no necessity to remand the matter to the Appellate Tribunal. The said observation appearing at 'internal page No.5' of the order sought to be reviewed can either be treated as an argument advanced on behalf of the Department or, if not, it can be treated as an 'obiter.' It was infact a passing remark made by the Court during the course of deciding the appeal and, therefore, when the matter was remanded to the Appellate Tribunal, it cannot be said that this Court had expressed any final opinion regarding ITR under Section 139 as "non-est".

15. In the facts of the case, it has to be seen as to when the due date for filing return i.e. 31.10.2002 had lapsed but, prior thereto, account books and other material of the assessee were seized on 01.09.2002 and when the block assessment was being done, whether it was at all necessary for the assessee to file a belated return after the seized material was released in favour of the assessee or if at all it was filed, whether such filing could be fatal to his case or whether the assessee was precluded from filing return though inspection was facilitated to him. The inter-se connection between regular proceedings vis-a-vis block assessment proceedings in the peculiar facts of the case, is a question that has relevance so as to

adjudge the issue of double jeopardy allegedly faced by the assessee, as argued on his behalf.”

9. We have also held in the order deciding review application that the instant appeal shall be decided on its own merits but keeping in view the effect of the observation made by this Court as regards ITR being ‘non-est’.

10. In view of the above, we are of the view that the Tribunal was not justified in treating the observation as ‘non-est’ as a finding against the assessee and, therefore, when we peruse ‘paragraph 8.3’ of the impugned judgement, we find force in the submission of Shri Goyal that the Tribunal has failed to examine the entire facts and circumstances of the case but has treated the finding of ‘non-est’ as final and the consequence thereof appears to be that the assessee has been taxed twice i.e. in regular proceedings as well as those relating to block assessment for the relevant period. We may refer ‘paragraph 8.3’ of the impugned judgement which reads as under:-

“8.3. It is admitted fact that when the search was conducted on 04.09.2002, the return for the assessment year 2002-2003 was not due on the date of the search and due date of filing of the return u/s. 139(1) for the assessment year 2002-2003 was 31.10.2002 and the said period had not expired on the date of search. It is also undisputed fact that the assessee applied for copies of seized books of account and other documents to the Revenue Authorities after search and after preparation of panchnamas etc., the copies of the

seized documents were applied to the assessee on 05.07.2004. **Though the return of income filed for the assessment year 2002-2003 on 01.09.2004 was non-est u/s. 139 (1) as was also held by Hon’ble High Court but the fact remains that the delay in filing such non-est return was not solely attributable to the assessee. Any how such reason may not be relevant u/s. 139(1). Since it was already held by Hon’ble High Court that the return for the assessment year 2002-2003 was non-est, therefore, no further finding would be required.** It is also admitted fact that the assessee’s application before Settlement Commission has already been rejected. Therefore, no such application was pending and filing of application before Settlement Commission would have no bearing on the issue. The CPU for F.Y. 2001-2002 as seized was later on examined as per Panchnamas and the assessee also filed return for the assessment year 2002-03 later on and amount of dispute is certain at Rs.53,27,810/-. Therefore, it would have no bearing on the issue u/s. 263 of the IT Act. It is a fact that when the AO framed block assessment order on 30.09.2004, the return for the assessment year 2002-2003 was within the knowledge of the AO as was filed on 01.09.2004.”

11. The Tribunal in ‘paragraph 8.3’ of the impugned judgement quoted above has itself held that delay in filing ‘non-est’ return was not solely attributable to the assessee. The said observation has material

bearing on the entire controversy involved as the financial implications of the result of proceedings of regular assessment vis-a-vis block assessment have to be examined in the entirety of the fact situation.

12. Both the substantial questions framed revolve around the finding of 'non-est' and its effect on the assessee and once we are satisfied and have already held in the order deciding review application, as quoted above, that the said observation was merely an obiter and not a finding/ ratio/ conclusion drawn by this Court, we deem it appropriate to remand the matter to the Appellate Tribunal for fresh consideration on merits of the case.

13. Consequently, we answer both the questions in the manner that the Tribunal's finding treating the ITR under Section 139(1) for the Assessment Year 2002-2003 filed on 01.09.2004 as 'non-est' is erroneous and the effect of search conducted on 04.09.2002 before the due date i.e. 31.10.2002, release of material in favour of the assessee on 05.07.2004, filing of return thereafter on 01.09.2004 and its financial consequences were liable to be considered on their own merits and not based upon the observation of 'non-est' made by this Court in the order dated 16.05.2014.

14. Consequently, the appeal succeeds and is **allowed**.

15. The order impugned dated 25.08.2014 is hereby **set aside** and the matter is **remanded** to the Income Tax Appellate Tribunal, Allahabad Bench, Allahabad for fresh consideration of entire case of the assessee on its own merits in accordance with law. The Tribunal shall

revive the proceedings of appeal and **dispose off** the same after providing full opportunity of hearing to the parties based upon record within a period of **four months** from the date a certified copy of this order is filed before it.

16. **Shekhar B. Saraf, J:-** I agree.

(2025) 3 ILRA 505

APPELLATE JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 26.03.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE KSHITIJ SHAILENDRA, J.

Income Tax Appeal No. 422 of 2006

The Commissioner of Income Tax
(Central) Kanpur **...Appellant**

Versus

Sri Umang Agarwal **...Respondent**

Counsel for the Appellant:

S.C., C.S.C., R.K. Upadhyaya

Counsel for the Respondent:

R.R. Agarwal, Suyash Agarwal

Tax Law – Income Tax Act, 1961 – Sections 139, 143, 158-BB(1)(ca), 15-BB, 158-BC & 263 - Civil Procedure Code, 1908 – Order 47 - Rules 1 - Sections 114 & 151- Review Petition - against High Court's order – whereby court had allowed the income Tax Appeal setting aside the order passed by the Income Tax Appellate Tribunal and remanded the matter to the Tribunal with certain observation – seeking review – on the ground that court failed to address key legal and factual issues – and most notably, that delayed in filing of the income tax return under Section 139 was due to the seizure of account books by tax authorities, and therefore, declaring the return "non-est" was unjust - The Income Tax Department opposed the review as unjustified, claiming due process was followed and the return was rightly treated as 'non-est' - Court

clarified that, the strict scope of review jurisdiction under Order XLVII Rule 1 and Section 114 of the CPC - a review is only allowed in the case of a clear error apparent on the face of the record, and not for rehearing or correcting a possibly erroneous but reasoned judgment – held, review is not an appeal in disguise – and earlier remark calling the ITR “non-est” was not its final conclusion but rather an obiter or passing comment – hence, order in question does not suffer from an error on the face of record – so as to persuade this court to review the order - accordingly, the review petition is rejected. (Para – 6, 12, 13, 14, 15, 16, 17)

Review Petition Rejected. (E-11)

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1. Income Tax Appeal No.86 of 2015 (Umang Agarwal Vs The Commissioner of Income Tax, Central Circle, Allahabad,
2. St. of West Bengal Vs Confederation of St. Government Employees, (2019) 3 Cal LJ 351,
3. Chhajju Ram Vs Neki , 1922 SCC OnLine PC 11 : (1921-22) 49 IA 144 : AIR 1922 PC 112],
4. Moran Mar Basselios Catholicos Vs Mar Poulouse Athanasius, AIR 1954 SC 526],
5. Lily Thomas Vs U.O.I., (2000) 6 SCC 224 : 2000 SCC (Cri) 1056,
6. Meera Bhanja Vs Nirmala Kumari Choudhury [(1995) 1 SCC 170],
7. Parsion Devi Vs Sumitri Devi reported in (1997) 8 SCC 715,
8. Thungabhadra Industries Ltd. Vs Govt. of A.P. [AIR 1964 SC 1372],
9. Aribam Tuleshwar Sharma Vs Pishak Sharma reported in (1979) 4 SCC 389,
10. Shanti Conductors (P) Ltd. Vs Assam SEB (2020) 2 SCC 677,
11. Perry Kansagra Vs Smriti Madan Kansagra (2019) 20 SCC 753,
12. S. Murali Sundaram Vs Jothibai Kannan & ors., (2023) 13 SCC 515,
13. Pancham Lal Pandey Vs Neeraj Kumar Mishra & ors., AIR 2023 (SC) 948,
14. M/s. Tata Steel Ltd. Vs Commissioner Trade Tax, Lucknow, 2024 (6) ADJ 248,
15. M/s. M.M.I. Tobacco Pvt. Ltd. & anr. Vs Iftikhar Alam, 2024 (5) ADJ 708,
16. Rajendra Singh Vs Lt. Governor, Andaman and Nicobar Islands & ors., (2005) 13 SCC 289,
17. Board of Control for Cricket in India & anr. Vs Netaji Cricket Club & ors., (2005) 4 SCC 741.

(Delivered by Hon'ble Kshitij Shailendra, J.)

**Order on Civil Misc. Review Application
No.203788 of 2014**

1. Heard Shri Manish Goyal alongwith Shri Rakesh Ranjan Agrawal, both learned Senior Advocates, assisted by Shri Suyash Agarwal and Shri Nitin Kumar Kesarwani for the applicant in review and Shri Ashish Agrawal, learned counsel for the respondent-Income Tax Department.

2. The instant application under Order XLVII Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 (in short ‘the Code’) on behalf of assessee seeks review of the final judgement and order dated 16.05.2014 whereby this Court had allowed Income Tax Appeal No. 422 of 2006 [The Commissioner of Income Tax (Central), Kanpur vs. Shri Umang Agarwal, Allahabad] setting aside the order dated 26.05.2006 passed by the Income Tax Appellate Tribunal, Allahabad in ITR No.464/ALLd./05 for the block period w.e.f. 01.04.1996 to 04.09.2002

and remanded the matter to the Tribunal with certain observations.

SUBMISSIONS ON BEHALF OF
APPLICANT-ASSESSEE

3. Shri Manish Goyal, learned Senior Counsel appearing for the applicant/assessee submits that there is an error apparent on the face of the record, inasmuch as, this Court has neither answered the substantial question of law, on which, the appeal had been admitted on 15.05.2012 nor has it dealt with significant factual aspects of the matter. Submission is that the assessee had paid advance tax of Rs.5,71,000/- on 14.03.2002, a search operation was conducted by the Department on 04.09.2002 wherein account books and other documents of the applicant were seized. According to him, 31.10.2002 was the due date for filing return for the Financial Year 2001-2002, (Assessment Year 2002-2003), however, since the account books were seized by the Department prior to the said due date and the seized materials and books were received from the Department on 05.07.2004, the applicant filed return under Section 143 of the Income Tax Act, 1961 (in short 'the Act') on 01.09.2004 after obtaining audit report, whereafter block assessment order was passed on 30.09.2004; regular assessment order was passed on 29.03.2006 which was assailed before the CIT (Central) Kanpur on 16.08.2005 by way of appeal. The appeal was allowed in favour of the applicant/assessee on 26.06.2006 holding that provisions of Section 158-BB(1)(ca) would apply in favour of the assessee. Shri Goyal further submits that this Court, while passing the order under review, has grossly erred in ignoring the vital aspect of the matter that the inability on the part of the

assessee to file return before the due date was seizure of the books of accounts and other materials prior to the arriving of the said date and the documents having been released on 05.07.2004, this Court wrongly held the ITR filed on 01.09.2004 as non-est. Submission is that had this Court taken into consideration the aforesaid aspect, as emphatically pressed through written arguments submitted after the judgement was reserved in the appeal, the order would have been in favour of the assessee and not against him. In support of submission that this Court is competent to correct errors to prevent miscarriage of justice and should not hesitate in reviewing its own order when the interest of justice so demands in appropriate cases, reliance has been placed on the following authorities:-

(i). Rajendra Singh vs. Lt. Governor, Andaman and Nicobar Islands and others, (2005) 13 SCC 289;

(ii). Board of Control for Cricket in India and another vs. Netaji Cricket Club and others, (2005) 4 SCC 741.

SUBMISSIONS ON BEHALF OF
I.T. DEPARTMENT

4. Per contra, Shri Ashish Agrawal, learned counsel for the Department submits that the instant review application is not maintainable inasmuch as, this Court passed a well-reasoned order and under the garb of review, the applicant is expecting this Court to sit in appeal over its own decision. On merits of the contention advanced as regards applicability of one or the other provision or other factual aspects, learned counsel submits that the Assessing Officer had made assessment for block period w.e.f. 01.04.1996 to 04.09.2002 by

his order dated 30.09.2004, categorically recording that seized materials were handed over by Investigating Wing, Allahabad and on 09.09.2003, whereafter, by an order dated 05.12.2003, assessee was called upon to inspect the seized material and obtain photocopy thereof. The assessment order further records that inspection and photocopying work was carried out w.e.f. 31.12.2003 to 28.05.2004, print outs of CPUs and floppies seized were carried out in the presence of the assessee's authorized representative and two witnesses, a notice under Section 158-BC was issued to the assessee on 08.06.2004 requiring him to prepare a true and correct return of his total income in the prescribed form and to deliver the same in the Department's Office within twenty days; such notice was served upon assessee on 09.06.2004; the assessee requested for extension of time for filing return, which extension was granted to him upto 45th day i.e. 24.07.2004, however, no return was filed by that date. Shri Agrawal further submits that the assessee was not co-operative in the proceedings and had taken much time in inspection and photocopying work, which continued for about five months. By referring to the computations made by the Assessing officer in his order dated 30.09.2004, it is urged that in the Assessment Year 2002-2003, total income of the assessee was shown as Rs.1,08,03,703/-, his disclosed income being Rs.53,27,810/- and undisclosed income Rs. 54,75,893/- and, accordingly, the block assessment was done in accordance with law. Referring to the order dated 16.08.2005 passed under Section 263 of the Act, it is urged that CIT (Central) Kanpur found the return under Section 139 as non-est and the assessment order dated 30.09.2004 was set aside on a limited issue of redetermination of the undisclosed income for the Assessment

Year 2002-2003. Submission is that the said order was set aside by this Court after considering the entire facts of the case and, since, this Court had remanded the matter to the Appellate Tribunal, review of the order is not a remedy and, in case, the assessee was aggrieved by the order sought to be reviewed, he should have filed an appeal. On the scope of review, learned counsel for the Department has placed reliance on the following authorities:-

(i) S. Murali Sundaram vs. Jothibai Kannan and others, (2023) 13 SCC 515;

(ii). Pancham Lal Pandey vs. Neeraj Kumar Mishra and others, AIR 2023 (SC) 948;

(iii). M/s. Tata Steel Ltd. vs. Commissioner Trade Tax, Lucknow, 2024 (6) ADJ 248;

(iv). M/s. M.M.I. Tobacco Pvt. Ltd. And another vs. Iftikhar Alam, 2024 (5) ADJ 708.

SUBMISSIONS ON BEHALF OF APPLICANT-ASSESSEE IN REJOINDER

5. As far as remedy of appeal is concerned, Shri Goyal submits that as per Section 114 and Order XVLII Rule 1 of the Code, review lies when an appeal lies but has not been preferred or when no appeal lies. Submission is that since, against final order of this Court in appeal, no appeal is provided under the Act before the Hon'ble Supreme Court and it is only by way of grant of special leave to file appeal that an appeal can be entertained by the Supreme Court, it is a case where no statutory appeal lies and, hence, the review of the order was rightly sought. He, otherwise, submits that the applicant has been taxed twice in the matter, i.e. he has been made liable to pay tax in regular assessment proceedings as well as for block assessment and since this

Court, in the order sought to be reviewed, had held the ITR filed under Section 139 of the IT Act as “non-est”, when the order of remand passed by this Court was given effect to, the Appellate Tribunal has, by order dated 25.08.2014, dismissed the appeal by observing that since the High Court has already held the ITR as non-est, it would be treated as non-est. Submission is that challenging the subsequent order dated 25.08.2014, the applicant-assessee has filed Income Tax Appeal No.86 of 2015 (connected with this review application) and, therefore, not only the order dated 16.05.2014 is required to be reviewed and set aside but also the consequential order dated 25.08.2014 passed by the Appellate Tribunal and the connected appeal be also allowed.

DISCUSSION AND FINDINGS

6. First of all, we would like to narrate the scope of review application as per Order XLVII Rule 1 of the Code. The said provision finds place in procedural part of the Code and as far as substantive part thereof is concerned, Section 114 is the relevant provision. Even if we accept the submission of Shri Goyal that appeal against order of the Appellate Court is entertained by Hon’ble Supreme Court only after special leave is granted by the Apex Court and, hence, as a matter of course, no statutory appeal is provided under the Act before the Supreme Court, irrespective of maintainability of review application for any reason whatsoever, including non-availability of remedy of statutory appeal, such application has to be considered as per the contours of Rule 1 of Order XLVII of the Code. The said Rule clearly provides that review can be sought on discovery of new and important matters or evidence which, after exercise of due diligence, was

not within knowledge of the applicant or could not be produced by him at the time when the order was passed or on account of some mistake or error apparent on the face of the record or for any other sufficient reason.

7. The Supreme Court, in **S. Murali Sundaram** (supra), after placing reliance on **Perry Kansagra vs. Smriti Madan Kansagra (2019) 20 SCC 753**, observed that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the Review Court does not sit in appeal over its own order; a rehearing of the matter is impermissible in law; review is not appeal in disguise; power of review can be exercised for correction of a mistake but not to substitute a view; such powers can be exercised within the limits of the statute dealing with the exercise of power; it is wholly unjustified and exhibits a tendency to rewrite a judgment by which the controversy has been finally decided. It was summed up as under:

“(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

(ii) Power of review may be exercised when some mistake or error apparent on the face of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on the points where there may conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.

(v) An application for review may be necessitated by way of invoking the doctrine *actus curiae neminem gravabit*.”

8. In **Shanti Conductors (P) Ltd. vs. Assam SEB (2020) 2 SCC 677**, it was held that scope of review under Order 47 Rule 1 CPC read with Section 114 CPC is limited and under the guise of review, the petitioner cannot be permitted to re-agitate and reargue questions which have already been addressed and decided; that an error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review under Order 47 Rule 1 CPC.

9. In **Pancham Lal Pandey (supra)**, the Supreme Court observed that the provision of review is not to scrutinize the correctness of the decision rendered rather to correct the error, if any, which is visible on the face of the order / record without going into as to whether there is a possibility of another opinion different from the one expressed. In **M/s. Tata Steel Ltd. (supra)**, reliance was placed by this Court on **Aribam Tuleshwar Sharma v. Pishak Sharma reported in (1979) 4 SCC 389**, wherein the Hon’ble Supreme Court propounded that review power and appellate power are inherently distinct. While the appellate power enables the courts to rectify all manners of errors in the judgment or order under challenge, review power does not. In **Parsion Devi v Sumitri Devi reported in (1997) 8 SCC 715**, the

Hon’ble Supreme Court espoused that the power under Order 47 Rule 1 of the CPC, 1908 does not allow for an erroneous decision to be “reheard and corrected.” In **Thungabhadra Industries Ltd. v. Govt. of A.P. [AIR 1964 SC 1372 : (1964) 5 SCR 174] (SCR at p. 186)**, the Hon’ble Supreme Court opined that there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by ‘error apparent’. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Similar view was taken in **Meera Bhanja v. Nirmala Kumari Choudhury [(1995) 1 SCC 170]**.

10. In **Lily Thomas v. Union of India, (2000) 6 SCC 224 : 2000 SCC (Cri) 1056**, it is observed and held that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed in the said decision that the words “any other sufficient reason” appearing in Order 47 Rule 1 CPC must mean “a reason sufficient on grounds at least analogous to those specified in the rule” as was held in **Chhajju Ram v. Neki, 1922 SCC OnLine PC 11 : (1921-22) 49 IA 144 : AIR 1922 PC 112]** and approved in **Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius, AIR 1954 SC 526]**

11. In **M/s. M.M.I. Tobacco Pvt. Ltd. (supra)**, one of us (Kshitij Shailendra, J.), gainfully referred to the abovenoted authorities on the subject and observed that since Section 114 of the Code of Civil Procedure, being the substantive provision

for review, clearly uses the words “the Court may make such order thereon”, power to allow or reject a review application depends on discretion of the Court in given facts and circumstances of a particular case and the Court is not bound to allow the application in every case and situation.

12. One of us (Shekhar B. Saraf, J.), after placing reliance upon various decisions of the Supreme Court, pronounced a judgment for the Division Bench of Calcutta High Court in **State of West Bengal vs. Confederation of State Government Employees, (2019) 3 Cal LJ 351** and culled out the principles emerging for reviewing the judgement/order holding that power of review is quite limited and would be governed by the principles under Order XLVII Rule 1 CPC. It was further held that the third condition “for any other sufficient reason” has to be read within the four corners of the first two conditions and an error which is not self-evident and has to be detected by the process of reasoning is not an error apparent on the face of the record. It was further held that a review petition cannot be allowed to be an “appeal in disguise”.

13. As far as judgments cited on behalf of the applicant i.e. **Rajender Singh (supra)** and **Board of Control for Cricket in India (supra)** are concerned, though it is true that the Courts should not hesitate to review their own order when interest of justice so demands in appropriate cases, the Supreme Court has clearly observed that this can be done only when there exists an error on the face of record and the words “sufficient reason” used in Order XLVII Rule 1 of the Code are wide enough to include misconception of fact or law of a Court. We have to consider the ratio laid

down in the authorities cited at the Bar in the given facts of the present case and we find that this Court, while deciding the Income Tax Appeal No.422 of 2006 by order dated 16.05.2014, though quoted a substantial question of law framed on 15.05.2012, but refrained to answer the same for the reason that, after setting aside the order under challenge before it, had remanded the matter to the Appellate Tribunal.

ITR U/S 139, WHETHER NON-EST

14. Insofar as the observation of this court that ITR filed under Section 139 of the Act had become ‘non-est’, after carefully going into the complete order dated 16.05.2014 in its spirit, we find that the observation of ‘non-est’ was not the ratio or the conclusion drawn by this Court, otherwise there was no necessity to remand the matter to the Appellate Tribunal. The said observation appearing at ‘internal page No.5’ of the order can either be treated as an argument advanced on behalf of the Department or, if not, it can be treated as an ‘obiter.’ It was infact a passing remark made by the Court during the course of deciding the appeal and, therefore, when the matter was remanded to the Appellate Tribunal, it cannot be said that this Court had expressed any final opinion regarding ITR under Section 139 as “non-est”.

15. In the facts of the case, it has to be seen as to when the due date for filing return i.e. 31.10.2002 had lapsed but, prior thereto, account books and other material of the assessee were seized on 01.09.2002 and when the block assessment was being done, whether it was at all necessary for the assessee to file a belated return after the seized material was released in favour of

the assessee or if at all it was filed, whether such filing could be fatal to his case or whether the assessee was precluded from filing return though inspection was facilitated to him. The inter-se connection between regular proceedings vis-a-vis block assessment proceedings in the peculiar facts of the case, is a question that has relevance so as to adjudge the issue of double jeopardy allegedly faced by the assessee, as argued on his behalf.

NON-ANSWERING THE
SUBSTANTIAL QUESTION WHETHER A
GROUND FOR REVIEW

16. We are of the view that if the substantial question of law framed as regards applicability of correct clause/sub-clause of any Section/sub-Section of Section 158-BB of the IT Act was not answered by this Court while deciding the appeal, the same, in itself, cannot be a ground to review the order, inasmuch as, the point was left open by the Court to be decided in appeal after remand, i.e. to say that the ingredients of the substantial question of law were to be re-determined by the Appellate Tribunal pursuant to the order of remand. Therefore, when Shri Goyal submits that the Appellate Tribunal, after remand, has accepted the finding of this Court as regards the ITR under Section 139 being “non-est” and, therefore, the order passed by the Tribunal be also set aside on this ground alone, we are of the view that the present review application and the connected appeal are to be decided in the light of scope of two different and independent proceedings, i.e. one being an application for review and the other being a statutory appeal and, hence, we would do accordingly.

CONCLUSION

17. While applying the ratio laid down in the aforementioned authorities on the scope of review, we find that not only the block assessment order dated 30.09.2004 but also the

assessment order 29.03.2006 and orders passed subsequently i.e. on 16.08.2005 and 26.06.2006 contained discussion of material that was available before the Authorities/Tribunal. Merely because this Court interpreted the record of proceedings in one way or the other, we do not find that there is any error apparent on the face of the record so as to justify exercise of our review jurisdiction. At the same time, the effect of order dated 16.05.2014 on the proceedings culminating into passing of the subsequent order dated 25.08.2014 after remand, has to be seen while deciding the connected Income Tax Appeal No.86 of 2015 (Umang Agarwal vs. The Commissioner of Income Tax, Central Circle, Allahabad) but, in any case, we are of the considered view that the order dated 16.05.2014 does not suffer from an error apparent on the face of the record so as to persuade this Court to review the order and take another view of the matter different from the one taken by this Court in its order dated 16.05.2014.

18. With the above observations, the application for review stands **rejected**.

19. **Shekhar B. Saraf, J.:** I agree.

(2025) 3 ILRA 512

**APPELLATE JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 06.03.2025

BEFORE

**THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE KSHITIJ SHAILENDRA, J.**

Special Appeal No. 75 of 2025

Smt. Renu

...Appellant

Versus

State of U.P. & Ors.

...Respondents

Counsel for the Appellant:

Vinay Kumar Singh

Counsel for the Respondents:

Adarsh Bhushan, Ankit Gaur (S.C.)

Civil Law - Appellant passed matriculation examination from Punjab School Education Board, completed Adeeb-e-Mahir from Jamia Urdu - Advertisement published regarding two year training programme for A.N.M. - Eligibility criteria prescribed candidate should have passed Intermediate Exam from U.P. Board or equivalent Board - Appellant applied, selected - During training appellant served letter requiring to correct particulars mentioned against her name else she would not be allowed to appear in examination - Against her name, deficiency indicated was 'Board not valid' - She approached concerned officials and told Adeeb-e-Mahir not equivalent to Intermediate from U.P. Board - She claimed stand of respondents was contrary to Government Orders dated 09.09.1983 and 13.09.1994 - Petition filed, dismissed - Impugned order - Held, Government Order dated 17.08.2013 related to appointment of Assistant Teacher (Urdu), had no application to present advertisement, for appointment on said post, equivalence provided in Government Orders of 1983 and 1984 has confined to those who obtained prior to 11.08.1997 and even for those posts, those who obtained degree after 1997 not eligible - Thus, certificate of petitioner cannot be treated equivalent to Intermediate. (Para 2, 3, 16)

Appeal dismissed. (E-13)**List of Cases cited:**

St. of U.P. & ors. Vs Mohammad Ishtiaque Ansari, Special Appeal Defective No. 268 of 2014 decided on 11.03.2014

(Delivered by Hon'ble Arun Bhansali, C.J.
& Hon'ble Kshitij Shailendra, J.)

1. This appeal is directed against order dated 06.01.2025 passed by learned Single Judge, whereby the writ petition

filed by the petitioner aggrieved of the order dated 03.05.2024 issued by the Secretary, U.P. State Medical Faculty, Lucknow by which the appellant was restrained from appearing in the final examination for the course of Auxiliary Nurse & Midwife / H.W. (Female) (New Syllabus) (for short 'A.N.M.') for the Session 2023-24 has been dismissed.

2. The appellant had passed the matriculation examination from Punjab School Education Board in 2010 and completed her Adeeb-e-Mahir from Jamia Urdu, Aligarh. An advertisement dated 13.05.2022 was published by the Director General (Training) Department of Medical Health and Family Welfare, Uttar Pradesh regarding two year training programme for the A.N.M. at various training centres throughout Uttar Pradesh. In the said advertisement/notice, along with other details, the eligibility criteria prescribed that the candidate should have passed Intermediate Exam (10 + 2) from U.P. Board of Secondary Education or equivalent Board.

3. The appellant applied for the two year training programme and claims to have filled out the application form as prescribed under the advertisement. The merit list was prepared and the appellant was selected. Whereafter she was admitted to the course for the Session 2023-24 and a training centre was allotted to her. However, during course of training on 08.05.2024, the appellant was served through respondent no.4 with a letter dated 03.05.2024 requiring the appellant to correct the particulars or the errors mentioned against her name by 10.05.2024, else she alongwith other candidates whose names appear in the said communication would not be allowed to appear in the

examination. Against her name, the deficiency indicated was 'Board not valid'. It was then submitted in the petition that when the appellant approached the concerned officials, she was told that Adeeb-e-Mahir is not equivalent to Intermediate from U.P. Board of Secondary Education. The appellant claimed that the said stand of the respondents is contrary to the Government Orders dated 09.09.1983 and 13.09.1994 issued by the State Government and that Jamia Urdu, Aligarh was duly recognised and as such the denial of the appellant based on her qualification of Adeeb-e-Mahir was not justified. When the respondents did not accept the said plea, the writ petition was filed seeking to question the communication dated 03.05.2024. The respondents before the learned Single Judge relied on a Government Order dated 13.08.2013 to indicate that those who have obtained the certificate of Adeeb-e-Mahir subsequent to the year 1997 were not eligible to the equivalence with Intermediate and that the Government Order dated 17.08.2013 is not under challenge.

4. Learned Single Judge, by the order impugned, after perusing the Government Order dated 17.08.2013 enclosed with the supplementary counter affidavit, came to the conclusion that the appellant was not entitled to any relief and consequently, dismissed the writ petition.

5. Learned counsel for the appellant made submissions that dismissal of the writ petition by the learned Single Judge on account of the Government Order dated 17.08.2013, is not justified as the same were guidelines pertaining to appointment on the post of Assistant Teacher (Urdu) and had no application to the admission to A.N.M. training course

and therefore, the order impugned deserves to be quashed and set aside.

6. Submissions were made that the Government Orders dated 09.09.1983 and 13.09.1994 clearly provide for equivalence of Adeeb-e-Mahir with the Intermediate (10+2) Examination and as Jamia Urdu is a recognised Board, the order dated 03.05.2024, holding the petitioner's candidature as invalid cannot be sustained. Reliance was placed on a Division Bench judgement of this Court in **State of U.P. and 3 others Vs. Mohammad Ishtiaque Ansari Special Appeal Defective No. 268 of 2014** decided on 11.03.2014.

7. Learned counsel for the respondents supported the order impugned. Submissions were made that the reliance placed by the appellant on the Government Orders dated 09.09.1983 and 13.09.1994 is totally misplaced inasmuch as the same had no application to the equivalence of Adeeb-e-Mahir with that of Intermediate Examination, as the said Government Orders had very limited application pertaining to knowledge of Urdu and nothing more and, therefore, the plea raised in this regard has no substance. Further submissions have been made that the appellant had suppressed material facts while applying for the training course inasmuch as in the enrolment form, she indicated having passed her Intermediate Exam from U.P. Board of High School and Intermediate Education, Allahabad, which was factually incorrect as she was claiming equivalence based on her having passed Adeeb-e-Mahir from Jamia Urdu, Aligarh and, therefore, as her claim in the enrolment form did not match with her marksheets, in the communication dated 03.05.2024, it was rightly indicated 'Board not valid' which necessarily meant that the

indication made in the enrolment form did not match with her marksheets.

8. Submissions have been made that even if the Government Order dated 17.08.2013 has no application to the training as A.N.M., the equivalence sought through the two Government Orders of 1983 and 1994 has no basis and as such, the appellant being not qualified, the appeal deserves dismissal.

9. We have considered the submissions made by counsel for the parties and have perused the material available on record.

10. The advertisement dated 13.05.2022 (Annexure-3) inter alia indicated the educational qualification as under:-

“माध्यमिक शिक्षा परिषद, उत्तर प्रदेश अथवा समकक्ष बोर्ड की इण्टरमीडिएट परीक्षा (102) उत्तीर्ण की हो।”

11. A perusal of the above would reveal that the candidate was required to have passed Intermediate Examination (10+2) from U.P. Board of Secondary Education or equivalent Board. The appellant filled up the enrolment form (Annexure-5) by indicating her Intermediate Board as 'U.P. Board of High School and Intermediate Education, Allahabad'. Admittedly, the said indication made was factually incorrect as the appellant had not passed the Intermediate Examination conducted by the U.P. Board of High School and Intermediate Education. Instead the appellant relied on having passed Adeeb-e-Mahir from Jamia Urdu, Aligarh in the year 2018. It is apparent that the declaration made in the enrolment form was factually incorrect and,

therefore, the respondents were justified in indicating the deficiency in its communication dated 03.05.2024 with 'Board not valid' and as the Board declared by the appellant in the enrolment form did not match with her marksheet and, therefore, no exception can be taken to the issuance of the communication dated 03.05.2024 on the said count.

12. The submission made that as Adeeb-e-Mahir has been declared as equivalent to the Intermediate Examination by Government Orders of 1983 and 1994, the respondents were bound to hold the appellant as eligible and permit her to appear in the examination and continue with her training, also apparently has no substance. The relevant part of the Government Order dated 09.09.1983 reads as under:-

“मुझे यह कहने का निदेश हुआ है कि राज्यपाल महोदय जामिया उर्दू अलीगढ़ द्वारा प्रदत्त निम्नलिखित परीक्षाओं को उनके सम्मुख अंकित स्थिति के अनुसार राज्याधीन सेवाओं में सीधी भर्ती के प्रयोजनों के लिए मान्यता दिये जाने की स्वीकृति सहर्ष प्रदान करते हैं।

प्रमाण-पत्र का नाम	मान्यता का स्वरूप
1	फि
— अदीब	जन पदों पर हाई स्कूल/मैट्रिकुलेशन स्तर का उर्दू का ज्ञान आवश्यक हो, उन पर नियुक्त के प्रयोजनों के लिए मान्यता।

2	ए
—अदीब—ए	से पदों पर
—माहिर	नियुक्ति के
	प्रयोजनों
	के लिए
	मान्यता
	जिन पर
	इण्टरमीडि
	एट स्तर
	का उर्दू
	का ज्ञान
	आवश्यक
	हो।

भवदीय
बाल कृष्ण चतुर्वेदी, ”

13. A perusal of the above Government Order indicates that permission has been granted for recognising Adeeb-e-Mahir for appointment to the post on which knowledge of Urdu of Intermediate level is necessary. The recognition was confined to such posts where the requirement of knowledge of Urdu of Intermediate level is necessary. The said Government Order cannot be read as having provided for equivalence of Adeeb-e-Mahir to Intermediate Examinations for all purposes.

14. Similarly, the Government Order dated 13.09.1994 provided that Adeeb-e-Kamil from Jamia Urdu, Aligarh was being recognised alongwith Adeeb-e-Mahir for appointment to the post of Assistant Teachers for teaching Urdu language and the same be treated as equivalent to Intermediate with Urdu subject / B.A. Urdu. The limited equivalence granted was confined to the Urdu language and that also limited to the qualification pertaining to knowledge of Urdu language at Intermediate level and

not equivalent to Intermediate for all purposes.

15. The reliance placed on the Division Bench judgement in the case of **Mohammad Ishtiaque Ansari** (supra) is also misplaced, as the said judgement pertains to eligibility for the post of 'Urdu Translator-cum-Junior Clerk' wherein the requirement was having passed the Intermediate Examination with Urdu as one of the subject of the Board of High School and, therefore, the said judgement would have no application to the case in hand where the knowledge of Urdu is not one of the parameters for seeking admission to the training.

16. In view of the above fact situation, though there may be some substance in the submissions made by counsel for the appellant that the Government Order dated 17.08.2013 related to appointment to the post of Assistant Teacher for teaching Urdu, the same had no application to the present notification/advertisement, the fact of the matter is that even for appointment on the post of Assistant Teacher for Urdu language, the equivalence as provided in the Government Orders of 1983 and 1994 has been confined to those who have obtained the same prior to 11.08.1997 and even for those posts, now those who have obtained the degree after 1997 are not eligible.

17. Be that as it may, in view of the discussions made hereinbefore, it cannot be accepted that the Adeeb-e-Mahir from Jamia Urdu, Aligarh is equivalent to Intermediate (10+2) of U.P. Board of Secondary Education or equivalent Board and as such, the dismissal of the writ

petition by the learned Single Judge cannot be faulted.

18. The appeal has no substance, the same is, therefore, dismissed.

(2025) 3 ILRA 517

APPELLATE JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 10.03.2025

BEFORE

**THE HON'BLE ATTAU RAHMAN MASOODI, J.
THE HON'BLE SUBHASH VIDYARTHI, J.**

Special Appeal No. 89 of 2025

**State of U.P. & Anr. ...Appellants
Versus
Prof. Bimal Jaiswal & Ors. ...Respondents**

Counsel for the Appellants:
C.S.C.

Counsel for the Respondents:
Nilaya Gupta, Anurag Kumar Singh

Civil Law – Allahabad High Court Rules, 1952 – Chapter VIII - Rule 5 - U.P. St. University Act, 1973 - Sections 8(1), 12(12), 30(2), 31 & 66-A - U.P. Public Service (Reservation for Scheduled Castes, Scheduled Tribes and others Backward Classes) Act, 1994 - Section 3(1)(c) - U.P. King George's Medical University Act, 2002 - Sections 13 & 113(1) - Intra court Appeal – against order of writ court - Allegations were made against a Professor regarding irregularities in his appointment to a reserved O.B.C. post and subsequent administrative misconduct. – the St. Government constituted a committee to conduct an inquiry - challenged in writ petition - Writ Court allowed the writ petition holding that the St. Government lacked jurisdiction to conduct the inquiry under the U.P. St. University Act, 1973 - Special Appeal - court held, - the St. Government has power to institute an inquiry in respect of allegations levelled against respondent no. 1 – however, Inquiry committee

head by the Vice-Chancellor of the Lucknow University is not correct – hence, judgment of the Writ Court is set aside to the extent it denied the St. Government's authority to conduct an inquiry, - and Office Memorandum dated 08.01.2025 was quashed, permitting the St. Government to reconstitute the inquiry committee under Section 8 of the Act - Special appeal, partly allowed. (Para – 21, 22, 25)

Appeal Partly allowed. (E-11)

List of Cases cited:

1. St. of U.P. Vs Neeraj Awasthi & ors.: (2006) 1 SCC 667,
2. Nishith Rai Vs St. of U.P.: (2018) 3 All.L.J. 683,
3. Anand Kumar Mishra Vs St. of U.P.: 2022 SCC OnLine All 311
4. Rakesh Ranjan Verma Vs St. of Bihar: 1992 Suppl. 2 SCC 343,
5. Smt. Rekha Yadav Vs St. of U.P.: 2012 LCD 1017

(Delivered by Hon'ble Attau Rahman Masoodi J. & Hon'ble Subhash Vidyarthi, J.)

1. Heard Shri Kuldeep Pati Tripathi, the learned Additional Advocate General assisted by Shri Nishant Shukla, the learned Additional Chief Standing Counsel appearing on behalf of the appellants, Shri Sandeep Dixit Senior Advocate assisted by Shri Nilaya Gupta Advocate, the learned Counsel for the respondent No.1 and Shri Anurag Kumar Singh, the learned Counsel for the University of Lucknow.

2. By means of the instant Intra Court Appeal filed under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 the appellants - State of U.P. and Special Secretary, Department of Higher Education,

have challenged the validity of a judgment and order dated 27.01.2025 passed by a Single Judge Bench of this Court in Writ-A No.913 of 2025.

3. The aforesaid Writ petition was filed by Prof. Bimal Jaiswal – the respondent No.1 in this Special Appeal, challenging the validity of an Office Order dated 08.01.2025 issued by the State Government whereby the State Government has constituted a Committee for conducting an inquiry in relation to the allegations levelled in the complaint dated 03.12.2024 submitted by an Advocate against the appointment of the respondent No.1 made in the year 2005 on the post of Assistant Professor reserved for the candidates belonging to Other Backward Class (Non-Creamy Layer Category), irregularities committed by him in fixation of examination centers, in appointment of teachers, foul play/manipulation in awarding marks and exploitation of research scholars etc. The constitution of Committee is as follows: -

i Vice chancellor, Lucknow
University, Lucknow
Chairman

ii Shri D.P. Shahi, Joint Secretary,
Higher Education Department, Government
of U.P. Member

iii Registrar, Chaudhary Charan
Singh University, Meerut
Member

iv Regional Higher Education
Officer, Lucknow Member

The Committee has been directed to conduct an inquiry and submit a report to the Government within 15 days.

4. The aforesaid order was challenged before the Writ Court on the ground that the State Government does not

have jurisdiction to pass such an order under provisions of the State Universities Act, 1973. The Writ Court referred to Sections 12 (12) and 66-A of the State Universities Act, 1973 and held that none of the aforesaid provisions empower the State Government for conducting an inquiry regarding allegations against appointment and working of a teacher of a State University.

5. The Writ Court allowed the Writ Petition and quashed the Office Order dated 08.01.2025 leaving it open for the competent authority to pass a fresh order, if required, in accordance with law under the relevant Rules.

6. Challenging validity of the aforesaid order, Shri Kuldeep Pati Tripathi, the learned A.A.G. appearing for the appellants, has submitted that the respondent No.1 is the son of Prof. Siya Ram Jaiswal, who was working as a Professor in Lucknow University. The respondent No.1 got appointed to a post reserved for candidates belonging to Other Backward Class (O.B.C.) category. Being son of a Professor, the respondent No.1 was not entitled to claim the benefit of reservation for candidates belonging to O.B.C. category. He obtained appointment by concealing the fact that his father was a Professor in the University and thereby wrongly claimed the benefit of reservation.

7. The learned A.A.G. has submitted that Section 8 (1) of U.P. State Universities Act 1973 authorizes the State Government to institute an inquiry in such circumstances. This provision was not considered by the Writ Court while dismissing the Writ Petition. He has placed reliance on the judgments passed by the Hon'ble Supreme Court in cases of **State of**

U.P. v. Neeraj Awasthi & Ors.: (2006) 1 SCC 667, **Nishith Rai v. State of U.P.:** (2018) 3 All.L.J. 683, and **Anand Kumar Mishra v. State of U.P.:** 2022 SCC OnLine All 311.

8. Shri Anurag Kumar Singh, the learned counsel for the Lucknow University has submitted that the State Government has power to institute an inquiry as per Section 8 (1) of the State Universities Act, 1973 and thus he has supported the appellants.

9. Per Contra, Shri Sandeep Dixit Senior Advocate representing the respondent No.1 has submitted that although it is not disputed that father of the respondent No.1 was a Professor and his initial appointment made in the year 2003 on the post of Assistant Professor may be defective, but subsequently the services of the respondent No.1 on the post of Assistant Professor were confirmed and in due course of time, he has been appointed to a post of Professor. No objection regarding his initial appointment was raised either at the time of confirmation of the services of the respondent No.1 or at the time of his appointment to the post of Professor. The action has been initiated almost 12 years after the appointment of the respondent No.1 on the basis of a complaint submitted by an Advocate, who has no concern with the appointment of the respondent No.1 and who appears to be a mere name-lender.

10. Shri Dixit has submitted that Lucknow University is an autonomous body. The Executive Council of the University has authority to take any action on any complaint against a Professor and the State Government has no such authority. Shri Dixit has relied upon the

judgments in the cases of **Rakesh Ranjan Verma v. State of Bihar:** 1992 Suppl. 2 SCC 343 and **Smt. Rekha Yadav v. State of U.P.:** 2012 LCD 1017.

11. A candidate belonging to O.B.C. category is entitled to reservation as per the provisions contained in Section 3(1)(c) of U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes & Other Backward Classes) Act, 1994, which provides as follows:-

“3. Reservation in favour of Scheduled Castes, Scheduled Tribe and other Backward Classes.—(1) *In public services and posts, there shall be reserved at the stage of direct recruitment, the following percentages of vacancies to which recruitments are to be made in accordance with the roster referred to in sub-section (5) in favour of the persons belonging to Scheduled Castes, Scheduled Tribes and other backward classes of citizens,—*

(a) in the case of Scheduled Castes twenty one per cent;

(b) in the case of Scheduled Tribes two per cent;

(c) in the case of other backward classes of citizens twenty seven per cent:

Provided that the reservation under clause (c) shall not apply to the category of other backward classes of citizens specified in Schedule II.

* * *

12. Schedule II appended to the aforesaid Act is as follows:-

1. Son or daughter of—

(a) a member of Indian Administrative Services Indian Foreign Service, Indian Police Service, Indian Forest Service or other Central Service whether directly recruited or promoted from any State Service; or

(b) a member of Uttar Pradesh Civil Service (Executive Branch), Uttar Pradesh Police Service or other State Service, who has been directly recruited to such Service; or

(c) such Group A/Class I officer of any Department or Ministry of Government of India or educational, research or other institutions under such Department or Ministry, who is not included in sub-category (a); or

(d) such Group A/Class I officer or any Department or institution of the State Government, who is not included in sub-category (b); or

(e) an officer of the defence forces or para military forces who is not below the rank of a Colonel or equivalent rank:

Provided that the income from salary of such member or service or officer is Rupees ten thousand or more per mensem, his spouse is at least a graduate and he or his spouse owns a house in an urban area.

2. Son or daughter of a person engaged in profession as a doctor, surgeon, engineer, lawyer, architect, Chartered Accountant, media and information professional, management and other consultant, film artist and other film professional, running educational institution or coaching

institute or ensued in the business as share or stock broker or in entertainment business;

Provided that his average income from all sources for three consecutive financial years is not less than rupees ten lakh per annum, his spouse is atleast a graduate and his family owns immovable property worth atleast rupees twenty lakh.

3. Son or daughter of a business man whose average income for three consecutive financial years is not less than rupees ten lakh per annum, his spouse is atleast a graduate and his family owns immovable property worth atleast rupees twenty lakh.

4. Son or daughter of an industrialist whose level of investment in running units is over rupees ten crore and such units are engaged in commercial production for atleast five years and his spouse is atleast a graduate.

5. Son or daughter of a person who has holding within the limit fixed under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960, has an income of rupees lakh in a financial year from sources other than agriculture such as salary, business or industry and the like and his spouse is atleast a graduate.

6. Son or daughter of a person, not included in any of the aforementioned categories whose average income from all sources for three consecutive financial years is not less than rupees ten lakh per annum, his spouse is atleast a graduate and his family

owns movable property worth at least rupees twenty lakh.”

13. A copy of the Writ petition has been annexed with the Special Appeal, a perusal whereof shows that in para-12 (i) of the Writ petition, it has been pleaded that the respondent No.1 belongs to ‘Kalwar’ (Jaiswal caste) which is recognized as Other Backward Class (O.B.C.). However, the respondent No.1 has not pleaded anything about the status of his father at the time of his appointment and he has not pleaded that he does not fall in any of the categories mentioned in Schedule II appended to the Reservation Act, 1994.

14. A bare perusal of the Office Order dated 08.01.2015 challenged in the Writ Petition indicates that besides a complaint regarding appointment of the respondent No.1 against a post reserved for O.B.C. (non-creamy layer), there are also complaints against him regarding certain irregularities committed in fixation of examination centers, appointment of teachers, foul play/manipulation in awarding marks and exploitation of research scholars etc.

15. Chapter-III of the State Universities Act, 1973 deals with “Inspection and Inquiry”. Section 8 of the State Universities Act, 1973 falling in Chapter – III provides as follows: -

“(1) The State Government shall have the right to cause an inspection to be made by such person or persons as it may direct, of the University or any constituent college or any Institute maintained by the University, including its buildings, libraries, laboratories, workshops and

equipment and also of the examinations, teaching and other work conducted or done by the University or such colleges or Institute or to cause an inquiry to be made in the like manner in respect of any matter connected with the administration and finances of the University or such college or such Institute.

(2) Where the State Government decides to cause an inspection or inquiry to be made under sub-section (1), it shall inform the University of the same through the Registrar, and any person nominated by the Executive Council may be present at such inspection or inquiry as representative of the University and he shall have the right to be heard as such:

Provided that no legal practitioner shall appear, plead or act on behalf of the University at such inspection or inquiry.

(3) The person or persons appointed to inspect or inquire under sub-section (1) shall have all the powers of a Civil Court, while trying a suit under the Code of Civil Procedure, 1908, for the purpose of taking evidence on oath and enforcing the attendance of witnesses and compelling production of documents and material objects, and shall be deemed to be a Civil Court within the meaning of Sections 345 and 346 of the Code of Criminal Procedure, 1973, and any proceeding before him or them shall be deemed to be judicial proceeding within the meaning of

Sections 193 and 228 of the Indian Penal Code.

(4) The State Government shall address the Vice-Chancellor with reference to the result of such inspection or inquiry, and the Vice-Chancellor shall communicate to the Executive Council the views of the State Government with such advice as the State Government may offer upon the action to be taken thereon.

(5) The Vice-Chancellor shall then within such time as the State Government may fix, submit to it a report of the action taken or proposed to be taken by the Executive Council.

(6) If the University authorities do not within a reasonable time, take action to the satisfaction of the State Government, the Government may, after considering any explanation which the University authorities may furnish, issue such directions as it may think fit, and the University authorities shall be bound to comply with such directions.

(7) The State Government shall send to the Chancellor a copy of every report of an inspection or inquiry caused to be made under sub-section (1) and of every communication received from the Vice-Chancellor under sub-section (5) and of every direction issued under sub-section (6) and also of every report or information received in respect of compliance or non-compliance with such direction

(8) Without prejudice to the provisions of sub-section (6) if the

Chancellor on consideration of any document or material referred to in sub-section (7) of this section including any report of an inquiry held before the commencement of this Act, is of opinion that the Executive Council has failed to carry out its functions or has abused its powers, he may, after giving it an opportunity of submitting a Written explanation, order that in supersession, of the said Executive Council, an ad hoc Execution Council, consisting of the Vice-Chancellor and such other persons not exceeding ten in number as the Chancellor may appoint in that behalf including any member of the superseded Executive Council, shall for such period not exceeding two years as the Chancellor may from time to time specify, and subject to the provisions of sub-section (11), exercise and perform all the powers and functions of the Executive Council under this Act.

(9) Nothing in Section 20 shall apply to the composition of the ad hoc Executive Council that may be constituted under sub-section (8).

(10) Upon an order being made under sub-section (8), the term of office of all members of the Executive Council superseded thereby, including ex officio members, shall cease and all such members shall vacate their offices as such.

(11) During the period of operation of an order under sub-section (8), the provisions of this Act, shall have effect subject to the following modifications, namely –

(a) in Section 20, after sub-section (5), the following sub-section shall be deemed inserted :

(6) 'A meeting of the Executive Council shall be held at least once every two months';

(b) in Section 21, in sub-section (1), after the words 'subject to the provisions of this Act', the words 'and subject also to the control of the Chancellor' shall be deemed inserted;

(c) in Section 24, in sub-section (2), the words 'and shall upon a requisition in Writing signed by not less than one-fourth of the total membership of the Court' shall be deemed omitted

(12) A fresh Executive Council shall be constituted in accordance with the provisions of Section 20 with effect from the expiration of the period of operation of an order under sub-section (8).

(13) Any Statute, Ordinance, Regulation or other rules made during the period of operation of order under sub-section (8), in accordance with the provisions of this Act, as deemed modified by virtue of the provisions of sub-section (11) shall, notwithstanding the expiration of such period, continue in force until amended, repealed or rescinded in accordance with the provisions of this Act."

16. A bare perusal of the aforesaid statutory provision indicates that the State Government has the right to cause an inquiry to be made in respect of any matter connected with the administration and finances of a State

University. Any illegality committed in appointment of a teacher and any illegality / irregularity committed by a teacher in his working, are matters connected with the administration of the Universities. Payment of salary to a teacher who has been appointed in an illegal manner, is a matter connected with the finances of the Universities. Therefore, the State Government has power under Section 8 (1) of the State Universities Act to get an inquiry conducted in respect of allegations regarding illegal appointment of a teacher as also regarding irregularities committed by him in performance of his duties.

17. Before the Writ Court, it was submitted on behalf of the petitioner that the State Government has no power to order such an enquiry under Section 66-A and 12(2) of the State Universities Act and case-laws were submitted in support of that submission. This submission was rightly accepted by the Writ Court as the aforesaid Statutory provisions are not attracted to such a situation. However, the provisions of Section 8 of the State Universities Act were not placed before the Writ Court and, therefore, the same escaped attention of the Writ Court. Since the effect and scope of the provision contained in Section 8 of the State Universities Act is purely a legal question, the same can be raised and entertained for the first time in this Intra Court appeal. The learned Counsel for the respondent no. 1 rightly did not raise any objection against this point being raised for the first time in this Special Appeal.

18. In the case of **Anand Kumar Mishra v. State of U.P.**, 2022 SCC OnLine All 311, the issue involved was regarding the scope of powers of the State

Government under Section 13 of the U.P. King George's Medical University Act, 2002, which reads as under:-

“13 (1) The State Government shall have the right to cause an inspection to be made by such person or persons. as it may direct, of the University including its buildings, libraries, laboratories, workshops and equipment and also of the examinations teaching and all other works conducted or done by the University or; to cause an inquiry to be made in the like manner in respect of any matter connected with the administration and finances of the University.

(2) Where the State Government decides to cause an inspection or inquiry to be made under sub-section (1), it shall inform the University of the same through the Registrar, and any person nominated by the Executive Council may be present at such inspection or inquiry as representative of the University and he shall have the right to be heard as such: Provided that no person shall appear, plead or act as legal practitioner on behalf of the University at such inspection or inquiry.

(3) The person or persons appointed to inspect or inquire under sub-section (1) shall have all the powers of a civil court, while trying a suit under the Civil Procedure Code, 1908, for the purposes of taking evidence on oath and of enforcing the attendance of witnesses and compelling production of

documents and material objects, and shall be deemed to be a civil court within the meaning of sections 345 and 346 of the Criminal Procedure Code, 1973, and the proceedings before him or them shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Penal Code, 1860.

(4) The State Government shall address the Vice Chancellor with reference to the result of such inspection or inquiry, and the Vice-Chancellor shall communicate to the Executive Council the views of the State Government with such advice as the State Government may offer upon the action to be taken thereon.

(5) The Vice-Chancellor shall then, within such time as the State Government may fix, submit to it a report of the action taken or proposed to be taken by the Executive Council.

(6) If the University authorities do not, within a reasonable time, take action to the satisfaction of the State Government, the State Government may, after considering any explanation which the University authorities may furnish, issue such directions, as it may think fit, and the University authorities shall be bound to comply with such directions.

(7) The State Government shall send to the Chancellor a copy of every report of an inspection or inquiry caused to be made under sub-section (1) and of every communication received from the Vice-Chancellor under sub-section

(5), and of every direction issued under sub-section (6), and also of every report or information received in respect of compliance or non compliance with such directions.”

19. Section 13 (1) of the U.P. King George's Medical University Act, 2002 is worded in the same manner as Section 8 (1) of the State Universities Act. While interpreting the aforesaid provision, this Court held that:-

“23. As far as Section 13 is concerned, there is no doubt that the State Government has a right to cause an inspection to be made by such person or persons, as it may direct, of the University including its buildings, libraries, laboratories, workshops and equipment and also of the examinations teaching and all other works conducted or done by the University or, to cause an inquiry to be made in the like manner in respect of any matter connected with the administration and finances of the University. The provision is quite wide in its scope as to the subject matter of such inquiry considering the use of the words “and all other works conducted or done by the University” and “to cause an inquiry to be made in the like manner in respect of any matter connected with the administration and finances of the University”. The term “administration” used therein has a wide import/meaning so as to include any illegal appointment(s) in the University, but then, as is borne

*out from the provision such inspection or inquiry as envisaged therein is to be conducted by a person other than one involved in the functioning of the University. If any action is to be taken under Section 13, then entire procedure is provided in the said Section itself. There is nothing on record including the counter affidavit filed by the State Government to show that any such procedure was adopted. For example sub Section (2) of Section 13 says where the State Government decides to cause an inspection or inquiry to be made under sub-section (1), it shall inform the University of the same through the Registrar, and any person nominated by the Executive Council may be present at such inspection or inquiry as representative of the University and he shall have the right to be heard as such. Sub-Section (4) requires addressing of report of such inspection or inquiry to the Vice Chancellor who in turn shall place it before the Executive Council with such advice as the State Government may offer upon the action to be taken thereon. A report of the action taken is to be submitted by the Vice Chancellor to the State Government under sub-Section (5). This procedure has not been followed. Nevertheless, **the State Government does have wide powers to get an inspection or inquiry conducted under Section 13 of the 2002 Act and also to issue direction to the University under sub-Section (6) if the University fails to take action and the University authorities are***

bound to comply with such directions and in this case it had sought a report from the University before issuing the order dated 02.06.2020.”

(Emphasis added)

20. We are in agreement with the aforesaid view taken by the Single Judge Bench of this Court in **Anand Kumar Mishra** (Supra), including the view that the inquiry as envisaged in Section 8(1) of the State Universities Act, is to be conducted by a person **other than one involved in functioning of the university.**

21. The State Government has appointed an Inquiry Committee headed by the Vice-Chancellor of Lucknow University. Section 31 of the State Universities Act provides that the teachers of the University shall be appointed by the Executive Council of the University. As per Section 30 (2) of the State Universities Act, the Vice-Chancellor is the Chairman of the Executive Council.

22. In these circumstances, the Vice-Chancellor ought not to have been made the Chairperson or even a Member of the Inquiry Committee. Therefore, while holding that the State Government has power to institute an inquiry in respect of allegations levelled against the respondent No.1, we are of the view that the Constitution of the Inquiry Committee in so far as it is headed by the Vice-Chancellor of the Lucknow University, is not correct and the State Government should constitute a fresh Committee in which no person involved in the functioning of the Lucknow University shall be a Member as per the law laid down in **Anand Kumar Mishra** (Supra). Further, the State Government

shall follow the procedure laid down in Section 8 of the State Universities Act.

23. The other two judgments cited by the learned A.A.G., namely **State of U.P. v. Neeraj Awasthi & Ors. and Nishith Rai v. State of U.P.**, (supra) do not deal with the provisions of the State Universities Act or any other statutory provision similar thereto and, therefore, those judgments are not relevant for decision of the present appeal.

24. The judgments in the cases of **Rakesh Ranjan Verma v. State of Bihar** and **Smt. Rekha Yadav v. State of U.P.** (supra) cited by the learned Counsel for the respondent no. 1 also do not deal with the provisions of the State Universities Act or any other statutory provision similar thereto and, therefore, those judgments are also not relevant for decision of the present appeal.

25. Accordingly, the Special Appeal is hereby **allowed** in part. The judgment and order dated 10.05.2022 passed by the Writ Court in Writ-A No.9049 of 2020 is **set-aside** to the extent it holds that the State Government has no authority to get an enquiry conducted in respect of the allegations levelled against the respondent no. 1. However, the Office Memorandum dated 08.01.2025 constituting the Enquiry Committee is set aside for the reason that the Vice-Chancellor of the University cannot be the Chairman/Member of the Enquiry Committee. The State Government shall be at liberty to constitute a fresh Inquiry Committee consisting of persons not involved in the functioning of the University and to proceed afresh keeping in view the provisions contained in Section 8 of the State Universities Act.

26. Parties to bear their own costs of litigation.

(2025) 3 ILRA 527

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: LUCKNOW 04.03.2025

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ A No. 2154 of 2025

Dinesh Kumar Kureel **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Counsel for the Petitioner:

Sudeep Kumar, Rajan Mishra, Umesh Chandra Tripathi

Counsel for the Respondents:

C.S.C., Raj Kumar Upadhyaya (R.K. Upadhyaya)

A. Service Law-Disciplinary Proceedings-Reliance on Preliminary Inquiry-Violation of Natural Justice-The petitioner challenged the disciplinary order dated 06.11.2024, whereby the punishment of stoppage of three increments with cumulative effect was imposed based on findings from a preliminary inquiry-The Court observed that the petitioner was not associated with the preliminary inquiry, and no witnesses or documentary evidence were produced during the regular inquiry to substantiate the charges-Additional material relied upon in the inquiry was neither supplied to the petitioner nor was he given a chance to rebut the same-the court emphasized that reliance on a preliminary inquiry, without conducting a full-fledged disciplinary inquiry involving examination and cross-examination of witnesses, is in violation of principles of natural justice-Held, the inquiry proceedings and the impugned punishment order are vitiated due to serious procedural lapses and violation of natural justice.(Para 1 to 29)

The writ petition is allowed. (E-6)

List of Cases cited:

1. Nirmala J. Jhala Vs St. of Guj. & anr. (2013)4 SCC 301.

2. Satyendra Singh Vs St. of U.P. (2024) SCC Online SC 3325

3. St. of U.P. Vs Saroj Kumar Sinha

(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Sri Sudeep Kumar, learned counsel for petitioner as well as learned Standing Counsel for respondents and Sri R.K. Upadhyaya, learned counsel for respondent.

2. The grievance raised by the petitioner in the present writ petition is with regard to order dated 06.01.2024 passed by the State of U.P. thereby inflicting the punishment of stoppage of three increments permanently with cumulative effect on conclusion of the disciplinary proceedings initiated against the petitioner.

3. It has been submitted by learned counsel for petitioner that present controversy relates to progress of the Harchandpur - Sirsaghat Road which was for a length of 0.968 kms. which in the review meeting Chaired by the concerned Minister was shown to have been completed.

4. It has been submitted that during an inquiry conducted by the Chief Engineer Central Public Works Department, Lucknow on 13.10.2022, it was found that 47 meters of the road had not been completed and work was still remaining. Accordingly, it is for the incorrect information supplied to the authorities, the disciplinary proceedings were initiated

against the petitioner and other persons who were responsible for the same.

5. Learned counsel for the petitioner has submitted that charge-sheet was submitted to the petitioner on 16.11.2022 containing four charges where the preliminary inquiry conducted on 13.10.2022 was also to be relied by the respondents in support of the said charges. It has been submitted that the petitioner was never associated with the preliminary inquiry and there is no doubt with regard to the fact that during inquiry proceedings, no further steps were taken to determine the allegations against the petitioner as to whether the entire length of the disputed road was completed or not and as to whether the petitioner was guilty for giving the wrong information.

6. It is stated that the question as to whether a preliminary inquiry report can be a basis for bringing the charges against the government servant was considered by the Supreme Court in the case of *Nirmala J. Jhala Vs. State of Gujrat*, 2013 (4) SCC 301 where it has been held that evident recorded in the disciplinarian inquiry cannot be used in a regular inquiry as the delinquent is not associated with it and the opportunity to cross-examine persons examined in preliminary inquiry is not given.

7. He has drawn the attention of this Court to the inquiry report as well as impugned order of punishment indicating that for approving the charges against the petitioner heavy reliance has been placed on the report of the inquiry committee. He has further submitted that the inquiry was concluded on 15.02.2023 and subsequently, the Inquiry Officer had suo motto directed the respondents to submit copy of the M.B.

(Measurement Book) and other material which was handed over to him on 09.05.2023 and the additional material so produced was never given to the petitioner nor he was given any opportunity to confront with the additional material and the inquiry officer as well as disciplinary authority has relied upon the said material and contents of the M.B. (Measurement Book) to prove the charges against the petitioner resulting in the impugned order of punishment. It was stated that the inquiry proceeded in total violation of principles of natural justice and is therefore, liable to be set aside.

8. Learned Standing Counsel on the other hand has opposed the writ petition on the basis of written instructions received from the Executive Engineer, Prantiya Khand, P.W.D., Raibareilly stating that the inquiry proceedings against petitioner have been conducted in accordance with law and all the provisions contained in U.P. Government Servant (Discipline and Appeal) Rules, 1999 have been followed and full opportunity of hearing has been given to the petitioner. He has further submitted that even after submission of inquiry report, the Disciplinary Authority has given full opportunity of hearing to the petitioner and only thereafter has passed the order of punishment and submits that there is no infirmity in the inquiry proceedings conducted against petitioner and prays for dismissal of the writ petition.

9. Heard learned counsel for the parties and perused the record.

10. The issue which falls for consideration before this Court is as to whether disciplinary proceedings against petitioner have been conducted adhering to the golden principle of Natural Justice

where the petitioner has been given full opportunity of hearing or not?

11. It is noticed that the allegation levelled against petitioner was that erroneous information was given to the higher officers with regard to completion of work of widening and strengthening of Harchandpur-Sirsaghat Road of length 0.968Km in Raebareli district, where 47 meters of road had not been completed while higher authorities were informed to the contrary that entire road has been constructed.

12. On the basis of aforesaid information preliminary inquiry was conducted and on the basis of preliminary inquiry report, disciplinary proceedings were initiated against petitioner. It is stated that though petitioner was never associated with the preliminary inquiry, but the copy of the preliminary inquiry report was handed over to the petitioner as the same was sought to be relied upon by the respondents in support of the charges.

13. It is noticed that there was no other cogent material in support of the charges and merely relying upon the preliminary inquiry report, the petitioner was held to be guilty of the charges levelled against him.

14. In the aforesaid circumstances, this Court is of the considered view that preliminary inquiry was conducted prior to taking a decision for conducting a regular inquiry to test the veracity of the allegations made in the complaint and it is only when the allegations were found to be correct, decision is taken to initiate regular disciplinary proceedings against a Government servant who is responsible for the misconduct.

15. It is in the aforesaid circumstances, preliminary inquiry has limited role which starts with testing the veracity of the allegations and ends when its recommendations with regard to the initiation of regular disciplinary proceedings or otherwise, against a Government servant. When decision is taken to initiate disciplinary proceedings against a Government servant, then it is incumbent upon the prosecution to establish the charges levelled against him during the course of disciplinary proceedings/inquiry. It is the very purpose of the inquiry where evidence and material sought to be proved against a Government servant, have to be tested during the course of such inquiry. This can be in the shape of documentary evidence or oral evidence or any other material evidence which can relate/lead towards culpability of the Government servant. Such purpose would be also in conformity with the principles of natural justice inasmuch as the Government servant is entitled to rebut and disapprove the material and evidence, on the basis of which charges are sought to be proved. Once the material is adduced during the disciplinary proceedings initiated against a Government servant, he gets adequate opportunity to repudiate the allegations and the question of veracity of the material produced therein, thereby giving him full opportunity to defend himself in the inquiry which is the purpose and object of such inquiry.

16. In case preliminary inquiry report is sought to be relied against a Government servant, then the same can be utilized where such Government servant has been associated in the preliminary inquiry and in case he was not associated with the preliminary inquiry then all the facts which have been proved in the

preliminary inquiry have to be proved in the regular inquiry also. Merely giving copy of the preliminary inquiry report to the delinquent Government servant, would in itself would not suffice compliance of the principles of natural justice. Persons whose statements have been recorded during the preliminary inquiry, have to be produced in the inquiry also to enable the petitioner to cross examine them. It is for this very reason that the basic rule should be followed that all the charges should be proved on the basis of material placed during the disciplinary proceedings itself.

17. This aspect of the matter was also considered by the Hon'ble Supreme Court in the case of **Nirmala J. Jhala Vs. State of Gujarat and Another, (2013) 4 SCC 301**.

18. It has been further submitted that the observations of the Apex Court in the case of **Nirmala J. Jhala (supra)** have been relied upon by the Court in the case of **Satyendra Singh Vs. State of U.P., 2024 SCC OnLine SC 3325**. In the case of **Satyendra Singh (supra)**, the Apex Court has observed as under :

*“14. In the case of **Roop Singh Negi**, this Court held that mere production of documents is not enough, contents of documentary evidence have to be proved by examining witnesses. Relevant extract thereof reads as under:—*

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been

proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

...

19. The judgment and decree passed against the respondent in *Narinder Mohan Arya* case [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record. ...”

(emphasis supplied)

15. Same view was reiterated in *State of Uttar Pradesh v. Saroj Kumar Sinha*, wherein, this Court held that even in an ex-parte inquiry, it is the duty of the Inquiry Officer to examine the evidence presented by the Department to find out whether the un rebutted evidence is sufficient to hold that the charges are proved. The relevant observations made in *Saroj Kumar Sinha* are as follows:—

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. **His**

function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

....

33. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the inquiry officer failed to fix any date for conduct of the enquiry. **In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet.”**

(emphasis supplied)

16. In the case of *Nirmala J. Jhala*, this Court held that evidence recorded in a preliminary inquiry cannot be used for a

regular inquiry as the delinquent is not associated with it and the opportunity to cross-examine persons examined in preliminary inquiry is not given. Relevant extract thereof reads as under:—

“42. A Constitution Bench of this Court in Amalendu Ghosh v. North Eastern Railway [AIR 1960 SC 992], held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

43. Similarly in Champaklal Chimanlal Shah v. Union of India [AIR 1964 SC 1854] a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex parte, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry

must be held. The Court further held as under :

“12. ... There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that article [, nor prior to that].”

44. In Narayan Dattatraya Ramteerthakhar v. State of Maharashtra [(1997) 1 SCC 299 : 1997 SCC (L&S) 152 : AIR 1997 SC 2148] this Court dealt with the issue and held as under:

“... a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (sic) nor, remains of no consequence.”

45. In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.”

19. It is for the aforesaid reasons that only material relied in holding that charges against petitioner are proved in the preliminary inquiry and as such this Court finds that the inquiry proceedings itself has been vitiated.

20. Apart from the above, it is noticed that after the inquiry was over, the Inquiry Officer had sought for additional material in the form of Measure Book and such material was handed over on 09.05.2023. No date, time and place was fixed for the additional material to be placed before the Inquiry Officer nor were copies of the Measure Book were ever supplied to the petitioner, nor was he ever confronted with the additional material and only the inquiry report was prepared and handed over to the Disciplinary Authority.

21. Accordingly, not confronting the delinquent Government servant with the material sought to be adduced against him during the inquiry, vitiates the entire proceedings inasmuch as, delinquent Government servant is not given any opportunity to defend himself and rely upon the material, without first giving it to the delinquent Government servant, itself is violative of the golden rule of affording fair opportunity of hearing and on this ground also the inquiry stands vitiated.

22. Considering the submissions made on behalf of petitioner that despite taking all the grounds assailing the inquiry report and also charges leveled against the petitioner, in the reply to the show cause notice, the Disciplinary Authority while passing the impugned order has not considered the grounds raised and in the most mechanical manner, relying upon the inquiry report has passed the order of punishment against petitioner.

23. Specifically, it was stated in para V of the reply given by the petitioner that preliminary inquiry conducted by a three member Committee was not complete in itself and was conducted without associating the petitioner and accordingly, same could not have been relied upon by the Inquiry Officer. Despite raising aforesaid objections, the Disciplinary Authority did not consider the said objections and passed the impugned order.

24. It is noticed that very purpose of giving show cause notice is to elicit objections to the inquiry report and when ever such objections are raised, the Disciplinary Authority is bound to consider each one of them and can either accept or reject them after giving due consideration and reasons for the same. In case any objection is raised and same is not considered by the Disciplinary Authority, it would be a ground in itself to render such an order passed by the Disciplinary Authority arbitrary inasmuch as, it defies the basic principle of fairness in the proceedings being conducted by him.

25. One of the main reasons for providing such elaborate procedure is to provide full opportunity to the delinquent Government servant to defend himself in such proceedings. He can defend himself by either adducing evidence in his favour indicating that the charges are false or he can challenge the veracity of the material adduced in the disciplinary inquiry which may impeach concurrence of the charges. In either of the two situations, one of the basic requirement for the inquiry officer as well as Disciplinary Authority is to carefully consider all such objections raised by the delinquent Government servant and it is only after due consideration, he can either accept or reject the objections raised

by the delinquent Government servant after giving reasons for the same.

26. In the present case, it is noticed that despite specific objections being raised by the delinquent Government servant with regard to the preliminary inquiry conducted by a three member Committee, no consideration was made by him at the time of passing the impugned order and this in itself, renders the impugned order illegal and arbitrary and liable for interference by this Court under Article 226 of the Constitution of India.

27. It is for the aforesaid reasons, this Court finds that there are serious infirmities in the inquiry report dated 23.06.2023 as well as impugned order of punishment dated 06.11.2024.

28. In the aforesaid circumstances and considering the allegations levelled against petitioner and also the time which has lapsed during the said period, it would not be equitable to remit the matter back to the inquiry officer. This Court further finds that apart from the preliminary inquiry report there was no other cogent material adduced by the respondents in support of the charges, is available, hence it would not be in the fitness of things to remit the matter back to the inquiry officer for inquiring the matter afresh.

29. In the light of above, writ petition is **allowed**. The impugned orders dated 06.11.2024 as well as 19.10.2024 are hereby set aside.

(2025) 3 ILRA 534
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.03.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 5027 of 2021

Ompal Singh Irrigation Supervisor

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Counsel for the Petitioner:

Atipriya Gautam, Gaurav Bishan, Lal Chandra Srivastava, Neeraj Srivastava, Vijay Gautam (Sr. Adv.)

Counsel for the Respondents:

C.S.C.

A. Constitution of India, 1950 - Article 226 - Mandamus - U.P. Retirement Benefit Rules, 1961 - Uttar Pradesh Qualifying Service for Pension and Validation Ordinance, 2020 - Uttar Pradesh Qualifying Service for Pension and Validation Act, 2021 - Retrospective Amendment Effect – Scope and Limits – Legislative power cannot be exercised to undo a judgment under which rights of parties have crystallized - Impermissibility of undoing a mandamus that has become final between parties by an executive order or even legislation - If in the exercise of powers of judicial review under Article 226 of the Constitution, a mandamus is issued by the High Court ordering authorities, who were parties to the lis, to do something or forbear from doing it, a subsequent amendment to the law by the legislature cannot undo the mandamus that has become final between parties. The state of the law, on the foot of which that mandamus has been issued, may be changed by the legislature by an amendment to the statute, but that would be a change that would govern future transactions between parties. A judgment that has become final inter partes and led to a mandamus, cannot be undone by the supervening amendment to the law. A judgment that has become final between parties on a given state of the law, can only be set aside at the instance of the party aggrieved by carrying an appeal (Para 16, 17)

B. Mandamus was issued in Writ-A No.14563 of 2018 on 14.02.2020 directing authorities to re-fix the petitioner's pension after adding his services from the date he joined the work charged establishment i.e. 21.04.1980 and pass necessary orders for grant of pension, with re-fixation done in the said manner. That judgment attained finality with no appeal filed. In the impugned order, it was held that the mandamus issued by the High Court on 14.02.2020 in Writ-A No. 14563 of 2018 stood ipso facto nullified upon promulgation of the Ordinance under Section 3. Held : No mandamus, that has become final inter partes, can ever be nullified by legislation as that would constitute usurpation of the judicial power of the State by the legislature, entrusted to the Courts under the Constitution. Subsequent promulgation of the U.P. Ordinance, 2020 and the U.P. Act, 2021 introducing retrospective amendment to Rule 3(8) of the U.P. Retirement Benefit Rules, 1961, could not override the said final judgment. Court quashed the impugned order, imposed ₹50,000 as costs on the State (Para 17, 19, 30)

Allowed. (E-5)

(Delivered by Hon'ble J.J. Munir, J.)

1. This writ petition is directed against the order dated 28.01.2021 passed by the Superintending Engineer, Irrigation Works Division-I, Irrigation and Water Resources Department, Meerut, rejecting the petitioner's claim to re-fix his pension, adding his services as a work charged employee to his regular service. The aforesaid claim is based on a mandamus of this Court issued in Writ-A No.14563 of 2018, decided on 14.02.2020. The basis to disregard the claim in enforcement of the mandamus is founded on the supervening promulgation of the Uttar Pradesh Qualifying Service for Pension and Validation Ordinance, 2020 (for short, 'the

Ordinance'), which the Superintending Engineer says, nullifies the mandamus inter partes. The Ordinance has subsequently been replaced by the Uttar Pradesh Qualifying Service for Pension and Validation Act, 2021 (for short, 'the Act of 2021'), which carry provisions that are almost a replication of the Ordinance.

2. The petitioner was an Irrigation Supervisor in the Department of Irrigation, Water Resources. He was last posted in the establishment of the Executive Engineer, Ganga Canal Division, Muzaffar Nagar. He retired from service on 31.07.2017 upon attaining the age of superannuation.

3. The petitioner was initially appointed as a Chowkidar on 21.04.1980 by the Executive Engineer, Central Ganga Canal Division-II, Aligarh in the work charged establishment. He was appointed as a Work Supervisor vide order dated 28.04.1983 passed by the Executive Engineer. The Chief Engineer, Central Ganga Canal Project, Aligarh promoted the petitioner to the position of an Irrigation Supervisor (Seench Paryavekshak) and posted him in the regular establishment. By an order of 20th January, 2004, passed by the Superintending Engineer, Barrage Construction Division, Agra, the petitioner's services were regularized. He was placed in the pay-scale of Rs.4000-6000/-. The petitioner was posted at the Barrage Construction Division, Agra at this time. The petitioner's salary was fixed by the Executive Engineer, Muzaffar Nagar Ganga Canal Division, Muzaffar Nagar vide order dated 31.01.2017 at a figure of Rs.38,100/-, adding to it the annual increment due on 01.07.2016. At the time of his retirement on 31.07.2017, the petitioner's last drawn salary was in the sum of Rs.39,200/-.

4. Upon the petitioner's retirement, his pension was wrongly fixed, as the petitioner says, reckoning only 13 years of service for him from the date of regularization, to wit, 20.01.2004 until his superannuation. The respondents did not take into account the 24 years service that the petitioner had rendered in the work charged establishment from the year 1980 to 2004.

5. Shorn of unnecessary details, suffice it to say that the petitioner's gratuity, leave encashment, commutation of pension etc. were all reckoned on the length of service rendered post regularization. He was sanctioned a pension of Rs.10,187/- per month. The entire period of 24 years rendered in the work charged establishment was excluded for the purpose of computation of petitioner's qualifying service relating to grant of pension. The petitioner, finding the aforesaid stand utterly illegal, instituted Writ-A No.14563 of 2018 before this Court, praying that a mandamus be issued commanding the respondents to take into consideration the period of services rendered by the petitioner in the work charged establishment for the purpose of computation of his qualifying service. It was prayed that his pension payment order be directed to be suitably modified and arrears on account of pension lawfully due be directed to be paid with interest. The aforesaid writ petition was heard by this Court and relying upon the authority of the Supreme Court in **Prem Singh v. State of U.P., (2019) 7 SCC 354**, vide order dated 14.02.2020, a *mandamus* was issued to the respondents in the following terms:

“For the reasons give above, the respondent no.4- Executive Engineer, Ganga Nahar

Division, Muzaffarnagar is directed to refix the pension of the petitioner after adding the service of the petitioner from the date of his joining as work charge employee i.e. 21.04.1980 and necessary order for grant of pension after refixation shall be passed within a period of two months from the date of production of certified copy of this order.

The writ petition is, accordingly, allowed with no order as to costs.”

6. It is common ground between parties that the mandamus issued by this Court on 14.02.2020 in Writ-A No.14563 of 2018 became final inter partes and no appeal was carried from the said judgment. The petitioner made an application dated 05.03.2020 along with a copy of this Court's judgment dated 14.02.2020, serving it upon the Superintending Engineer, Irrigation Works Division-I, Irrigation and Water Resources Department, Meerut, who was the competent authority to carry out the mandamus issued by this Court. The application did not elicit response. It was followed by another application on 13.08.2020, requesting compliance with the mandamus issued by this Court. The petitioner also made similar applications, as the one made to the Superintending Engineer, the Executive Engineer, Muzaffar Nagar Ganga Canal Division, Muzaffar Nagar and the Engineer-in-Chief, Civil Irrigation and Water Resources Department, U.P., Lucknow. The Executive Engineer, Muzaffar Nagar Ganga Canal Division, Muzaffar Nagar sought opinion of the learned Chief Standing Counsel, High Court and the learned District Government Counsel, Muzaffar Nagar vide letter dated 26.08.2020 (a copy whereof

was marked to the petitioner), if he was obliged to add the work charged period of service to determine the petitioner's entitlement to pension in terms of our judgment and order dated 14.02.2020.

7. It is the petitioner's case, specifically pleaded, that on the basis of legal opinion received from the learned Chief Standing Counsel, High Court and the learned District Government Counsel, Muzaffar Nagar, the Executive Engineer, Muzaffar Nagar Ganga Canal Division, Muzaffar Nagar wrote a letter to the Superintending Engineer, Irrigation Works Division-I, Irrigation and Water Resources Department, Meerut, clearly saying that the petitioner was appointed on 02.04.1981 and worked since 02.04.1981 to 23.01.2004 in the work charged establishment continuously. It was also said that his services have been regularized on the post of an Irrigation Supervisor on 24.01.2004. The communication from the Executive Engineer further said that the petitioner had worked in the work charged establishment for a total period of 22 years 9 months and 21 days, and, thereafter, 13 years 6 months and 8 days in the regular establishment. The communication from the Executive Engineer unequivocally said that in view of the legal opinion of the learned Chief Standing Counsel, High Court and the learned District Government Counsel, Muzaffar Nagar dated 26.08.2020, the petitioner is entitled to re-fixation of his salary after including the services rendered in the work charged establishment. This communication was addressed by the Executive Engineer to the Superintending Engineer vide letter dated 13.10.2020, which too is on record. These facts have been pleaded in paragraph No.19 of the writ petition. Instead of complying with the mandamus issued by this Court on

14.02.2020 in Writ-A No.14563 of 2018, the Superintending Engineer proceeded to reject the petitioner's claim, ignoring the period of his services in the work charged establishment for the purpose of computation of qualifying service for the determination of his entitlement to pension, falling back on the provisions of Sections 2 and 3 of the Ordinance. It is remarked in the impugned order, passed by the Superintending Engineer, that because services rendered in the work charged establishment under the Service Rules (reference to the U.P. Retirement Benefit Rules, 1961) are no longer to be treated as qualifying service by dint of Sections 2 and 3 of the Ordinance, the petitioner's claim in terms of the mandamus issued by this Court vide judgment and order dated 14.02.2020 in Writ-A No.14563 of 2018, could not be accepted.

8. Aggrieved by this order, the present writ petition has been instituted.

9. This Court issued a notice of motion on 25.03.2021 in terms of the following order:

“Learned Standing Counsel has accepted notice on behalf of all the respondents. He prays for and is granted four weeks' time to file counter affidavit. The petitioner will have one week thereafter to file rejoinder affidavit. List immediately thereafter.”

10. A counter affidavit was filed on behalf of the respondents on 09.05.2022. A separate short counter affidavit was filed on behalf of respondent No.1, that is to say, the State Government. This affidavit has been filed by one Vichitra Narain, an Under Secretary in the Department of Irrigation

and Water Resources Department, Government of U.P. In paragraph No.3 of his affidavit filed on behalf of the State Government, it is averred:

“3. The Engineer-in-Chief, Irrigation & Water Resources Department, Uttar Pradesh, Lucknow (Respondent No.3), The Chief Engineer (Sharda Sahayak) Ganga Irrigation Building, Telibagh, Uttar Pradesh, Lucknow (Respondent No.4), The Chief Engineer, (Ganga) Irrigation & Water Resources Department, Meerut District Meerut (Respondent No.5), The Superintending Engineer, Irrigation work Division-I, Irrigation & Water Resources Department, Meerut District Meerut (Respondent No.6), Executive Engineer, Meerut Division, Ganga Canal, Meerut District Meerut (Respondent No.7), Executive Engineer Muzaffarnagar Division Ganga Canal, District Muzaffarnagar (Respondent No.8) and The Chief Treasury Officer, Baghpat, District Baghpat (Respondent No.9) are the only competent authorities to give reply to the issues as raised by the Petitioner. Executive Engineer Muzaffarnagar Division Ganga Canal, District Muzaffarnagar (Respondent No.8) has been directed to file proper reply/counter in the matter and to take all proper legal steps.”

11. It is, therefore, evident that the entire stand of the Government is expressed in the counter affidavit dated 09.05.2022, which is one on behalf of respondent Nos.2 to 9, the various officers of the

Government, who have been declared competent to answer the petitioner's claim in the writ petition. When this matter came up before this Court on 26.09.2024, the following order was passed:

“This matter was mentioned in the morning in the first hour with the most startling fact brought to the notice of this Court that the judgment and order passed by the Court in Writ-A No. 14563 of 2018 preferred by the petitioner allowing it on 14.02.2020 and directing his services in the work charged establishment to be added to his regular service has been held to be a nullity by the Superintending Engineer, First Division Irrigation, Meerut, by the impugned order dated 28.01.2021. It is pointed out by the learned counsel for the petitioner that the judgment of this Court dated 14.02.2020 passed in Writ-A No. 14563 of 2018 has not been appealed much less set aside modified or reviewed. It has become final inter partes. The impugned order nevertheless relying on the Uttar Pradesh Qualifying Service for Pension and Validation Ordinance, 2020 has held that the judgement of this Court has become a nullity in view of Section 3 of the Ordinance.

In view of the very extraordinary facts shown here, this matter was immediately taken up at the time of mention.

*Mr. S.C. Upadhyay, learned Standing Counsel appearing for the State is granted **24 hours** time to seek instructions.*

Prima facie, the impugned order is a nullity and an act of brazen contempt since the judgement passed in Writ-A No. 14563 of 2018 has become final inter partes which cannot be held legislatively overruled as between the parties.

The Superintending Engineer, who has passed the impugned order will indicate by Monday, i.e. 30.09.2024 why apart from the petitioner being granted the necessary relief with the quashing of the order impugned, exemplary costs be not imposed recoverable from him personally besides directing a separate contempt case to be registered against him.

Put up on Monday i.e. 30.09.2024 at 10 am.

Let this order be communicated to the Superintending Engineer, Irrigation Work Division-I, Irrigation & Water Resource Department, Meerut through the Chief Judicial Magistrate, Meerut by the Registrar (Compliance) within 24 hours."

12. In order to explain his position, the Superintending Engineer, Irrigation Works Division-I, Irrigation and Water Resources Department, Meerut addressed written instructions to the learned Chief Standing Counsel dated 28.09.2024, the relevant part whereof reads:

"प्रकरण के सम्बन्ध में अधिशासी अभियन्ता मु0नगर खण्ड गंगा नहर मुजफ्फरनगर (पैरोकार अधिकारी) ने अभिलेखों के आधार पर अपने पत्रांक 4758 / मुखगनमु / कोर्ट केस/दिनांक

28.09.2024 आख्या उपलब्ध करायी है। जिसके क्रम में अवगत कराना है कि वादी ने मा0 न्यायालय द्वारा पारित निर्णय दिनांक 14.02.2020 को संलग्न कर दिनांक 05.03.2020 को अधिशासी अभियन्ता मु0नगर खण्ड गंगा नहर मुजफ्फरनगर/अधीक्षण अभियन्ता प्रथम मण्डल सिंचाई कार्य मेरठ/प्रमुख अभियन्ता सिंचाई एवं जल संसाधन विभाग उ0प्र0 लखनऊ को प्रत्यावेदन दिया। पुनः दिनांक 13.08.2020 को वादी द्वारा अनुस्मारक प्रेषित किया गया दिनांक 28.08.2020 का अधिशासी अभियन्ता मु0नगर खण्ड गंगा नहर मुजफ्फरनगर द्वारा मुख्य स्थायी अधिवक्ता से विधिक राय मांगी गयी।

दिनांक 18.06.2020 को अधिशासी अभियन्ता मु0नगर खण्ड गंगा नहर मुजफ्फरनगर ने अधीक्षण अभियन्ता प्रथम मण्डल सिंचाई कार्य मेरठ को मार्गदर्शन हेतु पत्र लिखा दिनांक 13.10.2020 को अधिशासी अभियन्ता मु0नगर खण्ड गंगा नहर मुजफ्फरनगर पुनः अनुस्मारक भेजा, परन्तु उच्चाधिकारियों द्वारा कोई मार्गदर्शन देने से पूर्व ही 21.10.2020 (छायाप्रतिसंलग्न-2) को अध्यादेश जारी हो गया जिसकी धारा-3 किसी न्यायालय के किसी निर्णय, डिक्री या आदेश के होते हुए भी इस अध्यादेश के प्रारम्भ होने के पूर्व उ0प्र0 रिटायरमेंट बनेफिट रूल्स 1961 के नियम-3 के उप नियम (8) के सम्बन्ध में या तद्दीन कृत या की गयी तात्पर्यित कोई कार्यवाही, इस अध्यादेश के उपबन्धों के अधीन किये जाने हेतु और सदैव से कृत या की गयी समझी जायेगी। और यह उतनी ही विधिमान्य होगी तथा सदैव से विधिमान्यकृत समझी जायेगी, मानों इस अध्यादेश के उपबन्ध दिनांक 01 अप्रैल 1961 से समस्त सरवान समयों पर प्रवृत्त थे।"

अतः उच्चाधिकारी कार्यालय प्रमुख अभियन्ता (कार्यप्रभारित अधिष्ठान प्रकोष्ठ) गंगा सिंचाई भवन तेलीबाग सिंचाई विभाग उ0प्र0 लखनऊ के पत्रांक 1508 / कप्रअप्र / दिनांक 26.11.2020 (छायाप्रति संलग्न-3) में दिये गये निर्देशानुसार कि पुरानी पेंशन योजना से अच्छादित याचियों के प्रत्यावेदन का निस्तारण उ0प्र0 शासन विधायी अनुभाग-01 के अधिसूचना संख्या 1877/79-वी0-1-2020-2 (क)20-2020 दिनांक 20.10.2020 द्वारा निर्गत

उ0प्र0 पेंशन हेतु अर्हकारी सेवा तथा विधिमान्यकरण अध्यादेश 2020 में निहित प्राविधानों के अनुसार नियुक्ति अधिकारी/सक्षम अधिकारी द्वारा प्रत्यावेदन को निस्तारित करने के आदेश है जो उचित माध्यम से कार्यालय को प्राप्त है। इसके अनुक्रम में दिनांक 28.01.2021 को श्री अमिताभ कुमार तत्कालीन अधीक्षण अभियन्ता प्रथम मण्डल सिंचाई कार्य मेरठ द्वारा वादी का प्रत्यावेदन आदेश पारित कर निरस्त किया गया। उक्त अध्यादेश विभिन्न वादों में Under Challenge है जिसके कारण वादी का क्लेम कन्सीडर नहीं किया जा सका। वादी के क्लेम को कन्सीडर करने के लिए और मा0 न्यायालय के आदेशों की अनुपालन हेतु शासन से व्यक्तिगत समन्वय स्थापित कर निर्देश लिये जा रहे हैं। सादर अवगत कराना है कि शासन द्वारा दिये गये निर्देशों का अनुपालन कर दिया जायेगा।"

(emphasis by Court)

13. On 30.09.2024, when the petition came up, the written instructions, above quoted, were placed before the Court by Mr. S.C. Upadhyay, learned Standing Counsel. Parties having exchanged affidavits, the petition was admitted to hearing, which proceeded forthwith. Judgment was reserved.

14. Heard Mr. Lal Chandra Srivastava, learned Counsel for the petitioner and Mr. S.C. Upadhyay, learned Standing Counsel appearing on behalf of the State.

15. We have carefully heard learned Counsel for both sides, perused the record as also the impugned order.

16. It is a proposition far too well settled to brook doubt that, once a judgment of a Court, particularly a Constitutional Court, rendered inter partes, becomes final and, in the exercise of powers of judicial review under Article 226 of the Constitution, a mandamus is issued

by the High Court ordering authorities, who were parties to the lis, to do something or forbear from doing it, a subsequent amendment to the law by the legislature cannot undo the mandamus that has become final between parties. The state of the law, on the foot of which that mandamus has been issued, may be changed, no doubt by the legislature by an amendment to the statute, but that would be a change that would govern future transactions between parties. May be on the same facts and a similar cause of action, that has led to the issue of a mandamus between two parties by the High Court, after amendment to the statute, it may not be granted on the terms of the altered law. This, however, would not mean that a mandamus issued by this Court, through a judgment inter partes, would be rendered nugatory because under the amended statute, if the cause were heard, that mandamus might not have been granted. Differently said, a judgment that has become final inter partes and led to a mandamus, cannot be undone, or, so to speak, virtually set aside, as if it were, by the supervening amendment to the law. The mandamus that was issued in Writ-A No.14563 of 2018 on 14.02.2020 by a judgment inter partes, obliged the Executive Engineer, Muzaffar Nagar Ganga Canal Division, Muzaffar Nagar to re-fix the petitioner's pension after adding his services from the date he joined the work charged establishment i.e. 21.04.1980 and pass necessary orders for grant of pension, with re-fixation done in the said manner, within two months of production of a certified copy of this Court's judgment.

17. The Ordinance came into force on 20.10.2020 and if we were to accept the reasoning carried in the impugned order, it would abnegate the judicial power of the

State exercised through Courts under the Constitution and subject it to an unknown authority ultra vires the Constitution. If by a subsequently promulgated Ordinance or an enactment of the competent legislature, a judgment of a Constitutional Court, that has become final inter partes, were held to be nullified as the impugned order seeks to do, we would be accepting the principle of a legislative review of judgments of Court that have become final between parties. There is no such principle known to the Constitution. A judgment that has become final between parties on a given state of the law, can only be set aside at the instance of the party aggrieved by carrying an appeal, invoking higher judicial powers as may be available under the law. It is true that, in some cases, if an appeal is carried from a final judgment, even of a Constitutional Court to a Higher Court, and, pending the appeal, the legislature retrospectively amends the law, then, subject to known exceptions against retrospective legislation, the rights of parties may be judged by the amended law, with an event in appeal that may be different from what it would have been if the law were not amended. This is not a case of the kind where pending an appeal from the judgment of this Court in Writ-A No.14563 of 2018, the basis of the law on which the judgment proceeded, has been retrospectively amended. The judgment in Writ-A No.14563 of 2018 admittedly became final between parties with no invocation of appellate procedures by the respondents.

18. The mere fact, therefore, that the law has now been amended, would not affect the mandamus granted by this Court in Writ-A No.14563 of 2018, that has become final between parties. It has to be carried out without reference to the Ordinance or the Act of 2021, that has

succeeded it. The impugned order, which treats the mandamus issued by this Court on 14.02.2020 in Writ-A No.14563 of 2018, nullified by Section 3 of the Ordinance, has to be regarded as non est. This is so because any order of an Administrative Authority, or an executive order of the Government, or even a legislation, insofar as it has the effect of nullifying a judgment of a Constitutional Court, rendered inter partes, is non est and void. Section 3 of the Ordinance reads:

“3. Validation.—

Notwithstanding any Judgement, decree or order of any Court, anything done or purporting to have been done and may action taken or purporting to have been taken under or in relation to sub-rule (8) of rule 3 of the Uttar Pradesh Retirement Benefit Rules, 1961 before the commencement of this Ordinance, shall be deemed to be and always to have been done or taken under the provisions of this Ordinance and to be and always to have been valid as if the provisions of this Ordinance were in force at all material times with effect from April 1, 1961.”

19. The retrospective amendment that it brings about a change to Rule 3(8) of the U.P. Retirement Benefit Rules, 1961 (for short, 'the Rules of 1961') may arguably be regarded as something that affects the law laid down by the Supreme Court in **Prem Singh** (supra). The decision in **Prem Singh** proceeds on the basis of Rule 3(8) of the Rules of 1961 as it stood before the amendment by the Ordinance and the Act of 2021. Therefore, a cause brought or heard after coming into force of the Ordinance and then the Act of 2021, if

sought to be supported by the law laid down by the Supreme Court in **Prem Singh**, may have to be judged with reference to the provisions of the Ordinance and the Act of 2021. It is in this sense that the words notwithstanding any judgment, decree or order of any Court have been employed in Section 3 of the Ordinance and also the Act of 2021. This is not to say in any manner that Section 3 of the Ordinance or the Act of 2021 has the endorsement of this Court as a constitutionally valid exercise of power. We cannot and need not say anything about it within the frame of this writ petition. The only thing we may say is that in a challenge to the vires of Section 3 of the Ordinance or the corresponding provision in the Act of 2021, what would be judged, perhaps is a case of brazen legislative overruling of a judgment of a Constitutional Court. As already said, that is not our concern here as that question does not arise. Here is a concluded judgment and a mandamus issued by this Court on 14.02.2020 in Writ-A No.14563 of 2018, between the petitioner and the respondents, which the respondents have never appealed. They say that the mandamus is a nullity because Section 3 of the Ordinance nullifies the mandamus. No mandamus, that has become final inter partes, can ever be nullified by legislation as that would constitute usurpation of the judicial power of the State by the legislature, entrusted to the Courts under the Constitution. The Superintending Engineer has gone completely wrong in thinking that a mandamus of this Court, final inter partes, would ipso facto be nullified upon promulgation of the Ordinance.

20. The principle that legislative power cannot be exercised to undo a judgment under which rights of parties

have crystallized and embodied in a mandamus issued by the High Court, has endorsement of the Constitution Bench of the Supreme Court in **Madan Mohan Pathak and another v. Union of India and others**, (1978) 2 SCC 50. In **Madan Mohan Pathak (supra)**, it was held:

“27. The statement of objects and reasons discloses that the purpose of the impugned Act was to undo settlements which had been arrived at between the Corporation and Class III and Class IV employees on January 24 and February 6, 1974, and actually recognised by the order of the Calcutta High Court. The question could well arise whether this was really the exercise of a legislative power or of a power comparable to that of an Appellate Authority considering the merits of what had passed into a right to property recognised by the courts. This Court has decided in *Shrimati Indira Gandhi v. Raj Narain* [1975 Supp SCC 1 : AIR 1975 SC 2299 : (1976) 2 SCR 347] that even a constitutional amendment cannot authorise the assumption of a judicial power by Parliament. One of the tests laid down there was whether the decision is of a kind which requires hearing to be given to the parties, or, in other words, involves at least a quasi-judicial procedure, which the Parliament does not, in exercise of its legislative power, follow. A decision reached by the Central Government, under Section 11(2) of the Act, is the result of a satisfaction on matters stated there and would imply quasi-judicial

procedure where the terms of a settlement had to be reviewed or revised. But, the legislative procedure, followed here, does not require that to be done. It would, in any event, be unfair to adopt legislative procedure to undo such a settlement which had become the basis of a decision of a High Court. Even if legislation can remove the basis of a decision it has to do it by an alteration of general rights of a class but not by simply excluding two specific settlements between the Corporation and its employees from the purview of Section 18 of the Industrial Disputes Act, 1947, which had been held to be valid and enforceable by a High Court. Such selective exclusion could also offend Article 14.

31. The object of the Act was, in effect, to take away the force of the judgment of the Calcutta High Court recognising the settlements in favour of Class III and Class IV employees of the Corporation. Rights under that judgment could be said to arise independently of Article 19 of the Constitution. I find myself in complete agreement with my learned brother Bhagwati that to give effect to the judgment of the Calcutta High Court is not the same thing as enforcing a right under Article 19 of the Constitution. It may be that a right under Article 19 of the Constitution becomes linked up with the enforceability of the judgment. Nevertheless, the two could be viewed as separable sets of rights. If the right conferred by the judgment independently is sought to be set aside, Section 3 of

the Act, would, in my opinion, be invalid for trenching upon the judicial power.

32. I may, however, observe that even though the real object of the Act may be to set aside the result of the mandamus issued by the Calcutta High Court, yet, the section does not mention this object at all. Probably this was so because the jurisdiction of a High Court and the effectiveness of its orders derived their force from Article 226 of the Constitution itself. These could not be touched by an ordinary act of Parliament. Even if Section 3 of the Act seeks to take away the basis of the judgment of the Calcutta High Court, without mentioning it, by enacting what may appear to be a law, yet, I think that, where the rights of the citizen against the State are concerned, we should adopt an interpretation which upholds those rights. Therefore, according to the interpretation I prefer to adopt the rights which had passed into those embodied in a judgment and became the basis of a mandamus from the High Court could not be taken away in this indirect fashion.”

21. The principle is succinctly laid down by a later Constitution Bench of their Lordships of the Supreme Court in **Cauvery Water Disputes Tribunal, Re, 1993 Supp (1) SCC 96 (2). In Cauvery Water Disputes Tribunal** (supra), the principle was stated thus:

“76. The principle which emerges from these authorities is that the legislature can change the

basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter partes and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or tribunal.”

22. The point fell for consideration before a Three-Judge Bench of the Supreme Court in **S.R. Bhagwat and others v. State of Mysore, (1995) 6 SCC 16**. In **S.R. Bhagwat** (supra), elucidating the principle, their Lordships held:

“12. It is now well settled by a catena of decisions of this Court that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect. We may only refer to two of these judgments.

13. A Constitution Bench of this Court in the case of Cauvery Water Disputes Tribunal, Re [1993 Supp (1) SCC 96 (2) : 1991 Supp (2) SCR 497] had to pronounce on the validity of Karnataka Cauvery Basin Irrigation Protection

Ordinance, 1991 by which an interim order passed by a statutory tribunal supported by the decision of this Court dated 26-4-1991 which had ruled that the Tribunal had power to consider the question of granting interim relief since it was specifically referred to it, was sought to be displaced. Sawant, J., speaking for the Constitution Bench held that the said provisions were unconstitutional and ultra vires. In paragraph 76 of the Report the following observations were made: (SCC p. 142)

“The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter partes and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or tribunal.”

In the case of *G.C. Kanungo v. State of Orissa* [(1995) 5 SCC 96 : JT (1995) 4 SC 589] a Division Bench of this Court speaking through Venkatachala, J., had to consider the validity of Arbitration (Orissa Second Amendment) Act, 1991 which sought to nullify the awards made by the Special Arbitration Tribunals constituted under the 1984 Amendment Act, in exercise of the power conferred upon them by the Act itself. Striking down the provisions as ultra vires and illegal

Venkatachala, J., made the following observations in paragraph 28 of the Report: (SCC p. 114)

“Thus, the impugned 1991 Amendment Act seeks to nullify the awards made by the Special Arbitration Tribunals constituted under the 1984 Amendment Act, in exercise of the power conferred upon them by that Act itself. When the awards made under the 1984 Amendment Act by the Special Arbitration Tribunals in exercise of the State's judicial power conferred upon them which cannot be regarded as those merged in Rules of Court or judgments and decrees of courts, are sought to be nullified by the 1991 Amendment Act, it admits of no doubt that legislative power of the State Legislature is used by enacting impugned 1991 Amendment Act to nullify or abrogate the awards of the Special Arbitration Tribunals by arrogating to itself, a judicial power. (See Cauvery Water Disputes Tribunal, Re [1993 Supp (1) SCC 96 (2) : 1991 Supp (2) SCR 497] .) From this, it follows that the State Legislature by enacting the 1991 Amendment Act has encroached upon the judicial power entrusted to judicial authority resulting in infringement of a basic feature of the Constitution — the Rule of Law. Thus, when the 1991 Amendment Act nullifies the awards of the Special Arbitration Tribunals, made in exercise of the judicial power conferred upon them under the 1984 Amendment Act, by encroaching upon the judicial power of the State, we have no

option but to declare it as unconstitutional having regard to the well-settled and undisputed legal position that a legislature has no legislative power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as invalid and not binding, for such powers, if exercised, would not be legislative power exercised by it, but judicial power exercised by it encroaching upon the judicial power of the State vested in a judicial tribunal as the Special Arbitration Tribunal under the 1984 Amendment Act. Moreover, where the arbitral awards sought to be nullified under the 1991 Amendment Act are those made by Special Arbitration Tribunals constituted by the State itself under the 1984 Amendment Act to decide arbitral disputes to which State was a party, it cannot be permitted to undo such arbitral awards which have gone against it, by having recourse to its legislative power for grant of such permission as could result in allowing the State, if nothing else, abuse of its power of legislation.”

15. We may note at the very outset that in the present case the High Court had not struck down any legislation which was sought to be re-enacted after removing any defect retrospectively by the impugned provisions. This is a case where on interpretation of existing law, the High Court had given certain benefits to the petitioners. That order of mandamus was sought to be nullified by the enactment of the impugned

provisions in a new statute. This in our view would be clearly impermissible legislative exercise.

17. We may recapitulate at this stage that the petitioners have mounted a limited attack on the impugned provisions of the Act insofar as they deprive them of the monetary benefits flowing from the deemed promotion to be given to them pursuant to the orders of the Division Bench of the High Court which have become final between the parties. We have extracted the aforesaid section with its relevant sub-sections wherein the impugned provisions of the clauses concerned have been indicated by underlining them. Petitioners contend that underlined portions of sub-sections (2), (3) and (8) of Section 4 clearly fall within the teeth of binding decision of the Division Bench of the High Court and they are in clear conflict with the said binding decision. As we are not concerned with other provisions of the Act except Section 11(2) we may straightaway turn to Section 11. The said provision deals with overriding effect of the Act. It reads as under:

“Overriding effect.— (1) The provisions of this Act or of any order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any law or order having the force of law or rules made under the proviso to Article 309 of the Constitution of India for the time being in force or any provision regulating the conditions of service of any allottee or in any order made

by virtue of any such law, rules or provisions.

(2) Notwithstanding anything contained in any judgment, decree or order of any court or other competent authority the rights to which a civil servant is entitled to in respect of matters to which the provisions of this Act are applicable, shall be determined in accordance with the provisions of this Act, and accordingly, any judgment, decree or order directing promotion or consideration for promotion of civil servants and payment of salaries and allowances consequent upon such promotion shall be reviewed and orders made in accordance with the provisions of this Act.”

18. A mere look at sub-section (2) of Section 11 shows that the respondent State of Karnataka, which was a party to the decision of the Division Bench of the High Court against it had tried to get out of the binding effect of the decision by resorting to its legislative power. The judgments, decrees and orders of any court or the competent authority which had become final against the State were sought to be done away with by enacting the impugned provisions of sub-section (2) of Section 11. Such an attempt cannot be said to be a permissible legislative exercise. Section 11(2), therefore, must be held to be an attempt on the part of the State Legislature to legislatively overrule binding decisions of competent courts against the State. It is no doubt true that if any decision was rendered against the State of Karnataka which was pending in

appeal and had not become final it could rely upon the relevant provisions of the Act which were given retrospective effect by sub-section (2) of Section 1 of the Act for whatever such reliance was worth. But when such a decision had become final as in the present case when the High Court clearly directed respondent-State to give to the petitioners concerned deemed dates of promotions if they were otherwise found fit and in that eventuality to give all benefits consequential thereon including financial benefits, the State could not invoke its legislative power to displace such a judgment. Once this decision had become final and the State of Karnataka had not thought it fit to challenge it before this Court presumably because in other identical matters this Court had upheld other decisions of the Karnataka High Court taking the same view, it passes one's comprehension how the legislative power can be pressed in service to undo the binding effects of such mandamus. It is also pertinent to note that not only sub-section (2) of Section 11 seeks to bypass and override the binding effect of the judgments but also seeks to empower the State to review such judgments and orders and pass fresh orders in accordance with provisions of the impugned Act. The respondent-State in the present case by enacting sub-section (2) of Section 11 of the impugned Act has clearly sought to nullify or abrogate the binding decision of the High Court and has encroached upon the judicial power entrusted to the

various authorities functioning under the relevant statutes and the Constitution. Such an exercise of legislative power cannot be countenanced.”

23. It may be remarked here that **S.R. Bhagwat** was a case where the vires of Section 11(2) and sub-Sections (2), (3) and (8) of Section 4 of the Karnataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1973 was under challenge. The above principles were laid down in the context of a challenge to the vires of the Karnataka Promotion, Pay and Pension Act. Nevertheless, the principle enumerated in the said decision about the impermissibility of undoing a mandamus that has become final between parties by an executive order or even legislation, has been clearly endorsed.

24. The same principles were laid down again in **Medical Council of India v. State of Kerala and others, (2019) 13 SCC 185** in the context of challenge to the vires of a legislation that attempted to overrule a judgment of the Court that had become final.

25. The principles were summarized in **Madras Bar Association v. Union of India and others, (2022) 12 SCC 455**, where it was held by L. Nageswara Rao, J.:

“50. The permissibility of legislative override in this country should be in accordance with the principles laid down by this Court in the aforementioned as well as other judgments, which have been culled out as under:

50.1. The effect of the judgments of the Court can be

nullified by a legislative act removing the basis of the judgment. Such law can be retrospective. Retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. [Lohia Machines Ltd. v. Union of India, (1985) 2 SCC 197 : 1985 SCC (Tax) 245]

50.2. The test for determining the validity of a validating legislation is that the judgment pointing out the defect would not have been passed, if the altered position as sought to be brought in by the validating statute existed before the Court at the time of rendering its judgment. In other words, the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed.

50.3. Nullification of mandamus by an enactment would be impermissible legislative exercise (see : S.R. Bhagwat [S.R. Bhagwat v. State of Mysore, (1995) 6 SCC 16 : 1995 SCC (L&S) 1334]). Even interim directions cannot be reversed by a legislative veto (see : Cauvery Water Disputes Tribunal [Cauvery Water Disputes Tribunal, In re, 1993 Supp (1) SCC 96 (2)] and Medical Council of India v. State of Kerala [Medical Council of India v. State of Kerala, (2019) 13 SCC 185]).

50.4. Transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers,

the rule of law and of Article 14 of the Constitution of India.”
(emphasis by Court)

26. In **Dr. Jaya Thakur v. Union of India and others, (2023) 10 SCC 276**, the principle in *Madras Bar Association* (supra) and, otherwise also, the settled law in regard to the impermissibility of overriding a mandamus by legislation has been unequivocally approved. In **Dr. Jaya Thakur** (supra), it has been held:

“114. It could, thus, clearly be seen that this Court has held that the effect of the judgments of this Court can be nullified by a legislative Act removing the basis of the judgment. It has further been held that such law can be retrospective. It has, however, been held that retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. It has been held that the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed. This Court has, however, clearly held that nullification of mandamus by an enactment would be impermissible legislative exercise. This Court has further held that transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the rule of law and of Article 14 of the Constitution of India.

116. As already discussed hereinabove, this Court has specifically issued a mandamus that

no further extension shall be granted to the second respondent. The Union of India and Respondent 2 were both parties in the proceedings before this Court in Writ Petition (Civil) No. 1374 of 2020 [Common Cause (2021) [Common Cause v. Union of India, (2023) 10 SCC 321]]. The mandamus issued to be parties was binding on them. We, therefore, find that Respondent 1 could not have issued Orders dated 17-11-2021 and 17-11-2022 in breach of the mandamus issued by this Court vide its judgment dated 8-9-2021 in Common Cause (2021) [Common Cause v. Union of India, (2023) 10 SCC 321] .”

27. The impugned order passed by the Superintending Engineer, Irrigation Works Division-I, Irrigation and Water Resources Department, Meerut does all what the consistent position of the law forbids. The Superintending Engineer in passing the order impugned has held the mandamus issued by this Court on 14.02.2020 in Writ-A No.14563 of 2018 ipso facto nullified upon promulgation of the Ordinance vide Section 3. This obviously could never have been the effect of the Ordinance and the mandamus, that had become final inter partes, continues to oblige the respondents, including the Superintending Engineer. He has passed the order impugned on so manifestly illegal a view that it cannot be lightly brushed aside. He has trifled with a mandamus of this Court by saying that he is free of the command because of the supervening promulgation of the Ordinance, a position absolutely contrary to what the law is.

28. We apprised the Superintending Engineer by our order dated

26.09.2024 that the order impugned, that he had made, was so illegal that it invited imposition of exemplary costs and he may show cause against it. We also said that it might expose him to action by way of contempt through a case to be separately registered for violating a mandamus final between parties by an order in writing that he had made, to wit, the impugned order. In the written instructions dated 28.09.2024, which the Superintending Engineer furnished to the learned Chief Standing Counsel, that were placed before us, he did not at all clarify why he made an order so illegal that made him fall foul of the mandamus issued by this Court in Writ-A No.14563 of 2018. He also did not explain his position why he may be relieved of his liability to suffer costs.

29. In the circumstances, the impugned order is held manifestly illegal and fit to be quashed and the petitioner entitled to a mandamus, ordering the respondents to reckon his services in the work charged establishment together with his regular services for the purpose of computation of his pension and other post retiral benefits.

30. In the result, this petition succeeds and is **allowed with costs which we quantify in the sum of Rs.50,000/-**. The impugned order dated 28.01.2021, passed by the Superintending Engineer, Irrigation Works Division-I, Irrigation and Water Resources Department, Meerut, is hereby **quashed**. A mandamus is issued to each of respondent Nos.1 to 9 to ensure amongst themselves that the petitioner's services, in the work charged establishment from 1980 to 2004, are reckoned for the purpose of computing his qualifying service for the grant of pension and other post retiral benefits. The petitioner's

31. Let this judgment be communicated to the Additional Chief Secretary, Irrigation & Water Resources Department, Government of U.P., Lucknow, the Additional Chief Secretary, Finance Government of U.P., Lucknow, the Engineer-in-Chief, Irrigation & Water Resources Department, U.P., Lucknow and the Chief Engineer (Sharda Sahayak) Ganga Irrigation Building, Telibagh, U.P., Lucknow through the Civil Judge (Senior Division), Lucknow, the Chief Engineer (Ganga), Irrigation & Water Resources Department, Meerut, the Superintending Engineer, Irrigation Work Division-I, Irrigation & Water Resources Department, Meerut, and the Executive Engineer, Meerut Division, Ganga Canal, Meerut through the Civil Judge (Senior Division), Meerut, the Executive Engineer, Muzaffar Nagar Division, Ganga Canal, District Muzaffar Nagar through the Civil Judge (Senior Division), Muzaffar Nagar and the Chief Treasury Officer, Baghpat, District Baghpat through the Civil Judge (Senior Division), Baghpat by the Registrar (Compliance).

The writ petition is allowed. (E-6)

List of Cases cited:

1. Surendra Pandey Ex Dy. Jailer Vs St. of U.P. (2007) 2 ADJ 531
2. UOI & ors. Vs J. Ahmed(1979)AIR SC 1022
3. STRC & anr. Abdul Gafoor (2006) 3 ESC 1985
4. M.M Malhotra Vs UOI & Ors. JT (2005) 9 SC 506

(Delivered by Hon'ble Neeraj Tiwari, J.)

1. Heard Sri Akshay Kumar Singh, learned counsel for the petitioner, Sri Anirudh Singh, learned standing counsel for respondent Nos. 1 & 2 and Sri R.K. Upadhyaya, learned counsel for respondent no. 3.

2. Present petition has been filed with the following prayer:

“(i) Issue a writ direction or order in the nature of certiorari quashing the impugned order dated 21.06.2023.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to make payment of full pension to the petitioner without any kind of deduction.

(iii) Issue a writ direction or order in the nature of mandamus commanding the opposite parties to grant the benefit of time pay scale w.e.f 09.05.2002, first promotional pay scale w.e.f. 09.05.2008, third promotional pay scale (IIIrd ACP) with effect from 09.05.2020 and make payment of arrears of salary after re-fixation of pay of the petitioner from due dates.”

3. Brief facts of the case are that petitioner was appointed as Deputy Jailer by the U.P. Public Service Commission-respondent No. 3 and joined his services on 09.05.1994. He was promoted to the post of Jailer vide order dated 17.05.2010 and thereafter on the post of Jail Superintendent vide order dated 19.05.2016. Petitioner submitted his joining at District Etawah on 01.07.2017 as Jail Superintendent. During the service of petitioner as Jail Superintendent at Etawah, there was allegation against him that two convicted prisoners were escaped from the jail and later on an inquiry was initiated against the petitioner. Thereafter, charge sheet was issued on 11.11.2019. The charge sheet is having only one charge. Basically petitioner was charged with allegation that he has loose control over the subordinate officers, due to which they are also reluctant in security measure required in jail, resulting into fleeing away of two prisoners. The charge sheet was duly replied by the petitioner vide reply dated 05.02.2020 denying the charges levelled against him. Inquiry report was submitted on 30.07.2020.

4. The petitioner was superannuated on 30.11.2021 and thereafter, permission was taken as mandated in Rule 351-A of Civil Service Regulation(hereinafter, referred to as ‘CSR’). Vide order dated 11.01.2022 the permission for continuance of inquiry was granted under Rule 351-A of CSR. The departmental proceeding was concluded and order dated 11.01.2022 was passed for deduction of 15 per cent amount from the pension of the petitioner.

5. Along with petitioner, three officers, one Jailer and two Deputy Jailers were also charge sheeted, but they have

been given minor punishment of warning/censure entry.

6. Petitioner has challenged the impugned order No. 1690A/22-1-200(12)/2019 dated 11.01.2022 by filing Writ A No. 3035 of 2022. During the pendency of the said writ petition, the State Government has withdrawn impugned order dated 11.01.2022 vide order dated 25.05.2022 and referred the matter to respondent No. 3 to take decision in light of judgment of this Court in the matter of *Surendra Pandey Ex Deputy Jailer Vs. State of U.P. 2007(2) ADJ 531*.

7. The impugned order dated 11.01.2022 was withdrawn, therefore, petition was also allowed vide order dated 19.09.2022. As there was no time bound direction to respondent No. 3 to pass order, therefore, petitioner filed Civil Misc. Review Application Defective No. 76 of 2023, which was disposed of vide order dated 12.04.2023 with direction to respondent No. 3 to take decision within six weeks. He next submitted that thereafter, impugned order dated 21.06.2023 has been passed reducing deduction of pension from 15 per cent to 10 percent for the period of three years. Order dated 21.06.2023 was communicated petitioner along with letter dated 12.07.2023.

8. Learned counsel for the petitioner has assailed the impugned order basically on three grounds.

9. Firstly, he submitted that after joining on the post of Jail Superintendent, petitioner had written Letter No. 1242/ahda-14-2017 dated 20.07.2017 to DG Jail about the poor condition of Etawah District Jail with regard to security, but no

action has been taken in this regard. Therefore, he may not be held responsible for the alleged incident.

10. Secondly, he submitted that along with petitioner, one Jailer, namely Ram Kuber Singh and two Deputy Jailers, namely Jagdish Prasad and Sibte Hassan Jafari of District Jail, Etawah were also found guilty for the same incident, but Jailer Ram Kuber Singh was given only warning, Jagdish Prasad was given punishment of censure entry, whereas, Sibte Hassan Jafari was given warning for working more vigilantly in future. He firmly pointed out that it is a case of absolute discrimination with petitioner, as he was the in-charge of the jail and his duty was only supervisory in nature, whereas, other charged employees are directly responsible for the incident. Therefore, in case of punishment, they should have been given more severe punishment than the petitioner and in the present case other charged employees have been given very minor punishment, which may not be even said to be punishment.

11. He next submitted that as per provisions of UP Jail Manual, Jailer is Chief Exclusive Officer of the Jail. He shall also be responsible for supervision of all building operations and for looking that all jail buildings are kept in thorough state of repair. In district jails, locking and unlocking of barracks shall be carried out in the general supervision of Jailer along with Deputy Jailer, Assistant Jailer and other officers. He next submitted that it is very surprising that officers responsible under the Jail Manual have been given only minor punishment. He further submitted that the manner in which the impugned order has been passed is discriminatory in nature.

12. Lastly, he submitted that this Court vide interim order dated 27.05.2022 passed in Writ A No. No. 3035 of 2022 has directed to decide the case in light of judgment of this Court in the matter of ***Surendra Pandey(Supra)***. He firmly pointed out that case of petitioner is squarely on same facts as in ***Surendra Pandey(Supra)*** and in that case, this Court after considering provisions of law has held that lack of efficiency, foresight and indecisiveness cannot be said to be misconduct in terms of Regulation 351A of CSR and therefore, based upon that, no punishment can be awarded and accordingly set aside the impugned order.

13. Learned Standing Counsel has vehemently opposed the submission raised by learned counsel for the petitioner and submitted that disciplinary proceeding was initiated under the Rule 7 of the U.P. Government Servants(Discipline and Appeal) Rules, 1999 against the petitioner on laxity in discharging his duty and for having loose control over sub-ordinate officers and prisoners, but could not dispute the factual submission and this fact that identical controversy has been decided by this Court in the matter of ***Surendra Pandey(Supra)***.

14. I have considered rival submissions made by learned counsel for the parties and perused the record.

15. The first argument of learned counsel for the petitioner is about the poor condition of District Jail, Etawah, for which he has written several letters from time to time and there is no denial of this fact in the counter affidavit, therefore, it is apparently clear that condition of District Jail, Etawah was not proper and further, lesser number of security officers were

posted at there. The CCTV camera was also not functioning.

16. From the perusal it is also clear that even after DG, Jail being informed about the poor condition of the jail by the petitioner, no action has been taken for proper safety.

17. Therefore, petitioner cannot be held responsible for any inaction and laxity in duty coupled with this fact that he has written several letters for improvement of condition of jails, which has not been taken care of.

18. Now coming to the second argument of learned counsel for the petitioner regarding discrimination in punishment given to petitioner. I have perused the provisions of UP Jail Manual. From the perusal of the same, it is apparently clear that main role in the security of the jail is assigned to other subordinate officers and the role of Superintendent is only supervisory in nature. Other charged employees viz. Jailer and Deputy Jailer are having bigger liability for execution of orders so issued by the petitioner. Very surprisingly, in the present case they have been awarded very lesser punishment.

19. Therefore, it is also a case of absolute discrimination with the petitioner. In all eventuality, petitioner cannot be awarded higher punishment than other charged employees.

20. Now the legal issue before the Court is as to whether lack of supervision comes within the purview of misconduct or not in terms of Regulation 351-A of CSR.

21. The very same issue with the same facts was before this Court in the

matter of **Surendra Pandey(Supra)**. In that matter a prisoner fled away from the jail premises and petitioner was found guilty of having loose control over his sub-ordinate employees and as a result of which prisoner managed to flee away from the jail. Relevant paragraphs of the aforesaid judgment are being quoted hereinbelow:

"6. The order of punishment against the petitioner was passed under Regulation 351-A of the Civil Service Regulations and the relevant portion is quoted below:-

"351-A. The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement....."

7. Learned counsel for the petitioner vehemently urged that the petitioner was not at all responsible for the fleeing away of the two prisoners and the only charges that had been levelled against the petitioner was that he had loose control over his subordinates which resulted in the said act. This according to him would not amount to an act of

*grave misconduct attracting the provisions of Article 351-A of the Civil Service Regulations and in support of his contention he placed reliance upon the decisions in **Union of India & Ors. Vs. J. Ahmed AIR 1979 SC 1022; U.P. State Road Transport Corporation & Anr., Vs. Abdul Gafoor 2006 (3) ESC 1985 and in M.M. Malhotra Vs. Union of India & Ors., JT 2005 (9) SC 506.***

*8. The sole question, therefore, that arises for consideration in the present petition is as to whether punishment could have been imposed upon the petitioner under the provisions of Regulation 351-A of the Civil Service Regulations even if it is to be assumed that the petitioner was guilty of the charge of having loose control over his subordinates as a result of which two prisoners fled away from the District Jail Gonda. Regulation 351-A clearly provides that the Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from pension, if the pensioner is found in departmental or judicial proceedings to have been "guilty of grave misconduct" during his service. The Supreme Court in **Jamil Ahmad (supra)** observed that failure to attain the highest expectation of an Officer holding responsible post or lack of aptitude of quality of leadership would not constitute as failure to maintain devotion to duty because if it is so*

then every Officer rated average would be guilty of misconduct. In the said case the charges levelled against the Officer indicated lack of efficiency, lack of foresight and lack of indecisiveness but the Supreme Court observed that these deficiencies in personal character or personal ability would not constitute misconduct for the purposes of disciplinary proceedings.

In M.M. Malhotra (supra) the Supreme Court observed:-

"Misconduct" as stated in Batt's Law of Master and Servant (4th Edition) (at page 63) is "comprised positive acts and not mere neglects or failures". The definition of the work as given in Ballentine's Law Dictionary (148th Edition) is "A transgression of some established and definite rule of action, where no discretion is left except what necessity may demand, it is a violation of definite law, a forbidden act. It differs from carelessness."

9. In Abdul Gafoor (supra) a Division Bench of this Court after noticing the aforesaid decisions observed that the allegations against the petitioner that he did not get the bus in question checked when it came to the Depot at 10:30 PM did not amount to misconduct as his inaction or failure of duty could not be the main cause for the fire in the bus. In the present case, the only allegation that has been levelled against the petitioner is that he had loose control over his subordinates as a result of which two prisoners fled away. The inquiry report does not indicate

that the petitioner was directly responsible for the fleeing away of these two prisoners. The punishment under Regulation 351-A could have been imposed upon the petitioner only if he was guilty of grave misconduct. In view of the aforesaid decisions it cannot be said that the petitioner was guilty of grave misconduct. The order dated 21st June, 2003 cannot, therefore, be sustained.

10. The submissions advanced by the learned Standing Counsel that this Court should not interfere with the quantum of punishment does not arise for consideration in the present case inasmuch as for the act indicated above punishment could not have been awarded under Regulation 351-A of the Civil Service Regulations. The writ petition, therefore, succeeds and is allowed. The order dated 21st June, 2003 is quashed. The petitioner shall be paid the balance amount of pension with interest at the rate of 9% per annum from the date it was due to the date of payment."

*22. In the present case too, the petitioner was charged with the allegation of having loose control over the subordinate employees resulting into fleeing away of two prisoners, which cannot be said misconduct and no punishment can be awarded under Regulation 351-A of CSR as decided by this Court in the matter of **Surendra Pandey(Supra)**.*

*23. Therefore, in light of facts of the case as well as ratio of law laid down by this Court in the matter of **Surendra***

Pandey(Supra), no punishment can be awarded to petitioner. Accordingly, impugned order dated 21.06.2023 cannot be sustained and is hereby set aside.

24. It is directed that petitioner shall be paid the entire deducted amount of pension along with interest @ 9 % from the due date to the date of actual payment.

25. Writ petition is **allowed** with all consequential benefits. No order as to costs.

26. So far as Prayer No. (iii) is concerned, petitioner is given liberty to file representation before respondent No. 1 within two weeks along with certified copy of this order. In case any such representation is filed, respondent No. 1 is directed to consider and decide the same in accordance with law, maximum within a period of eight weeks thereafter.

(2025) 3 ILRA 556
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.03.2025

BEFORE

THE HON'BLE SAURABH SHYAM
SHAMSHERY, J.

Writ A No. 7114 of 2023

Rajnish Kumar Pandey ...Petitioner
Versus
Union of India & Ors. ...Respondents

Counsel for the Petitioner:

Sri Santosh Kumar Pandey, Sri Shrawan Kumar Tripathi, Sri G.K. Singh (Sr. Advocate)

Counsel for the Respondents:

A.S.G.I., Sri Kunal Ravi Singh

Service Law - Regularization - University Teachers - Appointment Without Regular

Selection - U.P. State Universities Act, 1973 - Sections 2(19) & 31(3)(c) [as substituted by U.P. Act 23 of 2004] - Allahabad University Act, 2005 - Sections 3(u), 3(w), 29, 31 & 45 - University Statute - Clauses 15(2) & 15(7)(iv) - Petitioner was initially appointed as a Research Fellow (JRF/SRF) in 1992. He sought to be treated as a part-time teacher under para 10.02 of the Statute. He sought regularisation under Clause 15(7)(iv) of the University Statute framed under the Central Act. **Held:** Clause 15(2) of the Statute lays down the mandatory composition of the Selection Committee for appointment to the post of Lecturer, which must include: Dean of Faculty, Head of Department, and three subject experts appointed by the Executive Council from a panel recommended by the Academic Council. The Selection Committee that considered the petitioner's case did not conform to the prescribed composition and thus could not be treated as a regular Selection Committee under Clause 15(2). Consequently, the benefit under Clause 15(7)(iv)—which permits permanent appointment without further reference to a Selection Committee—could not be extended to the petitioner. The Court held that the essential conditions under Clause 15(7)(iv) were not satisfied, and hence, the petitioner's claim for regularisation stood rejected. (Paras 26, 31)

Dismissed. (E-5)

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Heard Sri G.K. Singh, learned Senior Advocate assisted by Sri Santosh Kumar Pandey, learned counsel for petitioner and Sri Kunal Ravi Singh, learned counsel for respondents- 2 to 6.

2. Petitioner has not disclosed in specific words that how he entered in Allahabad University i.e. he has not disclosed specifically that he was initially

appointed as a Research Fellow (JRF/SRF) in Department of Philosophy in 1992. Petitioner has not annexed any document to that effect, though during argument, some other documents were referred which indicate that he was an Research Fellow in the said Department.

3. The averments in writ petition commence with an assertion that petitioner and other similarly situated Research Fellows were engaged classes apart from their own duties in Department vide a notification dated 18.01.1992 and he has declared that after 19.01.1992, he was assigned work of teaching on regular basis. For reference, referred notification dated 18.01.1992 issued by Head of Philosophy Department, Allahabad University is quoted hereinafter :-

“All JRFs, SRFs, Research scholars are required to engage classes as per time table, apart from their other duties in the department.”

4. A case is set up by the petitioner and vehemently submitted by learned Senior Advocate that by imparting instructions in classes, petitioner would be a ‘teacher’ as defined under Section 2(19) of U.P. State University Act, 1973. For reference, said provision is quoted below :-

“2 (19) ‘teacher’ in relation to the provisions of this Act except Chapter XI-A, means a person employed in a University or in an institute or in a constituent or affiliated or associated college of a University for imparting instructions or guiding or conducting research in any subject or course approved by that

University and includes a Principal or Director.”

5. Learned Senior Advocate has also referred para 10.02 of the Statute and its provision that persons working as Research Fellow or Research Assistants may be called upon to act as ‘part time teacher’ and therefore, he submitted that since petitioner has started taking classes since 19.01.1992 soon after notification dated 18.01.1992, he would also be considered as ‘part time teacher’. For reference, said paragraph is reproduced hereinafter :-

“10.02 Teachers of the University shall be appointed in the subjects on whole time basis in the scales of pay approved by the State Government:

Provided that part time lecturers may be appointed in subjects in which in the opinion of the Academic Council such lecturers are required in the interest of teaching or for other reasons. Such part time lecturers may receive salary ordinarily not exceeding one half of the initial salary or the scale for the post to which they are appointed. Persons working as Research Fellows or as Research Assistants may be called upon to act as part time lecturers.”

6. Learned Senior Advocate has further submitted that the petitioner was a ‘part time teacher’ since 1992 and, therefore, as he would be within cut off date (31.12.1997) and accordingly, he was entitled for substantive appointment without reference to the Selection Committee and for that learned Senior

Advocate has referred Section 31(3)(c) of Act of 1973 as substituted by Uttar Pradesh Act No. 23 of 2004 (w.e.f. 20.05.2004). For reference, Section 31(3)(c) as substituted on 20.05.2004 is quoted below :-

“31(3)(c) :- Any teacher of the University who was appointed as [Associate Professors] part time [Associate Professors] on or before December 31, 1997 without reference to the Selection Committee by way of a short term or part time arrangement in accordance with the provisions for the time being in force for such appointment, may be given substantive appointment by the Executive Council, if any substantive vacancy of the same cadre and grade in the same department is available if such teacher –

(i) is serving as such on December 31, 1997 continuously since such initial appointment by way of short term/part time arrangement;

(ii) possesses the qualifications required for regular appointment to the post under the provisions of the relevant Statutes in force on the date of substantive appointment;

(iii) has been found suitable for regular appointment by the Executive Council. A teacher appointed by way of short term/part time arrangement as aforesaid who does not get substantive appointment under this clause shall cease to hold such post on such date as the Executive Council may specify.”

7. Learned Senior Advocate by referring documents has further submitted that petitioner and similarly situated persons have represented for their regularisation in terms of above provisions and to consider their grievance, a Committee was also constituted by Executive Council's decision dated 10.06.2004 and 19.12.2004 and it appears that nothing further happened and again it was resolved to constitute a Committee for purposes of ascertaining suitability. It may be noted that on 23.06.2005, the University of Allahabad Act, 2005 came to be enforced, which has different definition of 'Teacher' (Section 3(u)) and 'University appointed Teacher' (Section 3(w)). For reference, both Sections are quoted below :-

“3(u) “teacher” means Professors, Readers and Lecturers appointed or recognized by the University;

3(w) “University appointed teacher” means a teacher appointed by the University for imparting instruction and conducting research in the University or any other college or institution maintained by the University;”

8. It was further argued that on one hand, matter of regularisation kept pending and on other hand, fresh selection process was initiated. The petitioner has challenged it. In paragraph 25 of writ petition, it was disclosed that “claim of regularization was kept pending and fresh selection process was initiated as such writ petitions were filed challenging the selection however High Court vide its order dated 28.03.2014 did not intervene on the ground that some of the teachers were engaged after year 2000 and Ordinance No. 44 was not

challenged.”. Petitioner has neither disclosed details of said writ petition nor placed a copy of order dated 28.03.2014 on record, which appears to be an attempt to mislead. A copy of said order was later on filed through an annexure with a counter affidavit filed by the University on 13.07.2023.

9. I have carefully perused the said judgment, since it was heavily relied upon by learned counsel for University that issue of consideration for regularisation was rejected therein. From said judgment, following facts are revealed :-

“a. Petitioner herein has not filed earlier a single writ petition but has filed 3 writ petitions along with 2 other petitioners vide Writ A Nos. 64494/2008, 63695/2010 and 18243/2012.

b. Details of all 3 writ petitions are mentioned in above referred order dated 28.03.2014 whereby all 3 writ petitions were dismissed and relevant part thereof are mentioned as follows :-

Writ A No. 63695/2010

2nd writ petition no.63695 of 2010 has been filed by Dr. Uma Kant, Rajnish Kumar Pandey, Dr. Satish Kumar Singh, Dr. Prem Chandra Mishra and Dr. Pankaj Mishra, they seek a writ of mandamus commanding the Allahabad University to consider the claim of the petitioners for regularization pursuant to the decision taken by the Executive Council in its meeting held on 29.10.2009 and as per the assurance given by the Vice

Chancellor in the meeting of the Executive Council on 07.08.2010.

Writ A No. 18243/2012

Dr. Uma Kant, Rajnish Kumar Pandey, Dr. Satish Kumar Singh, Dr. Prem Chandra Mishra and Dr. Pankaj Mishra who had filed writ petition no.63695 of 2010, have filed this writ petition for quashing of the advertisement dated 14.02.2012 as well as for declaring the cut of date i.e. 31.12.1997 mentioned under Section 31 (3) (c) of the U.P. State Universities Act, 1973, as arbitrary and void. The petitioners have also prayed for quashing the circular dated 04.10.2002.

c. Relevant part of judgment in reference to leading Writ A No. 64494/2008 is mentioned below :-

Writ A No. 64494/2008

“By means of this writ petition, the petitioners have prayed, for quashing of the order of the Vice Chancellor dated 03.12.2008 and for a mandamus directing the University respondents to comply with the provisions of Ordinance No.44 and to permit the petitioners to continue as Guest Faculty Lecturers without facing any fresh interview/selection at least for a period of three years and they may be paid salary accordingly.

We may record that the unamended Ordinance No.44 of the Central University provides that Guest Faculty Lecturer shall not continue after the terminal date of

the academic year but if the Academic Unit, so desires, it may continue the Guest Faculty Lecturer earlier selected in the next consecutive academic session without recourse to fresh procedure of the selection but this extension shall not be beyond three consecutive years.

The Ordinance No.44 is not under challenge in the present writ petition. None of the conditions mentioned therein have been questioned on any ground whatsoever. The prayer in the petition is that the petitioners may be allowed to continue for three years on the strength of the selections dated 22.09.2007. This period of three years would admittedly expire in the year 2010. Therefore, for all practical purposes, the writ petition has become infructuous, irrespective of the stand taken by the University that Ordinance No.44 itself has been amended on 20.01.2009.

We may also refer to the judgment of the Division Bench of this Court in the case of Dr. Kirti Raje Singh Vs. University of Allahabad and others reported in 2010 (6) ADJ 860 (DB), wherein it has been held that a Guest Faculty Lecturer has no right to continue till the regular selected candidates join or to claim regularization.

After the aforesaid order has been passed, Sri K.C. Shukla, advocate appeared and made a statement that the petitioners have filed amendment applications dated 07.08.2013 and dated 22.07.2013 for an additional relief i.e. for a writ of mandamus directing the

respondents not to interfere in working of petitioners till regular selected candidate joins. Copy of the amendment applications has been handed over to the Court which is taken on record. Office may trace out the aforesaid amendment applications and place the same on records.

There is absolutely no mention as up to what date petitioners have worked after 2008. Ordinance No.44 as it then stood has not been questioned in the amendment applications also. The rights of a Guest Lecturer have already been examined in the case of Dr. Kirti Raje Singh (supra). For the same reason, the prayer made under the amendment application cannot be granted.”

10. The aforesaid judgment has rejected the claim of the petitioner for consideration of regularisation as prayed, in specific words and therefore its copy ought to have been placed by the petitioner and since it was not placed, therefore, the petition is liable to be dismissed on a single ground that he has not approached this Court with clean hands. In regard to doctrine of “clean hands”, a judgment passed by Supreme Court in K. Jayaram and others vs. Bangalore Development Authority and others, (2022) 12 SCC 815 would be relevant and its relevant paragraphs are extracted herein-after :-

“10. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the

writ court must come with clean hands and put forward all facts before the court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.

14. It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations were or are pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law.”

11. The following part of rejoinder affidavit would be relevant that instead of petitioner to extend explanation for not disclosing judgment dated 28.03.2014, he

still tried to mislead by stating that said judgment is not applicable to present case, without referring any finding returned therein. Para 8 of rejoinder affidavit is quoted below :-

“8. That it is relevant to state here that the respondent no. 2 to 6 are erroneously relying upon the judgment dated 28.03.2014 of this Hon'ble Court in Writ A 63695 of 2010 as the said judgment had no application to the facts of the present case in as much as the court held that provisions of Clause 6-H of Ordinance 44 was not challenged which provided that Guest Lecturers cannot continue beyond three years as such the writ petition which was filed in the year 2010 had become infructuous.

It has further been observed by the Hon'ble Court that "while omitting the Government Order dated 09th October, 2000 the State decided to provide substantive appointment by executive council to such teachers of the University, who were appointed as Part Time Lecturers on or before 31st December, 1997". The division bench has further recorded the contention of the Standing Counsel to the effect that "This date of 31st December, 1997 has been chosen, according to the Standing Counsel, with reference to the issuance of the Government Order dated 09th October, 2000 in as much as subsequent to 2000 the University cannot offer appointment as part time Lecturers in terms of the Government Order and on that date the earlier appointees would complete nearly 3 years of service

so as to have some semblance of continuity or a right to be offered substantive appointment.””

12. Learned Senior Advocate for petitioner has also tried to cover up above facts by stating that petitioner’s case has now been liable to consider in accordance with Section 31(3)(c) of State Act, since it was accepted that he was working as Part Time Lecturer in the Department of Philosophy of University of Allahabad w.e.f. 19.01.1992 and for that learned Senior Advocate has referred an Office Order dated 05.09.2019 issued by Registrar, University of Allahabad as well as a Corrigendum dated 30.07.2019 that the petitioner would be entitled for full salary/emolument as an Assistant Professor, however, without any basis and without putting again before Executive Council and without putting petitioner on notice, the office order dated 05.04.2019 and its corrigendum dated 30.07.2019 was withdrawn by a subsequent order dated 14.02.2020 issued by Registrar, University of Allahabad. Learned Senior Advocate has also referred Agenda No. IV of 55th Meeting of Executive Council dated 10.04.2019 (in regard to petitioner) and that it was approved and same is still in existence.

13. Learned Senior Advocate has further referred a report of 3 Members’ Committee dated 17.12.2018 wherein, it was specifically mentioned that petitioner was a selected candidate on a post of ‘Guest Faculty’ against 08 vacancies in department by a Selection Committee dated 22.09.2007, duly approved on 25.09.2007 by the then Vice Chancellor. The Selection Committee was comprised of Chairman and 2 other Members.

14. In aforesaid circumstances, the petitioner has approached this Court against aforesaid order dated 14.02.2020 vide Writ A No. 3177 of 2020 and it was disposed of vide order dated 28.11.2022 whereby impugned order was set aside with an observation that now issue of regularization, if at all, will be decided only by Executive Council in terms of Statute 15(7)(iv) of the University framed under the Central Act. Learned Senior Advocate has referred following part of said judgment. It is to note that outcome of earlier litigation (judgment dated 28.03.2014 passed in 3 writ petitions filed by the petitioners) was not brought into knowledge of that coordinate Bench :-

“25. As noted above, up to the date of enforcement of the Central Act, no better right or status had been acquired by the petitioner as a regular employee of the University. The first Resolution passed by the Executive Council to deal with the rights being claimed by the petitioner is dated 08.12.2011. It authorized the Vice Chancellor to constitute the Committee to examine the cases of regularization of certain teaching faculty including the present petitioner. That document itself makes it plain, no status had been acquired by the petitioner up to that date as a regular teaching faculty. Once that fact situation becomes plainly apparent on the face of the record, it cannot be gain said that the petitioner was entitled to automatic regularisation by virtue of Section 5(d) of the Central Act. As to the further submission that there existed an earlier Resolution of the Executive Council to

regularize all teachers, there is no reference to that in the resolutions of the Executive Council or of the Committee (that form the sheet anchor of the case now set up by the petitioner).

26. Even then, the claim of automatic regularisation is defeated upon parallel claim set up by the petitioner claiming appointment as Guest Faculty by the regular Selection Committee, on 22.09.2007. That engagement arose to the petitioner after enforcement of the Central Act. If the petitioner claims prior regularization under the State Act, he could never have sought engagement as a Guest Faculty at the same University, subsequently. Having obtained that engagement in that capacity, it is too late in the day for the petitioner to turn around and claim any higher status conferred on him prior to that date.

27. Under Statute 15.7(IV) as framed under the 'Central Act', a teaching faculty engaged on a temporary post may be regularized subsequently if such post becomes permanently vacant or another permanent post of the same rank and grade become available in the same cadre. In that case, the Executive Council may appoint such teacher on permanent basis in such department without further reference to the regular Selection Committee.

28. For reason of that material difference in language of Statute 15.7(iv) of the Statutes, the claim of continuity would require further consideration. The Selection Committee in its resolution dated

17.12.2018 has clearly reached a conclusion that the petitioner had continuously taught at the University in the department of Philosophy, since his initial engagement on 19.1.1992. It also found, that engagement was made under the 'State Act' and there was no defect in the constitution of the Selection Committee, at that stage.

29. All that survives for consideration is whether a post on which the petitioner had been initially appointed had become substantively vacant and was available or any further permanent post of same rank and grade had become available in the department of Philosophy. Plainly, that has escaped consideration of the Committee in its Resolution dated 17.12.2018. Arising therefrom, Executive Council has also not considered that issue.

30. Accordingly, order dated 14.02.2020 passed by the Registrar of the University is set aside. If at all, the matter has to be examined by the Executive Council if the post on which the petitioner had been initially appointed in the year 1992 had become vacant on substantive basis and was available (at present), or if any other post in the same pay and grade was substantively vacant in the department of Philosophy on which the petitioner could be regularized in terms of Statute 15.7(IV) of the University framed under the 'Central Act'. That exercise may be completed by the Executive Council, within a period of two months from today."

15. In pursuance of above order, a Committee was constituted on 12.01.2023 and its report was submitted before the Executive Council's meeting held on 23.03.2023 vide Agenda No. 06/2013 wherein it was accepted and it was resolved that the petitioner shall not continue teaching in any capacity.

16. The order dated 07.04.2023 is impugned in present writ petition along with resolution. For reference, impugned order, as communicated to petitioner, is reproduced hereinafter :-

“No.05/R/1185/2023 Date
07th April, 2023

To,
Dr. Rajnish Kumar Pandey,
Department of Philosophy,
University of Allahabad.

Subject:- In compliance of
the order dated 28th November,
2022 of Hon'ble High Court passed
in Writ Petition No. 3177/2020

Sir,

In pursuance of the order of
the High Court dated 28th
November, 2023 a committee was
constituted vide office order No.
05/R/23/2023, dt. 12 January, 2023.
The report of the committee was
then placed before the Executive
Council in its meeting held on 23
March, 2023 vide agenda No.
06/73 wherein after due
consideration and deliberation over
the report of the committee,
especially in view of the fact that
you have never faced a regular
selection committee and hence it is
not possible to consider your claim
for regularization under any of the
provisions including that of Statute
15[7] (iv), of the University of

Allahabad Act, the EC has resolved
as under:-

Resolution No. 06/73:

In pursuance of the High
Court's order dt. 28.11.2022 in the
writ petition no. 3177/2020 in the
matter of Dr. Rajnish Kumar
Pandey, a committee was
constituted vide office order no.
05/R/23/2023 dt 12th January, 2023
comprising of Hon'ble Justice
Shishir Kumar (former Judge,
Allahabad High Court) (Chairman
of the committee). Prof. Pankaj
Kumar, Dean College Development
(member) and Dr. Haribansh Singh,
Assistant Professor. Department of
Law (Convener).

The report of the
committee was read out by
Secretary, Executive Council
before the EC member. On the
basis of the report, it is brought to
light that claim of regularization of
Dr. Rajnish Kumar Pandey has
been rejected due to non-
applicability of U.P. State
University Act 1973 (i.e. old Act)
& Section 5(d), Section 45(2) &
Statutes 15(7) (iv) of the New Act
and Statutes.

As far as the question of
the payment to Dr. Rajnish Kumar
Pandey is concerned, it is clear that
he has a status of Guest Faculty
only, hence the payment to him
shall be made as per the UGC
norms applicable to payment to
Guest Faculty for the time period
from which his payment was
stopped by the then Vice
Chancellor till the present day.

After detailed discussion,
the Executive Council unanimously
approved the report of the

committee and also resolved that Dr. Rajnish Kumar Pandey, however, now shall not continue teaching in any capacity in the University of Allahabad.

This is for your kind information.

Regards,

Sd.

07.04.2023

Registrar”

17. The argument that petitioner could still be considered under old Act has already been rejected that his case could not be better than the observation made by coordinate Bench in judgment dated 28.11.2022 that he now could be considered only in terms of 15.7 (iv) of Statute for substantive appointment. For reference, relevant paragraph no. 27 of said judgment is quoted hereinafter :-

“27. Under Statute 15.7(IV) as framed under the 'Central Act', a teaching faculty engaged on a temporary post may be regularized subsequently if such post becomes permanently vacant or another permanent post of the same rank and grade become available in the same cadre. In that case, the Executive Council may appoint such teacher on permanent basis in such department without further reference to the regular Selection Committee.

28. For reason of that material difference in language of Statute 15.7(iv) of the Statutes, the claim of continuity would require further consideration. The Selection Committee in its resolution dated 17.12.2018 has clearly reached a conclusion that the petitioner had

continuously taught at the University in the department of Philosophy, since his initial engagement on 19.1.1992. It also found, that engagement was made under the 'State Act' and there was no defect in the constitution of the Selection Committee, at that stage.”

18. Learned Senior Advocate for petitioner has also referred that earlier, a 3 Members' Committee was constituted and a report was submitted which was considered by Executive Council in its meeting dated 17.12.2018, wherein minutes of Selection Committee dated 22.09.2007 was mentioned that petitioner was one of selected candidates against 08 vacancies in the department and petitioner was recommended for appointment and after judgment of this Court dated 28.11.2022, said report was upheld as well as he has faced Selection Committee, therefore, reasons assigned in impugned order are legally unsustainable.

19. Learned Senior Advocate has referred Section 45 of the Act of 2005 which provides 'Transitional Provisions' and referred its clause-2 that in given set of circumstances, since Ordinance are not made, therefore, case of petitioner still could be considered in accordance with provisions of Statute and Ordinance was made immediately before commencement of 'Act of 2005/Central Act' under the provisions of U.P. State Universities Act, 1973. For reference, sub-clause 2 of Section 45 is quoted below :-

“45. Transitional provisions.—

(1)

(2) Till such time as the first Ordinances are not made under

sub-section (2) of section 29, in respect of the matters that are to be provided for by the Ordinances under this Act and Statutes, the relevant provisions of the Statutes and the Ordinances made immediately before the commencement of this Act under the provisions of the Uttar Pradesh State Universities Act, 1973 (President's Act 10 of 1973) shall be applicable insofar as they are not inconsistent with the provisions of this Act and the Statutes.”

20. Learned Senior Advocate has also placed reliance upon judgments of this Court in **P.K. Malik vs. State of U.P. and others, 2005 (6) AWC 5945(FB); Pankaj Kumar vs. University of Allahabad and others, (1993) 1 UPLBEC 544; Manshyam Verma and another vs. University of Allahabad and others, Writ A No. 50303 of 2015 decided on 18.12.2017; Dr. Rajendra Bahadur Singh and others vs. State of U.P., 2021 (6) ADJ 602 (LB); Dr. Sangita Srivastava vs. University of Allahabad and others, 2002 (3) AWC 2088 and Swatantra Bala Sharma vs. State of U.P., 1994 (4) AWC 3142.**

21. Per contra, learned counsel for respondents 2 to 6 has submitted that :-

(a) The report of 3 Members' Committee was not approved in 53rd Meeting of Executive Council dated 20.12.2018 rather Chairman was authorized to get legal vetting as he referred Agenda No. 19/53 of said meeting and its resolution, which is quoted below :-

“The Executive Council in its meeting held on 08.12.2011, while considering the following item under “ Any other item with the permission of the Chair”, the following point were raised and resolved as under:-

The following issue were emerged and decided:-

(i) Some of the members raised the issue regarding the action on the representation of Dr. Manik Chandra, Department of Ancient History and other Guest Faculty/ Part-time Lecturers in pursuance of Executive Council Resolution No. 03/15 dated 20.06.2010 and Resolution No. 01/16 dated 07.08.2010.

Resolved that the Vice Chancellor be authorized to constitute a committee to examine the cases.

In pursuance of the above decision of the Execution Council, you are required to put up note immediately to the Registrar, with regard to the Guest Faculty/ Par-time Lecturers, may kindly submit the same to the Hon'ble Vice Chancellor for constituting a Committee the same.”

(b) Though it has not been denied that a subsequent Office Order was issued on 05.04.2019, whereby approval was accorded to continuity of service of the petitioner as Part Time Lecturer and it was approved in 55th Meeting of Executive Council.

(c) Learned counsel has further referred paragraphs 30, 42 and 49 of counter affidavit which are quoted below :-

“30. That the contents of paragraph 30 of the writ petition are incorrect. It is submitted that the reliance placed on Statue 15(7)(IV) is clearly misplace. Statute 15 is with regard to Selection Committee and its composition. Furthermore for application of 15(7)(IV), there has to be recommendation of a regular selection committee. In the present case, the petitioner has never faced any regular selection committee, apart from the selection committee for guest faculty, and his name has never been recommended by any regular selection committee.

With regards to Section 31 (3) (c) of the State University Act, the Court in Writ A No. 3177 of 2020 categorically held that the petitioner had lost any claim of higher status available under the State Act once the petitioner obtained an engagement of Guest Faculty in 2007.

Similarly section 46 (2) (b) of the 2005 Act were also not applicable because the essential requirements of the section were not met in the case of the petitioner. His name has never been recommended by a regular selection committee and neither was the petitioner ever appointed as a part time lecturer in the University after recommendation from any selection Committee.

It is pertinent to mention that the Committee was not a selection committee. The three member committee never functioned as a selection committee as it did not fulfil the requirement of Statue 15.

42. That the contents of paragraph 42 of the writ petition are incorrect. It is submitted that there was no selection of the petitioner at any point of time. The petitioner was initially a JRF scholar till 1997 and later on was appointed a Guest Faculty in 2007. Apart from these two instances, the petitioner was never appointed by the University in any capacity. Furthermore the order dated 05.04.2019 clearly stated that continuity/regularization would be subject to the petitioner facing a regular selection committee of the department. The petitioner is yet to face such a selection committee. There is no irregularity in the selection procedure but the fact that the selection procedure for the petitioner was never undertaken. The respondents have never acquiesced to the right of the petitioner.

49. That the contents of paragraph 50 of the writ petition are incorrect. It is submitted that the claim of the petitioner for regularization can't be considered in light of the judgment rendered in Writ A no. 64494 of 2008 whereby the Court held that the Vice Chancellor or for that matter the Executive Council had no authority of law to constitute a committee for regularization that was claimed by the petitioner.

Furthermore any claim on the basis of the State Act has been negated by the Court in Writ A No. 3177 of 2020. The only question that the Court referred for adjudication was the applicability of Statue 15.7 (IV) which is clearly

not applicable in case of the petitioner. For application of 15.7(IV), there has to be recommendation of a regular selection committee. In the present case, the petitioner has never faced any regular selection committee, apart from the selection committee for guest faculty in 2007, and his name has never been recommended by any regular selection committee as constituted under Statue 15(2).

The Court vide its order made it clear that regularization could only be seen on the basis of Statue 15(7) (IV) and on that basis directed the University to complete the exercise within two months. Thus all that was left was for the University to see the applicability of Statue 15(7) (IV) which was done by formation of Committee which examined the issue denovo and came to a conclusion that Statue 15(7) (IV) did not have any application in the case of the petitioner.”

(d) Learned counsel has further submitted that in the Office Order dated 05.04.2019, there was a reference of Selection Committee, however, it was not in terms of ‘Act of 2005’ and Statute. In absence of Ordinance, provisions of Act of 2005 and Statute were required to follow. Section 45 of Act of 2005 also provides no provision in consistent of Act of 2005 and Statute would be applicable and as such, Selection Committee as referred in Minutes of Meeting dated 22.09.2007 was not in terms of para 15.2 of Statute so far as Selection Committee for

appointment of Lecturer was concerned.

22. Heard learned counsel for parties and perused the record.

23. From above referred rival submissions and facts and circumstances of case, only issue left for consideration is that despite petitioner is guilty of not coming before this Court with clean hands still whether petitioner could be regularized in terms of para 15(7)(iv) of the Statute. For reference, para 15(2) (Selection Committee for Lecturer) and 15(7)(iv) of Statute are quoted below :-

“15. Selection Committees

:-

(1).....

(2) The Selection Committee for appointment to the posts specified in column 1 of the Table below shall consist of the Vice-Chancellor, a nominee of the Visitor and the persons specified in the corresponding entry in column 2 of the said Table:

Lecturer :-

(i) The Dean of the Faculty/Head of the Department.

(ii) Three experts in the concerned subject/field, to be appointed by the Executive Council, out of the panel recommended by the Academic Council.

(3).....

(4).....

(5).....

(6).....

(7) Appointments to temporary posts shall be made in the manner indicated below :-

- (i).....
- (ii).....
- (iii).....

(iv) Where a teacher has been appointed to a Department on the recommendation of a regular Selection Committee on a temporary post, and such post subsequently becomes permanently vacant or another permanent post of the same rank and grade becomes available in the same Department, the Executive Council may appoint such teacher on permanent basis in such Department without further reference to a regular Selection Committee.”

24. Aforesaid clause provides that petitioner may only be considered for appointment on permanent basis, if petitioner (teacher) was appointed on recommendation of a regular Selection Committee and only then he may not be referred to a regular Selection Committee for appointment of a teacher on permanent basis.

25. Now Court has to scrutinize whether Selection Committee constituted for consideration of appointment of petitioner dated 22.09.2007 was duly constituted or not.

26. In this regard, Clause 15 (2) of Statute of University would be relevant wherein constitution of a Selection Committee for post of Lecturer was also mentioned that it ought to have been comprised with Dean of the Faculty, Head of Department and three experts in concerned subject/field to be appointed by the Executive Council, out of the panel recommended by the Academic Council,

however, above referred constitution of Selection Committee was not in terms of above referred details of Constitution of Selection Committee.

27. In aforesaid documents, Court also takes note of effect of Section 45 of the Act, 2005 and for that Court takes note of Section 29 of the Act of 2005 which is powered to make Ordinance. At this stage, it would be relevant to refer that the Ordinance of University made under Section 29(2) of Act of 2005 were published in Gazette on 09.02.2008.

28. Constitution of Selection Committee for appointment on post of Lecturer would be governed in terms of Clause-15(2) of Statute and as referred above, constitution of Committee as referred in ‘3 Members’ Committee dated 17.12.2018’ does not fulfil condition, therefore, it cannot be held that petitioner was duly selected and therefore, condition prescribed in Statute 15.7(iv), that since petitioner was not appointed on recommendation of a regular Selection Committee and therefore, any exemption that such teacher may be appointed on permanent basis without further reference to a regular Selection Committee could not be granted.

29. In this regard, contents of Section 45(2) of Act of 2005 are taken note of that even in a case till Ordinance are made on issue of Selection Committee, no provision of earlier Act of 1973 and its Statute and Ordinance would be applicable if these are in consistent with provisions of Act of 2005 and its Statute. As referred above, composition of 3 Members’ Selection Committee dated 17.12.2018 was in consistent with the composition of Selection Committee provided in para

15(2) of Statute for purpose of selection of a Lecturer, therefore, it could not be considered that all conditions prescribed under Statute 15(7)(iv) to grant exemption to petitioner to exempt to face a Selection Committee for consideration for permanent were exist. The Selection Committee dated 17.12.2018 does not comprise in terms of Section 31 and its subsection of the U.P. State University Act, 1973, therefore, the reason assigned in impugned order has legal and factual backup, hence, no ground exists for interference.

30. In aforesaid circumstances, Court also takes note conduct of petitioner that he has not come forward before this Court with clean hands and since petitioner was not qualified in terms of Clause 15.7(iv) for appointment on permanent basis without further reference to a regular Selection Committee and since requisite condition of such clause are not present, therefore, his claim for appointment on permanent basis cannot be considered.

31. In view of above, Court is of considered opinion that since petitioner has not come before this Court with clean hands, therefore, this writ petition may be dismissed with cost, however, in the interest of justice, cost is exempted and writ petition having no force is, accordingly, **dismissed**.

(2025) 3 ILRA 570

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 06.03.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

Writ A No. 7393 of 2000

Sarwar Hussain

...Petitioner

Versus

**M.D. U.P. Rajkiya Nirman Nigam Ltd. Lko.
...Respondent**

Counsel for the Petitioner:

K.C. Jauhari, Manish Jauhari, Mohit Jauhari,
Subodh Kumar Verma, U.P. Mishra, V.P. Mishra

Counsel for the Respondents:

Mohd. Mansoor Ahmad, Shishir Jain

A. Service Law - Disciplinary Proceedings - Disproportionate Punishment - Constitution of India, Article 14 - Discrimination Among Co-Delinquents - In cases where multiple persons are involved in the same incident, parity among co-delinquents has also to be maintained when punishment is being imposed; Imposition of disproportionate penalty on one delinquent while others either spared or lightly punished violates Article 14 and vitiates the disciplinary action - Disciplinary authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences (Para 33, 34)

B. Service Law – Disciplinary Proceedings – Natural Justice – Failure to Consider Reply to Show Cause Notice – Dismissal Order Vitiating – It is a settled principle of service jurisprudence that when a delinquent employee submits a reply to the show cause notice issued upon receipt of the inquiry report, it is incumbent upon the disciplinary authority to apply its mind to such reply and record reasons if the contentions raised are being rejected. In the present case, although the petitioner submitted a detailed reply on 25.04.2004 pointing out inconsistencies in the inquiry report and process, the disciplinary authority merely noted the receipt of the reply but failed to consider it, thereby rendering the dismissal order unsustainable in law. Non-consideration of the employee's reply amounts to denial of reasonable opportunity and violates principles of natural justice. Dismissal order quashed. (Para 35, 36)

C. Service Law – Constitution of India, Article 226 – Dismissal Order Quashed – Remand Not Appropriate as Petitioner Had Died – High Court’s Power to Modify Punishment – Substitution of Punishment – In exceptional and rare cases, the High Court can itself impose an appropriate punishment with cogent reasons. In the present case, the petitioner died during the pendency of the writ petition and was substituted by his legal heirs; hence, remand of the matter to the disciplinary authority was not found to be appropriate by the Court. Exercising its powers under Article 226 of the Constitution and taking into account the punishment accorded to other persons involved in the same episode, the Court imposed the punishment of withholding one increment permanently and one censure on the petitioner. The writ petition was partly allowed; the impugned dismissal order was quashed; and the substituted punishment was imposed on the petitioner. (Paras 39, 40, 42)

Allowed. (E-5)

(Delivered by Hon'ble Abdul Moin, J.)

1. Heard learned counsel for the petitioner as well as Shri Shishir Jain, learned counsel appearing for the respondents.

2. By means of the present petition, the petitioner since deceased and substituted by the legal heirs, has challenged the order dated 16.09.2000 passed by the respondent No.2, a copy of which is Annexure-16 to the petition.

Further prayer is for payment of subsistence allowance to the petitioner.

3. As Sarwar Hussain the petitioner has died, as such, for the sake of convenience, Sarwar Hussain would be referred to as the petitioner.

4. By means of the order dated 16.09.2000, the petitioner since deceased has been dismissed from service.

5. The facts of the case revolve in a narrow compass inasmuch as the petitioner was working as Store Keeper when he was issued charge-sheet dated 20.07.1999, a copy of which is Annexure-8 to the petition.

6. The charges leveled in the charge-sheet were that from a savings bank account of the Nigam maintained with Oriental Bank of Commerce, Sitapur an amount of Rs.56,000/- was withdrawn vide a Cheque No.482371. The cheque was made out to an unknown person by the name of S.P. Singh although no amount was payable to him. In the preliminary enquiry it emerged that the petitioner had stolen the cheque and thereafter made the signatures of Shri P.K. Garg and Shri Atul Mehrotra and upon the cheque being presented, the aforesaid amount was withdrawn.

7. In support of the charges leveled against the petitioner, the respondents had made preliminary inquiry report, the report of the handwriting expert and the accounts documents of the Unit as the documents to be read against him.

8. A Show cause notice was issued to the petitioner to which he submitted his reply on 25.04.2000, a copy of which is Annexure-15 to the petition.

9. The disciplinary authority vide order impugned dated 16.09.2000 upon consideration of the inquiry report has dismissed the petitioner from service and hence the petition.

10. Grounds taken by the learned counsel appearing for the petitioner while raising the challenge to the punishment order and the legal grounds on the basis of supplementary affidavit as have been urged by the learned counsel appearing for the petitioner are

(a) that a perusal of the impugned removal order dated 16.09.2000 would indicate that none of the grounds that have been raised by the petitioner in his reply to the show cause notice dated 16.02.2000 have been considered while passing the order impugned.

(b) disparity in punishment to the persons involved in the entire episode.

11. Elaborating this ground, learned counsel appearing for the petitioner argues that the preliminary enquiry report dated 07.11.1998, a copy of which is Annexure-5 to the writ petition, would indicate the connivance of three officers namely Shri P.K. Garg, who was Project Manager and had opened the concerned Bank account which was a savings bank account without approval from the Headquarters; Shri B.B.L. Gupta, who was the Assistant Accountant and was also the in-charge of the cheque book and cheque issue register and had duly been informed by one Shri Mohd Yunus, the Office Assistant regarding Cheque No.482371 i.e. the cheque involved in the entire episode, having gone missing but no endorsement had been made by Shri Gupta in the said register; and Shri Mohd Yunus, who was the Office Assistant and who is said to have informed Shri B.B.L. Gupta about the cheque having gone missing to which it had been observed in the preliminary enquiry report itself that the statements given by

Shri B.B.L. Gupta do not appear to be correct and that he has tried to hide his mistakes.

12. The contention is that all the aforesaid three persons were actively involved in the entire episode which had resulted in an amount of Rs.56,000/- being withdrawn.

13. The argument is that obviously, no saving bank account could have been opened for the respondent-Corporation and in case Shri P.K. Garg, the Project Manager opened the said savings bank account and admittedly the same was opened without any approval from the Headquarter, as specifically finds place in the preliminary enquiry report, the same thus appears to be the first act in the entire episode for withdrawal of the amount Rs.56,000/- with the active connivance of Shri B.B.L. Gupta, the Assistant Accountant and Shri Mohd Yunus, Office Assistant but it is only the petitioner who has been imposed extreme penalty of dismissal from service while Shri B.B.L. Gupta has been imposed with withholding of one increment permanently and a penalty of censure while no action has been taken against Shri P.K.Garg.

14. It is also contended that initially Shri Mohd Yunus had been dismissed from service but upon a challenge being raised to the dismissal order by Shri Mohd Yunus by filing *Writ Petition No.6544(SS) of 2000 In Re Mohd Yunus Khan vs Uttar Pradesh Rajkiya Nirman Nigam Ltd*, decided on 04.09.2012, this court had quashed the said order and remitted the matter to the appointing authority to consider a lesser punishment and subsequent thereto, Mohd Yunus has been imposed with a penalty of withholding of one increment permanently.

15. Placing reliance on the judgments of the Hon'ble Supreme Court in the case of *Rajendra Yadav vs State of Madhya Pradesh & Ors : (2013) 3 SCC 73 and Lucknow Kshetriya Gramin Bank & Anr vs Rajendra Singh : (2013) 12 SCC 372* the argument is that the Hon'ble Supreme Court has held that there should be parity in punishment inasmuch as all persons similarly circumstanced should be punished likewise and there cannot be any discrimination in punishment.

16. Another ground taken by the learned counsel for the petitioner is that no date, time or place of enquiry has been fixed in the matter which thus vitiates the entire enquiry proceedings as well as the impugned order of dismissal.

17. On the other hand, Shri Shishir Jain, learned counsel appearing for the respondents-Corporation on the basis of averments contained in the counter affidavit has argued that the active role of the petitioner in the entire episode has clearly emerged as would be apparent from perusal of the report of handwriting expert from which it is clearly apparent that the cheque, with which an amount of Rs.56,000/- was withdrawn, was bearing the handwriting and the fraudulent signatures that were made by the petitioner and thus there cannot be parity with the other persons namely Shri P.K. Garg, B.B.L. Yadav and Shri Mohd Yunus whose roles have been spelt out in the preliminary enquiry report itself. He further argues that once the petitioner himself was the main culprit consequently the punishment imposed upon him i.e. of dismissal has correctly been imposed and once the charges leveled against the others were different there cannot be any occasion of parity. However, Shri Jain does not dispute

the punishments meted out to Shri B.B.L. Gupta and Shri Mohd Yunus and no action having been taken against Shri P.K. Garg.

18. So far as non consideration of the petitioner's reply in the dismissal order is concerned, the argument of Shri Shishir Jain is that the petitioner had not indicated anything new in his reply to the show cause notice that had been given by the respondent-Corporation and consequently no error was committed by the disciplinary authority in not considering the reply as had been given by Sarwar Hussain.

19. Shri Jain also argues that perusal of the enquiry report would indicate that repeated opportunity of personal hearing had been given to the petitioner but the petitioner admittedly failed to appear on one pretext or the other on the said dates consequently no error has been committed by the enquiry officer in submitting the enquiry report.

20. As regards the subsistence allowance, Shri Shishir Jain, learned counsel appearing for the respondents-Corporation has argued that after the petitioner had been placed under suspension, he was required to submit a certificate of not being engaged in any other business or profession in order to get subsistence allowance but he failed to do so and as such subsistence allowance was not paid to him.

21. Heard learned counsel for contesting parties and perused the record.

22. While the petitioner was working as Store Keeper, an amount of Rs.56,000/- was withdrawn from the savings bank account of the Corporation maintained with the Oriental Bank of

Commerce vide Cheque number 482371. In a preliminary enquiry, it emerged that the petitioner had stolen the cheque and thereafter had made the signatures of Shri P.K.Garg and Shri Atul Mehrotra on the said cheque and upon the said cheque being presented before the bank, aforesaid amount was withdrawn.

23. Handwriting on the cheque and the signatures on the cheque were duly determined by the respondents on the basis of the report of the handwriting expert, to be that of the petitioner.

24. A preliminary enquiry was held of which a report dated 07.11.1998 was drawn up.

25. A perusal of the report indicates that Shri P.K. Garg, Project Manager had opened the concerned bank account without approval from the Headquarters. Incidentally, the Bank account, as already indicated above, was a savings bank account and obviously no savings bank account could be opened for a Corporation. Shri B.B.L. Gupta, the Assistant Accountant, who was also in-charge of the cheque book and cheque issue register had duly been informed by Shri Mohd Yunus, the Office Assistant regarding the cheque no.482371 i.e. the cheque involved in the entire episode having gone missing but no endorsement had been made by Shri Gupta in the register. He also denied Shri Mohd Yunus having informed him about the loss of the cheque which in the preliminary enquiry was found to be not correct and Shri Gupta was found to have cleverly hidden his mistakes and the correct facts.

26. The preliminary enquiry may have remained a preliminary enquiry but

for the fact that the said preliminary enquiry report was made part of the charge-sheet dated 26.03.1999, which was issued to the petitioner and the charge against the petitioner was of having fraudulently withdrawn Rs.56,000/- from the bank on the basis of fake signatures on the cheque which was sought to be proved on the basis of said preliminary enquiry report along with the report of the handwriting expert. Thus, it is apparent that the respondents were of the view that the said preliminary report should be utilized against the petitioner.

27. The enquiry report dated 19.01.2000 was submitted in which charges were found proved against the petitioner in which again strong reliance had been placed on the preliminary enquiry report.

28. Show Cause Notice was issued to the petitioner to which he submitted a reply but the disciplinary authority without considering the grounds taken by the petitioner in his reply, passed the impugned order of dismissal.

29. Sheet anchor of the argument of the petitioner is the preliminary enquiry report which, as already been indicated above, indicates connivance of Shri P.K. Garg the Project Manager having opened concerned bank without approval from the headquarter and Shri B.B.L. Gupta, the Assistant Accountant and in-charge of cheque book and cheque issue register having not endorsed about the said cheque having gone missing.

30. When the charge against the petitioner is seen in the light of the preliminary enquiry report and the departmental enquiry report as submitted against the petitioner, it emerges about a

savings bank account having been opened by Shri P.K. Garg without any authority from the headquarter, Shri B.B.L. Gupta not having entered the lost cheque in the cheque book and cheque issue register and the petitioner having made forged signatures on the cheque which all action resulted in the withdrawal of Rs.56,000/- from the bank. Thus, the petitioner was only one part of the entire episode which started with an unauthorized saving bank account being opened by Shri P.K. Garg and which culminated with fraudulent withdrawal of Rs.56,000/-.

31. Admittedly, Shri B.B.L. Gupta has been punished with a penalty of withholding of one increment permanently and a penalty of censure. No action has been taken against Shri P.K. Garg. Dismissal order imposed against Shri Mohd Yunus was set aside by this Court vide judgment and order dated 04.09.2012 and upon it being remitted to the respondents, Shri Mohd Yunus had been imposed with a penalty of withholding one increment permanently while it is only the petitioner who has been imposed with a major penalty of dismissal from service.

32. As already indicated above, all the aforesaid persons were part of the same episode and consequently there clearly has been discrimination in punishment meted out to the individuals, who are involved in the entire episode, with two individuals namely Shri B.B.L. Gupta and Shri Mohd Yunus being punished with withholding one increment permanently and another individual namely Shri P.K. Garg not being proceeded against.

33. Hon'ble Supreme Court in the case of **Rajendra Yadav (supra)** has held as under:-

"8. We have gone through the inquiry report placed before us in respect of the appellant as well as Constable Arjun Pathak. The inquiry clearly reveals the role of Arjun Pathak. It was Arjun Pathak who had demanded and received the money, though the tacit approval of the appellant was proved in the inquiry. The charge levelled against Arjun Pathak was more serious than the one charged against the appellant. Both the appellants and other two persons as well as Arjun Pathak were involved in the same incident. After having found that Arjun Pathak had a more serious role and, in fact, it was he who had demanded and received the money, he was inflicted comparatively a lighter punishment. At the same time, the appellant who had played a passive role was inflicted with a more serious punishment of dismissal from service which, in our view, cannot be sustained.

9. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot

impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences.

10. The principle stated above is seen applied in a few judgments of this Court. The earliest one is *DG of Police v. G. Dasayan* [(1998) 2 SCC 407 : 1998 SCC (L&S) 557] wherein one Dasayan, a police constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The disciplinary authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on the Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India.

11. In *Shaileshkumar Harshadbhai Shah* case [(2006) 6 SCC 548 : 2006 SCC (L&S) 1486] the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on

which the others were given the benefit.

12. We are of the view that the principle laid down in the abovementioned judgments would also apply to the facts of the present case. We have already indicated that the action of the disciplinary authority imposing a comparatively lighter punishment on the co-delinquent Arjun Pathak and at the same time, harsher punishment on the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. The appellant is, therefore, to be reinstated from the date on which Arjun Pathak was reinstated and be given all consequential benefits as were given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs."

34. Likewise the Hon'ble Supreme Court in the case of **Rajendra Singh (supra)** has held as under:-

"17. If there is a complete parity in the two sets of cases, imposing different penalties would not be appropriate as inflicting of any/higher penalty in one case would be discriminatory and would amount to infraction of the doctrine of equality enshrined in Article 14 of the Constitution of India. That is the ratio of *Rajendra Yadav* case [*Rajendra Yadav v. State of M.P.*, (2013) 3 SCC 73 : (2013) 1 SCC

(L&S) 476 : (2013) 2 Scale 416] , already taken note above. On the other hand, if there is some difference, different penalty can be meted out and what should be the quantum is to be left to the appellate authority. However, such a penalty should be commensurate with the gravity of misconduct and cannot be shockingly disproportionate. As per the ratio of Obettee (P) Ltd. case [Obettee (P) Ltd. v. Mohd. Shafiq Khan, (2005) 8 SCC 46 : 2005 SCC (L&S) 1075] even if the nature of misconduct committed by the two sets of employees is same, the conduct of one set of employees accepting the guilt and pleading for lenient view would justify lesser punishment to them than the other employees who remained adopted the mode of denial, with the result that charges stood proved ultimately in a full-fledged enquiry conducted against them. In that event, higher penalty can be imposed upon such delinquent employees. It would follow that choosing to take a chance to contest the charges such employees thereafter cannot fall back and say that the penalty in their cases cannot be more than the penalty which is imposed upon those employees who accepted the charges at the outset by tendering unconditional apology.

18. This, according to us, would be the harmonious reading of Obettee (P) Ltd. [Obettee (P) Ltd. v. Mohd. Shafiq Khan, (2005) 8 SCC 46 : 2005 SCC (L&S) 1075] and Rajendra Yadav [Rajendra Yadav v. State of M.P., (2013) 3

SCC 73 : (2013) 1 SCC (L&S) 476 : (2013) 2 Scale 416] cases."

35. Another aspect of the matter is that after the petitioner had been served with the inquiry report, a show cause notice was issued to him asking him to submit his reply. The petitioner submitted a detailed reply pointing out the incongruities in the inquiry report and in the process of inquiry but the disciplinary authority, although indicating about the reply having been submitted by the petitioner on 25.04.2004 yet has failed to consider the same and has dismissed the petitioner from service.

36. It is settled proposition of law that when a reply has been submitted, the concerned authority is required to apply his mind to the reply submitted by the employee concerned. In this regard, it would be suffice to refer to the judgment of the Hon'ble Supreme Court in the case of **Raj Kumar Mehrotra Vs. State of Bihar & Ors** reported in **(2005) 12 SCC 256** wherein the Hon'ble Supreme Court has held as under:-

"5. Without going into other issues raised, we are of the view that the impugned order of the respondent authority imposing punishment on the appellant cannot be sustained. Even if we assume that Rule 55-A which pertains to minor punishment was applicable and not Rule 55 which relates to major punishments, nevertheless Rule 55-A requires that the punishment prescribed therein cannot be passed unless the representation made pursuant to Show cause notice has been taken into consideration before the order is passed. There is nothing in the

impugned order which shows that any of the several issues raised by the appellant in his answer to the show cause notice were, in fact, considered. No reason has been given by the respondent authority for holding that the charges were proved except for the ipse dixit of the disciplinary authority. The order, therefore, cannot be sustained and must be and is set aside."

37. Likewise, the Hon'ble Supreme Court in the case of Oryx Fisheries Private Limited Vs. Union of India & Ors reported in (2010) 13 SCC 427 has held as under:-

"40. In M/s Kranti Associates (supra), this Court after considering various judgments formulated certain principles in para 51 of the judgment which are set out below.

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions. c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant

grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and

succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

41. In the instant case the appellate order contains reasons. However, absence of reasons in the original order cannot be compensated by disclosure of reason in the appellate order. "

38. Keeping in view the aforesaid discussion, it is thus apparent that the impugned order of dismissal is legally invalid and merits to be quashed.

39. Consequence to the punishment order being quashed on the aforesaid ground is remitting of the matter to the disciplinary authority to pass a fresh order. However, in the instant case, the petitioner has died during the pendency of the instant petition on 24.12.2010 and has been substituted by his legal heirs. Thus, remand of the matter in such circumstances is not found to be appropriate by this Court.

40. In this regard, it would be apt to refer to the judgment of the Hon'ble Supreme Court in the case of **B.C. Chaturvedi vs Union Of India And Ors : 1995(6) SCC 749** wherein the Hon'ble Supreme Court has held in exceptional and rare cases, the High Court can itself impose an appropriate punishment with cogent reasons in support thereof. Consequently exercising power under Section 226 of the Constitution of India as well as considering the punishment as has been accorded to the other persons in the same episode, the Court is of the view that the punishment of withholding one increment permanently and one censure should be imposed on the petitioner and consequently the said punishment be read for the petitioner with effect from the date of dismissal order i.e. 16.09.2000.

41. As regards the grievance that the petitioner has not been paid subsistence allowance since he was suspended on 18.03.1999, the respondents have indicated that the petitioner failed to submit the requisite certificate of not being engaged in any other business or profession in order to get subsistence allowance. In absence

thereto and there being a clear stipulation in the suspension order for submission of a certificate and no such certificate having been given by the petitioner consequently no direction can be issued for payment of subsistence allowance.

42. Keeping in view the aforesaid discussion, the writ petition is *partly allowed*. Impugned order dated 16.09.2020, a copy of which is Annexure-16 to the petition, is quashed. Punishment of withholding one increment permanently and censure would now stand imposed on the petitioner with effect from 16.09.2000. Consequences to follow.

(2025) 3 ILRA 580
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.03.2025

BEFORE

**THE HON'BLE SAURABH SHYAM
 SHAMSHERY, J.**

Writ A No. 19031 of 2024
 alongwith other connected cases

Radheyshyam Shukla & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
 Nawal Kishor Mishra

Counsel for the Respondents:
 C.S.C.

A. Constitution of India, 1950 – Article 226 – Judicial review – Commutation of pension – 15 years formula – Policy matter – Scope of interference – *Common Cause's case* relied upon – Commutation of pension is an option and is exercised by choice and it is not mandatory or compulsory to seek commutation and being a policy matter

cannot be subjected to judicial review except being mala fide or extremely arbitrary or contrary to Statute or irrational. (Para 12)

B. Service Law – UP Civil Pension Commutation Rules, 1941 – Pension – Option of commutation – Benefit of lump sum amount after commutation was received – 15 years formula was adopted – Effect – Notification extended the period to 15 years – Validity challenged – Held, this neither prejudices the rights of any of the parties nor confers any undue advantage upon any party – Only on ground that government has received some more amount to the amount commuted way back 12 years to 15 years ago would itself not be a ground to quash the notification not being an irrational decision, even rate of interest if calculated would be on very low side – *Ashok Kumar Agrawal's case* relied upon. (Para 15 and 17)

Writ petition dismissed. (E-1)

List of Cases cited:

1. Ashok Kumar Agrawal & ors. Vs U.O.I. & anr., 2025:AHC:6439-DB
2. 'Common Cause' A Registered Society & ors. Vs U.O.I.; (1987) 1 SCC 142
3. Forum Of Retired IPS Officers (FORIPSO) Vs U.O.I. & anr., AIR ONLINE, 2019 DEL 508
4. R. Gandhi Vs U.O.I. & anr.; (1999) Supp. 1 SCR
5. Welfare Association Of Absorbed Central Government Employees in Public Enterprises Vs U.O.I. & ors.; (1991) 2 SCC 265
6. Bharat Petroleum Corp. Ltd. Ex. Employees Association & ors. Vs Chairman and Managing Director Bharat Petroleum Corporation Ltd. Bombay & ors.; (1993) 3 SCALE 424
7. T.R. Single & ors. Vs St. of Pun. & ors.; (2003) 2 ILR Punjab and Haryana 254

(Delivered by Hon'ble Saurabh Shyam
Shamshery, J.)

1. Heard S/Sri Nawal Kishor Mishra, Praveen Tiwari, Bhagwan Dutt Pandey, Rajesh Tripathi, Vijay Kumar Rai, Ram Krishna Yadav, Ashok Kumar Yadav, Pashant Singh, Anurag Shukla, Satish Chandra Tiwari, Brijendra Kumar Srivastava, Suresh Singh, Rajesh Kumar, Vinod Kumar Singh, Chandra Bhan Gupta, Chheda Lal Verma, Rajnish Kumar Srivastava, Anil Kumar Sharma and Ms. Durga Tiwari, learned counsels for petitioners, Sri Ashish Kumar Nagvanshi and Sri Rajesh Kumar Tiwari, learned A.C.S.C. for State along with other connected writ petitions.

2. This is bunch of writ petitions. All the petitioners have retired many years ago from the U.P. Government of Higher Education Department and are receiving pension and they have received benefits of a lump sum amount by Commutating their respective pension under Uttar Pradesh Civil Pension Commutation Rules, 1941.

3. The petitioners are aggrieved that their commutation amount has already recovered in about 10 to 12 years, however, by an Office Memorandum dated 08.12.2008, recovery from pension is directed to continue up to 15 years and as such the government has received much more amount than it was commuted. All the writ petitioners have challenged the said Office Memorandum dated 08.12.2008 on similar ground that according to their contention, the commutation amount was not loan, therefore, the exact amount could only be recovered and not more.

4. Learned counsels for petitioners have also argued that there is no provision

that by way of an Office Memorandum dated 08.12.2008, number of years to recover commutation value could be determined upto 15 years, without any basis and otherwise also it was excessive and arbitrary.

5. This Court has earlier asked the counsels for petitioners to go through a recent judgement passed by Division Bench of this Court in case of **Ashok Kumar Agrawal and 48 others versus Union of India and another, 2025:AHC:6439-DB**, wherein similar arguments were rejected in regard to petitioners therein i.e. employees of Punjab National Bank. For reference the relevant part thereof is mentioned hereinafter :-

“Having accepted such offer, a binding contract comes into existence between the employee and the employer as per which the original pension is to be restored after 15 years. Having acquiesced to the commutation policy with open eyes, it is not open for the retiring employee to contend later that the period of restoration of full pension be reduced from 15 years to 10 years. Whether or not the lumpsum amount gets equalised on expiry of 10 years or 11 year is not decisive or material. What is material is the nature of obligation which enures upon the parties when the retiring employee accepts the provision of commutation of pension. The employee with his open eyes having availed the policy, cannot subsequently turn around or seek modification in its terms. The argument that the table or the figures were not adequately disclosed, is also not acceptable,

inasmuch as the chart specifies the manner in which the commutation is to be fixed and the period after which the original pension is to be restored. In case, the employees had any misgivings about it, they could have sought appropriate clarification before accepting the offer. Once, the petitioners have acquiesced to the policy and accepted the offer, their subsequent attempt to resile or seek change in its computation would clearly be impermissible.

The writ petition lacks merit and is, accordingly, dismissed.

The view taken by us clearly finds support from the adjudication made by the Supreme Court in "Common Cause", A Registered Society And Others Vs. Union of India, (1987) 1 Supreme Court Cases, 142, R. Gandhi Vs. Union of India And Others, (1999) 8 SCC 106 as well the judgment of Delhi High Court in Forum Retired IPS Officers (FORIPSO) Vs. Union of India & Another, 2019 SCC Online Del 6610 and Punjab & Haryana High Court in Shila Devi Vs. State of Punjab in CWP No. 9426 of 2023. "

6. In regard to above judgment, learned counsels for petitioners have submitted that in their case there was no contract or specific regulation in regard to period of 15 years for the purpose of return of commuted amount.

7. Per contra, learned counsels for State have supported the impugned order and referred that issue has already been settled by the Supreme Court in ‘**Common**

Cause’ A Registered Society and others Vs. Union of India, (1987) 1 SCC 142.

8. I have considered the above submission and perused the record.

9. It is not under much dispute that all petitioners have got benefit of a lump sum amount after commutation of their respective pension at the time when they respectively attained the age of superannuation and pension was determined. Relevant Rules of Uttar Pradesh Civil Pension Commutation Rules, 1941 are reproduced hereinafter :-

“4. उक्त नियम-3 के प्रावधानों तथा एतास्मिन् पश्चात् विनिर्दिष्ट शर्तों के अध्यधीन और प्रभाव को पूरा करने के लिए बजट प्रावधान अस्तित्व के भी, किसी सरकारी सेवक जिसको ये नियम लागू होते हैं, को पेंशन, जो सिविल, नियमावली के अधीन उसको स्वीकृत किया गया है, के 40% से अनधिक किसी भाग के एकमुश्त अदायगी के लिए राशिकृत करने की अनुमति दी जा सकेगी, परन्तु

(क) विदेशी मुद्रा में है अतः अप्रासंगिक है अतः मुद्रित नहीं

(ख) जब पेंशन रुपये में संदेय हो, तब

(I) राशिकरण के बाद पेंशन का अवशेष किसी व्यक्ति के मामलों में 20 रु० प्रतिमाह अब छठे वेतन आयोग की संस्तुतियों के अनुसार रु० 2100/- से कम नहीं होगा, तथा

(II) साधारणतया राशिकृत मूल्य नीचे विनिर्दिष्ट उद्देश्यों में से एक या अधिक पर व्यय किया जाएगा, यथा-

(1) गृह यह गृहस्थल का सन्निर्माण पुर्ननिर्माण या क्रय

(2) ऋण का परिसमापन

(3) बच्चों या आश्रितों की शिक्षा

(4) विवाह सम्बन्धी व्यय, और

(5) किसी व्यवसाय या उपक्रम को प्रारम्भ करना।

परन्तु यह और कि पूर्ववर्ती परन्तुक के खण्ड क तथा ख के प्रयोजनों के लिए पेंशन की धनराशि की संगणना करने में इसमें भारत या किसी अन्य सरकार के राजस्व से आवेदक को संदेय किसी अन्य स्थायी पेंशन या पेंशनरो के राशिकृत भाग को जोड़ा जा सकेगा।

टिप्पणी- ऐसे सरकारी सेवक, जिसे 1 अप्रैल, 1948 को या के बाद भर्ती किया गया है, तथा सरकारी सेवक, जो उस तिथि के पहले से सेवा में थे किन्तु जिसने नियम 16 के प्रथम परन्तुक के अधीन 40% राशि अंशदायी भविष्य निधि पेंशन बीमा नियमावली, 1948 का चुनाव किया है, को इस नियम के अधीन तथा विहित पेंशन के आधे से अनाधिक किसी भाग के बदले उस परन्तुक के अधीन उसे संदेय वास्तविक पेंशन के 40% से अनाधिक किसी भाग की एकमुश्त अदायगी के लिए राशिकृत करने की अनुमति दी जा सकेगी, यदि वह उस नियमावली के नियम 19 के प्रथम परन्तुक के अधीन अपने को वास्तव में संदेय पेंशन को आहरित करने का चुनाव करता है।

(2) उ०प्र० उदारीकृत पेंशन नियमावली, 1961 के अध्यक्षईन, सरकारी सेवक के मामले में, उसको वास्तव में संदेय पेंशन के भाग, जिसे एकमुश्त अदायगी के लिए राशिकृत किया जा सकता है, का निर्धारण उक्त नियमावली के नियम 9 के अनुसार किया जाएगा।

5. साधारणतया सिविल सेवा विनियम के अनुच्छेद 353 के अधीन स्वीकृत अनुकम्पा भत्ता के

राशिकरण को अनुज्ञात किया जाएगा, किन्तु राज्य सरकार ऐसे भत्ता के राशिकरण को स्वीकृत कर सकेगी, यदि उसे समाधान है कि राशिकरण राशिकरणकर्ता के परिवार के स्थायी लाभ के लिए होगा।

6. जब तक अन्यथा निदेश न दिया जाये, आवेदन-पत्र इस नियमावली के भाग दो में वर्णित प्रक्रिया के अनुसार निम्नलिखित को सम्बोधित किये जायेंगे—

(क) ऐसे पेंशनभोगियों के मामले जो भारतीय कोषागारों से अपनी पेंशन आहरित, करते हो या जो ऐसे कालोनी के, जिनका कोई लेखा महालेखाकार, केन्द्रीय राजस्व में हो, निवासी होते हुए स्थानीय कोषागारों से अपनी पेंशन आहरित करते हों, यथास्थिति, राज्य सरकार को या राशिकरण कराने की स्वीकृति देने के लिए सशक्त प्राधिकारी को; और
(ख) समस्त अन्य पेंशन भोगियों के मामले में, भारत के उच्चायुक्त को।

*[7. (1) कोई राशिकरण तब तक स्वीकृत नहीं किया जायेगा जब तक कि पेंशनभोगी ने सक्षम चिकित्सीय प्राधिकारी से इस आशय का एक प्रमाण-पत्र प्रस्तुत नहीं कर दिया है कि उसका शारीरिक स्वास्थ्य तथा जीवन काल की प्रत्यासा ऐसी है जो राशिकरण को न्यायोचित ठहराये। भारत में संदेय पेंशन के सम्बन्ध में राज्य सरकार या राशिकरण स्वीकर्ता प्राधिकारी को भी हो, अपने स्वविवेक निर्णय पर दूसरा चिकित्सीय प्रमाण-पत्र प्रस्तुत करने की अपेक्षा कर सकेगी या चिकित्सीय परिषद् के समक्ष पेंशन भोगी को उपस्थित होने का निर्देश दे सकेगी।

[परन्तु चिकित्सा परीक्षा और सक्षम चिकित्सा प्राधिकारी से प्रमाण-पत्र प्रस्तुत करना आवश्यक नहीं होगा, जहाँ पेंशनभोगी, जिनमें यह पेंशन भोगी है जो स्वेच्छा से, अनिवार्य रूप से या अशक्त होने पर सेवानिवृत्त हुआ हो. अपने/अपनी सेवानिवृत्ति के दिनांक से या पेंशन भुगतान आदेश के जारी होने के दिनांक से, इसमें जो भी पश्चातवर्ती हो, एक वर्ष के भीतर विहित प्रपत्र 'कक' में राशिकरण के लिए आवेदन-पत्र प्रस्तुत करें।

(2) यदि आवेदक अपनी चिकित्सा परीक्षा के सम्बन्ध में पूछे गये किसी लिखित या मौखिक प्रश्न के उत्तर में अपनी जानकारी में ऐसा कोई कथन करता है जिसे मिथ्या पाया जाये या किसी तात्विक तथ्य को जानबूझ कर छिपाता है तो, यथास्थिति राज्य सरकार या राशिकरण स्वीकृत करने के लिए सशक्त प्राधिकारी वास्तविक भुगतान किये जाने के पूर्व किसी भी समय ऐसी स्वीकृति करे रद्द कर सकता है और ऐसे किसी कथन या तथ्य के छिपाने को सिविल सर्विस रेगुलेशन्स के अनुच्छेद 351 के प्रयोजनार्थ गम्भीर कदाचार भी माना जायेगा।

'[8. राशिकरण पर संदेय एकमुश्त धनराशि वह धनराशि होगी। जिसे राष्ट्रपति द्वारा विहित सारणी या आरणियों या वर्तमान मूल्य के अनुसार लेखा अधिकारी द्वारा स्वीकृत की जायें। इस नियम के प्रयोजन, के लिए चिकित्सीय की आयु मामले में ऐसी आयु मानी जायेगी जो वास्तविक आयु से कम नहीं है, जैसा कि प्रमाणित करने वाले चिकित्सीय प्राधिकारी निर्देश दें।

फिर भी नियम-7 के उप-नियम (1) परन्तुक के अन्तर्गत आने वाले

मामलों में अर्थात् ऐसे राशिकरण के मामले में, जिसमें चिकित्सा परीक्षा आवश्यक नहीं है, लेखा अधिकारी से राशिकरण कराने पर देय एकमुश्त धनराशि पर रिपोर्ट माँगना आवश्यक नहीं होगा। उक्त धनराशि की गणना राशिकरण स्वीकृत करने के लिए सक्षम प्राधिकारी द्वारा अपने स्तर पर ऊपर निर्दिष्ट वर्तमान मूल्य की सारिणी या सारिणियों और विभागाध्यक्ष/कार्यालयाध्यक्ष द्वारा सभी प्रकार से पूर्ण आवेदन-पत्र की प्राप्ति के दिनांक के पश्चात् पड़ने वाले अगले जन्म के दिनांक को पेंशनभोगी की आयु के अनुसार की जायेगी। लेखाधिकारी उक्त प्राधिकारी से स्वीकृति आदेश प्राप्त करने के पश्चात् सम्बद्ध कोषागार को भुगतान के लिए प्राधिकार जारी करने के पूर्व राशिकरण के मूल्य की गणना की शुद्धता की जाँच करेगा और यह भी देखेगा कि राशिकृत भाग पेंशन के '[40%] से अधिक' न हो।

9. ऐसे मामलों में, जिनमें आवेदन-पत्र राज्य सरकार को नियम 6 के खण्ड (क) के अधीन राशिकरण स्वीकृत करने के लिए सशक्त प्राधिकारी को सम्बोधित हो, एकमुश्त धनराशि रुपयों में देय होगी।

----- एकमुश्त धनराशि के सपरिवर्तन के लिए, जहाँ सपरिवर्तन का प्रश्न उत्पन्न हो, विनियम दर ऐसी दर होगी जो नियम-10 में उल्लिखित दिनांक पर लागू हों।

10. (1) नियम 7 के उप-नियम (1) के परन्तुक के अधीन आने वाले मामलों को छोड़कर, राशिकरण, जब स्वीकृत हो जाये, आदेश में विनिर्दिष्ट किये जानें वाले दिनांक से, जो साधारणतया आदेश के दिनांक से पन्द्रह दिन पश्चात् का दिनांक होगा प्रभावी होगा और

समस्त गणना उस दिनांक के निर्देश से की जायेगी।

टिप्पणी-विशेष मामलों में स्वीकृति प्राधिकारी इस नियम में उल्लिखित दिनांक से पूर्व के किसी दिनांक से, किन्तु यह स्वीकृत आदेश के दिनांक से पूर्व का नहीं होगा, राशिकरण की अनुमति दे सकता है। तब समस्त गणना ऐसे पूर्ववर्ती दिनांक से की जायेगी।

(2) नियम 7 के उप-नियम (1) के परन्तुक के अधीन मामलों में, अर्थात् बिना चिकित्सा परीक्षा के पेंशन के राशिकरण के मामलों में राशिकरण उस दिनांक से प्रभावी होगा जब सभी प्रकार से पूर्ण आवेदन-पत्र विभागाध्यक्ष/कार्यालयाध्यक्ष के पास पहुँचें और समस्त गणना उस दिनांक के निर्देश से और नियम-8 के अनुसार की जायेगी।

11. (1) नियम 7 के उप-नियम (1) के परन्तुक के अधीन मामलों को छोड़कर पेंशनभोगी यदि वह ऐसा चाहे, यथास्थिति, राज्य सरकार या राशिकरण स्वीकृत करने के लिए सशक्त प्राधिकारी या भारत के उच्चायुक्त को लिखित नोटिस द्वारा, जिससे कि वह उस दिनांक के जब राशिकरण अन्तिम हो जाये, पूर्व उक्त प्राधिकारी के पास पहुँचें, अपने आवेदन-पत्र को वापस ले सकता है।

(2) यदि वह खण्ड (1) में विनिर्दिष्ट अवधि के भीतर अपना आवेदन वापस नहीं लेता तो राशिकरण अन्तिम हो जायेगा, पेंशन के राशिकृत भाग को प्राप्त करने का अधिकार समाप्त हो जायेगा और राशिकृत मूल्य को प्राप्त प्राप्त करने का हक उस तिथि से प्रोद्भूत होगा, जिससे राशिकरण प्रभावी हों।
राशिकृत मूल्य का भुगतान,

सथासम्भव, उस तिथि से किया जायेगा जब से राशिकरण प्रभावी हो, किन्तु वास्तविक भुगतान की तिथि चाहे जो हो, संदत्त धनराशि तथा पेंशन पर प्रभाव नहीं होगा, मानों राशिकृत मूल्य उस तिथि को अदा किया गया था, जिसको राशिकरण अन्तिम हो गया था। यदि पेंशन का राशिकृत भाग उस तिथि के बाद आहरित किया गया है जिस पर राशिकरण आत्यन्तिक हो जाता है, तो आहरित धनराशि को राशिकरण में संदेय धनराशि में कम कर लिया जाएगा।

'[(3) नियम-7 के उप-नियम (1) के परन्तुक के अधीन आने वाले मामले में, पेंशनभोगी को अपना आवेदन-पत्र वापस लेने का हक नहीं होगा और राशिकरण उस दिनांक को अन्तिम हुआ समझा जायेगा जब राशिकरण के लिये आवेदन-पत्र, जो सभी प्रकार से पूर्ण हो, विभागाध्यक्ष/कार्यालयाध्यक्ष को प्राप्त हो जाये।

12. राशिकरण को जिसके लिए एक बार आवेदन किया गया था, स्वीकृत किया गया था तथा प्रभावी किया गया था, को विखण्डित नहीं किया जा सकता, अर्थात् राशिकृत पेंशन के भाग को उसके पंजीकृत भाग के प्रतिदाय पर प्रत्यावर्तित नहीं किया जा सकता।

[13. यदि पेंशनभोगी की मृत्यु राशिकरण अन्तिम हो जाने के दिनांक या उसके पश्चात् किन्तु राशिकरण का मूल्य प्राप्त करने के पूर्व हो आये, तो इस मूल्य का भुगतान उसके विधिक उत्तराधिकारी को किया जायेगा।

टिप्पणी-नियम-7 के उप-नियम (1) के परन्तुक के अधीन आने वाले बिना चिकित्सा परीक्षा के राशिकरण

के मामलों में, राशिकरण उस दिनांक को अन्तिम हो जाता है जब उसका पूर्ण आवेदन-पत्र विभागाध्यक्ष/कार्यालयाध्यक्ष द्वारा प्राप्त हो जाये। यदि ऐसे मामले में, पेंशनभोगी की मृत्यु राशिकृत मूल्य प्राप्त करने के पूर्व उक्त दिनांक हो या उसके पश्चात् हो जाये तो इस मूल्य का भुगतान उसके विधिक उत्तराधिकारी को किया जायेगा। ”

10. As referred above, an opportunity was granted to petitioners that they can committed their pension to get a lump sum amount as and when their respective pension was determined which could preferably be used for the above referred purposes (See Rule 4 of Rules 1941), though, none of petitioners have declared that they have used said amount for any of referred purpose and for any ancillary purpose. Though the Court is not entering into such dispute at this stage, however, it has to be noted that purpose of commutation was beneficiary for pensioners, so they could get a lump sum amount to use it for their benefit and for that some fixed amount to be deducted from their pension upto certain years which is now 15 years.

11. All the petitioners are guilty of approaching this Court at the very belated stage. The impugned notification is of year 2008 and they have approached this Court in the year 2024 i.e. after more than 16 years , probably being fence sitter and since some other High Courts have granted stay on further recovery when pensioners of their State approached to challenge number of years of recovery, which was later on followed by this Court and co-ordinate Benches have passed certain interim orders.

12. the Supreme Court way back in the year 1987 in case of of **"Common Cause" A Registered Society And Others Vs. Union of India, reported in 1987 SCC (1) 142**, has held that commutation of pension is an option and is exercised by choice and it is not mandatory or compulsory to seek commutation and being a policy matter cannot be subjected to judicial review except being mala fide or extremely arbitrary or contrary to Statute or irrational and held that:-

“Commutation brings about certain advantages. The commuting pensioner gets a lump sum amount which ordinarily he would have received in course of a spread over period subject to his continuing to live. Two advantages are certainly forthcoming out of commutation--(1) availability of a lump sum amount, and (2) the risk factor. Many State Governments have already formulated schemes accepting the 15 years rule. This Court would not be justified in disturbing the 15 years formula so far as civilian pensioners are concerned”

13. Similarly a Division Bench of High Court of New Delhi in Forum Of Retired IPS Officers (FORIPSO) Vs. Union of India and another, AIR ONLINE, 2019 DEL 508, has considered similar argument and has negated it, with following observations, after taking note of recommendations of 6th Pay Commission and other factors that :-

“We would want most favourable terms for the pensioners, but there are restraints and the field experts and not the

Court is the best judge to evaluate on different and somewhat conflicting factors that have to be taken into consideration. This is not to say that courts do not have jurisdiction and aggrieved pensioners/employees if they are unjustly treated cannot be granted relief, but for such interference the Court should come to a firm conclusion that a grave error had crept in which makes the court's interference absolute to do justice. Interference in such matter can result in creating all kinds of problems and cascading effects as these are highly complexed and difficult matters requiring balancing of various competing interests, which would to some extent include financial resources available”

14. The Division Bench of this Court in **Ashok Kumar Agrawal (supra)** has also taken note of above referred judgments and declined the objections of petitioners therein about fixing a period of 15 years to return commuted amount, therefore, the principle laid in **Ashok Kumar Agrawal (supra)** is also applicable in present case and no circumstances exists to take a different view.

15. The impugned notification is being promulgated under the provisions of 1941 Rules, and has only prescribed the method of commutation amount and period thereof which is now 15 years and only on ground that government has received some more amount to the amount commuted way back 12 years to 15 years ago would itself not be a ground to quash the notification not being an irrational decision, even rate

of interest if calculated would be on very low side.

16. The Court also takes note that in one of writ petitions, petitioners have mentioned that they have paid in terms of their commutation lump sum amount more than, ranging from 1 to 7 lac but it would itself not be a ground to quash any said notification since they have not only taken advantage of lump sum taken 12 or 15 years ago to spend on specific purposes as described in Rules 1941 on a certain undertaking and that they have not disclosed whether such amount was used for said purpose or any ancillary purpose. It is not a case that due to return of commuted amount till 15 years, the State has enriched substantially.

17. The Court also takes note of another judgment passed by Supreme Court in **R. Gandhi Vs. Union of India and another, (1999) Supp. 1 SCR**, wherein **Common Cause (supra)** was followed that “the decision in **Common Cause (supra)** has been understood in all subsequent judgments of this Court as 15 years from the date of commutation and we are in respectful agreement with the same. This neither prejudices the rights of any of the parties nor confers any undue advantage upon any party” and accordingly, impugned memorandum therein was upheld whereby it was decided that the commuted pension would be recovered for a period of 15 years. The Supreme Court has also followed **Common Cause (supra)** in **Welfare Association Of Absorbed Central Government Employees in Public Enterprises Vs. Union of India and others, (1991) 2 SCC 265** as well as **Bharat Petroleum Corporation Limited Ex. Employees Association and others Vs. Chairman and Managing Director**

Bharat Petroleum Corporation Limited Bombay and others, (1993) 3 SCALE 424. (also see : T.R. Single and others Vs. State of Punjab and others, (2003) 2 ILR Punjab and Haryana 254, and Shila Devi and others Vs. State of Punjab and others and converted 807 petitions decided by Punjab and Haryana High Court on 27.11.2024, wherein also policy of fixing 15 years for recovery of commuted part of pension was upheld)

18. The Court also takes note that commuted amount petitioners has range from 12 lakh to 14 lakh and installment is between 11,000/- and 14,000/- per month, which is not exorbitant. The petitioners has also not disclosed their respective pension amount. It is also relevant to note that for purpose of other benefits, pension amount is considered without taking note of commuted amount and accordingly, all writ petitions are **dismissed** and correspondently interim orders passed in all writ petitions are vacated.

19. A copy of this order be communicated to Principal Secretary (Finance), Government of U.P. at Lucknow.

20. Registrar (Compliance) to take steps.

(2025) 3 ILRA 588
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 27.03.2025

BEFORE

THE HON'BLE JASPREET SINGH, J.

Writ B No. 1043 of 2024

Chandan Singh @ Chandra Pal Singh
...Petitioner
Versus
D.D.C Sitapur & Ors. ...Respondents

Counsel for the Petitioner:
 Mohammad Aslam Khan

Counsel for the Respondents:
 C.S.C., Digvijay Singh, Dilip Kumar Pandey

A. Civil Law -U.P. Zamindar Abolition & Land Reforms Act,1950-Section 171-The dispute pertained to agricultural plots recorded in the name of late Ruda Singh, who died intestate in 1979- n 1984, a revenue court vested his land with the Gaon Sabha, declaring he had no legal heirs-The petitioner, claiming to be his nephew, challenged this much later during consolidation proceedings starting in 1995-The petitioner failed to challenge the 1984 order in a timely manner-The petitioner's evidence of kinship(an undated certificate by the gram pradhan) lacked authenticity and corroboration-There were inconsistencies in his identity ,age and claims-He executed gift deeds in favour of third parties soon after his name was recorded, raising suspicion of land grabbing-The court held that the petitioner failed to establish any valid relationship with Ruda Singh-The only proof submitted (a pradhan certificate) had no legal value-Thus, the court concluded that the findings of the Deputy Director of Consolidation were based on valid legal and factual reasoning.(Para 1 to 71)

The writ petition is dismissed. (E-6)

(Delivered by Hon'ble Jaspreet Singh, J.)

1. In order to appreciate the controversy involved in the instant petition, the relevant facts giving rise to the cause of action to the petitioner are being noticed hereinafter.

2. The dispute in question relates to Plots No.100, 318 and 443 having a total area of 4.3120 hectares, situate in village Para, Pargana, Tehsil and District Sitapur. The aforesaid plots are part of Khata

No.218 which was recorded in the name of Ruda Singh as its Bhumidhar in the base year khatauni.

3. Ruda Singh is said to have expired in the year 1979 leaving behind his nephew (bhanja) i.e. the petitioner, who was the son of Smt. Sita Singh (sister of Ruda Singh and second wife of Fakirey Singh). The petitioner claimed rights in the property in dispute on the basis of being the preferential heir in terms of Section 171 of the U.P. Zamindar Abolition & Land Reforms Act, 1950 (for short, 'the Act of 1950').

4. The record indicates that in the year 1984, certain proceedings under Section 194 of the Act of 1950 were initiated in the Court of Sub Divisional Officer, Sitapur and vide its order dated 17.09.1984, the said case was decided by recording a finding that Shri Ruda Singh had died intestate. Since, he did not have any legal heir, hence, the plots in question were ordered to be recorded in the name of Gaon Sabha.

5. The petitioner states that when he came to know about the order dated 17.09.1984, he preferred a revision before the Additional Commissioner, Lucknow Division, Lucknow. By the said revision bearing No.78/2018, the petitioner had assailed the order, but during the aforesaid proceedings before the Additional Commissioner, it was noticed by the said Court that since an appeal under Section 11(1) of the Act of 1953 was pending before the Settlement Officer of Consolidation, hence, the revisional Court abated the revision vide its order dated 22.02.2022.

6. It is also the case of the petitioner that village in question was

notified under Section 4 of the Act of 1953 on 22.07.1995. The petitioner had filed his objections under Section 9-A(2) of the Act of 1953 before the Consolidation Officer, claiming title over the disputed plots as being the heir of late Ruda Singh (Mamaji, maternal uncle of the petitioner) on the basis of inheritance being the legal heir. In support of his claim, the petitioner had filed a certificate issued by Gram Pradhan stating that the petitioner is the nephew (Bhanja) of late Ruda Singh and that Smt. Sita Singh (mother of the petitioner) was the real sister of late Ruda Singh.

7. The Consolidation Officer vide its order dated 04.01.2016 allowed the objections of the petitioner. The State as well as Gram Sabha being aggrieved against the order dated 04.01.2016 passed by the Consolidation Officer preferred an appeal under Section 11(1) of the Act of 1953. Simultaneously, an appeal was also filed by Mohd. Imran Khan, Hari Shankar and Smt. Rukhsana. The Settlement Officer of Consolidation after hearing the parties concerned dismissed all the appeals by means of the order dated 08.05.2023.

8. In the meantime, in pursuance of the order dated 04.01.2016 passed by the Consolidation Officer in favour of the petitioner, the Consolidation Officer vide its order dated 09.06.2023 incorporated the name of the petitioner in the records maintained by the consolidation authorities. This order dated 09.06.2023 passed by the Consolidation Officer in proceedings under Rule 109 of the U.P. Consolidation and Holdings Rules, 1954 (for short, 'the Rules of 1954') was assailed by filing an appeal by the State and the Gaon Sabha, Mohd. Imran Khan, Hari Shankar and Smt. Prema Devi. All the said appeals were dismissed by the Settlement Officer of Consolidation.

9. In the aforesaid backdrop, eight revisions were filed before the Deputy Director of Consolidation. One set was filed by the State, the other set was filed by Gaon Sabha. Separate revision was filed by Mohd. Imran Khan, separate revision was filed by Smt. Rukhsana and two separate revisions were filed by Hari Shankar. All the revisions were connected and have been decided by means of the order dated 17.09.2024. The Deputy Director of Consolidation allowed five revision filed by the State and Gaon Sabha wherein the order dated 04.01.2016 passed under Section 9-A(2) of the Act of 1953, order dated 09.06.2023 passed by the Consolidation Officer under Rule 109 of the Rules of 1954 along with order dated 08.05.2023 and 03.08.2023 passed by the Settlement Officer of Consolidation were set aside as a consequence revisions ending with the following number 173, 248, 267, 118 and 119 were allowed and revision ending with following number 190, 253 and 254 were dismissed. In this backdrop, the petitioner has assailed the judgment of the Deputy Director of Consolidation dated 17.09.2024 by filing this petition.

10. Shri Mohd. Arif Khan, learned Senior Counsel along with Shri Shadab Khan and Mohd. Aslam Khan, learned counsel for the petitioner has urged that the Deputy Director of Consolidation had exceeded its jurisdiction in allowing the revisions of the State and the Gaon Sabha as the order suffers from misconstruction of facts.

11. It was urged that reasons as indicated in the order of the Deputy Director of Consolidation reflects that the grounds which prevailed in the mind of the Court while allowing the revisions are legally not tenable.

12. It was stated that the revisional Court has noticed that the death certificate which was issued by the Gram Pradhan of the Gram did not inspire any confidence as it was issued by a person, who had no authority for doing so. It is further urged that it has incorrectly been held by the Deputy Director of Consolidation that the order dated 17.09.1984 passed by the Sub Divisional Officer was not challenged by the petitioner whereas the Deputy Director of Consolidation ignored the fact that the petitioner had filed a revision, assailing the order dated 17.09.1984, which as per the order of the Additional Commissioner dated 22.02.2022 was abated since the village in question was under consolidation operations and an appeal filed by the State and Gaon Sabha were pending before the Settlement Officer of Consolidation.

13. It was submitted by the learned Senior Counsel that the petitioner in the first place was not aware of the order dated 17.09.1984 but as soon as he became aware, he had challenged the order dated 17.09.1984, hence, it could not be said that the petitioner had not assailed the order. Once, the order had been assailed but the proceedings abated in view of consolidation operations, the order dated 17.09.1984 could not have been treated as having attained finality at least insofar as the petitioner is concerned. Moreover, by virtue of operation of law, the village was put under consolidation operations, hence, the said order could not come in the way of the petitioner.

14. It was further argued that when the petitioner had filed his objections under Section 9-A(2) of the Act of 1953 wherein the Consolidation Officer and the Settlement Officer of Consolidation upheld the claim of the petitioner being the

nephew (Bhanja) of late Ruda Singh, thus, till even one heir of Ruda Singh was alive then in light of the order of succession as provided in Section 171 of the Act of 1950, the property could not be vested in the State.

15. It was also urged that any proceedings held behind the back of the petitioner could not be pressed against him and once the matter was seized by the Consolidation Officer in proceedings under Section 9-A(2) of the Act of 1953 then the said proceedings become the substantive proceedings where the rights of the parties had to be adjudicated. Without considering the relationship of the petitioner and Ruda Singh and without holding that Ruda Singh did not have any heir till then passing of an order vesting the property in the State is *per se* in excess of jurisdiction vested in the Deputy Director of Consolidation.

16. It was also urged that the proceedings which were initiated in the year 1984 under Section 194 of the Act of 1950 where the petitioner was not a party, hence, any order passed in such proceedings could not be made binding against the petitioner. The Deputy Director of Consolidation by observing that the order dated 17.09.1984 had not been assailed, therefore, the petitioner would have no right is an erroneous view, as in order to arrive at such a conclusion, it ought to have recorded cogent reasons to discredit the relationship of the petitioner and late Ruda Singh and needless to say, the same has not been done.

17. Learned Senior Counsel further in order to buttress his submissions pointed out that the alleged proceedings which culminated in order dated 17.09.1984 were a sham as it would indicate from the record

that no notice was issued to the petitioner. Moreover, the proclamation which is said to have been made in the proceedings of the year 1984 was not in accordance with law, apart from the fact that it disclosed that the said proclamation was served on the Gram Pradhan and/or no other person.

18. It was also urged that where the Gram Pradhan was a contesting and an interested party then before any order under Section 194 of the Act of 1950 could be passed the least that could have been ascertained was whether the real affected parties had been served, however, in the instant case, it would reveal that there is nothing on record to indicate that apart from Gram Pradhan, the said notice was served on any of the private parties, who were contesting the proceedings and needless to say that the petitioner was not even a party. Hence, the said proceedings on which reliance has been placed by the State as well as Deputy Director of Consolidation it had no legs to support the case. Consequently, the order passed by the Deputy Director of Consolidation was bad in law.

19. It was lastly urged by the learned Senior Counsel that once the proceedings had been decided by the Consolidation Officer holding the petitioner to be the nephew of late Ruda Singh then in such circumstances, there was no justification to vest the property in question with the State. It may be a different situation where apart from the petitioner certain other persons who also claimed to be nephews of Ruda Singh had contested the proceedings but that could only be treated as a dispute amongst the nephews *inter se* but it does not absolve the responsibility of the Deputy Director of Consolidation to have noticed that even if

one legal heir was available, the land could not be vested in the State and thus the order passed by the Deputy Director of Consolidation dated 17.09.1984 cannot stand judicial scrutiny and deserves to be set aside.

20. Dr. Krishna Singh, learned standing counsel appearing for the State has refuted the submission advanced by the learned Senior Counsel on behalf of the petitioner and he urged that the petitioner has not stated the complete facts and has also not brought on record the relevant documents and orders which were passed in respect of the disputed property from time to time as well as certain subsequent events such as gift-deeds executed by the petitioner in favour of third parties.

21. Elaborating his submissions, Dr. Singh, learned standing counsel submitted that initially proceedings under Section 34 of the U.P. Land Revenue Act, 1901 (for short, 'the Act of 1901') bearing Case No.174 was decided on 19.07.1979 wherein in respect of Plot No.190-A which was recorded in the name of Ruda Singh, his name, was deleted and it came to be recorded in the name of Nathu Singh son of Pahalwan Singh, who claimed on the basis of a Will. The remaining land of Ruda Singh was mutated in the names of Raghubar Singh, Mangal Singh and Bharat Singh, all three sons of Badri Singh, who claimed to be the nephews (children of real sister of Ruda Singh) as successors of Ruda Singh.

22. Upon an application moved by the Pradhan, the proceedings under Section 194 of the Act of 1950 were initiated on the premise that Ruda Singh did not have any successor, hence, the land ought to be vested with the Gaon Sabha. The said

proceedings initiated at the behest of the then Gram Pradhan came to be contested by Raghubar Singh, Mangal Singh and Bharat Singh (who claimed to be the nephews of Ruda Singh being his real sister's sons), however, the same came to be decided by the Sub Divisional Officer, Sitapur holding that Ruda Singh did not have any legal heir and the land was directed to be vested with the State/Gaon Sabha by means of the order dated 17.09.1984. Since then, the land remained recorded with the Gaon Sabha.

23. Upon commencement of consolidation operations in the village in the year 1995, one Chandan Singh (the petitioner) filed his objections under Section 9-A(2) of the Act of 1953 claiming rights on the land on the basis of succession claiming to be the nephew of Ruda Singh, however, later Chandan Singh absented himself in the proceedings and an ex-parte order dated 11.04.2008 was passed. Subsequently, an application for restoration was moved by one Akhilesh Kumar which was allowed on 01.08.2012 and thereafter the proceedings were revived and the Consolidation Officer framed issues on 09.08.2012.

24. It was further submitted that earlier Chandan Singh had filed his objections on 09.12.2004 claiming rights in the land in question being the successor of Ruda Singh but after the restoration, Chandan Singh filed another set of objections on 19.06.2013 claiming on the basis of an unregistered Will of Ruda Singh.

25. It was further submitted that the Consolidation Officer while passing the order dated 04.01.2016 erred in ignoring the material on record relating to the earlier

round of litigation including the fact that the petitioner could not have claimed rights being the nephew of Ruda Singh merely on the strength of a certificate issued by the Gram Pradhan which had no sanctity apart from the fact that the Consolidation Officer also did not consider the impact of the earlier order dated 19.07.1979 as well as the order dated 17.09.1984 which related to the property in question and the said orders had remained intact.

26. It was also urged that during pendency of the appeal filed by Prema Devi before the Settlement Officer of Consolidation, she impleaded the State and Gaon Sabha as a party and she pressed that the said land be vested in the State. It was further urged that the order passed in proceedings under Section 194 of the Act of 1950 was not challenged in a revision before the Additional Commissioner, which was abated vide order dated 22.02.2022. It was urged that in the revision before the Additional Commissioner the order dated 25.11.2017 was challenged which was only a consequential order, but the main order dated 17.09.1984 never came to be challenged and to this extent the learned Senior Counsel for the petitioner has not made a correct submission rather his pleadings in Para-6 of the writ petition and the submissions both are against the record. Thus, the Settlement Officer of Consolidation committed a gross error in dismissing the appeal by proceeding on the premise that the order dated 17.09.1984 was challenged.

27. The learned standing counsel had further submitted that in the aforesaid backdrop the State and the Gaon Sabha preferred the revision before the Deputy Director of Consolidation, who after taking note of the facts and also specifically

noticing that the order dated 17.09.1984 was never challenged coupled with the fact that there was no material worth consideration to establish that the petitioner was the nephew of Ruda Singh, allowed the revisions and the order of the Deputy Director of Consolidation dated 17.09.2024 cannot be faulted.

28. Dr. Singh has further pointed out that identity of the present petitioner is also dubious for the reason that while Chandan Singh son of Fakirey had filed his objections before the Consolidation Officer and in the Vakalatnama filed by Chandan Singh, there was discrepancy in his signatures. It was also sought to be pointed out by the learned standing counsel that the date of birth of Chandan Singh as noticed in Aadhar Card is different to the date of birth recorded in his driving licence.

29. It was further pointed out that in an appeal filed by Prema Singh, the present petitioner Chandan Singh used his alias as Chandra Pal Singh and appeared through Ram Kumar Shukla son of Sharda Prasad Shukla, resident of Koraiya, Udaipur, on the basis of power of attorney executed by Chandan Singh alias Chandra Pal Singh whereas Ram Kumar Shukla filed Vakalatnama on behalf of Chandra Pal Singh and not Chandan Singh.

30. It was further submitted that even though the land already vested with the State but Chandan Singh did not implead the State or the Gaon Sabha as a party and it is only at a later stage, DGC (Revenue) filed an application that the State and the Gaon Sabha be made a party. Moreover, as soon as the order was passed by the Consolidation Officer directing to record the name of Chandan Singh alias Chandra Pal Singh as a successor of Ruda

Singh, he immediately executed gift-deeds in respect of land in dispute to Ram Kumar Shukla and his family members. Significantly, Ram Kumar Shukla is the same person whose son had separately filed objections before the Consolidation Officer and Chandan Singh had also executed his power of attorney in favour of Ram Kumar Shukla who appeared and contested the appeal of Prema Devi on behalf of Chandan Singh. This clearly indicates that by forming caucus of individuals attempt was made to usurp the Government land.

31. Another fact was pointed out that the gift-deeds which were executed in favour of Ram Kumar Shukla and his family members but the petitioner were witnessed by Devakar Prashad son of Chandrika Prasad, who is the very same person who had filed the affidavit as Pairokar of the petitioner in the instant petition. It was pointed out that as soon as Chandan Singh had executed gift-deeds in favour of Ram Kumar Shukla and his family members, he had no locus to maintain the instant petition. It was also stated that Ram Kumar Shukla has long criminal history of about 16 cases and he yields a terror in the area in question and he is also responsible for grabbing the land of the Government and the present petitioner is being used as a front by him.

32. For the aforesaid facts and circumstances, it was submitted that the Deputy Director of Consolidation after taking note of the entire background had recorded findings of fact that there was not enough material to establish that Chandan Singh was the nephew of Ruda Singh. Moreover, at no point of time, the petitioner had challenged the earlier order dated 17.09.1984 by which land vested in the State and the said order remained intact,

hence, there was no challenge to the same, accordingly, in an indirect manner, it was not open for the petitioner to have usurped the land in consolidation proceedings.

33. It was also urged that the Consolidation Officer and Settlement Officer of Consolidation did not take note of the fact that Chandan Singh had initially filed his objections under Section 9-A(2) of the Act of 1953 on the basis of succession and later filed another set of objections claiming on the basis of Will of Ruda Singh while the said Will never saw light of the day in the entire proceedings and his conduct was also suspicious and no evidence was led to establish the relationship of the petitioner with Ruda Singh.

34. For all the aforesaid reasons, the petitioner who is merely a front created to usurp and grab the property of the State has no right, title or interest in the property, hence, the writ petition deserved to be dismissed.

35. Learned Senior Counsel on behalf of the petitioner in rejoinder had additionally submitted that any criminal history against Ram Kumar Shukla cannot be read against the petitioner to discredit his right as well as it can have no impact on the relationship of the petitioner with Ruda Singh.

36. He urged that the petitioner had assailed the order by which the land in question vested with the State, but the revision was abated on account of the consolidation operations in the village, hence, it is not correct to state that the petitioner had not assailed the order and the findings recorded by the Deputy Director of Consolidation are perverse and against

the material on record. Consequently, the writ petition be allowed.

37. Shri Shraswat Srivastava, learned counsel appearing for the private-respondent No.5 had submitted that since the private-respondent No.5 did not have any personal right regarding the title of the property in dispute, hence, they do not propose to file any counter affidavit. Thus, for the said reason, the said private-respondent No.5 had no submission to make.

38. The Court has heard learned counsel for the parties and also perused the material on record.

39. It is an undisputed fact that the property in dispute was recorded in the name of Ruda Singh. It is also not disputed that Ruda Singh died on 12.01.1979. Upon his death, two sets of claims were made, firstly by Nathu Singh son of Pahalwan Singh, who claimed on the basis of Will said to have been executed by Ruda Singh and secondly the claims were raised by Raghubar Singh, Mangal Singh and Bharat Singh, the three sons of Badri, who claimed to be the nephews (Bhanja) of Ruda Singh.

40. This relationship was disclosed by the petitioner only in his rejoinder affidavit indicating that Ruda Singh son of Bhujja Singh had two sisters, namely, Smt. Sita Singh and Smt. Parvati Singh. The present petitioner is the son of Fakirey Singh who had solemnized second marriage with Smt. Sita Singh (sister of Ruda Singh). The other sister, namely, Smt. Parvati Singh was married to Bardi Singh and in this way the other nephews namely, Raghubar Singh, Mangal Singh and Bharat Singh being sons of Badri had claimed the

property of Ruda Singh in their capacity of being the nephews of Ruda Singh.

41. From a perusal of short counter affidavit, filed by the State, it would reveal that mutation proceedings under Section 34 of the Act of 1901 were initiated, wherein the name of Nathu Singh son of Pahalwan Singh was recorded as the legatee of Ruda Singh, whereas Raghubar Singh, Mangal Singh and Bharat Singh sons of Badri Singh were recorded on the basis of succession being the nephews of Ruda Singh (Bhanja).

42. It will be relevant to notice at this stage that this is first litigation which commenced in 1979 relating to the property of Ruda Singh. At that given point of time, there was no mention regarding the petitioner being the nephew of Ruda Singh. Neither Smt. Sita Singh contested the proceedings for her son (assuming if Chandan Singh would have been a minor). Moreover, Raghubar Singh, Mangal Singh and Bharat Singh while contesting the proceedings also did not disclose that there was another nephew (son of Smt. Sita Singh). This first round of litigation is said to be contested by the alleged children of Smt. Parvati Singh (the other sister of Ruda Singh). After the order dated 19.07.1979 was passed in proceedings under Section 34 of the Act of 1901, thereafter, proceedings were initiated at the behest of the State under Section 194 of the Act of 1950 which came to be decided on 17.09.1984 vesting the land in the State.

43. Significantly, neither Nathu Singh, who claimed rights to the property of Ruda Singh on the basis of Will nor the three sons of Smt. Parvati Singh, namely,

Raghubar Singh, Mangal Singh and Bharat Singh challenged the order dated 17.09.1984. A natural corollary which follows logic is the fact that in case if right of any party is extinguished, necessarily the aggrieved would raise objection. However, in this case, Raghubar Singh, Mangal Singh and Bharat Singh though contested the proceedings under Section 194 of the Act of 1950 which came to be decided in favour of the State vide order dated 17.09.1984, but they never assailed the said order in any further proceedings. Thus, insofar as the persons who were interested in the property of Ruda Singh and had raised their claims being the legatee of Ruda Singh and his nephews they all did not assail the order dated 17.09.1984 and apparently it can be deduced that they abandoned their rights in favour of the State.

44. Undisputedly, since 17.09.1984, the land in question remained recorded in the name of the State and no person came forward assailing the said order or the entry in the revenue records in the name of the State at the given time.

45. Learned Senior Counsel for the petitioner could not indicate as to why the present petitioner who alleged himself to be the nephew (Bhanja) of Ruda Singh did not ever put his claim at the first point of time upon the death of Ruda Singh in 1979 or even after the order dated 17.09.1984 was passed. Merely a vague assertion was made by the petitioner that as and when he became aware of the said order, the same was challenged, however from the material available on record, it indicates that the present petitioner did not assail the order dated 17.09.1984 at all.

46. The record indicates that in Para-6 of the writ petition, the petitioner has stated as under:-

"6. That on coming to know about the order, the petitioner filed a revision before the Additional Commissioner-I, Lucknow Division, Lucknow. During the pendency of the revision, the village was notified under Section 4 of U.P. Consolidation and Holdings Act (hereinafter called) the Act on 22.7.1995 and the proceedings were pending before the Settlement Officer of Consolidation, hence, on 22.2.2022, an order was passed for abatement of the revision filed by the petitioner against the order dated 17.9.1984 passed by the Sub Divisional Officer, Sitapur. A copy of the order dated 22.2.2022 passed by the Additional Commissioner (Judicial-I), Lucknow Division, Lucknow is filed herewith as Annexure No.1."

47. In context of the aforesaid paragraph, if the order passed by the Additional Commissioner dated 22.02.2022, marked as Annexure No.1, is perused, it would indicate that the said revision was filed in the year 2018 against an order dated 25.11.2017 which was merely a consequential order in terms whereof the mutation entry in the name of the State was made. However, by challenging the order dated 25.11.2017 without assailing the order dated 17.09.1984, no benefit can be derived by the petitioner. In light of this fact the submission of the learned Senior Counsel that the order dated 17.09.1984 was challenged by the petitioner appears to be baseless and it does not find any corroboration from the record before the Court.

48. This Court notices a fact that despite the petitioner having filed his rejoinder affidavit to the short counter affidavit filed by the [State wherein it was stated that the petitioner has not assailed the order dated 17.09.1984], an opportunity was available to the petitioner to indicate whether the said order dated 17.09.1984 was challenged and if so, a copy of the revision could have been the best evidence available with the petitioner, but the same has not been brought on record. In view thereof and in absence of any material brought before this Court, the submission of the learned Senior Counsel that the petitioner had assailed the order dated 17.09.1984 pales into insignificance rather it appears to have been advanced before this Court wrongly and without verifying the record.

49. There is another way to look at the aforesaid facts. Once the petitioner knew that the village in question was under consolidation operations since 1995 and the petitioner had filed his two separate objections under Section 9-A(2) of the Act of 1953, one set on the basis of succession in the year 2004 and later on the basis of a Will of Ruda Singh in the year 2013 then what was his justification to file the revisions before the Additional Commissioner only in 2017 after the Consolidation Officer had allowed his objections and that too challenging the consequential order and not the primary order dated 17.09.1984. Moreover, he knew his objections before the Consolidation Officer were allowed and yet he did not inform the Court of Additional Commissioner regarding the order passed by the Consolidation Officer and it is only the DGC (Revenue), who informed the Court that an appeal was pending that the Additional Commissioner abated the

proceedings. This appears to be a ruse resorted to by the petitioner and the said fact cannot come to the aid of the petitioner.

50. In light of this fact, the order dated 22.02.2022 passed by the Additional Commissioner abating the proceedings where the challenge was made to the order dated 25.11.2017 and not to the order dated 17.09.1984 cannot come to the rescue of the petitioner and the basic premise of the submission of the learned Senior Counsel loses its substratum.

51. At the cost of repetition, it is noticed that since 1979 till the year 2018, there was never any challenge made by Chandan Singh and there has been no cogent explanation regarding the same either in the petition or in the rejoinder affidavit and not even during the course of submissions made before this Court.

52. Learned Senior Counsel also could not demonstrate the reasons and the purpose regarding two separate sets of objections filed by Chandan Singh under Section 9-A(2) of the Act of 1953 rather the same were concealed. In the first set of objections filed under Section 9-A(2) of the Act of 1953 dated 09.12.2004, a copy thereof has been brought on record at running page 40-41 of the short counter affidavit filed by the State wherein Chandan Singh alias Chandra Pal Singh son of Fakirey Singh is shown to be 50 years of age. Moreover, the pedigree shown in the said objections is quite different to the pedigree given by the petitioner in the rejoinder affidavit filed before this Court. Moreover, the Aadhar Card which has been brought on record by the petitioner is in the name Chandan Singh alias Chandra Pal Singh whereas his date of birth is shown as

20.08.1973. It has also not been explained by the learned Senior Counsel for the petitioner that in case if the name of the petitioner was Chandan Singh alias Chandra Pal Singh, but in the identities which have been filed Chandan Singh is missing and the name has been shown as "Chandra Pal Singh" with a completely different date of birth i.e. if the date of birth as mentioned in his objections under Section 9-A(2) of the Act of 1953 is seen, his age is shown as 50 years in 2004 which necessarily would imply i.e. his date of birth would be around 1954 and in case if the Aadhar Card is taken note of then his date of birth is 20.08.1973 and there is a huge gap of 20 years between the two.

53. In addition, the power of attorney executed by Chandan Singh in favour of Ram Kumar Shukla son of Sharda Prasad Shukla also uses the word 'Chandan Singh alias Chandra Pal Singh'. The Vakalatnama which is brought on record, which is at running page 199 of the short counter affidavit, filed by the State, also indicates the signatures in the name of Chandra Pal Singh which has been written quite differently on the power of attorney which has been brought on record at running Page-193 of the short counter affidavit, filed by the State, indicating the writing of full name Chandan Singh alias Chandra Pal Singh. In the same vein, if the objections filed by the petitioner on 19.06.2013 is seen which is at running page 200 of the short counter affidavit, it would indicate that Chandan Singh claimed rights in the property of Ruda Singh on the basis of a Will. However, despite putting to the learned Senior counsel for the petitioner no reasonable answer was given. Significantly though this document was placed on record along with the short counter affidavit and thereafter the petitioner had filed his

rejoinder affidavit to the counter affidavit, but nowhere any denial or explanation was given for the aforesaid discrepancies, which are writ large on the record .

54. In the aforesaid context, the first submission of the learned Senior Counsel for the petitioner to the effect that the only reason which prevailed in the mind of Deputy Director of Consolidation while passing the impugned order was the fact that the order dated 17.09.1984 is till intact and was not challenged was incorrect turns out to be misconceived and is turned down.

55. Now once the order dated 17.09.1984 by which the land vested in the State remained intact whether the consolidation authorities could have taken a different view also needs to be examined. It is no doubt true that once the village is brought under the consolidation operations, any party aggrieved can raise objection which is to be considered by the authorities and in this scenario while the village came under consolidation operations, the petitioner filed his objections on the basis of succession.

56. In order to claim rights on the basis of succession it was the bounden duty of the petitioner to prove the fact that at the time of death of Ruda Singh in the year 1979, who were the heirs present and alive in the preferential order of succession as per Section 171 of the Act of 1950 and how the petitioner alone could seek precedence over others or that the petitioner was the sole surviving heir. This necessarily required the relationship between petitioner and Ruda Singh to be established with the fresh family tree and date of death of the heirs to determine the actual preferential heir alive at the time of death of Ruda Singh.

57. To prove the aforesaid fact, the petitioner merely filed a certificate, a copy of which has been filed as Annexure No.5 to the writ petition. Apart from this document, there was no other documentary evidence filed by the petitioner.

58. From a perusal of the said certificate, it reveals that it is issued by Jaidevi, who is said to be the Pradhan. However, the said document is undated. The said certificate states that the said Pradhan namely Jaidevi certifies that Ruda Singh son of Bhujja Singh, resident of Gram Para, Pargana, Tehsil and District Sitapur had died. He had two brothers, namely, Bhangat Singh and Ujjagar Singh, who died issueless and unmarried. Ruda Singh also had two sisters namely, Parvati Singh, who had no children alive and Parvati Singh had also died. The other sister Sita Singh, had also died. She had one son Chandan Singh alias Chandra Pal Singh and he is real nephew of Ruda Singh, who is the lawful heir of Ruda Singh and Ruda Singh has no other heir.

59. The learned Senior Counsel for the petitioner could not justify as to how the Pradhan would have the authority to issue such a certificate. Even if at all the certificate is noticed, it would be found that it was undated and is vague. There is no corroboration of the facts mentioned in the said certificate as issued by the Pradhan Jaidevi. There is no reference to the date of death of any of the persons so mentioned in the said certificate. Moreover, the manner in which the said certificate has been drawn does not inspire confidence, both in terms of facts or even in context of its relevancy and admissibility.

60. Learned Senior Counsel for the petitioner could not demonstrate that

actually when Ruda Singh died in the year 1979 yet there was no death certificate issued by any Competent Authority nor any relevant entries from the Parivar Register were brought on record, then under what provisions such a certificate was brought on record as Annexure No.5 and how it could be relied upon and could be made the basis of a finding, especially when the date of death was not mentioned in the alleged certificate which is being heavily relied upon by the petitioner for the purpose of establishing the relationship of the petitioner with late Ruda Singh. There is no mention regarding the date of death of two brothers of Ruda Singh. This assumes significance for the reasons that the names of two brothers namely, Bhangat Singh and Ujjagar Singh have not been mentioned in the pedigree which has been given by the petitioner in his rejoinder affidavit. Neither the date of marriage nor the date of death of the two sisters have been mentioned and this assumes significance for the reason that whether Chandan Singh was the son of Sita Singh, the alleged sister of Ruda Singh and all this was necessary to determine the succession when it opened in 1979 upon the death of Ruda Singh.

61. For the petitioner, it was of prime importance to plead and establish who were the family members of Ruda Singh and when Ruda Singh died in 1979, which of his legal heirs were surviving at the given time. In absence of this vital information coupled with the fact when the two sisters of Ruda Singh were married and with whom, also who were the nephews (if so) born and surviving on the said date of death of Ruda Singh. This was to be seen in order to determine the rightful successor and upon whom the property of Ruda Singh would devolve.

62. Moreover, from the material available on record, it would also reveal

that there is huge difference in the age of the petitioner as per his own documents. As per his Aadhar Card, the petitioner was born in the year 1973 while in the objections filed by the petitioner before the Consolidation Court in the year 2004 his age is mentioned as 50 years, so as per the same, the petitioner would have been born somewhere in 1954. Thus, as per the petitioner himself there is a wide difference in his date of birth ranging over two decades and for the said reason the veracity of the claim for succession of the petitioner being the heir of Ruda Singh and surviving him in 1979 as the only heir also becomes highly doubtful and suspicious and more so in absence of any evidence to the contrary.

63. Learned Senior Counsel could not dispute the fact that no document worth its name was brought on record by the petitioner to establish the relationship. No common relative, family, friend or person, who knew the family was examined as a witness and even till the filing of the writ petition, no document was placed on record to establish some semblance of relationship. In absence of cogent evidence to this effect and seeing the manner in which the proceedings have been contested that is to say that two sets of objections, one in the year 2004 and the other in the year 2013 before the Consolidation Officer and that too on complete diagrammatically opposite lines i.e. claiming succession as per Section 171 of the Act of 1950 in the objections of 2004 and then claiming rights in the property on the basis of Will in the year 2013 coupled with the fact that the said will had never seen the light of the day since 1979.

64. Additionally, Chandan Singh having executed a power of attorney in favour of Ram Kumar Shukla son of

Sharda Prasad, who contested the proceedings as power of attorney holder of the petitioner, this fact along with the event of execution of the gift-deed by the petitioner in favour of family members of Ram Kumar Shukla soon after his name was recorded as per the order passed by the Consolidation Officer in the year 2016 coupled with the fact that the instant petition came to be filed through pairokar, namely, Devakar Prashad, who is the person who was the witness in the said gift-deeds and only later the rejoinder affidavit came to be filed by the petitioner wherein his name has been shown as Chandan Singh with his date of birth is shown as 20.08.1973. Moreover, the record indicates that the writ petition was filed with the petitioner being described as Chandan Singh @ Chandra Pal Singh. However, in the photo verification on the affidavit the name of the petitioner is Chandra Pal Singh. The photo identify document also shows the name as Chandra Pal Singh. What is surprising is the fact that the petitioner's name is Chandan Singh and apparently Chandra Pal Singh is the alias, however, his photo identify is in the alias name and not in the original proper name. The alias is used to complement the name but it does not substitute the original name. This also creates a suspicion as this has been taken as a ground by the State in its short counter affidavit and no proper explanation has been given while filing the rejoinder affidavit or during the course of arguments by the petitioner.

65. Coming to the last submissions of the learned Senior Counsel whereby it was urged that even if at all Raghubar Singh, Mangal Singh and Bharat Singh are to be treated to be the nephews even then the land cannot vest in the State and this

aspect has not been taken note by the Deputy Director of Consolidation.

66. This submission of the learned Senior Counsel is also misconceived for the reasons that once the proceedings under Section 194 of the Act of 1950 were initiated, the said persons, namely, Raghubar Singh, Mangal Singh and Bharat Singh had contested the proceedings and had filed their objections and after the order dated 17.09.1984 was passed on merits, they did not assail the order any further. Once there is a finding that the order dated 17.09.1984 was passed by a competent Court and the said order was not assailed or challenged any further it was binding on the parties and to that extent, it is not open for the petitioner to espouse the cause of Raghubar Singh, Mangal Singh and Bharat Singh. Moreover, the petitioner does not have a right to call in question the proceedings under Section 194 of the Act of 1950 to allege that there was no proper proclamation and the only notice that was served was on the Pradhan. This fact is incorrect as shall be evident from the order dated 17.09.1984 which indicates that the notices were issued to the concerned parties and they had put their objections. Once the parties had appeared and filed their objections and contested the matter, the issue of irregularity of service of notice pales into insignificance.

67. Since, neither Raghubar Singh, Mangal Singh and Bharat Singh raised any objections of this nature, the petitioner cannot be granted the benefit of indirectly assailing an order or raising any objections to the mode of service which was personal to those three persons namely Raghubar Singh, Mangal Singh and Bharat Singh who did not raise it. Hence, the said submission also does not find favour with this Court.

68. There is another reason to discard the aforesaid submissions and that is, the petitioner did not disclose that at the time of death of Ruda Singh, apart from the petitioner (being the Bhanja as alleged) there were three other nephews of Ruda Singh being children of Parvati Singh (sister of Ruda Singh). Moreover, Raghubar Singh, Mangal Singh and Bharat Singh also in the year 1979 did not refer to the petitioner being the Bhanja of Ruda Singh. Throughout the proceedings whether it was Raghubar Singh, Mangal Singh and Bharat Singh or it was the petitioner, none disclosed the facts. Each set trying to oust the other, despite the fact, that the petitioner or Raghubar Singh, Mangal Singh and Bharat Singh if were the real nephews it would have been disclosed mere non-disclosure of vital facts also gives credence that they were not the family members or heirs of Ruda Singh.

69. Lastly, once an order was passed on 17.09.1984 in substantive proceedings under Section 194 of the Act of 1950 and it remained unchallenged then it was imperative for the petitioner to challenge it and since it was not challenged, then the Consolidation Authorities could not ignore it. Hence to this extent, the orders of the Consolidation Officer and the Settlement Officer of Consolidation cannot be countenanced. This error had been rectified by the Deputy Director of Consolidation.

70. Thus, the circuitous manner in which the multiple claims have been laid at different point of time and contradictory plea of the petitioner claiming on the basis of succession and also claiming on an alleged will which was never placed on record and not disclosing that there were other nephews of Ruda Singh (if they

actually were) and conveniently stating that all relevant persons (sibling) of Ruda Singh were dead without giving any date of death, it all piles upto create doubt and suspicion which could not be explained or dispelled by cogent evidence, hence, the findings of the Consolidation Officer and the Settlement Officer of Consolidation cannot be sustained and for all the reasons, the Deputy Director of Consolidation has rightly rejected the same.

71. In view of the aforesaid detailed discussions, this Court is of the clear opinion that the order passed by the Deputy Director of Consolidation dated 17.09.2024 cannot be termed as bad in the eyes of law, hence, the petition lacks merit and is accordingly dismissed. The interim order, stands vacated. Costs are made easy.

(2025) 3 ILRA 602

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 10.03.2025

BEFORE

**THE HON'BLE ASHWANI KUMAR MISHRA, J.
THE HON'BLE VIPIN CHANDRA DIXIT, J.**

Writ C No. 605 of 2025

**Thoughtsol Infotech Pvt. Ltd. ...Petitioner
Versus
Union of India & Ors. ...Respondents**

Counsel for the Petitioner:
Sushant

Counsel for the Respondents:
Archana Singh, Naman Agarwal, Varad Nath,
Vivek Kumar Singh, A.S.G.I.

A. Civil Law -MSMED Act.2006- Section 11-Public Procurement Policy,2012-MSME Preference-Cloud Service Contract-Nature of Contract-Preferential Treatment-The petitioner challenged the award of a cloud

service contract by the Directorate General of Hydrocarbons to the third respondent, a registered MSE, despite the petitioner being the lowest bidder-The challenge was based on the assertion that the third respondent was not the actual provider of the core cloud infrastructure, which was to be delivered by Amazon Web Services and that the respondent functioned merely as intermediary-Held, the contract included substantial supply of goods in addition to services, and thus composite in nature-The MSE preference under the Public Procurement Policy 2012 is available only where the goods and services are produced by the MSE itself-Traders, Intermediaries and agents were excluded from the benefits of MSE policy-The third respondent could not validly claim MSE benefits as it did not produce the cloud services or infrastructure but merely facilitated AWS's services-Thus, the award of contract to the third respondent under the guise fo MSE preference was arbitrary and contrary to the MSME policy, and the petitioner was entitled to relief.(Para 1 to 92)

The writ petition is allowed. (E-6)

(Delivered by Hon'ble Ashwani Kumar Mishra, J.)

1. Award of contract for hiring of cloud services for up-gradation of National Data Repository, by the Directorate General of Hydrocarbons, in favour of third respondent company, notwithstanding the lowest bid of petitioner, is the subject matter of challenge in this petition. The petitioner submits that preferential treatment meted out to the third respondent on account of its status as registered Micro & Small Enterprise (in short 'MSE'), although substantial part of the contract is to be performed by Non-MSE i.e. Amazon Web Services (in short 'AWS') is in teeth of the applicable MSME policy and its objectives and thus wholly irrational and arbitrary.

2. Directorate General of Hydrocarbons (hereinafter referred to as 'DGH') came to be established under the administrative control of Ministry of Petroleum and Natural Gas, Government of India in 1993. Its object was to promote sound management of oil and natural gas resources having regard to environment, safety, technological and commercial aspects of the petroleum activity. DGH was also entrusted the management of natural exploration and production (E&P) data in the oil and natural gas sector.

3. The E&P data is owned by the Government of India and is a national asset. By way of an amendment introduced in Petroleum and Natural Gas (Amendment) Rules, 2006 every E&P operator in India is obliged to provide free of cost all data earlier obtained or to be obtained as a result of petroleum operations in India to the Central Government or its designated agency. The E&P data policy issued by the Ministry in 2017 contemplates creation of a framework for data assimilation, disclosure, sharing, accessibility and dissemination through a National Data Repository (in short 'NDR'). This was in accordance with the policy decision taken by the Government of India on 28.2.2014. NDR came to be formally launched to public on 28.6.2017. It is currently operational at OADB Building at Noida, Gautam Buddh Nagar, Uttar Pradesh.

4. DGH has floated tenders on GeM portal (Government e Marketplace for short 'GeM') on 22.3.2024 for hiring of cloud service for upgradation of national data repository on DGH on cloud platform (hereinafter referred to as the 'cloud contract'). Petitioner and third respondent both qualified technically for the award of

cloud contract and after evaluation of their financial bids the petitioner was shortlisted as L1 (lowest tenderer) having offered the most competitive rates for the project. Despite petitioner being the L1 (lowest tenderer) the cloud contract has not been awarded to the petitioner. The reason for it is that third respondent is a registered MSE and in accordance with the applicable provisions it has been given the option to match its financial bid with that of the petitioner.

5. Micro, Small, and Medium Enterprise Development Act, 2006 (hereinafter referred to as 'the Act of 2006') as well as policy documents issued thereunder are relied upon by DGH for award of the cloud contract to the third respondent on 26.12.2024.

6. Aggrieved by the award of cloud contract to third respondent the petitioner, a non-MSE enterprise, has filed the present petition. In addition, the petitioner submits that being the lowest tenderer for the cloud contract it ought to be awarded cloud contract. Consequently, a further prayer is made to command the DGH to award the cloud contract in favour of the petitioner.

7. The writ petition was entertained on 10.1.2025 and time was allowed to the respondents to obtain proper instructions. DGH filed a short counter affidavit in the matter on 21.1.2025. Counter affidavit of the third respondent was also filed on 27.1.2025. The matter was heard at some length and this Court passed following orders on 31.1.2025:-

"When the matter is taken up today, learned Senior Counsel for the petitioner Sri J.S.I. Deepak has placed before the Court a

written submission annexing documents to show that substantial part of the contract relates to the work undertaken on behalf of Amazon Web service and that the providing of service by the third respondent is only incidental and insignificantly small in comparison to the share attributed to M/s Amazon Web service.

The chart annexed along with written submission, however, is not a part of the writ petition and is not supported by any affidavit. In its absence, it will be difficult for the Court to take cognizance of such materials.

Faced with such observation, learned counsel for the petitioner seeks adjournment as he intends to file an additional affidavit bringing on record such materials.

Let such affidavit be filed within three days.

Respondents will have three days thereafter to submit a reply.

Let this matter appear as fresh once again on 7th February, 2025.

Mrs. Archana Singh appearing for the employer states that a work order has already been issued to third respondent. Such fact, however, is not on record.

We permit the respondents also to place such material on record within three days.

Considering the issues that arise for consideration in the facts of the case, we provide that any settlement of contract in favour of the third respondent shall remain

subject to the outcome of the present writ petition.”

8. A supplementary affidavit has been filed by the petitioner to demonstrate that cloud contract has to be executed by two different entities i.e. C.S.P. (Cloud Service Provider) and Managed Service Provider (MSP). Dominant part of the cloud contract is to be performed by CSP. Only incidental or support services are to be provided by MSP i.e. the third respondent. It is specifically asserted that 97% of financial outlay for the cloud contract is appropriated to CSP which is AWS in this case while MSP gets only 3%. According to the petitioner the cloud contract service is to be performed primarily by CSP and therefore, the status of MSP as MSE cannot be a relevant consideration for award of cloud contract. Affidavits in reply are filed by the respondents disputing the claim whereafter hearing in the writ got concluded.

The Contract

9. Before proceeding further it would be apposite to briefly notice the salient features of cloud contract. Bid for the cloud contract were invited by DGH on GeM portal. The bid document contained request for proposal for the cloud contract. Various clauses of the bid documents specify the manner and methodology to be followed in implementation of the cloud contract. Clause 4.2 of the bid document specifies the purpose of the bid as upgradation of National Data Repository (NDR 1.0). It records that bid document is being floated for hiring of Managed Service Provider (in short ‘MSP’)/empanelled Cloud Service Provider (in short ‘CSPs’) of MeitY (Ministry of Electronics & Information Technology,

Government of India) for providing the necessary cloud IT infrastructure for hosting of NDR 2.0 applications on cloud platform. The broad reasons necessitating requirement of NDR 2.0, as mentioned in the bid document is extracted hereinafter:-

“(a) Existing contract is coming to end and the hardware and other infrastructure needs to be replaced.

(b) Setting up of Virtual data Rooms for anytime/anywhere/any device access of NDR data to achieve larger global footprint.

(c) Raw/Pre-Stack seismic data stored offline to be ingested through application for effective and contact less data delivery.

(d) Majority of No-Go area opened for E&P activities, potentially generating large volume of E&P data.

(e) Application stack needs improved features and better user experience to meet industry expectations and effectively powering E&P Bid Rounds.”

10. Essentially the cloud contract envisages following functions to be performed under the contract:-

*“A. Compute Services,
Storage - Attached with VMs/VDIs,
Data Transfer/ Data Out charges,
Database & Analytics,
Security/Other Component*

*B. Storage -
Blob/Object/Hot/Archive for E&P
Class of Data and CDN Services*

C. Support Services

D. Migration One time”

11. Services included in Clauses ‘A’ & ‘B’ broadly consists of compute

services and storage. These services are to be provided by CSP. Remaining part of the cloud contract included in Clauses ‘C’ & ‘D’ consists of support services and migration of existing data to be performed by MSP on the propriety software of CSP.

12. DGH is defined as the purchaser in the contract, whereas ‘service’ is specified in clause 34 of the bid document to mean:-

”service” means the service delivered to the Stakeholders of Purchaser or its nominated agencies, employees of Purchaser or its nominated agencies, and to professionals, using the tangible and intangible assets created, procured, installed, managed, and operated by the selected bidder including the tools of information and communications technology.”

13. The bidder was required to submit two bids on GeM portal, i.e. Pre-qualification and Technical bid and (b) financial bid.

14. Evaluation process and criteria has been specified in clause 6 of the bid document. Clause 6.1.2 specify that financial bid of only the qualified bidders who have cleared the pre-qualification and technical evaluation criteria will be opened. The bid document defines the nature of functions to be performed by the CSP and MSP in following terms:-

“Managed service as defined in this BID DOCUMENT are CSP Managed service defined as- The capability provided to the consumer by the CSP, to deploy on-to the cloud infrastructure

consumer created or acquired applications, created using programming languages, libraries, APIs, service and tools, supported by the provider. The consumer/MSP does not manage or control the underlying cloud infrastructure including network, servers, operating systems or storage, but has control over the deployed applications and possibly configuration settings for the application hosting environment.

The bidder must comply with the reference link for the managed service wherever applicable, in case the bidder does not comply for managed service requirement, purchaser may reject the bidder.”

15. Clause 13.4.4 of the bid document refers to service of managed support service/helpdesk. Sub-clause 1 to 4 of clause 13.4.4 are also relevant and are reproduced hereinafter:-

“1. The Bidder shall maintain a pool/team of competent resources for providing Service Support at any time (24 hours a day, 7 days a week) via all possible modes including phone, chat, and email support to purchaser for provisioning, configuring, optimising, maintenance, security, performance, troubleshooting etc.

2. The bidder shall provide details of the Service Helpdesk (including help line number, email address, escalation details etc.). This Service Helpdesk will be the single point contact & must be available at any given point of time for supporting the NDR 2.0 set-up

& operations. The bidder shall ensure that the proposed team carry out all works in a professional and timely manner.

3. In case bidder is an MSP, it shall have back-to-back support agreement with the offered CSP during the entire tenure of the contract so that all support required by the bidder from the CSP for smooth functioning of the entire solution during the contract period are available to the bidder. The bidder will be responsible for ensuring that level of agreement between the bidder and the CSP is not an impediment in this regard.

4. CSP and bidder shall ensure that the migration of NDR 1.0 to NDR 2.0 is done successfully and optimised in the best possible/optimal manner using service. In case of any discrepancy / delay/challenge during successful migration as defined in this RFP, it will be the responsibility of the CSP & bidder to deploy any professional service that may be required without any additional cost implications to the purchaser.”

16. The bidder is expected to understand the complete architecture of existing NDR 1.0 applications, processes, steps for smooth migration of applications and databases including any interdependencies between applications and data. The bidder is to be responsible for deployment of its application with all security measures/scalability/accessibility on cloud platform in co-ordination with the selected application service provider and in consultation with DGH. Clause 16.3.2 specify the responsibility matrix. It contains table 19 which specify the

responsibility of each of the stakeholder. The managed service provider while submitting the bid is required to submit a certificate by the CSP in format 'A' according to which they (CSP) are responsible for ensuring 99.5% availability of service, except for archival storage for which the availability shall be 99%. The bid document also contemplates a certificate by the CSP that it shall be responsible for providing single point support and resolution and single console billing for all the service as listed in table 25. The CSP is also required to confirm that the platform service offered by the bidder (MSP) is directly managed service where the CSP manage runtime, middleware, operating system, virtualization, servers, storage, networking, licenses alongwith its upgrades, patches etc. A further declaration was required from the CSP that all service listed in the price schedule (bill of material) shall be available throughout the contract period. In the event any service become obsolete an equivalent or higher version of the same at the same or lower cost was to be provided. Clause 5, 6 and 7 of format A are relevant and are reproduced hereinafter:-

"5. We confirm that, we shall jointly with the Bidder, work towards ensuring monitoring and management of all the required Cloud service for the projects, including monitoring dashboard and logging through a single console.

6. We confirm that we shall provide all necessary assistance and technical support to (Name of the Bidder) during the entire duration of the project. Our Technical team comprising of Technical Solution Architect and

Account Manager shall provide all requisite support (such as review of solution design, architecture review, helping in optimizing costs, scalability, operation excellence, high-performance, security recommendations, sustainability etc.) to purchaser during the tenancy of this contract.

7. We agree to provide every functionality offered by Cloud in the form of Secured, Authenticated and Authorized APIs to eliminate challenges with human error, avoid manual human interaction to critical databases and provides flexibility to customers to integrate the APIs in their environment as per business requirements."

17. Clause 16.4.3 contains format CP-3: commercial proposal (bill of materials). The bidder in its commercial proposal is required to specify the discount offered on percentage terms on CSP work/services in clauses 'A' & 'B' as also the other services provided by MSP in clauses 'C' & 'D' which are as under:-

"A. Compute service, storage-attached with VMs/VDIs, data transfer/ data out charges, database and analytics, security/ other components;

B. Storage, Blob/object/hot/archive for E&P class of data and CDN service. The functions stipulated in clause A & B are to be performed by the CSP;

C. specifies the support service cost;

while D. contains the cost towards one time migration from hard disk to cloud charges."

18. The bid also contained a clause providing for purchase preference to be granted to MSEs, which reads as under:-

"1. Purchase preference to Micro and Small Enterprises (MSEs): Purchase preference will be given to MSEs as defined in Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012 dated 23.03.2012 issued by Ministry of Micro, Small and Medium Enterprises and its subsequent Orders/Notifications issued by concerned Ministry. If the bidder wants to avail the Purchase preference for service, the bidder must be the Service provider of the offered Service. Relevant documentary evidence in this regard shall be uploaded along with the bid in respect of the offered service. If L-1 is not an MSE and MSE Service Provider (s) has/have quoted price within L-1+ 15% of margin of purchase preference /price band defined in relevant policy, then 100% order quantity will be awarded to such MSE bidder subject to acceptance of L1 bid price.

OM No.1 4 2021 PPD dated 18.05.2023 for compliance of Concurrent application of Public Procurement Policy for Micro and Small Enterprises Order, 2012 and Public Procurement (Preference to Make in India) Order, 2017."

19. A corrigendum to bid was published on 25.7.2024 clarifying the applicability of purchase preference to MSEs. Clause 4 of the corrigendum is

relevant for the present purposes and is reproduced hereinafter:-

"4. Purchase preference to Micro and Small Enterprises (MSEs): Purchase preference will be given to MSEs as defined in Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012 dated 23.03.2012 issued by Ministry of Micro, Small and Medium Enterprises and its subsequent Orders/Notifications issued by concerned Ministry. If the bidder wants to avail the Purchase preference, the bidder must be the manufacturer of the offered product in case of bid for supply of goods. Traders are excluded from the purview of Public Procurement Policy for Micro and Small Enterprises. In respect of bid for service, the bidder must be the Service provider of the offered Service. Relevant documentary evidence in this regard shall be uploaded along with the bid in respect of the offered product or service. If L-1 is not an MSE and MSE Seller (s) has/have quoted price within L-1+ 15% of margin of purchase preference/price band defined in relevant policy, such Seller shall be given opportunity to match L-1 price and contract will be awarded for percentage of 100% of total value."

20. A supplementary affidavit has been filed on behalf of the petitioner stating that out of total bid amount of Rs.37.92 crores for the cloud contract a sum of Rs.35.83 crores was to be appropriated towards the procurement of goods and service from CSP under heads 'A' & 'B',

while Rs.89.57 lacs and Rs. 1.19 crores, respectively, were earmarked for the incidental service to be provided by the MSP. It is, therefore, asserted that 97% of the amount payable towards contract value was to be appropriated to CSP of respondent no.3 i.e. 'AWS' while the third respondent was to get only 3% of the total contract value for the incidental service towards installation/ setup/ commissioning/ maintenance of the products and service. The petitioner also submits that the third respondent is not the originator of goods and service which are core to the fulfillment of tender floated by DGH.

21. A chart is also annexed by the petitioner alongwith the supplementary affidavit filed on 4.2.2025 according to which CSP components in the bid of petitioner is 97.21 % while MSP component is 2.79%, whereas for the third respondent CSP component is 97.12% while MSP component is 2.88%.

22. We may also refer to the petitioner's contention that though the contract apparently is for hiring of cloud service for upgradation of NDR, on cloud platform, but its major part consists of providing goods making it a works contract. Clause 12.16 and 13.2.2 of the RFP are relied upon which state that licenses and software are to be purchased on behalf of and owned by and registered in the name of DGH.

23. It is asserted that goods includes intangible products like licenses and software among others. MSE order is also relied upon to submit that intangible products like licences are to be considered as goods. It is, therefore, submitted that since the award of contract includes goods and service both, as such it is to be treated

as works contract for which preferential treatment cannot be extended to third respondent under appropriate regulatory MSE scheme.

MSME scheme

24. The Act of 2006 came into force on 2.10.2006 to provide for the promotion, development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. Prior to it the small scale sector was defined under Section 11B of the Industries (Development and Regulation) Act, 1951. Section 29B of the aforesaid Act of 1951 notified items reserved exclusively for manufacture for small scale industry. However, a detailed legal framework in respect of micro, small and medium enterprises was lacking which led to enactment of Act no.27 of 2006. Certain enterprises came to be characterized as the micro, small and medium enterprises under Section 7, 8 of the Act of 2006. Chapter (iv) in the Act of 2006 regulated promotion, development and enhancement of competitiveness of micro, small and medium enterprises. Section 9 provided for measures for promotion and development of such enterprises. Section 10 dealt with providing of credit facilities. Section 11 contemplated procurement preference policy with which we are concerned in the present case.

25. In exercise of power under Section 11 public procurement policy of 2012 was introduced for micro, small and medium enterprises (MSME) vide order dated 23.3.2012. Clause 3 of the 2012 order provided that every central ministry or department or public sector undertaking shall set an annual goal of procurement

from micro, and small enterprises from the financial year 2012-13 and onwards with the objective of achieving an overall procurement of minimum of 20% of its total annual purchases of products produced and service rendered by MSEs in a period of three years. After a period of three years i.e. from 1.4.2015 over all procurement goal of minimum of 20% was made mandatory. Clause 6 of the 2012 orders contemplated grant of preference in price quotation in tenders for MSME which reads as under:-

“Price quotation in tenders. - (1) In tender, participating Micro and Small Enterprises quoting price within price band of L1+15 per cent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a Micro and Small Enterprise and such Micro and Small Enterprise shall be allowed to supply up to 20 per cent of total tendered value.

(2) In case of more than one such Micro and Small Enterprise, the supply shall be shared proportionately (to tendered quantity).”

26. The Public Procurement Policy has been clarified by the Ministry vide office memorandum dated 25.3.2022. Several frequently asked questions have been elaborately explained. Question nos.18, 21, 32, 47 and 48 are relied upon which are reproduced:-

“Q.No.18: Whether this policy is applicable for works/ trading activities also?

Ans. Policy is meant for procurement of only goods produced and service rendered by MSEs. However, traders/ distributors/ sole agent/ Works Contract are excluded from the purview of Public Procurement Policy for MSEs Order, 2012.

Q.No.21: Can MSEs quoting a price within the band L1+15% be given complete supply to tender in case tender item cannot be split /divided?

Ans. In case of tender item cannot be split or divided, etc. the MSE quoting a price within the band L1+15% may be awarded for full/ complete supply of total tendered value to MSE, considering the spirit of the Policy for enhancing Govt. Procurement from MSEs.

Q.No.32: Are Works Contracts a part of service? What is the difference between Works and service?

Ans. Works Contracts are not covered under the purview of Public Procurement Policy for MSEs. The definition is available in GFR Rules 130, 143, 177 & 197.

Q.No.47: Can Joint Ventures take the benefits of the Public Procurement Policy for MSEs Order, 2012?

Ans. No, Under Udyam Registration (and earlier under UAM), there is no provision of registration of Joint Ventures. As mentioned in S. No. 3 above, benefits of the Public Procurement Policy for MSEs Order, 2012 can be availed by those MSEs which are registered on the Udyam Registration portal.

Q.No.48: Can Consortiums with Foreign Company takes the benefits of the Public Procurement Policy for MSEs Order, 2012?

Ans. No, Under Udyam Registration (and earlier under UAM), there is no provision of registration of Consortium. As mentioned in S. No. 3 above, benefits of the Public Procurement Policy for MSEs Order, 2012 can be availed by those MSEs which are registered on the Udyam Registration portal."

27. Clarification regarding definition of goods and service under the public procurement policy for MSEs order 2012 has further been issued on 9.11.2016 which defines goods and service in following terms:-

"Goods" includes all articles, material, commodity, livestock, furniture, fixtures, raw material, spare parts, instruments, machinery, equipment, industrial plant, vehicles, aircrafts, ships, railway rolling stock assemblies, sub-assemblies, accessories, a group of machines comprising an integrated production process or such other categories of goods or intangible, products like technology transfer, licenses, patents or other intellectual properties (but excludes books, publications, periodicals, etc., for a library), procured or otherwise acquired by a procuring entity. Procurement of goods may include certain small work or some service, which are incidental or consequential to the supply of such goods, such as transportation, insurance, installation,

commissioning, training and maintenance;

""Service" means any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory service or any other service classified or declared as such by a procuring entity but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf, "Subject matter of procurement" means any item of procurement whether in the form of goods, service or works or a combination thereof;"

28. Yet another office memorandum came to be issued by the Procurement Policy Decision of the Department of Expenditure, Ministry of Finance, Government of India on 13.1.2023 on which the second respondent placed heavy reliance. The clarification came to be issued on a reference from GeM portal, regarding confusion among buyers on definition of works and service. Clause 2(d) of this order is reproduced hereinafter:-

"2.(d) In case of composite contracts for Goods and service. If the procurement value of Goods is substantial and rendering of Service is incidental then such procurement should be handled as procurement of Goods. Similarly, if the procurement value of service is significant and supply of goods is incidental to the contract then such procurement can be handled as procurement of service."

29. It is in the context of above statutory scheme mandated for MSEs that the petitioner contends that the cloud contract cannot be awarded to third respondent, on account of its status as the MSME.

Petitioner's submission

30. It is in the light of the facts noticed above that the petitioner has assailed the award of contract to third respondent on the following grounds:-

"That Respondent No. 3 is not entitled to seek benefits of the MSE Order since it is excluded from seeking benefits under the MSE Order by virtue of the clarification provided in the Office Memorandum bearing No. F. No. 1(3)/2018-MA dated 25.03.2022, which states in response to question number 18 that the MSE Order is meant for procurement of only goods produced and services rendered by MSEs, and that traders/ distributors / sole agent / works contract are excluded from the purview of the MSE Order;

To seek conferment of benefits under the MSE Order, an eligible MSE bidder must prove that all the goods being produced, and the services being rendered are being produced and rendered by the MSE itself. Respondent No. 3 is not the originator of the goods supplied under the RFP;

The basic requirement of the tender floated by the Respondent No. 2 is the availability of a cloud storage and compute solution which is provided by a handful of companies such as

Google, Microsoft and Amazon. It is categorically stated that the Respondent No. 3 (or the Petitioner for that matter) does not have the infrastructure to develop cloud solutions in the manner as provided by the companies above-named;

It is also admitted by the Respondent No. 2 and 3 that the cloud infrastructure is supplied by a Cloud Service Provider (CSP). Therefore, it is very clear from the very nature of the tender and the bids submitted that the originator of the cloud storage and compute infrastructure is the CSP and not the Petitioner or the Respondent No. 3. Therefore, the Respondent No. 3 is ineligible to receive benefits under the MSE Order as it is not the producer of the cloud storage infrastructure, rather it is the CSP that is the producer of the said infrastructure;

License and Software under the RFP are "goods": Clauses 12.16 and 13.2.2 of the RFP state that licenses and software are to be purchased on behalf of and owned by and registered in the name of the Respondent No. 2. The non-exhaustive definition of "goods" as provided for under Rule 143 of the General Financial Rules, 2017 ("GFR") includes intangible products such as software and licenses, amongst others. It has been clarified by the Director, MSME (MA Division) vide Office Memorandum dated 09.11.2016 that intangible products like licenses are also to be considered as goods in the context of the MSE Order. Therefore, the license and software (being goods) originate

from the CSP and therefore, "goods" are not being provided by the Respondent No. 3 to the Respondent No. 2;

"Services", if any, being provided by the Respondent No. 3 are incidental to the goods supplied by the CSP;

The entire RFP may be broken down into four heads- Compute Services and Storage; Support Services; and Migration (one time). It is relevant to note that the above-mentioned categories are defined and standardised by the Respondent No. 2 in the BoM as laid out in Clause 16.4.2 and 16.4.3 of the RFP. The BoM lays down the various components of goods and services required for fulfilment of the RFP and serves as a comprehensive document for the purpose of understanding the scope of services;

It is submitted that all compute services and storage under heads 'A' and 'B' are being rendered by the CSP while the services under heads 'C' and 'D' of the above only pertain to support and migration of existing data (for which the CSP's proprietary software is used, as is evidenced from the Supplementary Affidavit dated 15.01.2025 filed by the Petitioner;

It is submitted that the services rendered by the Respondent No. 3 are encapsulated in Clause 13.4.4 and 13.4.6 clearly establish that these services are purely incidental and consequential to the supply of the actual goods in the nature of licenses, software,

etc., and relate to installation / commissioning / training /maintenance of the products being supplied by the CSP;

It is submitted that the CSP for the Respondent No. 3 has stated that the services being offered by the Respondent No. 3 is the CSP's directly managed service where it manages runtime, middleware, operating system, virtualization, servers, storage, networking, licenses along with its upgrades, patches, etc. by itself, and that it shall support the Respondent No. 3 to work towards ensuring monitoring and management of all the required cloud services, and that its technical team shall provide all necessary assistance and technical support opted by the Respondent No. 3 during the entire duration of the project;

Lastly, it is also relevant to note that the financial bid of the Respondent No. 3 indicates that approximately 97% of the sums quoted are to be paid to the CSP, while the bidder receives only the balance 3% for its incidental services. The Respondent No. 3 is a trader/distributor of the goods and services provided by its CSP. The CSP is the originator/provider of the goods and majority of the services rendered in the RFP, and that the support services provided by the Respondent No. 3 is merely incidental to the said supply of goods, thereby incorporating all such services within the ambit of supply of goods itself. In such a circumstance, the only role of the Respondent No. 3 is to act as a facilitator between the Respondent

No. 2 and the CSP and is hence a mere trader/distributor;

The contract emanating from the RFP is composite in nature, and is hence a works contract, even if it is assumed that the Respondent No. 3 is rendering services, it is submitted that the contract emanating from the RFP would be composite in nature, and by virtue of the same, the contract shall be construed to be a works contract;

Even if assumed (though not admitted) that there are services being rendered by the Respondent No. 3, it is submitted that the said services and goods would be indivisible once a license is issued by a particular CSP, the resultant services would also be rendered by personnel trained to operate and handle such software/platform. In a nutshell, the contract is also composite in nature since the scope of the tender could not be executed without the CSP's software as cross functionality between two CSPs (Amazon and Microsoft, in the present case) is not technically possible;

The petitioner relies upon the judgment of Bombay High Court, in Sterling and Wilson Private Limited & Ors. vs. Union of India & Ors., AIR2017BOM24 to state that contracts involving the supply of goods along with services constitute composite contracts, which are to be treated as works contracts, and that such contracts would not fall within the ambit of the MSE Order;

It is also urged that this Hon'ble High Court in the case of

Rahul Singh US. Union of India 2017SCCOnLineAll3579, upon assessment of the language of Section 11 of the MSMED Act, 2006, held that preference policies could be issued only for procurement of goods and services produced and provided by an MSE, and does not capture within its ambit assignments in the nature of a works contract;

That the above judgments of the Hon'ble Allahabad High Court and the Bombay High Court were not specifically in the context of taxation as alleged and have not been challenged and/or overruled by the Hon'ble Supreme Court of India and hence remain good law, squarely applicable in the present context."

Reply of Respondents

31. Learned counsel for DGH, however, opposes the writ petition primarily on the ground that the contract in question is not a works contract but is a service contract. It is urged that petitioner has acknowledged the contract to be a service contract, as per the stipulation in the RFP for cloud contract, and is now estopped from asserting the contract to be a works contract. It is submitted that placing of reliance upon the judgment of the Supreme Court in Kone Elevator India Pvt. Ltd. Vs. State of Tamil Nadu and others (2014) 7 SCC 1 is misplaced since it arose out of a taxing statute and has no applicability in the present case. It is also urged that concept of works contract arises in taxing statutes for fiscal purposes and is primarily to regulate construction projects and not for the present purposes. It is also urged that the contract in question for

providing cloud service has been characterized as procurement of consultancy service and cannot be treated to be a works contract. The cloud service contract is alleged to be of a distinct nature from a works contract. The DGH, moreover, submits that third respondent in arrangement with AWS has submitted its bid and its status as MSE cannot be questioned as it is duly registered as a MSME. It is also submitted that AWS is an approved cloud service provider by the MeitY and various critical functions such as cloud migration etc is to be performed by it. Respondents contend that status of trader cannot be attributed to respondent no.3.

32. It is further argued that service provided by respondent no.3 as MSP are critical and its value addition cannot be substituted. Reliance is placed upon the MSE order to submit that the contract in question is not a 'works contract' and since third respondent is registered under UDYAM, as such the benefit of MSME are legitimately available to it. Submission is that the third respondent is a network partner of AWS and is not its agent, as is alleged, by the petitioner. The DGH further submits that pursuant to the award of contract to third respondent a kick off meeting has been held and performance bank guarantee etc has been furnished by it. Certain orders for requisition of lease line has also been placed on 13.2.2005.

33. The third respondent contends that the contract has rightly been awarded to it by DGH in accordance with the tender conditions which entitle it to the benefit of MSE procurement purchase order, 2012, issued by the Government of India. It is alleged that contract emanating from RFP is not a works contract; the quantum of

service rendered by respondent no.3 is beyond the scope of judicial scrutiny and; the applicability of distinction of works contract to MSE Act is misplaced. The selected contractor argues that its status as registered MSME is not challenged nor there is any challenge to the corrigendum dated 27.5.2024 which makes the purchase reference clause in favour of MSE applicable in the contract itself. It is then submitted that the contract is a service contract and cannot be said to be works contract. It is thereafter argued that in terms of clause 13.4.4 of the RFP the MSP (respondent no.3) was bound to have a back to back support agreement with the empanelled CSP (AWS) for the entire tenure of contract. It is also argued that license in the contract clause is not for purchase of any goods and is merely use of standard language in IT service contract. The RFP does not provide for any sale or purchase of license of software by the bidder from CSP.

34. The third respondent further argues that it does not purchase cloud infrastructure from CSP and that such cloud infrastructure is predominantly pay for use where payment is for the use of technology. There is, however, no sale or purchase of technology. It is also submitted that there is no transfer of goods in the cloud contract. The respondent further argues that quantum of service rendered by respondent no.3, in the contract, is beyond the scope of judicial review. It is then urged that phrase 'originator of service' is a self-conceived concept of the petitioner, which is not to be found anywhere in the contract document. Only the MSP is responsible for contract and CSP is only a party to the contract and play a supporting role in executing the contract by MSP. It is also submitted that the quantum of work distributed between

MSP and CSP and the flow of money between them would per-se, have no bearing upon the MSE order being accorded or not. The respondents further alleged that unless arbitrariness, perversity or malafide on part of the tendering authority is alleged, the author of tender document is taken to be the best person to understand its requirement and the courts should exercise judicial restraint.

35. Learned Senior counsel on behalf of third respondent also argues that the concept of works contract arises in the context of taxing statute and has no applicability in case of a contract providing for cloud service. It is lastly submitted that by no stretch of imagination it can be said that services rendered by the third respondent are incidental to the service being provided by the CSP. It is also denied that the value addition in the execution by third respondent is negligible or the third respondent acts as an intermediary/agent/trader.

36. We have heard Sri J. Sai Deepak, learned Senior Counsel appearing for the petitioner assisted by Sri Sushant Chandra; Sri S.P. Singh, learned A.S.G.I. assisted by Sri Vivek Kumar Singh, learned counsel for respondent no.1; Ms. Archana Singh, learned counsel for respondent no.2; Sri Amit Saxena, learned Senior Counsel assisted by Sri Varad Nath and Sri Naman Agarwal, learned counsel for respondent no.3 and have perused the materials on record.

37. In order to appreciate the controversy raised in this petition, an element of clarity is required regarding the nature of contract awarded to 3rd respondent. Much of the submissions raised at the bar is with regard to the nature of

cloud contract itself. Whether it is a contract of services or it includes goods also so as to make it a works contract; who performs dominant functions in the contract even if it be a contract of services; whether MSP is an agent or subservient partner in the contract in question; whether the status of MSP as MSME can be a relevant consideration for award of contract which has to be substantially performed by the CSP which is not an MSME; whether grant of preferential treatment to third respondent for award of contract is in accordance with the policy objective for which the Act of 2006 has been enacted etc. are the questions that arise for consideration in the facts of the present case.

38. The petitioner has annexed the copy of the compliance document filed by the third respondent which specify the role of CSP in cloud data migration services. Clause 6 is relied upon which specifies that AWS provides a portfolio data transfer service to provide the right solution for data migration project. AWS is to leverage data migration solution based on online data transfer and offline data transfer. Data migration services are to be made available by the CSP for migrating the existing data from DGH to cloud based NDR 2.0 on AWS.

39. According to petitioner clause 12.16 and 13.2.2 of the tender document provides that licenses and software are to be purchased on behalf of and owned and registered in the name of the DGH. Reliance is placed upon the definition of goods under rule 143 of General Financial Rules, 2007 to state that it includes intangible products like software and licenses among others. Our attention has also been invited to the communication of director of MSME contained in the office

memorandum dated 19.11.2016 as per which intangible product like licenses are also to be considered as goods in the context of MSE order. The petitioner relying upon such clause asserts that licenses and other intangible products constituting goods as per the MSE order are being supplied to DGH by the CSP and not by respondent no.3. Clause 12.16, relied upon by the petitioner, reads as under:-

“12.16.

Equipment's/Licenses Ownership

1. The Purchaser shall own the software licenses, processes, Documents supplied by the Bidder during this Contract period.

2. However, all the risk and liability arising out of or in connection with the usage of the equipment, assets/components during the term of the Contract shall be borne by the bidder.”

40. Similarly Sub-clause 2 of clause 13.2 (broad scope of activities) reads as under:-

“2. All Licences / application / software / Root access/Admin User name /Admin Account etc. shall be registered in the name of purchaser.”

41. The purchaser in the tender document is the DGH. Office memorandum dated 9.11.2016 issued by the department of MSME, Government of India defines goods and services. The definition of goods contained in the office memorandum has been issued to clarify goods and services. Public Procurement Policy (MSME), 2012 includes such other categories of goods or intangible products like technology transfer, licenses, patents or other

intangible properties (excluding books etc.) procured or otherwise acquired by a procuring entity.

42. On behalf of the petitioner reliance is placed upon the Division Bench judgment of Bombay High Court in Sterling and Wilson as well as the judgment of this Court in Rahul Singh, wherein reliance is placed upon the principles laid down by the Supreme Court in Kone Elevators India Pvt. Ltd. (supra) to hold that benefit of MSME regime cannot be extended to a case of works contract.

43. The submission advanced on behalf of the petitioner is countered by Sri Amit Saxena, learned Senior counsel, who contends that clause (29)(A) of Article 366 is the basis of the judgment in Kone Elevator India Pvt. Ltd. (supra) which is reproduced hereinafter:-

”366. Definitions

In this Constitution, unless the context otherwise requires, the following expressions have, the meanings hereby respectively assigned to them, that is to say—

(29A) tax on the sale or purchase of goods" includes—

(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a tax on the delivery of goods on hire-purchase or any system of payment by installments;

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on 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), where such supply or service, is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;”

44. Submission is that clause (29)(A) was introduced with the object of regulating the taxing statute and has no relevance for the purposes of applying the provisions of MSME Act. For such purposes learned counsel has placed reliance upon the judgment of Calcutta High Court in Hindustan Petroleum Corporation Vs. West Bengal State Micro, Small Enterprises Facilitation Council and others (2023) SCC OnLine Calcutta 1700. Learned Single Judge of the Calcutta High Court after referring to various judgments including the Division Bench judgment of Bombay High Court in Sterling and Wilson

as well as judgment of this Court in Rahul Singh observed as under:-

“60. Thus, in the context of the above discussions, the principle of Kone Elevator (supra) was erroneously applied by several High Courts in the judgments cited by the petitioner, as discussed above. The correct proposition of law, in my humble opinion, is that once an enterprise, otherwise coming within the contemplation of the Act, is registered under Section 8(1), the same has to attract the provisions of the MSME act, including Section 18 of the same, vesting authority on the Council to resolve disputes in that regard.

62. Thus, the artificial distinction, about works contracts being excluded from the ambit of the said Act, does not find place within the scheme of the MSME Act itself. The said concept was borrowed from revenue jurisprudence, which has no nexus with the benefits sought to be conferred under the MSME Act. Importing the said concept in the instant context is beside the point and not apt.”

ANALYSIS

45. The respective submissions of the parties on the aspect of *cloud contract* being a works contract, and by virtue of it being so the inapplicability of MSE policy, can be conveniently segregated into two parts. The first part can deal with the factual aspects of cloud contract so as to determine whether it is a contract of service alone or it includes supply of goods as well. The second part can then deal the question

of applicability of MSE policy for award of cloud contract on account of MSE registration as UDYAM of third respondent.

46. We have already extracted various clauses of the cloud contract in order to ascertain the services to be provided to the purchaser by the bidder. DGH undisputedly is the purchaser under the contract. Third respondent admittedly is the bidder/MSP and has partnered with AWS as its CSP.

47. The cloud contract envisages that various licenses and software are to be purchased on behalf of and owned and registered in the name of DGH i.e. the purchaser. Clause 12.16 and 13.2.2, extracted above, indicates in unmistakable terms that the bidder has to provide various licenses and software to the purchaser (DGH) as part of the contract. The Bill of Material (BoM) also indicates that various licenses and software forms part of the cloud contract which are to be transferred by the bidder to the DGH.

48. The Director MSME vide its office memorandum dated 9.11.2016 (quoted above) has specified that intangible products like licenses are also to be considered as goods. Rule 143 of the General Financial Rules, 2017 also defines intangible products such as software and licenses to be goods. The bid document, therefore, clearly shows that the contract awarded to third respondent though is styled as contract of services but it does include supply of goods also to DGH which is the purchaser.

49. The question that then arises for our consideration is as to whether merely for the reason of inclusion of goods

in the cloud contract, the contract itself becomes a works contract so as to exclude it from the purview of MSE regime.

50. Reliance is placed for such purposes upon the judgment of Supreme Court in *Kone Elevator India Pvt. Ltd.* (supra). In para 46 of the said judgment the Supreme Court has culled out following principles:-

“46. At this juncture, it is condign to state that four concepts have clearly emerged. They are:

(i) the works contract is an indivisible contract but, by legal fiction, is divided into two parts, one for sale of goods, and the other for supply of labour and services;

(ii) the concept of “dominant nature test” or, for that matter, the “degree of intention test” or “overwhelming component test” for treating a contract as a works contract is not applicable;

(iii) the term “works contract” as used in clause (29-A) of Article 366 of the Constitution takes in its sweep all genre of works contract and is not to be narrowly construed to cover one species of contract to provide for labour and service alone; and

(iv) once the characteristics of works contract are met with in a contract entered into between the parties, any additional obligation incorporated in the contract would not change the nature of the contract.”

51. The Supreme Court has observed that the concept of ‘dominant nature test’ or ‘degree of intention test’ or ‘overwhelming component test’ for treating

a contract as a works contract is not applicable. Once the characteristics of works contract are met in a contract any additional obligation incorporated in the contract would not change the nature of the contract. The Court, therefore, held that installation of a lift and consequential supply of its part to be a works contract.

52. On behalf of the petitioner reliance is also placed upon the judgment in *Bharat Sanchar Nigam Ltd. vs. Commissioner of Trade Tax, U.P. Lucknow* 2016 SCC OnLine All 4398 to submit that since the contract consists of supply of goods in addition to services it would amount to a works contract and, therefore, would not be treated as contract of services so as to apply the provisions of MSME Act itself.

53. Having given our anxious consideration to the matter in issue we find that the concept of 'Works Contract' is predominantly a concept intended to regulate taxing statutes. Clause (29A) came to be added in Article 366 of the Constitution of India by the Constitution (Forty-Sixth Amendment) Act, 1982 with effect from 2.2.1983. The statement of objects and reasons clarify the context in which this provision had to be introduced. For better appreciation of the context we deem it appropriate to reproduce it, hereunder:-

“STATEMENT OF OBJECTS AND REASONS

Sales tax laws enacted in pursuance of the Government of India Act, 1935 as also the laws relating to sales tax passed after the coming into force of the Constitution proceeded on the footing that the expression "sale of goods", having

regard to the rule as to broad interpretation of entries in the legislative lists, would be given a wider connotation. However, in Gannon Dunkerley's case (A.I.R. 1958 S.C. 560), the Supreme Court held that the expression "sale of goods" as used in the entries in the Seventh Schedule to the Constitution has the same meaning as in the Sale of Goods Act, 1930. This decision related to works contracts.2. By a series of subsequent decisions, the Supreme Court has, on the basis of the decision in Gannon Dunkerley's case, held various other transactions which resemble, in substance, transactions by way of sales, to be not liable to sales tax. As a result of these decisions, a transaction, in order to be subject to the levy of sales tax under entry 92A of the Union List or entry 54 of the State List, should have the following ingredients, namely, parties competent to contract, mutual assent and transfer of property in goods from one of the parties to the contract to the other party thereto for a price.3. This position has resulted in scope for avoidance of tax in various ways. An example of this is the practice of inter-State consignment transfers, i.e., transfer of goods from head office or a principal in one State to a branch or agent in another State or vice versa or transfer of goods on consignment account, to avoid the payment of sales tax on inter-State sales under the Central Sales Tax Act. While in the case of a works contract, if the contract treats the sale of materials separately from the cost of the labour, the sale of materials would be taxable, but in the case of an indivisible works contract, it is not possible to levy sales tax on the transfer of property in the goods involved in the execution of such contract as it has been held that there is no sale of the materials as such and the property in them does not pass as moveables. Though practically the

purchaser in a hire-purchase agreement gets the goods on the date of the hire-purchase, it has been held that there is sale only when the purchaser exercises the option to purchase at a much later date and therefore only the depreciated value of the goods involved in such transaction at the time the option to purchase is exercised becomes assessable to sales tax. Similarly, while sale by a registered club or other association of persons (the club or association of persons having corporate status) to its members is taxable, sales by an unincorporated club or association of persons to its members is not taxable as such club or association, in law, has no separate existence from that of the members. In the Associated Hotels of India case (A.I.R. 1972 S.C. 1131), the Supreme Court held that there is no sale involved in the supply of food or drink by a hotelier to a person lodged in the hotel.4. In the New India Sugar Mills case (A.I.R. 1963 S.C. 1207), the Supreme Court took the view that in the transfer of controlled commodities in pursuance of a direction under a Control Order, the element of volition by the seller, or mutual assent, is absent and, therefore, there is no sale as defined in the Sale of Goods Act, 1930. However, in Oil and Natural Gas Commission Vs. State of Bihar (A.I.R. 1976 S.C. 2478), the Supreme Court had occasion to consider its earlier decisions with regard to the liability of transfers of controlled commodities to be charged to sales tax. The Supreme Court held that where there are any statutory compulsions, the statute itself should be treated as supplying the consensus and furnishing the modality of the consensus. In Vishnu Agencies Vs. Commercial Tax Officer (A.I.R. 1978 S.C. 449), six of the seven Judges concurred in over-ruling the decision, in New India Sugar Mills case

while the seventh Judge held the case to be distinguishable. It is, therefore, considered desirable to put the matter beyond any doubt.5. The various problems connected with the power of the States to levy a tax on the sale of goods and with the Central Sales Tax Act, 1956 were referred to the Law Commission of India. The Commission considered these matters in their Sixty-first Report and, recommended, inter alia, certain amendments in the Constitution if as a matter of administrative policy it is decided to levy tax on transactions of the nature mentioned in the preceding paragraphs.6. Device by way of lease of films has also been resulting in avoidance of sales tax. The main right in regard to a film relates to its exploitation and after exploitation for a certain period of time, in most cases, the film ceases to have any value. It is, therefore, seen that instead of resorting to the outright sale of a film, only a leased or transfer of the right to exploitation is made.7. There were reports from State Governments to whom revenues from sales tax have been assigned, as to the large scale avoidance of Central sales tax leviable on inter-State sales of goods through the device of consignment of goods from one State to another and as to the leakage of local sales tax in works contracts, hire-purchase transactions, lease of films, etc. Though Parliament could levy a tax on these transactions, as tax on sales has all along been treated as an item of revenue to be assigned to the States, in regard to these transactions which resemble sales also, it is considered that the same policy should be adopted.8. Besides the above mentioned matters, a new problem has arisen as a result of the decision of the Supreme Court in Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi (A.I.R. 1978 S.C. 1591). States have been proceeding on the basis

that the Associated Hotels of India case was applicable only to supply of food or drink by a hotelier to a person lodged in the hotel and that tax was leviable on the sale of foodstuffs by a restaurant. But overruling the decision of the Delhi High Court, the Supreme Court has held in the above case that service of meals whether in a hotel or restaurant does not constitute a sale of food for the purpose of levy of sales tax but must be regarded as the rendering of a service in the satisfaction of a human need or ministering to the bodily want of human beings. It would not make any difference whether the visitor to the restaurant is charged for the meal as a whole or according to each dish separately.⁹ It is, therefore, proposed to suitably amend the Constitution to include in article 366 a definition of "tax on the sale or purchase of goods" by inserting a new clause (29A)."

54. We find substance in the argument of Sri Saxena, that the object of introducing clause (29A) in Article 366 is entirely distinct and it may not have much applicability in the present controversy as the clause is not intended to determine the scope and ambit of MSE regime. The judgment of the Supreme Court in Kone Elevators India Pvt. Ltd. (supra) was also in the context of a taxing issue. Though its principles have been applied by the Bombay High Court in Sterling and Wilson (supra) and by this Court in Rahul Singh (supra) yet, on this aspect, we find the reasoning assigned by the Calcutta High Court in Hindustan Petroleum Corporation (supra) to be of considerable weight. In Hindustan Petroleum Corporation (supra) learned Single Judge elaborately examined the context in which clause (29A) was introduced in Article 366 of the Constitution of India. Clause (29A) of

Article 366 of the Constitution of India as also the judgment of Supreme Court in Kone Elevators India Pvt. Ltd. (supra) cannot be entirely relied upon for interpreting the object and provisions of the MSE regime. In our view, the applicability of MSE regime for award of cloud contract will have to be determined with reference to the provisions of the Act of 2006 as well as the Public Procurement Policy Order, 2012 and the clarifications issued thereunder.

55. The MSE regime intends to promote development and enhance the competitiveness of micro, small and medium enterprises. The origin of the Act of 2006 as well as its objects have been elaborately examined by the Hon'ble Supreme Court in a recent decision in the case of Lifecare Innovations Pvt. Ltd. & Anr. vs. Union of India 2025 INSC 269. In para 13 the Court traced the origin of MSME scheme in following words:-

"13. The first statutory recognition of MSMEs, measures for their protection, promotion and grant of special benefits was through the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993.¹⁷ The 1993 Act was repealed by the comprehensive and promising regime under the present Micro, Small and Medium Enterprises Development Act in 2006, which not only created different classes of enterprises under Section 7, but also established an Advisory Committee to advise the Central government regarding the classification of enterprises, a National Board for MSMEs under Section 3, the

functions of which are provided in Sections 5 and 6, inter alia to deal with, “factors affecting the promotion and development of micro, small and medium enterprises and review the policies and programmes of the Central Government” and to “make recommendations on matters referred to it by the Central Government which are necessary or expedient for facilitating the promotion and development and enhancing the competitiveness of the micro, small and medium enterprises”. Section 9 of the Act enables the Central Government to adopt measures that may be necessary for the promotion, development, and enhancement of the competitiveness of MSMEs. Section 10 speaks of progressive credit facilities for these MSMEs. Section 11 is the provision for procurement preference policy. Section 11 is important for our consideration. Under this provision, the Central or State governments notify the preference policies with respect to the procurement of goods and services produced and provided by micro and small enterprises by its ministries, departments, aided institutions, or public sector enterprises. Section 11 is reproduced hereinbelow for ready reference:

“Section 11. Procurement preference policy.— For facilitating promotion and development of micro and small enterprises, the Central Government or the State Government may, by order notify from time to time, preference

policies in respect of procurement of goods and services, produced and provided by micro and small enterprises, by its Ministries or departments, as the case may be, or its aided institutions and public sector enterprises.”

56. The provisions of Section 11 of the Act of 2006 as well as the MSE order 2012 has been examined by the Court to observe as under in para 1.1:-

“1.1 Having examined the legal regime concerning the promotion and development of MSEs, we have come to the conclusion that the Procurement Order 2012 has the force of law and is enforceable. While the Act and the Procurement Order 2012 do not create an ‘enforceable right’ for an individual MSE, the statutory authorities and administrative bodies created thereunder are impressed with enforceable duties. They are accountable and subject to judicial review. We have also explained how the scope of judicial review in these matters should transcend the standard power of judicial review to issue writs of mandamus to perform the statutory duty and proceed to examine whether the duty bearers, the authorities and bodies are constituted properly and whether they are functioning effectively and efficiently. By ensuring institutional integrity we achieve our institutional objectives.”

(Emphasis supplied by us)

57. The object of the Act of 2006 is to facilitate the promotion and development of MSE and to enhance its competitiveness. Section 11 of the Act provides for procurement preference policy. It contemplates preference policies for MSME in respect of procurement of goods and services. Goods produced and services rendered by the MSME. The intendment of policy is to promote MSE for the goods produced by it as well as services rendered by it. It is for this purpose that the MSE regime provides for minimum procurement by governmental departments from MSE and the MSE is allowed to match price figures by the lowest bidder if such bid is within the range of L1+15%.

58. MSE regime thus has a definite purpose and object to subserve. It is to promote MSE units registered under the Act of 2006 for the goods produced and the services rendered. The Procurement Policy is to be framed by the respective Government. Section 11 of the Act of 2006 clearly provides that preference policy for procurement of goods and services *has to be for the goods produced and services rendered by MSE units.*

59. It transpires that various doubts were raised with regard to the applicability of MSME provisions in various circumstances before the concerned Ministry. In order to address such concerns an office memorandum dated 25.3.2022 has been issued which is contained in annexure 11 to the writ petition. In response to question no.18 (extracted in para 24) the Ministry has clarified that MSE policy is meant for procurement of only goods produced and services rendered by MSEs. Traders/distributors/sole agent/works contract are excluded from the purview of

public procurement policy for MSE Order, 2012.

60. The explanation offered by the Ministry is categorical and is in accord with Section 11. The policy for procurement is only for the Goods produced by MSEs or Services rendered by MSEs.

61. Since procurement policy is for the goods produced or services rendered by the MSE, the Ministry has clarified that traders/distributors/sole agent/works contract are excluded from the purview of the MSEs Order, 2012.

62. In reply to question no.32 (quoted above) also the position has been clarified by the Ministry and it has been clarified that works contract are not covered under the purview of Public Procurement Policy. Reliance is placed upon clause 143 of the General Financial Rules, 2017.

63. In reply to question no.48 (quoted above) the Ministry has clarified that there is no provision for registration of consortium consisting of a foreign company.

64. When we analyse the object and provisions of the Act of 2006 in conjunction with the Public Procurement Policy for MSEs Order, 2012 and the clarification issued by the Ministry vide office memorandum dated 25.3.2022 it is evident that benefit of MSME regime can be extended in favour of MSEs unit, duly registered as such, for the goods produced by it and services rendered by it, only.

65. The MSE policy/regime since intends to promote the MSEs for the goods produced by it or services rendered by it,

the benefit of the policy will not be extended to traders/distributors/sole agent/works contract or to exigencies where goods produced or services rendered is by a consortium consisting of a foreign company. Thus, where registered MSME is not the producer of goods or renders services, but is only assisting the dominant partner, the MSME policy cannot be made applicable.

66. Before proceeding further, we may notice the argument of Sri Amit Saxena that this Court while exercising its writ jurisdiction has extremely limited scope in interfering with contractual matters. For such purposes learned counsel relies upon an observation made by the Supreme Court in para 24 to 26 in *Agmatel India (P) Ltd. vs. Resoursys Telecom* (2022) 5 SCC 362, which are reproduced:-

*“24. The scope of judicial review in contractual matters, and particularly in relation to the process of interpretation of tender document, has been the subject-matter of discussion in various decisions of this Court. We need not multiply the authorities on the subject, as suffice it would be refer to the three-Judge Bench decision of this Court in *Galaxy Transport Agencies [Galaxy Transport Agencies v. New J.K. Roadways, Fleet Owners & Transport Contractors, (2021) 16 SCC 808 : 2020 SCC OnLine SC 1035]* wherein, among others, the said decision in *Afcons Infrastructure [Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818]* has also been considered; and this Court has disapproved the interference by the*

High Court in the interpretation by the tender inviting authority of the eligibility term relating to the category of vehicles required to be held by the bidders, in the tender floated for supply of vehicles for the carriage of troops and equipment.

*25. This Court referred to various decisions on the subject and stated the legal principles as follows : (*Galaxy Transport Agencies case [Galaxy Transport Agencies v. New J.K. Roadways, Fleet Owners & Transport Contractors, (2021) 16 SCC 808 : 2020 SCC OnLine SC 1035]* , SCC paras 14-20)*

*“14. In a series of judgments, this Court has held that the authority that authors the tender document is the best person to understand and appreciate its requirements, and thus, its interpretation should not be second-guessed by a court in judicial review proceedings. In *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd. [Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818]* , this Court held : (SCC p. 825, para 15)*

‘15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or

in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.'

15. In the judgment in *Bharat Coking Coal Ltd. v. AMR Dev Prabha* [*Bharat Coking Coal Ltd. v. AMR Dev Prabha*, (2020) 16 SCC 759], under the heading "Deference to authority's interpretation", this Court stated : (SCC p. 776, paras 50-52)

'50. Lastly, we deem it necessary to deal with another fundamental problem. It is obvious that Respondent 1 seeks to only enforce terms of NIT. Inherent in such exercise is interpretation of contractual terms. However, it must be noted that judicial interpretation of contracts in the sphere of commerce stands on a distinct footing than while interpreting statutes.

51. In the present facts, it is clear that BCCL and CI-India have laid recourse to clauses of NIT, whether it be to justify condonation of delay of Respondent 6 in submitting performance bank guarantees or their decision to resume auction on grounds of technical failure. BCCL having authored these documents, is better placed to appreciate their requirements and interpret them. [*Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.*, (2016) 16 SCC 818]

52. The High Court ought to have deferred to this understanding, unless it was patently perverse or mala fide. Given how BCCL's interpretation of these clauses was plausible and not absurd, solely differences in opinion of contractual interpretation ought not to have been grounds for the High Court to come to a finding that the appellant committed illegality.'

16. Further, in the recent judgment in *Silppi Constructions Contractors v. Union of India* [*Silppi Constructions Contractors v. Union of India*, (2020) 16 SCC 489], this Court held as follows : (SCC pp. 501-02, para 20)

'20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author

must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.'

17. In accordance with these judgments and noting that the interpretation of the tendering authority in this case cannot be said to be a perverse one, the Division Bench ought not to have interfered with it by giving its own interpretation and not giving proper credence to the word "both" appearing in Condition No. 31 of the NIT. For this reason, the Division Bench's conclusion [New JK Roadways v. State (UT of J&K), 2020 SCC OnLine J&K 733] that JK Roadways was wrongly declared to be ineligible, is set aside.

18. Insofar as Condition No. 27 of the NIT prescribing work experience of at least 5 years of not less than the value of Rs 2 crores is concerned, suffice it to say that the expert body, being the Tender Opening Committee, consisting of four members, clearly found that this eligibility condition had been satisfied by the appellant before us. Without therefore going into the assessment of the documents that have been supplied to this Court, it is well settled that unless arbitrariness or mala fide on the part of the tendering authority is alleged, the expert evaluation of a particular tender, particularly when it comes to technical evaluation, is not to be second-guessed by a writ court. Thus, in Jagdish Mandal v. State of Orissa [Jagdish

Mandal v. State of Orissa, (2007) 14 SCC 517], this Court noted : (SCC pp. 531-32, para 22)

'22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review,

should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.'

19. Similarly, in Montecarlo Ltd. v. NTPC Ltd. [Montecarlo Ltd. v. NTPC Ltd., (2016) 15 SCC 272] , this Court stated as follows : (SCC p. 288, para 26)

'26. We respectfully concur with the aforesaid statement of law.

We have reasons to do so. In the present scenario, tenders are floated and offers are invited for highly complex technical subjects. It requires understanding and appreciation of the nature of work and the purpose it is going to serve. It is common knowledge in the competitive commercial field that technical bids pursuant to the notice inviting tenders are scrutinised by the technical experts and sometimes third-party assistance from those unconnected with the owner's organisation is taken. This ensures objectivity. Bidder's expertise and technical capability and capacity must be assessed by the experts. In the matters of financial assessment, consultants are appointed. It is because to check and ascertain that technical ability and the financial feasibility have sanguinity and are workable and realistic. There is a multi-prong complex approach; highly technical in nature. The tenders where public largesse is put to auction stand on a different compartment. Tender with which we are concerned, is not comparable to any scheme for allotment. This arena which we have referred requires technical expertise. Parameters applied are different. Its aim is to achieve high degree of perfection in execution and adherence to the time schedule. But, that does not mean, these tenders will escape scrutiny of judicial review. Exercise of power of judicial review would be called for if the approach is arbitrary or mala fide or procedure adopted is meant to favour one. The decision-

making process should clearly show that the said maladies are kept at bay. But where a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the Court should follow the principle of restraint. Technical evaluation or comparison by the Court would be impermissible. The principle that is applied to scan and understand an ordinary instrument relatable to contract in other spheres has to be treated differently than interpreting and appreciating tender documents relating to technical works and projects requiring special skills. The owner should be allowed to carry out the purpose and there has to be allowance of free play in the joints.'

20. This being the case, we are unable to fathom how the Division Bench, on its own appraisal, arrived at the conclusion that the appellant held work experience of only 1 year, substituting the appraisal of the expert four-member Tender Opening Committee with its own."

(italicised matter emphasised in the original; emphasis in bold italics supplied)

26. The abovementioned statements of law make it amply clear that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender document or subserving the purchase of the tender, the

Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the constitutional court, that, by itself, would not be a reason for interfering with the interpretation given."

67. So far as the scope of interference in matters of award of contract by this Court is concerned, the position in law is well settled. Hon'ble Supreme Court in *Agmatel India (P) Ltd.* (supra) has referred to a long line of judgments requiring restraint to be exercised by the writ court in contractual matters. The restraint in either interpreting the tender clauses or technical evaluation or comparison is equally settled.

68. However, the issue for consideration in this case is not the interpretation of tender or technical evaluation or comparison or bid etc. The question arising in this case is with regard to applicability of MSE policy for award of cloud contract in favour of third respondent.

69. Undisputedly, the petitioner is the lowest bidder for the cloud contract. The award of contract to it is denied only on account of grant of benefit of MSE policy. We are, therefore, required to examine whether MSE policy is applicable in this case or not?

70. Article 14 of the Constitution of India guarantees equality before law to everyone. It is settled that classification under Article 14 must never be arbitrary.

The classification must always rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which the classification is made. The test ultimately is of intelligible differentia and the rationale nexus to the object sought to be achieved.

71. If the object of promoting MSME unit in government procurement is not subserved since the goods are either not produced by it or the services are not rendered by it, then the grant of benefit of MSE policy would be arbitrary.

72. It is for this limited purpose that this Court has examined the applicability of MSE policy in the facts of the present case. The MSE policy is categorical. It is to be extended to an MSE only for the goods produced or services rendered by it.

73. In Lifecare Innovations Pvt. Ltd. (supra), Hon'ble Supreme Court has explained the scope of judicial review in such matters. The Court has held that scope of judicial review in these matters should transcend the standard power of judicial review to examine whether the authorities are functioning effectively and efficiently to achieve institutional objectives.

74. The terms of contract have already been examined by us and it is apparent that though it is styled as a contract of services but it does include supply of goods also. The goods are to be supplied primarily by the CSP. Even the services which are to be provided for the cloud contract are to be majorly rendered by the CSP.

75. In this regard the petitioner has pleaded that dominant part of the contract

consists of work assigned under heads 'A' & 'B' which require huge investment into setting up of data warehouses and research and development. This part of the contract is the dominant part and as per the bid submitted by third respondent (MSP) it is to be provided by CSP which is AWS in this case. In para 10 of the supplementary affidavit filed by petitioner on 4.2.2025 following assertions are made:-

“10. That an assessment of the financial proposal of the Respondent No. 3 indicates that out of a total bid of INR 37,92,17,479.47/-, a sum of INR 35,83,14,173.61/- was proposed to be utilized towards the procurement of goods and services from the CSP under Heads A and B of the said proposal, while INR 89,57,854.34/- and INR 1,19,45,451.52/- were earmarked for the fee of incidental services pertaining to installation, commissioning, training and maintenance services under Heads C and D respectively. The above figures indicate that approximately 97% of the Respondent No. 3's fee proposal was earmarked for purchase of goods and services from the CSP to the Respondent No. 3, i.e. Amazon Web Services, while the balance meagre fee was proposed for the incidental service for installation/set-up/commissioning/maintenance of the products and services offered by the Respondent No. 3's CSP.”

76. Annexure-2 to this affidavit is a chart containing the financial bid of petitioner and third respondent. As per this chart the share of cloud service provider in the contract for the petitioner is 97.21%

while for the third respondent it is 97.12%. The MSP component i.e. role of petitioner and respondent no.3 in terms of financial outlay in the contract is 2.79% for the petitioner while it is 2.88% for the third respondent. The chart (annexure SA-3) is referred to in para 11 of the supplementary affidavit filed by the petitioner.

77. Respondent no.3 has filed its supplementary counter affidavit in reply to the assertions made by the petitioner in supplementary affidavit. Para 10 of the supplementary affidavit has been replied in para 36 which is reproduced hereinafter:-

“36. That the contents of paragraph no. 10 of the supplementary affidavit save as matters of record, are misleading, wrong and denied; in reply thereto, it is submitted a suitable reply has already been given in the preceding paragraphs of this counter affidavit which is not being repeated herein for the sake of brevity.”

78. The figures mentioned in the chart suggesting that 97% of the financial outlay for the cloud contract goes to CSP while the share of MSP remains below 3% is not specifically disputed. In para 32 to 34 of the supplementary counter affidavit the third respondent states that a misconceived narrative is put forth by the petitioner and that predominantly cloud infrastructure is based on ‘pay for use’ principle and the services/cloud payments are variable subject to its usage. The respondent contends that:-

“Without prejudice, it is also submitted that the quantum of work distributed between the MSP and CSP and the flow of money

between them would per se have no bearing upon the aspect as to whether the answering respondent is entitled to the benefit of the MSE order or not inasmuch as there could be judicial determination of the appropriate quantum which would make an MSME eligible for the benefits or otherwise”

79. In para 32 the respondent again states as under:-

“The composition of work, distribution of funds becomes immaterial and is not something that the petitioner can be allowed to question at such a belated stage before this Hon'ble Court. It may also be noted that the intention of the MSME Act is to promote, enhance and develop the competitiveness of concerned entities and the same is not be measured in terms of 1 profits they ultimately earn.”

80. In para 34 the respondent state as under:-

“Therefore, the fact that the answering respondent employs 20 CSP-trained specialists underscore the specialized nature of its services and clearly negates the notion of mere trading or reselling. Such specialized personnel would not be required if the answering respondent was simply a reseller.”

81. The provisions contained in the tender document as well as specific pleading made in the writ makes it apparent that the contract is to be predominantly performed by the CSP. 97% of the financial

outlay for the cloud contract goes to CSP while the share appropriated to MSP is less than 3%.

82. Based upon the services provided by CSP viz-a-viz MSP and their respective shares in performing contract in monetary terms it can be safely concluded that CSP is the dominant partner in the cloud contract which not only performs major part of the contract consisting of compute services and its storage but also provides software licenses, processes and documents on behalf of MSP to DGH for the contract period. The MSP is the subservient partner in the cloud contract which only plays a supporting role in offering support services etc. for which it gets less than 3% outlay of the contract value.

83. Learned counsel for the parties otherwise acknowledge at the bar that providing of cloud compute services as well as storage of data etc. are highly skilled services which are currently limited to few multinational corporations like Amazon Web Services, Microsoft, Google etc. On behalf of the two bidders i.e. petitioner and the third respondent the cloud services are to be provided either by Amazon Web Services or by M/s Microsoft International as CSP. The MSP i.e. the petitioner or third respondent do not have the technical wherewithal to provide cloud compute services or storage etc. which is the dominant part of the contract. Their role in the cloud contract is limited to providing of support services and migrating data on the proprietary software of CSP.

84. Since DGH is a body functioning under the administrative control of Ministry of Petroleum and Natural Gas, Government of India,

therefore, the provisions of public procurement policy for MSME Order, 2012, will otherwise be applicable upon it. However, the issue as to whether bidder in the cloud contract is either producing the goods or is rendering the services so as to extend MSME Policy upon it has neither been considered nor examined in correct perspective. Routine applicability of MSME Policy in the cloud contract without examining whether necessary ingredients for its applicability are attracted is apparent on record, which is clearly arbitrary.

85. Materials available on record and its careful analysis leaves no room of doubt that goods and services for the cloud contract is not rendered by the bidder in its capacity as MSP (third respondent). It is merely playing a supporting role in providing of cloud services on behalf of AWS/CSP.

86. Whatever be the nomenclature: be it sole agent/distributor/partner/collaborator or consortium member the MSP/bidder (third respondent) cannot be held to be rendering services or providing goods for the cloud contract. This distinction has to necessarily go to CSP (AWS in this case).

87. Although, we are not much impressed by the petitioners' argument of third respondent not being the originator of service, which is not a term used in the contract, yet, what is apparent is that the CSP (AWS in this case) is predominantly rendering goods and services for the cloud contract, which is not an MSME.

88. Once that be so, the question that arises for our consideration is as to whether preference in the matter of award of cloud contract could have been extended

to third respondent only because it is registered as MSE?

89. Structuring of the cloud contract is such that the bidder (third respondent) is the MSP. It acts not only on its behalf but also acts on behalf of CSP in submitting the bid. The cloud contract envisages an agreement between MSP and its dominant partner i.e. CSP. The contract further stipulates a guarantee by the CSP that it shall provide all services which are expected to be provided by the CSP and also extend assurances in assisting MSP in performing its part of obligation under the contract. MSP, therefore, is in collaboration with CSP for performing duties under the cloud contract with dominant functions performed by CSP.

90. MSP and CSP are two distinct entities with different roles assigned to them in the cloud contract. The dominant partner of cloud contract i.e. CSP is not an MSE. The MSE regime does not extend benefit of MSE policy in cases of foreign collaboration or an exigency in which the registered MSE is not rendering the services or plays a subservient role to a dominant partner which is not an MSE. Even foreign collaboration or joint venture, etc., is not permissible in the MSME regime. Works contract are also excluded from its purview. The MSME policy, as is apparent from the Act of 2006 as well as procurement policy of 2012 limits its applicability only to registered MSME units for the goods produced by it or services rendered by it. Nothing more and nothing less.

91. Extending the benefit of MSE policy in award of cloud contract in favour of third respondent would thus run counter to the policy objectives and provisions of

MSE regime. Extending such benefit will be wholly irrational and arbitrary. Preferential treatment to third respondent under the MSME policy will not subserve the objective of the policy itself and would be arbitrary.

92. Grant of benefit of MSE policy in favour of third respondent for award of cloud contract since is found impermissible and arbitrary, the consequential award of contract to third respondent cannot be sustained and is quashed. Consequently, this petition succeeds and is allowed. Respondent no.2 is directed to proceed further in accordance with law for award of cloud contract, in light of the observations contained in this judgment.

93. Parties are left to bear their own costs.

(2025) 3 ILRA 633
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 05.03.2025

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

Writ C No. 2218 of 2025
 alongwith other connected cases

Vijay Pratap Singh & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:

Manoj Kumar Dwivedi, Akhilesh Kumar Mishra,
 Vikrant Dwivedi

Counsel for the Respondents:

C.S.C.

**A. Civil Law – UP Excise Act, 1910 –
 Sections 24, 24-A & 36-A – New Excise
 Policy, 2025 – Liquor shop license –
 Renewal – e-lottery – Exclusion claimed –**

Right to carry out trade in liquor – Entitlement – *Ugar Sugar Works Ltd.'s case* relied upon – There is no fundamental right to carry out trade in liquor – Held, the dealing in liquor attracts the principles of *res extra commercium* as it has been well settled that there cannot be any commerce, there cannot be a business in crime because specifically the liquor and the intoxicants have to be regulated as they are noxious and injurious to health; no citizen can claim any right to deal with such goods on the principles of General Public Policy i.e. *res extra commercium*. (Para 24 and 33)

B. Civil Law – Constitution of India, 1950 – Article 226 – Writ – Judicial review – Excise Policy – Scope of interference – *B. Surendra Das's case* relied upon – The challenge to the Policy can be on a Ltd. ground and one of the grounds available to challenge the Policy was violation of Article 14 of the Constitution of India – Once it is held that the petitioners have no right, no writ can be issued as the challenge to the Policy is premised on the foundation of a right. (Para 25 and 34)

C. Principles of *res extra commercium* – General Public Policy – Applicability. (Par 33)

D. Civil Law – Constitution of India, 1950 – Article 300-A – Right to property – Right of return of money – Right protected under the Rules, how far can be taken away by a Policy – Held, the right of return of the money at the end of the license year is even protected in the rules, the said right cannot be taken away through a Policy decision – High Court quashed the Clause 5.15.2.2(1)(ga) of the Policy declaring it violative of Art. 300-A of Constitution. (Para 36 and 40)

E. Constitution of India, 1950 – Article 300-A – Word 'Law' – Meaning – The word 'law' as used in the context of Article 300-A of the Constitution has to mean the law framed by legislature and not the executive directions as given under Article 162 of the Constitution. (Para 38)

F Practice and Procedure – Though the provision of Policy was not challenged, the issue relating to it was arisen and addressed by both side – Permissibility of deciding the vires of Policy – Held, Clause 5.15.2.2 (1) (ga) of the said Policy, has the affect of taking away the rights vested under Art. 300-A; although, there is no challenge to the said provision, however, the issue has arisen and was addressed by both the sides extensively – High Court quashed the Clause 5.15.2.2 (1) (ga) of the Policy. (Para 40)

Writ petition dismissed. (E-1)

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4. Ugar Sugar Works Ltd. Vs Delhi Administration & ors.; (2001) 3 SCC 635
5. St. of Kerala & ors. Vs B. Surendra Das & ors.; (2015) 12 SCC 101
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12. Kuldeep Singh Vs Govt. NCT of Delhi; 2006 (5) SCC 702

13. Commissioner of Municipal Corporation, Shimla Vs Prem Lata Sood & ors.; 2007 (11) SCC 40

14. Anand Kumar Sharma Vs St. of U.P. & ors.; 2014 SCC OnLine All 15240

15. The St. of Mah. & anr. Vs Lok Shikshan Sanstha & ors.; 1971 (2) SCC 410

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(Delivered by Hon'ble Pankaj Bhatia, J.)

1. Heard Shri Manoj Kumar Dwivedi, Shri Shobhit Mohan Shukla, Shri Anurag

Kumar Singh, Shri Rohit Jaiswal, Shri Abhishek Singh and Shri Avinash Singh, learned counsel appearing for the petitioners and Dr. L.P. Mishra, learned counsel appearing for the State assisted by Shri Anil Pratap Singh, learned Addl. Advocate General, Shri Shailendra Kumar Singh, learned CSC, Shri Pankaj Khare, learned A.C.S.C., Shri Tushar Verma, learned A.C.S.C., Shri Badrish Tripathi, learned A.C.S.C., Shri Abhishek Kumar Pandey, A.C.S.C. and Shri Dheerendra Singh, learned Standing Counsel for the respondent – State.

2. Present writ petitions have been filed challenging the Government Order dated 06.02.2025 specifically 5.11 issued by respondent no.1.

There is also a challenge to the consequential order dated 06.02.2025 issued by respondent no.2 and the notices dated 13.02.2025 issued by respondent no.3 which provides for settlement of all country liquor shops through e-lottery process including the shop of the petitioners as contained in Annexures – 1 to 3.

A further mandamus has been sought commanding respondent no.3 to exclude the shop of the petitioners for the settlement through e-lottery for the Excise Year 2025 – 26.

It is further prayed that any other writ which this Court may deem appropriate may be issued.

3. The facts that arise from all the petitions are that the petitioners were running liquor shops by virtue of the licenses granted in their favour in terms of the policy which subsisted prior to passing of the policy dated 06.02.2025. It is claimed that most of the petitioners were

running the shops since the year 2018 which were granted to them through e-lottery process and were renewed on a yearly basis on the basis of the demands and fees as demanded which were enhanced from time to time. It is further stated that in terms of the license granted in the year 2018 and renewed subsequently from year to year, the last such license in favour of the petitioners was to subsist till 31.03.2025 and there was a legitimate expectation that in terms of the prescriptions contained in the rules, an option of renewal shall be conferred and shall be given to the petitioners, however, the State Government through Government Order dated 06.02.2025 framed the excise policy. In terms of the said excise policy, the manner of allocation and grant of shops was radically modified and it was provided that all the liquor shops which were under the control of the State Government and are regulated by virtue of the U.P. Excise Act and the Rules framed thereunder shall be amended and shall be given through a fresh e-lottery to be drawn as prescribed in the government policy. Certain other prescriptions were also noticed in the said government policy. The said policy for the sake of brevity is being referred to 'New Excise Policy, 2025'.

4. In sum and substance of the arguments is that Condition No.5.11 of the said policy takes away the rights of consideration for renewal which were vested in favour of the petitioners in terms of various rules and to that extent it is proposed to be argued that the policy is bad in law. The other contentious issue as raised is with regard to Clause 5.15.2.2(1)(ga) wherein it has been prescribed that all the stocks which are lying with the licensee shall be taken on 01.04.2025 and shall be kept in the custody of the Excise

Commissioner which shall be destroyed by them under their guidance and videography, and no amount of compensation shall be payable to the licensee.

5. In nutshell argument raised by the petitioners are in respect of these two clauses which are said to be offending.

6. The first argument raised is that the policy decision is contrary to Rule 5 of the Rules which have been framed for regulating the sale of various liquor shops. The second argument raises is that the circular which is in the form of a Government Order cannot override the rules which specifically provide for consideration and right of renewal which I shall advert to subsequently. It is further argued that as the rules have not been amended, a challenge was raised before the Allahabad High Court on the ground that without amending the respective rules in respect of various shops, the Government Order has been floated. It is argued that in a huge haste, to overcome the said legal lacunae, the rules have been modified on 03.03.2025 by issuance of a publication. In terms of the said rules with regard to liquor sale through Model Shops were amended, the rules in respect of country liquor was also modified. It is stated that after the modification of the said rules, the interim order which was passed by the Allahabad High Court in Writ Tax No.748 of 2025 was vacated and the parties were given the liberty to challenge their rights.

7. Attacking the said amendment in the rules w.e.f. 03.03.2025, the submission of learned counsel for the petitioners is that the said rules cannot be applied retrospectively. He argues that the policy was framed on 06.02.2025 through the Government Order and thereafter,

applications were invited for the participants and as such, the law as was applicable on the date of inviting the tender through e-lottery should be the relevant law and thus, the amendments effected w.e.f. 03.03.2025 do not cure the lacunae which has occurred by the State. It is further argued that the petitioners cannot be deprived of the legal rights which vest in them by virtue of the rules through an illegal policy which in the present case is Government Order dated 06.02.2025. It is further proposed to be argued that the State has to act as a welfare State to uphold the majesty and rule of law, which is absent in the present case. It is further argued by virtue of the provisions contained in Clause 5.15.2.2(1)(ga), the right of property stands affected adversely and the petitioners have been deprived of their right to property without any law which is also violative of Art. 300A of Constitution of India. It is further argued that the State in its policy has specifically excluded one kind of shop known as U.P. Excise (Settlement of Licenses for Premium Retail Vends of Foreign Liquor) Rules, 2020 and to that extent, the policy of the State is discriminatory insofar as they have taken policy in respect of certain kind of shops only whereas the premium retail vends have been exempted from the said policy decision which, according to the petitioners, is arbitrary and illegal. It is further argued that only two rules have been amended in respect of two kind of shops and there are no amendment with regard to the other shop noticeably the shops of retail of Bhang as well as the other retail shops which include the shop of vending of Beer.

8. It is further argued by one of the counsel(s) appearing for the petitioners that in terms of the rules it was prescribed that

after the expiry of the period of license, if the licensee desires, the State Government may take steps for renewal on the basis of the material available. In the present case, the said right of 'desire' expressed and conferred by virtue of the rules has been taken away in terms of the policy. It is further argued that the policy is violative of Rule 5. He further argues that although there is no fundamental right under Art. 19(6) of the Constitution, the policy still has to satisfy the test of Art. 14 of the Constitution which is miserably failing in the present policy. I shall advert to the judgments referred by the parties subsequently.

9. Starting from the said argument as recorded above, learned counsel for the State was called.

10. Dr. L.P. Mishra, learned counsel for the State assisted by the other counsels argues that firstly there is no right to carry trade in liquor as has been held by the Supreme Court. He further argues that the distinction drawn with regard to the premium retail vends of foreign liquor and allegations of violation of Art. 14 of Constitution on that ground merits rejection on account of sole reason that the said shops are a separate category and no parity can be claimed by the petitioners who have a license in different category of shops. He further argues that separate rules governed with regard to the sale of the foreign kinds of liquor and thus, the claim of parity is not justified. He further argues that there is no specific challenge to Clause 1(ga) of Para 5.15.2.2 and thus, the petitioners cannot argue on the said clause. He further argues that the argument that only two set of rules have been modified/amended on 03.03.2025 is for the reason that the category of shops have been reduced which

were five in number in earlier policy and now they are four in number. He argues that the amendment with regard to two set of shops, as recorded above, were published, however, with regard to the other set of shops, no rules have been framed so far which shall be done by the State Government in terms of the prescriptions contained in the Excise Act. He further argues that with regard to the claim that the petitioners would be deprived of their right to property, he has given statement that earlier with regard to destruction of the liquor and the erstwhile rules which were prevalent shall be considered by the State Government as per the directions that may be issued by this Court and a rational decision shall be taken at an appropriate level by the appropriate authority. He argues that he is unable to make a statement on that count as the policy decision in question was ratified by the Cabinet and without approval of the Cabinet, no decision/statement can be given at this stage. He, however, undertakes that till a fresh decision is taken by Cabinet at an appropriate level, the stocks after the expiry of the license shall not be destroyed and shall be kept which shall be subject to further decision which shall be taken by the State Government at an appropriate level in accordance with law.

11. He also places reliance on Section 36-A of U.P. Excise Act which shall be dealt with subsequently. He also argues that the amendment carried out in the rules on 03.03.2025 have not been challenged in the present writ petitions. He further argues that the submission of counsel for the petitioners that law as prevalent on the issuance of the advertisement would prevail, is contrary to the settled principles, as the law which applies on the date of the issuance of the

licenses would be governing the rights in between the parties and to that extent, the petitioners are wrong in arguing the same.

12. In rejoinder, learned counsel for the petitioners apart from reiterating the submissions as have been recorded above, have argued that once the license is granted, the rights start accruing in favour of the petitioners and the said rights can be taken away only in accordance with law and whatever benefits flow from the licenses granted should be extended to the petitioners which have been denied by means of the policy. It is further proposed to be argued that the petitioners were continuing since the year 2018 onward and had made heavy investments and the State Government has come out with a policy abruptly which will lead severe losses to the petitioners. It is further argued that due to the fact that the licenses were renewed since the year 2018 on year to year basis, the petitioners have made huge investments and thus, there was a legitimate expectation that the licenses would be renewed this year also.

13. Dr. L.P. Mishra, learned counsel for the State countering the submission on the arguments of legitimate expectation argues that the legitimate expectation cannot be claimed against law and to that extent, the arguments merits rejection.

14. Learned the counsel for the State argues that the petitioners have also applied under the New Policy and they are estopped from challenging the Policy. Having taken the benefit of the said submissions, the counsel for the petitioner argues that merely because the petitioners have applied under the new Policy, they cannot be estopped from arguing on their

vested right, which according to them vests by virtue of their rights in their favour.

15. Learned counsel for the petitioners in support of the contentions that they are not estopped from raising the plea, as argued by the counsel for the State, have placed reliance on Para 24 of the judgment of the Supreme Court in the case of **Krishna Rai (dead) through Legal Representatives and Others vs. Banaras Hindu University; (2022) SCC 713** which is as under:

“24. The case laws relied upon by the Division Bench would have no application in the facts of the present case as none of the judgments relied upon by the Division Bench laid down that principle of estoppel would be above law. It is settled principle that principle of estoppel cannot override the law. The manual duly approved by the Executive Council will prevail over any such principle of estoppel or acquiescence.”

16. The counsel for the petitioners placed reliance on the judgment in the case of **Government of India vs. Vedanta Limited & Ors; (2020) 10 SCC 1** to argue that the law as prevalent on the date of Public Policy would apply. In this context reliance is placed on para 106, which is as under :

“106. The two Explanations in Section 48 begin with the words “For the avoidance of any doubt”. It cannot, however, be presumed to be clarificatory and retrospective, since the substituted Explanation 1 has introduced new sub-clauses, which have brought

about a material and substantive change in the section. A new Explanation 2 has been inserted which states that the test as to whether there is a contravention with the fundamental policy of Indian law, shall not entail a review on the merits of the dispute. Since the amendments have introduced specific criteria for the first time, it must be considered to be prospective, irrespective of the usage of the phrase “for the removal of doubts”. Reliance is placed on the judgment of this Court in Sedco Forex International Drill. Inc. v. CIT [Sedco Forex International Drill. Inc. v. CIT, (2005) 12 SCC 717] wherein it was held that an Explanation if it changes the law, it cannot be presumed to be retrospective, irrespective of the fact that the phrases used are “it is declared” or “for the removal of doubts”. In SsangYong Engg. & Construction Co. Ltd. v. NHAI [SsangYong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] this Court was considering the amendments made to Section 34, wherein two Explanations to Section 34 had been inserted, which are identically worded with the two Explanations to Section 48. In that case, a similar ground of retrospectivity had been urged. This Court held that since the Explanations had been introduced for the first time, it is the substance of the amendment which has to be looked at, rather than the form. Even in cases where “for avoidance of doubt”,

something is clarified by way of an amendment, such clarification cannot have retrospective effect, if the earlier law has been changed substantially."

17. Before advertng to the factual submissions as recorded above, it is essential to notice that the excise under the State of U.P. is governed under the provisions of U.P. Excise Act, 1910; the powers and duties of the officers regulating are specified; the establishment and control of the liquor shops is exclusively in the administration of the Excise Departments in the District; the import, export and transport is also regulated by virtue of Chapter III; and manufacture, possession and sale is governed by Chapter IV of the said act.

18. It is essential to notice Section 24 and Section 24A of the U.P. Excise Act. Section 24 grants an exclusive privilege of manufacture which can be granted by the State Government through the Excise Commissioner which is subject to the provisions of Section 31, which is quoted herein below:

"24. Grants of exclusive privilege of manufacture, etc.—
Subject to the provisions of Section 31, the Excise Commissioner may grant to any person a license for the exclusive privilege—

(1) of manufacturing or of supplying by wholesale, or of both, or

(2) of selling by wholesale or by retail, or

(3) of manufacturing or of supplying by wholesale, or of both, and of selling by retail, any country

liquor or intoxicating drug within any local area."

19. Section 24A governs the right of the Excise Commissioner for grant of license or licenses for the exclusive or other privilege with regard to sale by retail at shops. Section 24A is quoted herein below:

"24-A. Grant of exclusive or other privilege in respect of foreign liquor.—*(1) Subject to the provisions of Section 31, the Excise Commissioner may grant to any person a license or licenses for the exclusive or other privilege,—*

(a) of manufacturing or of supply by wholesale, or of both; or

(b) of manufacturing or of supplying by wholesale, or of both and selling by retail; or

(c) of selling by wholesale (to wholesale or retail vendors); or

(d) of selling by retail at shops (for consumption 'on' or 'off' the premises or for consumption 'on' and 'off' the premises) any foreign liquor in any locality.

(2) The grant of license or licenses under clause (d) of subsection (1) in relation to any locality shall be without prejudice to the grant of licenses for the retail sale of foreign liquor in the same locality in hotels and restaurants for consumption in their premises.

(3) Where more licenses than one are proposed to be granted under clause (d) of subsection (1) in relation to any locality for the same period, advance intimation of the proposal shall be given to the prospective applicants for every such license.

(4) The provisions of Section 25, and proviso to Section 39 shall apply in relation to grant of a license for an exclusive or other privilege under this section as they apply in respect of the grant of a license for an exclusive privilege under Section 24."

20. In terms of the powers conferred by virtue of Section 24 & 24A of the Excise Act, the State through the Excise Commissioner is empowered to control and regulate the sale etc., of the liquor shops.

21. Chapter VI of the said Act provides for grant of licenses, permits and passes which include the power to suspend or cancel the licenses. It is essential to notice Section 36-A of the Excise Act, which is as under:

"36-A. Bar to right of renewal and compensation—*No person to whom a license has been granted under this Act shall have any claim to the renewal of such license or any claim for compensation on the determination or non-renewal thereof."*

22. In terms of the powers conferred by virtue of the Act, rules have been framed with regard to the sale in respect of various kind of liquors. In terms of the said statutory prescription and the rules framed, the petitioners were granted license. It is essential to notice that the rules which are applicable to various kind of liquor are known as U.P. Excise (Settlement of Licenses for Retail Sale of Beer) Rules, U.P. (Settlement of Licenses for Retail Sale of Country Liquor) Rules, U.P. Excise Settlement of License for Retail Shop of Foreign Liquor (Excluding

Beer and Wine) Rules, and, U.P. Excise (Settlement of Licenses for Retail Sale of Wine), Rules which have been framed from time to time. The State Government also framed rules which are known as the U.P. Excise (Settlement of Retail Licenses for Model Shop of Foreign Liquor) Rules.

23. To test the first argument that the right of the petitioners of renewal is conferred by virtue of the Rules, vests in them as soon as they are granted license. To test the said argument, it is essential to notice Constitutional Bench Judgment of the Supreme Court in the case of ***Khoday Distilleries Ltd. and Others vs. State of Karnataka and Others; (1995) 1 SCC 574***, wherein the Supreme Court had the occasion to consider the rights to carry out trade in liquor, in contradistinction to the rights entrusted by virtue of Article 19 of the Constitution of India. The law as summarized by the Supreme Court is as under:

"60. We may now summarise the law on the subject as culled from the aforesaid decisions.

(a) The rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in clauses (2) to (6) of Article 19. The fundamental rights guaranteed in Article 19(1)(a) to (g) are, therefore, to be read along with the said qualifications. Even the rights guaranteed under the Constitutions of the other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied limitations are made explicit by clauses (2) to (6) of Article 19 of our Constitution.

(b) The right to practise any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilised societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e., res extra commercium, (outside commerce). There cannot be business in crime.

(c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is res extra commercium being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence the trade or business in liquor can be completely prohibited.

(d) Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the standard of living of the people and improvement of the public health. It, therefore, ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. The

State has, therefore, the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes.

(e) For the same reason, the State can create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale and distribution of the liquor as a beverage and also sell the licences to the citizens for the said purpose by charging fees. This can be done under Article 19(6) or even otherwise.

(f) For the same reason, again, the State can impose limitations and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are res commercium. The restrictions and limitations on the trade or business in potable liquor can again be both under Article 19(6) or otherwise. The restrictions and limitations can extend to the State carrying on the trade or business itself to the exclusion of and elimination of others and/or to preserving to itself the right to sell licences to do trade or business in the same, to others.

(g) When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on

trade or business subject to the limitations, if any, and the State cannot make discrimination between the citizens who are qualified to carry on the trade or business.

(h) The State can adopt any mode of selling the licences for trade or business with a view to maximise its revenue so long as the method adopted is not discriminatory.

(I) The State can carry on trade or business in potable liquor notwithstanding that it is an intoxicating drink and Article 47 enjoins it to prohibit its consumption. When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor which is also an aspect of reasonable restriction in the interest of general public. The State cannot on that account be said to be carrying on an illegitimate business.

(j) The mere fact that the State levies taxes or fees on the production, sale and income derived from potable liquor whether the production, sale or income is legitimate or illegitimate, does not make the State a party to the said activities. The power of the State to raise revenue by levying taxes and fees should not be confused with the power of the State to prohibit or regulate the trade or business in question. The State exercises its two different powers on such occasions. Hence the mere fact that the State levies taxes and fees on trade or business in liquor or income derived from it,

does not make the right to carry on trade or business in liquor a fundamental right, or even a legal right when such trade or business is completely prohibited.

(k) The State cannot prohibit trade or business in medicinal and toilet preparations containing liquor or alcohol. The State can, however, under Article 19(6) place reasonable restrictions on the right to trade or business in the same in the interests of general public.

(l) Likewise, the State cannot prohibit trade or business in industrial alcohol which is not used as a beverage but used legitimately for industrial purposes. The State, however, can place reasonable restrictions on the said trade or business in the interests of the general public under Article 19(6) of the Constitution.

(m) The restrictions placed on the trade or business in industrial alcohol or in medicinal and toilet preparations containing liquor or alcohol may also be for the purposes of preventing their abuse or diversion for use as or in beverage."

24. Similarly, the Supreme Court had the occasion to deal with the scope of judicial review in challenge to the Excise Policy under Article 226 in the judgment in the case of **Ugar Sugar Works Ltd. vs. Delhi Administration and Others; (2001) 3 SCC 635** wherein the Constitutional Bench Judgment was affirmed to hold that there is no fundamental right to carry out trade in liquor and the grounds to challenge were also very limited.

25. It is essential to notice the next judgment of the Supreme Court in the case of *State of Kerala and Others vs. B. Surendra Das and others*; (2015) 12 SCC 101 wherein the view that no one has a fundamental right to trade in liquor was reaffirmed. It was also stated that the challenge to the Policy can be on a limited ground and one of the grounds available to challenge the Policy was violation of Article 14 of the Constitution of India.

26. It is also essential to notice the judgment of the Supreme Court in the case of *Kuldeep Singh vs. Govt. of NCT of Delhi*; (2006) 5 SCC 702 wherein the Supreme Court had the occasion to consider that on account of the change of Policy, the huge investments made did not confer on the licensee any accrued or vested right so as to bar the government from changing the previous policy decisions. It is essential to notice paragraph 15 and 30 of the said judgment, which are as under:

“15. The appellants filed applications for grant of licence pursuant to the policy decision adopted by the State. They might have invested a huge amount, but did not thereby derive any accrued or vested right. The matter relating to grant of licence for dealing in liquor is within the exclusive domain of the State. If the State had the right to adopt a policy decision, they indisputably had a right to vary, amend or rescind the same. The effect of a policy decision taken by the State is to be considered having regard to the provisions contained in Article 47 of the Constitution of India as also its power of regulation and control in

respect of the trade in terms of the provisions of the Excise Act.

30. Unless, therefore, an accrued or vested right had been derived by the appellants, the policy decision could have been changed.”

27. The counsel for the petitioners have also relied upon the judgment in the case of *Ugar Sugar Works Ltd. (supra)* and argued that the limited ground of challenge are available, as held in Paras 13 to 18, which are as under:

“13. That there is no fundamental right to trade in intoxicants, like liquor, has been conclusively held by this Court in State of A.P. v. McDowell & Co. [(1996) 3 SCC 709] where taking note of some of the earlier Constitution Bench decisions of this Court, the argument that a citizen of this country has a fundamental right to trade in intoxicant liquor was once again emphatically repelled. That issue is, thus, no longer res integra. The following observations of the Bench in McDowell case [(1996) 3 SCC 709] are educative: (SCC pp. 735-36, para 39)

“39. The contention that a citizen of this country has a fundamental right to trade in intoxicating liquors refuses to die in spite of the recent Constitution Bench decision in Khoday Distilleries [Khoday Distilleries Ltd. v. State of Karnataka, (1995) 1 SCC 574] . It is raised before us again. In Khoday Distilleries [Khoday Distilleries Ltd. v. State of Karnataka, (1995) 1

SCC 574] this Court reviewed the entire case-law on the subject and concluded that a citizen has no fundamental right to trade or business in intoxicating liquors and that trade or business in such liquor can be completely prohibited. It held that because of its vicious and pernicious nature, dealing in intoxicating liquors is considered to be res extra commercium (outside commerce). Article 47 of the Constitution, it pointed out, requires the State to endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and all drugs which are injurious to health. For the same reason, the Bench held, the State can treat a monopoly either in itself or in an agency created by it for the manufacture, possession, sale and distribution of liquor as a beverage. The holding is emphatic and unambiguous. Yet an argument is sought to be built upon certain words occurring in clauses (e) and (f) of the summary contained in para 60 of the decision. In these clauses, it was observed that creation of a monopoly in the State to deal in intoxicating liquors and the power to impose restrictions, limitations and even prohibition thereon can be imposed both under clause (6) of Article 19 or even otherwise. Seizing upon these observations, Shri Ganguly argued that this decision implicitly recognises that business in liquor is a fundamental right under Article 19(1)(g). If it were not so, asked the learned counsel, reference to Article 19(6)

has no meaning. We do not think that any such argument can be built upon the said observations. In clause (e), the Bench held, a monopoly in the State or its agency can be created 'under Article 19(6) or even otherwise'. Similarly, in clause (f), while speaking of imposition of restrictions and limitations on this business, it held that they can be imposed 'both under Article 19(6) or otherwise'. The said words cannot be read as militating against the express propositions enunciated in clauses (b), (c), (d), (e) and (f) of the said summary. The said decision, as a matter of fact, emphatically reiterates the holding in Har Shanker [Har Shankar v. Dy. Excise and Taxation Commr., (1975) 1 SCC 737] that a citizen has no fundamental right to trade in intoxicating liquors. In this view of the matter, any argument based upon Article 19(1)(g) is out of place."

14. In Har Shankar v. Dy. Excise and Taxation Commr. [Har Shankar v. Dy. Excise and Taxation Commr., (1975) 1 SCC 737] Chandrachud, J. (as the learned Chief Justice then was) in para 53 of the judgment opined: (SCC p. 758)

"53. In our opinion, the true position governing dealings in intoxicants is as stated and reflected in the Constitution Bench decisions of this Court in Balsara case [State of Bombay v. F.N. Balsara, 1951 SCC 860 : AIR 1951 SC 318 : 52 Cri LJ 1361], Cooverjee case [Cooverjee B. Bharucha v. Excise Commr., AIR

1954 SC 220] , *Kidwai case* [State of Assam v. A.N. Kidwai, Commr. of Hills Division, 1957 SCR 295 : AIR 1957 SC 414] , *Nagendra Nath case* [Nagendra Nath Bora v. Commr. of Hills Division, AIR 1958 SC 398] , *Amar Chakraborty case* [Amar Chandra Chakraborty v. Collector of Excise, (1972) 2 SCC 442] and the *R.M.D.C. case* [State of Bombay v. R.M.D. Chamarbaugwala, AIR 1957 SC 699] , as interpreted in *Harinarayan Jaiswal case* [State of Orissa v. Harinarayan Jaiswal, (1972) 2 SCC 36] and *Nashirwar case* [Nashirwar v. State of M.P., (1975) 1 SCC 29] . There is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants — its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights are vested in the State and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants. In American Jurisprudence, Vol. 30 it is stated that while engaging in liquor traffic is not inherently unlawful, nevertheless it is a privilege and not a right, subject to governmental control (p. 538). This power of control is an incident of the society's right to self-protection and it rests upon the right of the State to care for the health, morals and welfare of the people. Liquor

traffic is a source of pauperism and crime (pp. 539, 540, 541).”

15. In *Har Shankar case* [Har Shankar v. Dy. Excise and Taxation Commr., (1975) 1 SCC 737] after considering decisions of five Constitution Benches, the law was summed up thus: (SCC p. 755, para 47)

“47. These unanimous decisions of five Constitution Benches uniformly emphasised after a careful consideration of the problem involved that the State has the power to prohibit trades which are injurious to the health and welfare of the public, that elimination and exclusion from business is inherent in the nature of liquor business, that no person has an absolute right to deal in liquor and that all forms of dealings in liquor have, from their inherent nature, been treated as a class by themselves by all civilised communities. The contention that the citizen had either a natural or a fundamental right to carry on trade or business in liquor thus stood rejected.”

16. In view of this settled position of law, any argument impugning the policy decision of the State Government, as reflected in the impugned notification, based upon Article 19(1)(g) is totally out of place and merits outright rejection and we have no hesitation in doing so most emphatically.

17. Faced with the settled legal position that there is no fundamental right to trade in liquor, learned counsel for the petitioner did not pursue the argument based on Article 19(1)(g)

to question the competence of Delhi Administration to take a policy decision with regard to regulating trade in liquor and laying down various regulatory measures and in our opinion rightly so. Learned counsel, however, mounted his challenge to the impugned notification based on Article 14 principally on the ground that the policy as reflected in the impugned notification was irrational and that raising of MSF requirements over the previous years' figures with a view to regulate the "quality of liquor" being sold in Delhi was arbitrary and has no nexus with the object sought to be achieved, viz., to provide liquor of good quality to the consumers in the National Capital Territory of Delhi. It was also urged that the policy is discriminatory and as a result of the policy, small-scale manufacturers with good quality of liquor, were likely to be deprived of their marketing brand within the potential market of Delhi, in case they do not achieve the prescribed MSF outside Delhi and that would result in leaving the field wide open only for big business houses who would retain their monopoly in Delhi market.

18. The challenge, thus, in effect, is to the executive policy regulating trade in liquor in Delhi. It is well settled that the courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed,

arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State."

28. They have also placed reliance on the judgment of the Supreme Court in the case of **Union of India vs. Indo-Afghan Agencies Ltd.; (1968) 2 SCR 366** in support of their contentions that they are not estopped from raising the plea.

29. In support of their arguments with regard to legitimate expectation, reliance is placed upon the judgment in the case of National Building Construction Corporation vs. S. Raghunathan and others; (1998) Supp (1) SCR 156.

30. Learned counsel for the State, on the other hand, to contend that it is the date when the license is granted is relevant for the application of the Policy and the Rules and not date on which the tenders are invited or applications are invited. To support the said contentions, reliance is placed upon the following judgments :

1. 1996 (2) SCC 439 (S. B. International Ltd. vs. Assistant Director General of Foreign

Trade & Ors.);

2. 1999 (7) SCC 314
(Union of India vs. Indian Charge
Crome and Anr.);

3. 2004 (1) SCC 663
(Howrah Municipal Corp. and
Others vs. Ganges Rope Co. Ltd.
and Others]);

4. 2006 (5) SCC 702
(Kuldeep Singh vs. Govt. NCT of
Delhi);

5. 2007 (11) SCC 40
(Commissioner of Municipal
Corporation, Shimla vs. Prem Lata
Sood and Others);

6. 2014 SCC OnLine All
15240 (Anand Kumar Sharma vs.
State of U.P. and Others)

31. In support of their contentions
that the Policy decisions are not open to
challenge beyond the known parameters of
scope of judicial review. Reliance is placed
on the following judgments :

1. 1971 (2) SCC 410 (*The
State of Maharashtra and Another
vs. Lok Shikshan Sanstha and
others*);

2. 1980 (Supp) SCC 559
(*Col A. S. Sangwan vs. Union of
India and Others*);

3. 1990 (3) SCC 223 (*Shri
Sitaram Sugar Company Ltd. vs.
Union of India and Others*);

4. 1991 (1) SCC 505
(*Union of India vs. S. L. Dutta and
Another*);

5. 2001 (3) SCC 635 (*Ugar
Sugar Works Ltd vs. Delhi
Administration and others*);

6. 2005 (3) SCC 369
(*Sidheshwar Sahakari Sakhar
Karkhana Ltd. vs. Union of India
and*

others);

7. 2007 (8) SCC 418
(*Dhampur Sugar (Kashipur Ltd.
Vs. State of Uttaranchal and
others*);

8. 2011 (1) SCC 640 (*Bajaj
Hindustan Limited vs. Sir Shadi Lal
Enterprises Limited and another*);

9. 2014 (13) SCC 356
(*Ehsan Khalid Vs. Union of India
through Secretary and others*).

32. Specific reliance is placed by
the counsel for the State on the Full Bench
Judgment of this Court in ***Writ Tax No.504
of 2002 (Brij Bhushan Chaudhary vs.
State of U.P.) decided on 05.07.2002*** and
specific reliance is placed on the following
observations while deciding the question
no.4, which is as under :

*“So far as Question no.4 is
concerned, that is, if the petitioners
are entitled to the renewal of
licence, it is not disputed that the
petitioners do not have any
Fundamental Right to trade or
business in liquor, which is, in fact,
the exclusive privilege of the State.
In this behalf, Section 36-A of the
U.P. Excise Act is also very clear in
that respect. Section 36A provides
as follows :*

*"36-A. Bar, to right of
renewal and compensation:- No
person to whom a licence has been
granted under this Act shall have
any claim to the renewal of such
licence or any claim for
compensation on the determination
or non-renewal thereof."*

*The grant of licence being
an exclusive privilege of the State,
under the Rules, the State
Government has been conferred*

power to renew the licence on such terms and conditions, as it deems fit and proper. A bare perusal of the provisions contained in the Rules makes it clear that the State Government has the privilege to deal with cases of licenses. The Rules, in effect, have to be read in consonance with their publication in the Gazette, the Foreign Liquor 3rd Amendment Rules 2002 and Beer 2nd Amendment Rules 2002 clearly state in Rule 1 (ii) that they shall come into force at once. "At once" would mean immediately on the date, March 14, 2002. In view of Section 77, there can be no doubt that the Foreign Liquor & Beer rules would come into force on 14.3.2002. In the case of Major G.S. Sodhi (Supra) it was held that the publication in the official Gazette is presumed when a printed copy of the Gazette is produced. However, in the instant case there is no dispute that the publication took place on 3rd April, 2002. No licence was granted prior to the publication in the Gazette. Only an advertisement was published. Advertisement being step towards grant of licence and being in conformity with the rules, therefore, there is no scope for challenge only on the ground of its non-publication."

33. On the basis of the pleadings and the law as recorded above, this Court is to consider whether any right has accrued in favour of the petitioners warranting interference by issuance of a writ under Art. 226 of the Constitution of India, as claimed. The right of renewal claimed by the petitioners by virtue of the Rules needs

to be repelled for the reason that specific bar is created under section 36-A of the U.P. Excise Act which prohibits the claim of right of renewal on the licensee. The said claim is further liable to be rejected on the ground that there is no fundamental right to deal in liquor. The dealing in liquor attracts the principles of *res extra commercium* as it has been well settled that there cannot be any commerce, there cannot be a business in crime because specifically the liquor and the intoxicants have to be regulated as they are noxious and injurious to health; no citizen can claim any right to deal with such goods on the principles of General Public Policy i.e. *res extra commercium*. Even the licenses granted to the petitioners do not confer any right; they are mere privilege.

34. In the absence of there being any right to carry out trade in liquor and there being a specific bar in seeking renewal by virtue of Section 36-A of the U.P. Excise Act, the claim of renewal/right to be considered for renewal based upon the rules, is ill-founded and cannot be accepted. Once it is held that the petitioners have no right, no writ can be issued as the challenge to the Policy is premised on the foundation of a right, which in the present case was found to be non-existent.

35. As regards to challenge to the policy on the ground of discrimination with the category of shops known as Premium Retail Vends of Foreign Liquor on the ground of discrimination, the same needs to be repelled for the simple reason that the said category of shops is a separate category and no parity can be claimed with the said category as the petitioners are running the shops in different categories and to that extent, the challenge on the ground of arbitrariness needs to be repelled

and is rejected. There is no allegation in the writ petitions with regard to there being any malafide or unreasonableness in the formulation of policy. There is no allegation of discrimination other than the one, dealt with by this Court herein above, as such, there is no reason to hold that the policy falls short of the test of Art. 14 of the Constitution of India.

36. However, this Court cannot ignore the fact that by virtue of a Policy decision being 5.15.2.2(1)(ga), prima-facie the right of property under Art. 300-A of Constitution has been taken away. The right of return of the money at the end of the license year is even protected in the rules, the said right cannot be taken away through a Policy decision.

37. It is well settled that Art. 300-A protects the right of Property which can be taken only in accordance with law. The Supreme Court has explained that the word 'law' used under Art. 300-A of Constitution has to be a law framed by the State Legislature and cannot be a Government Order. As laid down in the case of **Bombay Dyeing & Mfg. Co. Ltd. v. State of Bombay; AIR 1958 SC 328** to the effect that the money would also amount to property and thus to deprive a person of property, there has to be an authority of law.

38. The word 'law' as used in the context of Article 300-A of the Constitution has to mean the law framed by legislature and not the executive directions as given under Article 162 of the Constitution. This view is fortified by the decision of Hon'ble Apex Court in the case of **Bishambhar Dayal Chandra Mohan and others Vs. State of U.P. and others; (1982) 1 SCC 39**,

wherein the Hon'ble Supreme Court in para 41 has observed as under:

“There still remains the question whether the seizure of wheat amounts to deprivation of property without the authority of law. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162, as is clear from the opening words, is subject to other provisions of the Constitution. It is, therefore, necessarily subject to Article 300-A. The word 'law' in the context of Article 300-A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order; having the force of law, that is positive or State made law. The decisions in Wazir Chand v. State of Himachal Pradesh and Bishan Das and others v. The State of Punjab and others are an authority for the proposition that an illegal seizure amounts to deprivation of property without the authority of law. In Wazir Chand's case (supra), the police in India seized goods in possession of the petitioner in India at the instance of the police of the State of Jammu and Kashmir. The seizure was admittedly not under the authority of law, inasmuch as it was not under the orders of any Magistrate; nor was it under Sections 51, 96, 98 and 165 of the

Code of Criminal Procedure, 1898, since no report of any offence committed by the petitioner was made to the police in India, and the Indian police were not authorised to make any investigation. In those circumstances, the Court held that the seizure was not with the authority of law and amounted to an infringement of the fundamental right under Article 31 (1). This view was reaffirmed in Bishan Das's case (supra)."

39. Relying on the said judgment the Hon'ble Supreme Court in the case of ***Hindustan Times and others Vs. State of U.P. and another; (2003) 1 SCC 591*** has reaffirmed the same. The relevant paragraphs nos.23, 24 and 25 are as under:

"23. The expression 'law', within the meaning Article 300-A, would mean a Parliamentary Act or an Act of the State Legislature or a statutory order having the force of law.

24. In Bishambhar Dayal Chandra Mohan & Ors. etc. v. State of Uttar Pradesh & Ors. etc. [(1982) 1 SCC 39], this Court held as under :- "41. There still remains the question whether the seizure of wheat amounts to deprivation of property without the authority of law. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or

order. Article 162, as is clear from the opening words, is subject to other provisions of the Constitution. It is, therefore, necessarily subject to Article 300-A. The word "law" in the context of Article 300-A must mean an Act of Parliament or of a State legislature, a rule, or a statutory order, having the force of law, that is positive or State-made law."

25. It is not the contention of the respondents that any service is rendered to the petitioners herein. It is also not the contention of the respondents that the petitioners are bound to pay the amount in question by reason of their statutory obligation to pay retiral benefits to the working journalists. It is also not the case of the respondents that the petitioners herein have not been discharging their statutory obligations in the matter of payment of retiral benefits to the working journalists working in their own establishment in terms of the provision of the Central Acts as well as in terms of the Bachawat Award."

40. In the present case, Clause 5.15.2.2(1)(ga) of the said Policy, has the affect of taking away the rights vested under Art. 300-A; although, there is no challenge to the said provision, however, the issue has arisen and was addressed by both the sides extensively. Finding the said clause to be violative of Art. 300-A of Constitution, Clause 5.15.2.2(1)(ga) of the said Policy dated 06.02.2025 is quashed.

41. The State Government is directed to take steps for refund of the money in terms of the respective Rules,

which are similar and have not been amended even on 03.03.2025, and the consequent refund shall also be made to the petitioners in accordance with the law as per the prevalent Rules.

42. The writ petitions are *dismissed* except to the extent as noticed above.

(2025) 3 ILRA 652
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.03.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE VIPIN CHANDRA DIXIT, J.

Writ C No. 3824 of 2025

Deepak Kumar Verma ...Petitioner
Versus
Union of India & Ors. ...Respondents

Counsel for the Petitioner:
 Awadhesh Kumar Malviya

Counsel for the Respondents:
 A.S.G.I., Devi Shanker Shukla, Gaurav Kumar Chand

Civil Law - Constitution of India, 1950 - Article 226 - Against rejection of retail outlet dealership - Petitioner applied for the same in pursuance of advertisement, fulfilled all requirement, rejected by respondent - From perusal of Khatauni, there are six other co-owners of said property, whereas, lease deed was executed only by Raj Narayan and legal heirs of late Lal Bahadur Singh - Other co-owners not signed lease deed, since partition had not taken place, land owners who leased land to petitioner applied for partition before SDM and on date of application, offered land being Gata Nos. 485 & 488 not partitioned and lease deed was not executed by all co-owners - Thus,

impugned order based on evidence, no illegality. (Para 3, 5 to 8)

Writ petition dismissed. (E-13)

(Delivered by Hon'ble Vipin Chandra
 Dixit, J.)

1. The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner for quashing the impugned order dated 28.12.2024 passed by respondent no. 3 by which candidature of the petitioner for retail outlet dealership was cancelled.

2. Heard Sri Awadhesh Kumar Malviya, learned counsel for petitioner, Sri Gaurav Kumar Chand, learned counsel for respondent no. 1, Sri Devi Shanker Shukla, learned counsel for respondent nos. 2 & 3 and perused the record.

3. It is submitted by learned counsel for the petitioner that the petitioner had applied for retail outlet dealership in pursuance of advertisement dated 28.06.2023. The petitioner has fulfilled all the requirement as per the advertisement, but his candidature has been rejected by the respondent authority merely on the ground that lease deed was not executed by all the co-owners. The lease deed dated 23.09.2023 executed by Raj Narayan and legal heirs of late Lal Bahadur Singh in favour of petitioner for 35 x 35 meter land (total area 1225 sq. meter) from Arazi No. 485 & 488 which fulfills land requirement.

4. We have gone through the impugned order dated 28.12.2024. The respondent authority had cancelled the candidature of the petitioner on the ground that the land was not leased out by all the co-owners. The relevant extract of the order

dated 28.12.2024 is reproduced herein below :-

"Complaint 1:-

Land offered by the selected applicant Sh. Deepak Kumar Verma has not taken the land on lease from all the co-owners;

After investigation of complaint, findings are as below :-

1. As per the application and khatauni submitted by you, the offered land, Gata No. 485 & 488, Village Piratipur, Tehsil & District Ghazipur, is co-owner by Sh. Raj Narayan S/o Kuvar and Sh. Lal Bahadur S/o Kuvar.

Sh. Lal Bahadur S/o Kuvar has passed away, and the following legal heirs' names have been updated in the khatauni :-

Smt. Vimla Devi w/o Lal Bahadure Singh

Shri Manish Kumar Singh S/o Lal bahadur Singh

Shri Uday Pratap Singh S/o Lal Bahadur Singh

Shri Subhasg Singh S/o Lal Bahadur Singh

2. However, as per the complaint, after verifying the khatauni for Gata No. 485 & 488, it is observed that additional persons were listed as co-owners. A couple of co-owners have also submitted affidavits stating that they are co-owners, and the property division is still pending. The additional names are as follows :-

Shri Ajay S/o Ram Ashish

Shri Vijay S/o Ram Ashish

Shri Sanjay S/o Ram Ashish

Shri Mrityunjay S/o Ram Ashish

3. Based on documents collected from the applicant and the complaint, and after due verification, it is observed that the partition of the offered land was not carried out before the submission of the application for the dealership. The landowners who leased the land to the applicant had applied for the partition of the land at the SDM, Sadar, Ghazipur, under online case No. T202414291000249 dated 15.12.2023.

4. As per the SDM order dated 28.06.2024, it is clear that the partition of the land has not yet been completed.

5. The other co-owners of the land, including Shri Vijay Singh, filed a case in the Civil Judge Jr. Division Court, Ghazipur, which was registered as OS No. 185/2024 dated 11.03.2024, against Shri Manish Singh and others, including the applicant. The case raises objections to the construction of the petrol pump, as the partition among all co-owners is still pending.

6. Opinion sought from our panel advocate, Shri Vinod Kumar Gupta, Ghazipur. As per his opinion in the letter dated 25.07.2024, no further process should be carried out as the offered land is under dispute among the co-owners, and the partition has not been completed. The court has scheduled the next hearing for 20.08.2024. Additionally, the advocate's report dated 25.07.2024 and a copy of the plaint for suit No.

185/2024 pending before CJ(SD), Ghazipur, indicate that the lease deed has not been executed by all the co-owners who inherited the land from a common ancestor. No partition of the offered Gata No. 485 and 488 had been made at the time of executing the lease. Furthermore, the said suit is pending for the cancellation of the lease deed. Hence, the allegations of the complaint are substantiated.

7. Based on the investigation and due verification of the documents, and as per the details mentioned above, it is established that the applicant did not register the offered land with all the co-owners at the time of submitting the application. The complaint has been substantiated.

Considering the above points, your candidature for the Retail Outlet Dealership at the specified location is hereby cancelled. This decision is made in adherence to the dealership selection guidelines and based on the findings of the investigation and legal advice obtained."

5. From the perusal of Khatauni (Annexure No. 2 to the writ petition), it is apparent that apart from Raj Narayan and late Lal Bahadur Singh there are six other co-owners of the said property, whereas, the lease deed was executed only by Raj Narayan and legal heirs of late Lal Bahadur Singh. Other co-owners have not signed the lease deed and since partition had not taken place, the decision of respondent authority in rejecting the candidature of the petitioner cannot be said to be arbitrary and malafide.

6. It is also apparent from the record that the land owners who leased the land to the petitioner had applied for partition before SDM, Sadar, Ghazipur on 15.12.2023 and as per order dated 28.06.2024 (Annexure No. 6 to the writ petition), the land had not yet been partitioned.

7. Upon perusal of the record, it is very much clear that on the date of application, the offered land being Gata Nos. 485 & 488 had not been partitioned and the lease deed was not executed by all the co-owners.

8. The reasons recorded by the respondent authority in rejecting the candidature of petitioner for retail outlet dealership is based on evidence and there is no illegality in any manner. Learned counsel for the petitioner has failed to establish that there was any partition between the co-owners or that the lease deed was executed by all the co-owners.

9. No ground for interference is made out.

10. The writ petition is devoid of merit and is accordingly, dismissed.

(2025) 3 ILRA 654

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 10.03.2025

BEFORE

**THE HON'BLE MANOJ KUMAR GUPTA, J.
THE HON'BLE KSHITIJ SHAILENDRA, J.**

Writ C No. 6049 of 2020

**M/S Jai Prakash Asso. Ltd. ...Petitioner
Versus
State of U.P. & Anr. ...Respondents**

Counsel for the Petitioner:

Navin Sinha (Sr. Adv.), Rahul Agarwal, Rohan Gupta

Counsel for the Respondents:

Abhinav Gaur, Ami Tandon, Arvind Srivastava, Ashish Kumar Singh, C.S.C., Gaurav Tripathi, Kartikeya Saran, Rahul Agarwal, Rohit Nandan Pandey, Sandeep Arora, Shreesh Srivastava, Sujjan Singh, Syed Imran Ibrahim

A. Civil Law - Constitution of India, 1950 - Article 226, Maintainability of Writ Petition - Contractual Matters - Scope of Judicial Review - Public Law Element - Existing Legal Right - Held: There is no absolute bar to the maintainability of a writ petition under Article 226 of the Constitution even in matters arising out of contractual obligations involving the State or its instrumentalities. However, judicial review in such cases is confined to examining whether the impugned action has a public law element and violates Article 14 by being arbitrary, unfair, or unreasonable. Relief under Article 226 may be granted where there is infringement of an existing legal right and the action impugned has public law character, but writ would not lie where only a contractual right is to be established or where the disputes require adjudication of serious disputed questions of fact. The power under Article 226 is plenary and discretionary, and should be exercised with circumspection where the dispute falls purely in the realm of private law. On facts, cancellation order challenged was alleged to be illegal, arbitrary and disproportionate executive fiat affecting public interest and existing rights under allotment. Held, writ petition maintainable. (Para 68 - 76)

B. Civil Law - Constitution of India, 1950 - Article 14, Principles of Proportionality - Scope and Test - Following principles emerge while applying the doctrine of proportionality: the administrative action must have a lawful objective; the action taken must be appropriate to achieve the intended goal; the doctrine of proportionality is applied to test an

administrative action to find out whether it is just and reasonable and not excessive; it ensures that discretionary powers are not exercised arbitrarily but reasonably and do not infringe on fundamental rights disproportionately; the measure adopted must be least restrictive or least burdensome for achieving the purpose; and the test of reasonableness is to be examined from the standpoint of the interest of the general public and not from the point of view of the person against whom action is taken (Para 130)

C. Construction/Interpretation of Contract - Consensus ad idem - Conduct of parties and correspondence - Binding effect - The essential feature of any binding contract is the meeting of minds i.e., consensus ad idem. How the parties acted pursuant to the contract is a significant indicia to their common understanding of the contract and thus constitutes an important tool in interpretation of the terms of the contract. The real intendment of the parties has to be gathered from the manner in which they understood the same, and for that purpose, the correspondence exchanged between them could be taken into consideration. If parties to a contract, by their course of dealing, put a particular interpretation on the terms of it—on the faith of which each of them, to the knowledge of the other, acts and conducts their mutual affairs—they are bound by that interpretation just as much as if they had written it down as a variation of the contract. There is no need to inquire whether that interpretation is correct, mistaken, or consistent with the original terms. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. Correspondences exchanged are required to be taken into consideration for construction of the contract. (Para 100, 101)

D. U.P. Industrial Area Development Act, 1976 - Sections. 7 & 14 - Resumption of lease - Nature of power - Distinction from general contract law and Transfer of Property Act - Held, the power conferred

under Section 14 of the Act is a special power to cancel allotment/lease and resume possession for breach of conditions or non-payment of dues - The provision empowers the Chief Executive Officer to resume the property and forfeit the whole or part of money paid - Further, the Collector may take possession on requisition - The lease deed itself reiterates the overriding effect of this statutory power - There is no requirement to follow the detailed procedure under the Transfer of Property Act - It is sufficient that the order states resumption is due to breach of express conditions - The Act being a special statute overrides the general law under the Transfer of Property Act. (Para 111, 113)

E. Developer-petitioner had recovered nearly 80% of receivables from homebuyers but failed to complete the housing projects, and repeatedly defaulted on its obligations under the Special Development Zone (SDZ) Policy, including non-payment of dues to the Development Authority, cancellation of allotment was held to be lawful and not hit by the doctrine of proportionality. The Authority rightly considered factors such as non-development, insolvency, and protection of homebuyers' interests in furtherance of planned development. Insolvency proceedings initiated against the petitioner under the Insolvency and Bankruptcy Code, 2016, further justified the action. Held : Cancellation of entire allotment was not hit by doctrine of proportionality nor was illegal for any other reason. While passing the cancellation order, the Authority had considered several factors including default in development/construction but the cancellation was primarily on ground of non-payment of the dues of the Authority. (Para 166, 167)

Dismissed. (E-5)

(Delivered by Hon'ble Manoj Kumar Gupta, J. & Hon'ble Kshitij Shailendra, J.)

1. For ease of discussion, the judgment has been structured according to the following table of contents: -

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2. Writ – C No. 6049 of 2020 has been treated to be leading petition and the facts narrated in the judgment, except where stated explicitly, would be from the pleadings of the parties in the leading petition.

INTRODUCTION:

3. M/S Jai Prakash Associates Limited (in short 'JAL' or 'the petitioner'), is a Company incorporated under the provisions of Companies Act, 1956. Initially, the writ petition was filed against two respondents, i.e. the State of U.P. and Yamuna Expressway Industrial

Development Authority (in short 'YEA' or 'Authority'), later on, around 258 home-buyers were impleaded pursuant to order dated 19.09.2023 passed by this Court. The petitioner-company was facing winding up proceedings in the form of CP (IB) No.330/ALD/2018 (ICICI Bank Vs. Jai Prakash Associates Limited) and one Mr. Bhuvan Madan was appointed as Interim Resolution Professional (in short 'IRP'). For this subsequent development, the petitioner was permitted to be represented through the said IRP and, consequently, the cause title was amended pursuant to the order dated 26.07.2024.

4. The prayer made in the writ petition is to quash the order dated 12.02.2020 passed by respondent no.2 (YEA) whereby the allotment of land made by the said respondent in favour of the petitioner has been cancelled. Further, a mandamus has been sought restraining the respondents from interfering with the peaceful possession of the petitioner over the land in question and from taking any other coercive action pursuant to the order impugned; further direction to respondent no.2 to provide requisite amenities such as water, sewer and drainage and to take all other requisite steps for effective implementation of the Escrow Agreement dated 24.09.2018. The writ petition was amended and further prayers were added to quash the resolution dated 28.6.2021 (Annexure No.37-B) passed by the Board of YEA in its 70th Board Meeting in so far as YEA sought to levy restoration charges upon the petitioner and limited the proposed re-schedulement and re-computation of the dues to the year 2023. Another relief claimed is for quashing the consequential letter dated 05.07.2021 (Annexure No.37-C) whereby the decision taken by the Board in its 70th Meeting

along with other decisions was communicated to the petitioner. A prayer commanding YEA to re-schedule and re-compute the balance dues and to decide the representation dated 02.03.2021 has also been made.

CASE OF THE PETITIONER (JAL) :

5. The Government of Uttar Pradesh constituted Taj Express Industrial Development Authority (in short 'TEA') vide notification dated 24.04.2001 under the U.P. Industrial Area Development Act, 1976 (in short 'the Act, 1976') for implementing the Yamuna Expressway Project and allied developments in the region. The responsibilities of the erstwhile TEA, inter alia, include execution of Yamuna Expressway, acquisition of land for construction of the expressway area, development and preparation of zonal plan/master plan for planned development along the expressway, development of drainage, feeder roads, electrification etc. In exercise of powers conferred upon TEA under the Act of 1976 and in furtherance of discharge of its essential functions, YEA brought a policy of Special Development Zone (in short 'SDZ') contemplating setting up of SDZs with a particular core activity chosen by the entrepreneur out of the options specified. On 29.02.2008, YEA invited applications from the interested parties by widely publishing the SDZ policy through circulation of a detailed brochure containing various terms and conditions. The petitioner applied in response to the notice for setting up of the SDZ with "sports" as its core activity. At the time of applying, it was JPSK Sports Pvt Ltd which was, later on, named as Jaypee Sports International Ltd (JPSI) which subsequently merged into the petitioner-

company in the year 2014 pursuant to a scheme of merger. YEA, vide letter dated 11.06.2008, issued an allocation letter to the petitioner communicating the latter that YEA had decided to allocate an area of 1000 hectares of land for setting up SDZ with "Sports" as the core activity.

6. On 28.08.2008, YEA informed the petitioner that it had reserved land measuring approximately 1000 hectares in Sector 25, Noida for the petitioner to develop SDZ with sports as the core activity. It was informed that the land had been reserved in anticipation of respondent no.2 taking possession over the land for which acquisition proceedings were in progress. In between years 2009 and 2011, YEA issued six allotment letters dated 24.02.2009, 20.03.2009, 10.08.2009, 27.01.2010, 23.06.2010 and 07.12.2010 to the petitioner and the land measuring 1085.3327 hectares, inclusive of 98.9862 hectares for village development and abadi extension, and 14.6673 hectares was allotted to it. All the allotment letters, being similar in nature, contained a payment schedule, the area of the land allotted and installments fixed for payment of the premium .

7. In between the same period of time, subsequent to the six allotment letters and payment of 20% advance allotment money by the petitioner, 32 lease deeds were executed by which approximately 965.7390 hectares of land was leased. All the lease deeds contained detailed terms and conditions under which right in the land was transferred to the petitioner, specifying the mode of recovery of any amounts payable by the petitioner, as arrears of land revenue. Various clauses contained in the allotment letters which were contemplated to be a part of the lease

deeds, were expressly incorporated therein without adopting the allotment letters as a whole. Lease deeds do not contain any clause which may enable the respondents to cancel/ terminate the lease deeds. According to the terms and conditions contained in the lease deeds, YEA was to extend full cooperation and render such assistance to the petitioner as might be necessary, such as obtaining requisite permits, sanctions, approvals, clearances etc for achievement of the objectives under the SDZ Scheme, however, according to the petitioner, YEA continuously acted in a lackadaisical manner and did not approve drawings of Real Estate Development under process. This conduct was not only detrimental to the interest of the allottees of such residential areas but also caused undue loss to the petitioner.

8. After having applied for the aforementioned approvals, the petitioner began construction of such buildings as was permitted by the Regulations and had constructed a good portion of the structures. The petitioner had started the housing projects over the demised land, but the projects were not given the requisite sanctions causing grave financial hardship to the petitioner. The projects were stuck up on account of failure on the part of YEA to grant requisite approvals, without any explanation, which constitutes a breach of the terms of the lease deeds.

9. According to the petitioner, it completed the core activities as required and applied for being granted the completion certificate after depositing fees in that regard in the year 2011 and 2012, but the same remained pending before the Authority without any explanation or just cause. Due to huge delays beyond the petitioner's control and due to subdued

economic environment, the petitioner was unable to follow the payment mechanism agreed as per the lease deeds. It is submitted that a payment of Rs.2,379.74 crores had been duly made by the petitioner till 31.07.2017 to YEA and the total outstanding amount aggregated to only a sum of Rs.359.81 crores. YEA duly recognized such hardships faced by various builders and hence, vide its office order dated 16.06.2017, proposed a scheme that permitted all YEA's allottees to seek re-schedulement of the defaulted amount (premium and lease rent) under their respective leases by filing a written application (the "Re-Schedulement Scheme"). Further, as per the Re-schedulement Scheme, the applicant was to deposit 5% of the defaulted amount by 31.07.2017 and 10% defaulted amount within a period of 30 days from the date of Re-schedulement Demand Letter to be issued by YEA. The balance was to be deposited in installments fixed through the Re-schedulement Demand Letter.

10. The petitioner applied for re-schedulement scheme vide letter dated 24.07.2017 and the matter was discussed with the Chief Executive Officer of YEA on 24.07.2017 and he assured the petitioner that on payment of Rs.300 (Three hundred) crores, the matter would be taken up with Board for considering reduction of the rate of interest and re-schedulement of the balance amount. After discussion between the parties, the petitioner requested ICICI bank to release Rs.300 (Three hundred) crores from the Escrow Account on 31.07.2017 and deposited the said amount through Bank Draft No.551184 issued by ICICI bank. According to the petitioner, the sum so deposited amounts to more than 50% of the amount overdue that was further more than the required 15% amount

contemplated under the Re-schedulement Scheme. YEA, instead of approving the petitioner's application under the Re-schedulement Scheme, as per the petitioner, threatened it to cancel the allotment which led the petitioner to file Writ-C No.47262 of 2017 seeking quashing of the letter dated 04.08.2017 with a writ of mandamus commanding the YEA to forthwith issue a re-schedulement demand letter specified in the scheme. The said writ petition was connected with the leading petition by order dated 02.08.2017. YEA, vide letter dated 16.02.2018, directed the petitioner to deposit Rs.170.78 crores by 31.03.2018 for availing the Re-schedulement of the overdue amounts. In reply thereto, the petitioner, vide its letter dated 08.03.2018, duly clarified that it had already paid Rs.410 (four hundred and ten) crores during 29.03.2017 to 31.07.2017 to YEA which amounts to 83% of the principal amount of installments towards land dues and to consider re-schedulement of total amount due as on 31.03.2018 in twelve half yearly installments.

11. Pursuant to approval of the re-schedulement plan, the payment mechanism was altered from the payment terms stipulated under the six allotment letters and the balance payments were to be made in twelve half yearly installments, starting from 30.09.2018 till 31.12.2023. However, the petitioner found some discrepancy and unmatched figures and noticed arbitrarily imposed additional penalty of 1% to 3% while preparing the re-schedulement letter more than the prescribed penal interest which was 3% over and above the prime lending rate fixed by SBI. The petitioner made request to correct the mistake by letter dated 04.07.2018. It is further pleaded that in Writ-C No.744 of 2017 (Chitra Sharma Vs.

Union of India) regarding the corporate insolvency resolution process of Jaypee Infratech Ltd, a subsidiary of the petitioner-company, the Supreme Court, vide order dated 09.08.2018, directed the petitioner to deposit requisite amount from time to time and in compliance of such directions, the petitioner deposited Rs.750 crores before the Supreme Court. The said amount was, later on, transferred to the National Company Law Tribunal, Allahabad (NCLT) vide order dated 09.08.2019 passed by the Supreme Court and the amount lies in the custody of NCLT.

12. The petitioner was facing financial crisis due to deposit of Rs.750 crores and for making interest payment to YEA at a very high rate since financial year 2011, varying between 14% to 14.75% along with the penal interest at the rate of 3% against the average bank interest rate of about 12%. Therefore, it requested the YEA to rectify the additional penal interest, reduce the rate of interest and defer first two installments, which were due on 30.09.2018 and 30.03.2019 to 31.12.2018 and 20.06.2019 respectively. YEA, however, continued to hammer upon making deposit of the balance amount and repeated requests made by the petitioner went in vain. Due to subdued economic environment and the fact that even after payment of land dues to the extent of 87%, the building drawings were not approved by YEA resulting into Real Estate Projects becoming unviable and causing huge losses to the petitioner. However, despite such repeated requests, YEA did not take bonafide action and even threatened the petitioner, inter alia, with cancellation/termination of the lease deeds.

13. The petitioner presented a cheque of rupees 10 (ten) crores towards

the overdue installments and promised to deposit the balance amount by 15.02.2019 and submitted letters requesting YEA to grant further extension of time to deposit the balance amount of first installment, reduction in rate of interest and sought rectification in respect of additional penal interest. YEA, vide its letter dated 04.06.2019, informed the petitioner that in 65th Board Meeting, it had been decided that change in payment mechanism to Escrow Account might be considered only after the petitioner would make the default good in pursuance of re-schedulement letter dated 28.05.2018. It directed the petitioner to deposit rupees ninety eight crores for execution of proposed Escrow Agreement for the balance amount. The petitioner, vide letter dated 18.06.2019, inter alia, advised YEA to invoke the performance bank guarantee of rupees hundred crores issued by Punjab and Sindh Bank, which was duly invoked by YEA vide its letter dated 02.07.2019 issued to the said bank and, accordingly, rupees hundred crores were transferred to YEA's account held with said bank on 03.07.2019; pursuant whereof, the petitioner, vide its letter dated 13.08.2019, submitted the Escrow Agreement for getting the same executed by the authorized signatories of the authority and to facilitate implementation of the same by ICICI Bank.

14. Later on, the petitioner, vide letter dated 21.12.2019, informed YEA that bank guarantee of rupees hundred crores was to be maintained for a period of 10 years which period had already expired and that drawings of core activity area, submitted long back, had not been approved. Accordingly, the petitioner requested the YEA to dispense with the requirement of bank guarantee in view of completion of core area and also asked for approval of pending real estate

development as proceeds from sale of said projects was a must for the petitioner to ensure payment of balance dues in respect of land. Despite compliance of the terms as agreed between the parties, YEA passed the order impugned dated 12.02.2020 cancelling the allotment of entire land in Sector-25 on the pretext that the petitioner had defaulted in making payment of installments in accordance with the re-schedulement plan dated 28.05.2018 without considering that the same stood superseded by the Escrow Agreement dated 24.09.2019. The petitioner contends that YEA's actions are illegal, arbitrary, and financially oppressive. Despite substantial compliance and investments, YEA's unjustified demands and failure to approve crucial infrastructure had jeopardized the SDZ project. The petitioner seeks judicial intervention to rectify these issues and prevent undue financial burdens.

CASE OF YEA :

15. The petitioner entered a commercial agreement to develop SDZ Project but defaulted on payments and failed to complete the required development. The cancellation order followed due process and was in accordance with contractual clauses governing non-payment. Clause 5.2 of the allotment letter allowed three default notices, beyond which the Authority had the right to terminate the lease. The petitioner was required to develop 35% of the total area for core activities, but failed to do so.

16. The dispute is contractual, arising from allotment letters and lease deeds, making a writ petition under Article 226 inappropriate. The Supreme Court has consistently ruled that judicial review in

contractual matters is limited and should not be done unless arbitrariness or violation of fundamental rights is involved. The cancellation was effected as per Clause 4.2 of the allotment letters, and the petitioner has not disputed its payment defaults.

17. The lease deed is not a standalone document; it is directly linked to the allotment letters. Since the allotment letter was canceled, the lease deed also ceases to exist.

18. Despite multiple opportunities for restructuring payments, the petitioner failed to adhere to the new schedules. The Authority granted multiple extensions but still did not receive timely payments. The Escrow Agreement of 24.09.2019 was meant to facilitate payments, yet the petitioner deposited only ₹47.09 lakh, while the due amount was significantly higher.

19. A survey conducted in year 2024 found that the petitioner developed only 5.46% of the required 40% covered area. Several essential sports and infrastructure projects (e.g., stadiums, training institutes, gymnasiums, hostels, etc.) were not developed. The petitioner also failed to complete housing projects, causing severe hardship to homebuyers.

20. The doctrine of proportionality does not apply to contractual agreements. The cancellation order was issued after multiple warnings, making it a last resort, not a disproportionate response.

21. The cancellation was necessary to protect homebuyers, who suffered due to project delays. The Authority has plans to ensure homebuyers are not impacted, either by re-auctioning the project with the

condition that the new developer completes it, or the Authority undertaking the development itself.

22. The petitioner was admitted into insolvency on 03.06.2024, proving financial mismanagement. Over ₹64,552 crores in claims were filed against the petitioner, with ₹51,512 crores admitted. The insolvency proceedings show that the petitioner's financial troubles were not caused by the cancellation but by years of defaults.

EVENTS TAKING PLACE DURING PENDENCY OF THE PETITIONS :

23. An interim order was passed in the leading writ petition on 25.02.2020 directing the parties to maintain status quo provided the petitioner deposits rupees hundred crores with YEA within one month, but in two parts, i.e. Rs. 50 crores by 10.03.2020 and another Rs. 50 crores by 25.03.2020. The petitioner complied with the first direction/ part of the order dated 25.02.2020 by depositing Rs. 50 crores in the account of YEA on 09.03.2020 and made further deposit of Rs. 5 crores on 16.03.2020. However, the petitioner failed to deposit the remaining amount of Rs. 45 crores. Petitioner's application dated 04.01.2021 seeking extension of time to comply with the order was disposed of on 08.02.2021 granting a week's time to the petitioner. The Court, by order dated 08.02.2021, (corrected/ modified on 01.03.2021) permitted the petitioner to deposit Rs.52,50,26,551/- within a week with a further direction to YEA to consider re-structuring and re-computing of the dues after the petitioner makes compliance of the order. Thereafter, by order dated 29.09.2022, the petitioner was directed to

deposit a sum of Rs.100 crores. This amount was deposited by the petitioner and an affidavit dated 02.11.2022 was filed to that effect. Accordingly, the petitioner has deposited Rs.50 crores + Rs.5 crores + Rs.52,50,26,551/- + Rs.100 crores (Total Rs.207,50,26,551/-).

24. The Board of YEA, considered the proposal of the petitioner company for restructuring and vide letter dated 05.07.2021, demanded a lump sum payment of Rs.425.10 crores towards "restoration charges" as a pre-condition. The petitioner challenged the aforesaid demand of YEA by filing Writ-C No.17785 of 2021 which was dismissed as withdrawn with liberty to the petitioner to seek amendment in the present writ petition. Accordingly, amendment was sought and was allowed.

SPOT INSPECTION DURING COURSE OF HEARING:

25. During the course of hearing, the Court, vide order dated 09.05.2024, directed for survey of the site by YEA in presence of representative of the petitioner. Site survey was, accordingly, conducted on different dates. The inspection report and photographs of the site have been filed.

26. Whereas the emphasis of the respondent-Authority has throughout been to the effect that the petitioner failed to carry out construction activity as per the stipulations contained in the allotment letters, the stand of the petitioner has been that in the core and non-core areas of the subject land, adequate constructions have been raised and whatever could not be raised, it was on account of lapses on the part of the respondent-Authority. A tabulated depiction of the construction

raised is contained in 7th supplementary affidavit as well as affidavit dated 25.07.2024 filed after joint survey was carried out. According to the petitioner, following is the position with regard to constructions done on the spot:-

S l. N o .	CORE ARE A	TO TA L LA N D A RE A	LAN D ARE A D EVE LOP ED	LAND AREA UNDE R DEVE LOPM ENT	LAND AREA FOR FUTU RE DEVE LOPM ENT
		(H EC T.)	(HE CT.)	(HECT .)	(HECT .)
1	FI RACE TRAC K + SERV ICES (STP, WTP, ESS &PO NDS FOR RAIN WATE R HAR VEST ING	80. 61	80.6 1	0.00	0.00
2	CRIC KET STAD IUM &ASS OCIA TES FACI	14. 66	9.57	0.00	5.09

	LITIE S				
3	HOC KEY &MU LTI- PURP OSE SPOR TS HALL	11. 09	0.00	0.00	11.09
4	ROA D	55. 45	44.3 6	0.00	11.09
5	GREE NS	57. 34	54.7 9	0.00	2.55
6	OTHE R SERV ICES (LAK E FOR RAIN WATE R HAR VEST ING)	10. 21	0.00	0.00	10.21
7	OTHE RS SPOR TS &SUP PORT ACTI VITIE S	12 1.7 6	0.00	11.33	110.43
A	TOTA L	35 1.1 2	189. 33	11.33	150.46
			Total=200.66		

S l. N	NON CORE AREA	T OT AL	LA ND AR	LAND AREA UNDE	LAND AREA FOR

o .		L A N D A R E A	EA D EVE LOP ED	R DEVE LOPM ENT	FUTU RE DEVE LOPM ENT
		(H EC T.)	(HE CT.)	(HEC T.)	(HEC T.)
1	SUB- LEASE (INCL UDING ROAD &GRE ENS)	64. 07	0.00	64.07	0.00
2	PROJE CTS	13 8.6 1	115. 30	23.31	0.00
3	OTHE R LAND (RESID ENTIA L, COMM ERCIA L &INST ITUTI ONAL)	28 4.2 9	0.00	2.82	281.47
4	OTHE R ROAD S	85. 03	29.7 6	38.26	17.01
5	OTHE R GREE NS	76. 88	26.9 1	34.60	15.38
B	TOTA L	64 8.8 8	171. 96	163.06	313.86
			Total= 335.02		

A+ B	GRA ND TOTA L	1000. 00	361. 29	174. 39	464. 32
			Total= 535.68		

Proceedings under Insolvency and Bankruptcy Code, 2016 :

27. By order of NCLT dated 3.6.2024, the application of ICICI Bank filed in the year 2018 under Section 7 of the Insolvency and Bankruptcy Code was admitted by NCLT. The petitioner challenged the order dated 3.6.2024 before NCLAT vide Company Appeal (80) (Insolvency) No. 1185 - 1162 of 2024. The NCLAT dismissed the appeal by judgment dated 6.12.2024. Thereafter, Civil Appeals bearing number 98 - 102 of 2025 and 2011 - 2012 of 2025, along with various intervention applications, were filed before the Supreme Court assailing the aforesaid orders. The same were dismissed by the Supreme Court by order dated 10.1.2025. We are informed that at present, the resolution professional is functioning and so far there is no approved resolution plan.

PARTIES HEARD :

28. We have heard Mr. Jayant Bhushan, learned Senior Advocate, assisted by advocates Mr. Vishal Gupta, Mr. Rohan Gupta, Mr. Amartya Bhushan, Mr. Aditya Marwah, Mr. Anoop Rawat, Mr. Sagar Dhawan, Mr. Ahkam Khan, Ms. Shikha Gupta, Ms. Kirti Gupta, Mr. Pranay Kumar, Mr. Jatin Kumar Mishra for the petitioner (JAL), Mr. Bhuvan Madan, Resolution professional (in person), Mr. Manish Goyal, learned Senior Advocate, assisted by Mr. Praveen Kumar, Mr. Syed Imran Ibrahim and Mr. Pranav Tanwar for

respondent no. 2 (YEA), Mr. Amit Saxena, learned Senior Advocate, Mr. Rahul Agarwal, Advocate, Ms. Upasana Agarwal, Advocate and Ms. Aishwarya Gupta, Advocate on behalf of lenders/financial creditors, mortgagees and sub-lessees and Mr. Anoop Trivedi, learned Senior Advocate assisted by Mr. Abhinav Gaur, Advocate for the homebuyers.

ISSUES:

29. The submissions made by learned counsel for the parties range from issues pertaining to maintainability of the writ petition; challenge to the impugned cancellation order on various grounds; interest of various stakeholders, sub-lessees, homebuyers and financial institutions and ancillary issues pertaining to quantification of the amount payable by the petitioner, in case the challenge to the cancellation succeeds and the remedies open to YEA to realize the same. The main issues which would arise are: -

1. Whether the writ petition is maintainable?

2. Whether the terms of the allotment letter, except those, specifically referred to and incorporated by reference in the lease deed, survive after the execution of the lease deed?

3. Whether the impugned cancellation of the allotment letter by letter dated 12.02.2020 has the consequent effect of cancelling the lease deed, in absence of specific reference to the lease deed?

4. Whether the petitioner's earlier Writ C- No. 47262/2017 challenging the decision taken by the respondent in its meeting dated 04.09.2017 for cancelling

proportionate land would disentitle the petitioner from challenging present cancellation on the ground of proportionality?

5. Whether the cancellation of the entire allotment for non-payment of some dues is excessive administrative action and hit by the doctrine of proportionality?

6. Whether the cancellation of the entire allotment was only on account of non-payment of dues or also on the account of purported defaults in development/construction?

7. Whether, if the cancellation of allotment was on account of purported defaults in development/ constructions, the cancellation is illegal?

8. Whether homebuyers and banks' sub-leases can subsist without validity of lease?

30. The ancillary issues which may arise for consideration in the event the impugned cancellation order is quashed are as follows: -

A. Whether the fact that the company is in Corporate Insolvency Resolution Process (CIRP) should deprive the company of relief even if it is found that the cancellation was illegal where the Insolvency and Bankruptcy Code (IBC) specifically envisages continuation of the operations of the company as a going concern?

B. What could be the broad principles to be applied in determining the legality/ appropriateness of YEA's demands i.e. as regards its dues?

C. Whether the purported dues of YEA are now required to be resolved as per the provisions of the IBC in light of the statutory provisions of IBC and YEA submitting its claim with the resolution professional of the company?

D. Whether YEA's claims are protected under IBC in view of fact that a claim under Section 13 and Section 13A of the UP Industrial Area Development Act, 1976 would make YEA a secured creditor and at par with entitlement of secured financial creditors under Section 30(2)(b) read with Section 53 of the IBC?

31. We proceed to note the submissions of learned counsel for the parties in relation to the main issues and if the cancellation order is held to be illegal, we will also deal in detail the submissions made by them on the ancillary issues.

Contentions raised on behalf of the petitioner

ISSUE NO. 1:

32. It is contented by Shri Jayant Bhushan, learned senior counsel for the petitioner, that although the counsel for the respondent argued that the Writ Petition is not maintainable, in the counter affidavit filed by YEA, no such objection has been taken. The only objection taken is that the scope of judicial review while dealing with the policy decision is narrow. In fact, the respondent admits that an executive order is not beyond the scope of judicial review, but only states that the scope of challenge to policy decision is limited. Reliance has been placed on the judgment of the

Supreme Court in **ABL International v. Export Credit Guarantee Corporation: (2004) 3 SCC 553; Rajasthan Industrial Development and Investment Corporation vs. Diamond and Gem Development Corporation: (2013) 5 SCC 470** and **Teri Oats Estates Pvt. Ltd. vs. U.T. Chandigarh & Others: (2004) 2 SCC 130** in contending that even writ petition against the State or an instrumentality of the State arising out of the contractual obligations is maintainable.

ISSUE NO. 2:

33. The allotment letter initially granted in favour of the petitioner on 11.06.2008 itself envisaged that after payment of 20% of the premium within 90 days of the allotment letters, the lease deed would be executed for a period of 90 years. It further stated that the date of execution of the lease deed will be treated as date of handing over of actual possession of the land. Pursuant to the 6 (six) allotment letters, payment of 20% of the premium was made by the petitioner and pursuant thereto, 32 (thirty two) lease deeds were executed. Pertinently, the paragraph 2 of the recitals of the lease deed refers to the allotment letter and, thereafter, para 3 of the recitals states that lease was being granted "on terms and conditions contained in these presents". Thus, it was made clear that the terms governing the transactions between the petitioner and the respondent were laid down comprehensively in the lease deed itself. Clauses 3.1, 3.6 to 3.8, 3.9 and 11 of the allotment letter have been incorporated vide Clauses 3, 15 and 16 of the lease deed. There are several clauses in the allotment letter which are more or less identically reproduced in the lease deed. If the interpretation given by the respondent is correct, namely, that the allotment letter

and lease deed were to be read together and that all the clauses of the allotment letter still hold good even after execution of the lease deed, there was no purpose in repeating the clauses of the allotment letter in the lease deed. Further, several clauses in the allotment letter were substantially changed in the lease deed. This again points to the fact that the terms of the allotment letter were no longer in operation after the execution of the lease deed. If this were not so, there would be a complete confusion as to which of the two different clauses would be applicable after the lease deed had been executed. Still further, some of the clauses in the allotment letter were completely removed, or removed and replaced by different clauses in the lease deed. One such example is Clause 4.2 in the allotment letter which is the cancellation clause. Such a clause is conspicuously absent in the lease deed and instead there is Clause 38 which provides for recovery of amounts due as arrears of land revenue. Again, if both allotment letter and lease deed were simultaneously in existence, there would be complete confusion as to which clause will prevail. Further, there would be no reason why some clauses in the allotment letter were deleted from the lease deed.

34. The respondent's submission that because the allotment letter is annexed to the lease deed, therefore, it becomes part of the lease deed, is erroneous. The allotment letter has been annexed only to show the chronology of events since it is referred to in clause 2 of the recitals of the lease deed and also because certain clauses of the allotment letter are incorporated by reference in the lease deed. It is submitted that after the lease deed has been executed, the allotment letter ceases to be effective for the land parcels for which lease deeds have been executed since it has been

superseded by the lease deed which is the essential contract between the parties. The allotment letters have been superseded by the lease deeds executed subsequently and it is the lease deeds that confer right over the land to the petitioner and prevails over the allotment letter, except to the extent expressly saved by the lease deeds and, therefore, the only legitimate recourse would have been to invoke clause 38 of the lease deed for the recovery as arrears of land revenue and there was no occasion to cancel the allotment, which anyway stood superseded by the terms of the lease deeds. The lease deeds being the definitive agreement between the parties conferring title upon the petitioner of the lands covered under the lease deeds, any power to cancel/ terminate the said lease deeds was necessarily to be expressly provided in the said lease deed. Since YEA is well aware that there is no provision in the lease deed for cancellation of the same, it has resorted to cancelling the allotment of land rather than the cancellation of the lease deeds, which is clearly misconceived. Reliance was placed in this regard on the judgments of the Supreme Court in **H.R. Basavaraj & another Vs. Canara Bank & others: (2010) 12 SCC 458 and Andhra Pradesh Industrial Infrastructure Corporation Limited: AIR 2018 SC 1981.**

ISSUE NO. 3:

35. As submitted in issue no. 2 above, the allotment letter did not survive after the execution of the lease deed as it stood superseded by the lease deed. Thus, the cancellation of the superseded allotment letter is of no consequence whatsoever. It does not have the effect of the cancellation of the lease deed which is a subsequent, totally independent and separate document

which has already superseded the allotment letter.

ISSUE NO. 4:

36. The challenge in the earlier Writ Petition was essentially based on the ground that there was no occasion even to proportionately cancel the land in view of the fact that the default in payment was due to various actions of YEA itself such as not approving building plans, etc. However, by way of the impugned cancellation order, YEA has arbitrarily cancelled the entire allotment of land. The earlier Writ Petition is infructuous insofar as the challenge to the proportionate cancellation is concerned and the petitioner shall withdraw it with liberty to approach the Court for other prayers relating to sanctioning of plans, etc., in case the present Writ Petition is allowed.

ISSUE NO. 5:

37. The lease deeds gave the petitioner the unfettered right to create third party rights including the power to sub-lease without permission of the Lessor i.e. the respondent No. 2 (Clause 5 of the Lease Deed), the permission to mortgage in favour of banks/financial institutions/lenders (Clause 14 of the Lease Deed), etc. It also gives the power to develop the land (Clause 4 of the Lease Deed), and, in fact, the petitioner has spent a large amount of money in excess of Rs.2,500 crores in developing the whole SDZ land including construction of the Formula One Racetrack (Buddha International Circuit). Moreover, around the date of cancellation order, the petitioner had paid an amount of Rs 2294.49 crores (including interest) against allotment amount of Rs 1659.25 crores towards land

premium and Rs. 195.73 crores (including interest) towards lease rent against Rs 264.42 crores (including interest). Hence, most of the payments had already been made and outstanding land premium was only to the tune of Rs. 547.77 crores including interest and lease rent was only to the tune of Rs 68.69 crores including interest. Further, the default in the present case was clearly not wilful or dishonest and, at various stages, the default ranged between 9% to 25% (total amount payable) when the cancellation was made. Pertinently, on the date when the cancellation was made, according to the petitioner, of the total amounts due as on that date, 91% had already been paid by the petitioner and there was a default only of 9%.

38. The cancellation of the entire allotment at that stage was, therefore, totally disproportionate. In 2017, in YEA's 61st Board Meeting dated 04.09.2017, it had been decided to take back land proportionate to the unpaid dues. This was, in fact, in addition to Clause 38 of the Lease Deed which provided for arrears being recoverable as arrears of land revenue. However, on 12.02.2020 instead of cancelling only proportionate land, the entire allotment of 1000 hectares was cancelled by YEA. The petitioner has already shown its bona fide by depositing more than Rs.200 crores towards principal amount in pursuance of the interim orders of this Hon'ble Court dated 25.02.2020, 08.02.2021 & 29.09.2022. The petitioner relies upon the judgment of the Hon'ble Supreme Court in Teri Oats (supra), particularly paragraphs 42 to 46 and 49.

39. It is submitted that although the statutory power to cancel is there in Section 14 of the Act of 1976, the

reasonableness and proportionality of the action of the respondent is still subject to judicial review. This is exactly what has been held by the Supreme Court in the *Teri Oats* (supra). The principle of proportionality has also been referred to in the judgment of the Supreme Court in *Andhra Pradesh Industrial Infrastructure Corporation* (supra).

40. The cancellation not only affects the petitioner but various third parties such as home buyers and lenders (banks). Prior permission for mortgage was given by the respondent as per Clause 14 of the Lease Deed. The cancellation, apart from being contrary to the Lease Deed, would also affect the banks and is totally arbitrary and disproportionate. YEA could have recovered its arrears by resorting to Clause 38 of the Lease Deed, under which they could have sold assets of the petitioner sufficient to recover their dues. Thus, a small portion of the lease land could have been cancelled, the value of which was equal to the amount of dues payable to YEA. It was, therefore, incumbent on the respondent to choose the least restrictive measure to achieve fulfilment of its outstanding dues. This would have envisaged attachment of only that portion of the property and sale thereafter which would have been sufficient to recover the outstanding dues. In the present case, that would have meant less than 10% of the allotted land. The default in the present case was clearly not willful or dishonest and at various stages, the default ranged between 9% to 25% (total amount payable) when the cancellation was made. In fact, on the date when the cancellation was made, according to the petitioner, of the total amounts due as on that date, 91% had already been paid by the petitioner and there was a default only of 9%.

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41. It was never YEA's case in its Counter Affidavit that the cancellation had been made on account of defaults in development/construction. A perusal of paras 97-99 of the Counter Affidavit of YEA would make it clear that the cancellation was on account of default in payments and the alleged non-providing of performance security of Rs. 100 crores and not on account of any alleged default in development. The cancellation letter itself makes it clear that the cancellation is on account of non-payment of certain dues. A perusal of the operative portion of the cancellation order would make this clear. The references to certain non-development in the cancellation letter are only on account of reiteration of the facts leading up to the defaults and cancellation and not setting them out as grounds for cancellation. Moreover, the cancellation, if made on the said ground, would be illegal.

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42. In response to the query from this Hon'ble Court, the respondents said that they would protect the interest of the homebuyers by treating the homebuyers as direct sub-lessees and continuing with them as sub-lessees. The respondents have presumed that despite the lease itself having been cancelled, the sub-leases would still be valid, and the sub-lessees would become direct sub-lessees of YEA. This submission/understanding of the respondents is faulty. There is no privity of contract between YEA and the homebuyers/sub-lessees. Once the lease itself goes, there is no question of the sub-lease surviving. Thus, YEA's note as set out in its supplementary counter affidavit dated 26.7.2024 is legally flawed.

43. On behalf of the petitioner, reliance was placed upon following authorities:-

(i) Andhra Pradesh Industrial Infrastructure Corporation & others Vs. S.N. Raj Kumar & another: (2018) 6 SCC 410;

(ii) Teri Oats (P) Ltd. Vs. U.T., Chandigarh & others: (2004) 2 SCC 130;

(iii) Bharti Cellular Ltd. Vs. Union of India and others: (2010) 10 SCC 174;

(iv) M. Sham Vs. State of Mysore: (1973) 2 SCC 303;

(v) State of Rajasthan and another Vs. Ferro Concrete Construction Private Ltd.: (2009) 12 SCC 1;

(vi) H.R. Basavaraj Vs. Canara Bank: (2010) 12 SCC 458;

(vii) Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla & others: (1992) 3 SCC 285;

(viii) Consumer Online Foundation & others Vs. Union of India & others: (2011) 5 SCC 360;

(ix) Style (Dress Land) Vs. Union Territory, Chandigarh: (1999) 7 SCC 89;

(x) Indian Explosives Ltd. and others Vs Coal India Limited and others: (2019) 16 SCC 258;

(xi) Virtual Soft Systems Ltd. Vs. Commissioner of Income Tax, Delhi: (2007) 9 SCC 490;

(xii) State of Jharkhand & others Vs. Ambay Cements & another: (2005) 1 SCC 368;

(xiii) State of M.P. Vs. Thakur Bharat Singh: (1997) 2 SCR 454;

(xiv) Kranti Associates Pvt. Ltd. & another Vs. Masood Ahmed Khan & others: (2010) 9 SCC 496; and

(xv) Ahmad Ullah Vs. Union of India & others: 2019 SCC Online All 5904.

Contentions Raised On Behalf Of Yea (respondent No. 2):

44. Sri Manish Goyal, learned Senior Counsel, appearing for the respondent no.2-YEA, submits that the present Writ Petition is not maintainable. The dispute raised is purely contractual, and the petitioner is seeking reliefs arising out of the terms of contracts (Allotment Letters and Lease Deeds), the interpretation and enforcement of the provisions therein. The Supreme Court has consistently held that the scope of judicial review under Article 226 is limited in contractual disputes. Contractual actions cannot be questioned on the grounds of equity, equality and proportionality if it can be shown that the action of the Authority was in terms of the contract, such as the present case, wherein the Authority terminated the petitioner's allotment and the lease deeds under Clause 4.2 of the Allotment Letters. In commercial transactions, the rights and obligations of the parties are determined by the contract, and the courts must refrain from adjudicating on purely contractual issues. The petitioner was seeking extensions for payment and the re-schedulement of its dues solely on commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract. A writ court cannot be a forum to seek any relief based on terms and conditions incorporated in the

agreement between the parties (**Re: Rajasthan State Industrial Development and Investment Corporation and Another v. Diamond & Gem Development Corporation Limited and Another: (2013) 5 SCC 470**).

45. In *Joshi Technologies International Inc. v. Union of India*: (2015) 7 SCC 728, the Hon'ble Supreme Court set aside the judgment passed by the High Court on the ground that it should not have exercised its power under Article 226, since the matter pertained to pure contract. The Supreme Court laid down the circumstances in which the High Court would not normally exercise its discretion under Article 226. The petitioner had been in continuous and wilful breach of the material terms of the Allotment Letters and the Lease Deeds, and there was no arbitrariness or lapse in procedure on part of the Authority in passing the Cancellation Order. The petitioner has admittedly failed to make the payments towards the allotment and is, therefore, not entitled to maintain the present Writ Petition. There are various questions of facts raised by the petitioner which cannot be adjudicated before this Hon'ble Court under its writ jurisdiction. In *State of Bihar v. Jain Plastics and Chemicals Ltd*: (2002) 1 SCC 216, the Hon'ble Supreme Court held that disputed questions of facts cannot be determined in the exercise of writ jurisdiction.

Re: Concept of Proportionality

46. At the outset, the Authority submits that the 'proportionality', in all its facets, has no application in the present case, which arises from a commercial and contractual relationship between the petitioner and the Authority. Contractual

actions cannot be questioned on the grounds of equity and proportionality if it can be shown that the action of the Authority was in terms of the contract, such as the present case, wherein the Authority terminated the petitioner's Allotments and the Lease Deeds in accordance with Clause 4.2 of the Allotment Letters. The Authority had the power of cancellation of the Allotment and the Lease Deeds on the petitioner's defaults. The petitioner defaulted, which it does not dispute. Further, the petitioner failed to develop the SDZ Project including housing projects and maintain the Performance Bank Guarantee. Thus, there were valid grounds for cancellation and the Authority, in valid exercise of its contractual rights, terminated the Allotment and the Lease Deeds.

47. The primary submission is that the doctrine of proportionality has no application in the present case. YEA was compelled to pass the Cancellation Order in view of the petitioner's persistent and consistent defaults, failure to develop the SDZ Project including the housing projects, harm to the homebuyers, and loss to the public interest. The Authority had, from time to time, taken least restrictive measures against the petitioner. Despite such measures and opportunities, the petitioner continued to default on its financial and development obligations. The Authority, in public interest and as a last resort, passed the Cancellation Order. The Cancellation Order had a proper purpose and rational connection with the aim it sought to achieve. The primary objective of the Cancellation Order was to protect public interest and uphold the contractual integrity essential for the development of the SDZ Project. The petitioner's persistent defaults (fiscal and infrastructural) over a decade reflect a blatant disregard for its

obligations, which has led to severe consequences for homebuyers and the Authority. The Authority exercised utmost restraint by granting multiple opportunities to the petitioner before resorting to cancellation. The failure to rectify its defaults and develop the SDZ Project resulted in public distress. The doctrine of proportionality, when applied to the facts of this case, underscores that the Authority's actions were proportionate, necessary, and aimed at serving a legitimate public interest. Therefore, the petitioner's claims of excessiveness and harshness ought to be dismissed as unfounded.

48. Shri Goyal, with vehemence, referred to para 79 of the writ petition in which the petitioner has raised following assertion:

"79. Because it may further be noted there was no occasion for the respondent no. 2 to have cancelled the entire allotment of land when admittedly clause 38 could have been invoked by applying the doctrine of proportionality, on the requisite part of the leased land and therefore the impugned order is also in violation to the well recognized doctrine of proportionality."

49. In its rejoinder affidavit as well, the petitioner has raised the following similar assertion:

"It was very much within YEA's powers to appropriate all the monies deposited by JAL in a manner that all the outstanding dues towards some of the Lease Deeds stood paid and YEA could

have terminated only the balance lease deeds."

50. The petitioner has admitted that it has defaulted in complying with the terms of the contracts. The petitioner has also not disputed the liability to pay. The only argument by the petitioner is that the respondent ought not to have chosen to cancel the entire allotment but ought to have taken back only the proportional land. The petitioner has raised the said argument in order to further its nefarious designs and enjoy the use of the beneficial land without having to pay for the same. The petitioner is trying to blow hot and cold. The Authority took a decision of taking back of proportionate land in its 61st Board Meeting dated 04 September 2017. The same was also informed to the petitioner. The petitioner challenged the said decision before this Hon'ble Court in the connected Writ Petition No. 47262 of 2017 raising a specific ground that the Authority's said decision cannot override the terms and conditions of the Allotment Letter, Reservation Letter and the Lease Deeds and the Authority has no right under the Lease Deeds to take back lands belonging to the petitioner. The petitioner has also disputed the taking back of the proportionate land by letter dated 03 November 2017. In this backdrop and under these circumstances, the Re-Schedulement Plan of the dues was agreed in the 62nd Board Meeting of the Authority and communicated to the petitioner on 28th May 2018. However, the petitioner even failed to make payment of the first and second instalment of the Re-Schedulement letter. It is clear that after having challenged the decision of taking back of the proportionate land in the connected Writ Petition No. 47262/2017, the

petitioner is making contrary submissions in the present Writ Petition.

51. The Authority also places reliance on the judgments where the Hon'ble Supreme Court held that parties cannot 'blow hot and cold' since it is a pure abuse of process of law, vide-**Uttar Haryana Bijli Vitran Nigam Ltd. And Ors. v. Adani Power (Mundra) Limited And Ors.: 2023 SCC OnLine SC 461, Shivali Enterprises v. Godawari (Deceased) through LRs and Ors.: 2022 SCC OnLine SC 1211, Alcon Electronics Pvt. Ltd. v. Celem S.A. of FOS 34320 Roujan, France and Ors.: (2017) 2 SCC 253**. Further, the contract between the parties was for the entire land with the purpose of planned development. The petitioner, therefore, cannot be allowed to evade its liability to make payment for the entire portion of the land. The Authority submits that the development of the Yamuna Expressway is an integrated and time-bound project [**Nand Kishore Gupta v. State of U.P., (2010) 10 SCC 282**]. Initially, the land was acquired for the Yamuna Expressway and subsequently for creating land parcels alongside the Expressway, designated as special development zones and townships. These land parcels were strategically planned to maximize the utilization of the Expressway. The Expressway Project and the development of the surrounding land parcels are interdependent components of a unified scheme.

52. The petitioner's reliance on the judgment in **Teri Oats v. UT of Chandigarh: (2004) 2 SCC 130 ("Teri Oats")** was said to be misplaced by pointing out various distinctive features of two cases and it was argued that the petitioner's attempt to raise issues of equity

and proportionality does not hold water, as the Authority's actions were in accordance with the terms of the Allotment Letters and the Lease Deeds. The petitioner's default arises from contractual obligations under the Allotment Letters and Lease Deeds, and there is no arbitrariness that warrants interference by this Hon'ble Court under Article 226. The Authority acted within its rights under the contract and followed due process in issuing the Cancellation Order. It is contended by the petitioner that when substantial developments have already taken place, respondents could not have cancelled the entire allotment and, default is in respect to some part of amount, but entire allotment has been cancelled, which is arbitrary and only proportional cancellation in respect of land in question at the best could have been made. Submission of Shri Goyal in this regard is that the Board of the Authority, at its 70th Board Meeting, passed a resolution (70/39), to restore the petitioner's allotment and lease deeds subject to payment of restoration charges at the rate of 10% of the prevailing rates of the allotted project ("Restoration Charges"). The Authority informed the petitioner about the said decision of the Board and, accordingly, directed the petitioner to deposit Restoration Charges for enabling the Authority to take further steps for restoring the allotment. The petitioner filed a writ petition bearing no. 17785 of 2021 challenging the levy of restoration charges. The said writ was "dismissed as withdrawn" by the High Court on 17.08.2021, and the petitioner was granted liberty to amend the present Writ Petition for the relief against restoration charges.

53. The petitioner has failed to demonstrate any public law element or arbitrariness in the Authority's decision to

cancel the allotment. The petitioner's contention that the Cancellation Order only terminated the Allotment Letters and it does not have the consequent effect of cancelling the Lease is fallacious and has no basis in the facts or in the law. The Allotment Letters continued to subsist along with the Lease Deeds. The Allotment Letters were issued as the principal agreement and the Lease Deeds were ancillary and for implementation of the Allotment Letters. The same is evident from the terms of the Allotment Letters and Lease Deeds, as well as from the correspondences between the parties, which clearly reflect a common understanding that the Allotment Letters subsist along with the Lease Deeds. In case of default of payment, Clause 4.2 of the Allotment Letters was to be invoked. The Authority also had the statutory power to cancel the Allotment and the Lease Deeds on breach of terms therein under Section 14 of the 1976 Act. The Allotment Letters and the Lease Deeds were executed for a common purpose and they subsist together. Lease Deeds are an integral part of the allotment and have no independent existence. The Lease Deeds were executed for implementation and carrying out the objects of the Allotment Letters. As such the Lease Deeds in favour of the petitioner are coterminous with the Allotment Letters and have no life or existence once the allotment is cancelled.

54. It is settled law that the parties to a contract, by their course of dealing, put a particular interpretation on the terms of it and they will be bound by the interpretation. Further, the correspondences exchanged by the parties can be taken into consideration thereof and for the purpose of construction of a contract. In **Transmission Corpn. of Andhra Pradesh Ltd. v. GMR**

Vemagiri Power Generation Ltd., (2018): 3 SCC 716, the Supreme Court held that "the terms of the contract will have to be interpreted by taking into consideration all surrounding facts and circumstances, including correspondence exchanged, to arrive at the real intendment of the parties, and not what one of the parties may contend subsequently to have been the intendment or to say as included afterwards"

55. The Allotment Letters and Lease Deeds were intended to coexist and govern the parties' obligations together. The Lease Deeds explicitly refer to the Allotment Letters, which were annexed as integral schedules and were not superseded. The petitioner's own conduct further confirms this understanding, as it continued to rely on the Allotment Letters for key terms like payment schedules and extensions even after the Lease Deeds were executed. Thus, the petitioner's claim that the Lease Deeds supersede the Allotment Letters is factually incorrect and legally untenable. The argument of the petitioner that the defaulted amount can be recovered only as arrears of land revenue in terms of Clause 38 of the Lease Deeds and hence, to such an extent Clause 4.2 of the Allotment Letters stood eclipsed is flawed understanding of the composite transaction. The aforesaid clause in the Lease Deeds does not supersede the Allotment Letters in as much as at no stage the Allotment Letters were superseded by the execution of the Lease Deeds. The said clause was in addition to the already existing Clause 4.2 of the Allotment Letters. Clause 4.2 of the Allotment Letters explicitly grants the Authority a contractual right to cancel both the allotment and the lease deeds in response to defaults committed by the petitioner. Consequently, it is submitted

that the Authority acted within its rights when it terminated the petitioner's allotment (including Lease Deeds) due to the petitioner's admitted defaults.

56. Reliance has been placed upon the following authorities:-

(i) **Commissioner of Rural Development and others Vs. A.S. Jagannathan: (1999) 2 SCC 313;**

(ii) **Super Poly Fabriks Limited Vs. Commissioner of Central Excise, Punjab: (2008) 11 SCC 398;**

(iii) **Orissa Power Transmission Corporation Limited and others Vs. Asian School of Business Management Trust and others: (2013) 8 SCC 738;**

(iv) **Forward Constructions Co. and others Vs. Prabhat Mandal (Regd.), Andheri and others: (1986) 1 SCC 100;**

(v) **Direct Recruitment Class II Engineering Officers' Association Vs. State of Maharashtra and others: (1990) 2 SCC 715; and**

(vi) **Shiv Chander More and others Vs. Lieutenant Governor and others: (2014) 11 SCC 744.**

(vii) **Manks Vs. Whiteley: (1912) 1 Ch. 735;**

(viii) **Infrastructure Leasing & Financial Services Ltd. Vs. HDFC Bank Ltd. and another: 2023 SCC Online 1371;**

(ix) **MTNL Vs. Canara Bank and others: (2020) 12 SCC 767;**

(x) **Cox & Kings Ltd. Vs. SAP India (P) Ltd.: (2024) 4 SCC 1;**

(xi) **Innoventive Industries Ltd. Vs. ICICI Bank and another: (2018) 1 SCC 407; and**

(xii) **Dilip B. Jiwrajka Vs. Union of India and others: (2024) 5 S435.**

57. Placing reliance upon the judgment of **Manks v. Whiteley (supra)** it was argued that where several deeds form part of one transaction and are contemporaneously executed, they have the same effect for all purposes such as are relevant to the case in hand as if they were one deed. It was contended that in the present case allotment letters and lease deeds cannot be treated as separate deeds or documents and they would represent a single and whole transaction. **Manks (supra)** was reconsidered in **S. Chattanatha Karayalar Vs. the Central Bank of India: (1965) 3 SCR 318**. Placing reliance upon judgment in **MTNL (supra)**, it was contended that a composite transaction would refer to a transaction which is interlinked in nature; or, where the performance of the agreement may not be feasible without the aid, execution and performance of the supplementary or the ancillary agreement, for achieving the common objects, and collectively having a bearing on the dispute. It was contended that in case of a composite transaction involving multiple agreements, it would be incumbent for the courts to assess whether the agreements are consequential or in the nature of follow up to the principal agreement.

58. Submission is that the Authority, in exercise of its contractual

rights and statutory power, was compelled to cancel the allotment and the lease deeds due to the petitioner's consistent and persistent breach of the terms of the allotment letters and the lease deeds. It is not in dispute that the petitioner is a persistent and consistent defaulter. The petitioner has admitted its defaults and that it failed to pay its outstanding dues arising out from the allotment and lease deeds executed for the SDZ Project. Despite the grant of various extensions for payment by the Authority, the petitioner failed to adhere to agree upon payment schedule. The petitioner's repeated requests for re-scheduling of payments were accepted by the Authority on multiple occasions, yet the petitioner continued to breach its payment obligations under the allotment letters, lease deeds, and the re-scheduled payment plan. As elaborated below, various accommodations were granted to the petitioner at its requests (least restrictive measures), however, the petitioner failed to pay its dues. The petitioner also failed to undertake the development of the SDZ Project, including the housing projects. The petitioner's violation of its development obligations resulted in regular complaints from the homebuyers, who suffered due to the petitioner's failure and misappropriation of funds. The petitioner's misconduct frustrated the very purpose of the allotment and the lease deeds, causing irreparable harm to the public interest, the homebuyers, and the Authority. In the end and as a last resort, the Authority had no option but to terminate the allotment and the lease deeds. The petitioner consistently and persistently defaulted in complying with payment schedule in terms of the allotment. 21 default notice were issued by the Authority (from 13 September 2011 to 25 August 2015) demanding payment from the petitioner in terms of the payment schedule as revised (or

extended) from time to time. On three separate occasions, by its letters dated 18 February 2014, 07 August 2014, and 01 December 2014, the petitioner sought extension of time for payment of its dues. The Authority, in terms of the allotment (Clause 3.6 of the Allotment Letter) and as a least restrictive measure, granted three extensions for payment on 21 February 2014, 13 August 2014 and 29 December 2014. However, the petitioner still failed to pay its dues in extended time. On three separate occasions, by letters dated 22 August 2017, 08 March 2018 and 12 April 2018, the petitioner sought time for re-scheduling the outstanding dues on account of financial constraints. Last re-schedulement: By letter dated 28 May 2018" (in response to 08 March 2018 request), the Authority agreed for re-schedulement. However, petitioner did not make payments, and the Authority issued a default notice dated 16 October 2018. Instead of curing the default, the petitioner continued to seek extensions for payment even under the Re-schedulement vide letters dated 19 September 2018 and 27 October 2018. The Authority granted extension till 31 December 2018 for depositing the first instalment of the re-scheduled payment plan. On 31 December 2018, the petitioner deposited only Rs. 10 Crore (against the first re-scheduled instalment amount of approximately Rs. 108 Crore) and requested further extension until 15 February 2019. Performance Bank Guarantee was invoked to meet the defaults. On 31 October 2019, the Authority directed the petitioner to restore the performance bank guarantee since the earlier one had been adjusted towards the outstanding. However, the petitioner failed to do so.

Escrow Arrangement:

59. In order to facilitate the payment of the outstanding dues from the

petitioner, the parties entered into an Escrow Agreement on 24 September 2019. The escrow arrangement was a mechanism for ensuring that the proceeds from the housing project are collected in the escrow account and appropriated towards payment of outstanding dues from the petitioner. The petitioner once again failed to honour its commitment and until 28 February 2020, mere Rs. 47.09 lakh (approx.) was deposited in the escrow account. In these circumstances, huge outstanding had accumulated, and the petitioner was entirely responsible therefor. The Authority, vide a letter to the Punjab and Sindh Bank, invoked the Bank Guarantee and adjusted the amount recovered towards the outstanding dues. The petitioner requested the Authority to execute the escrow agreement. The Authority sent a default notice to the petitioner and directed it to pay the amount due under the re-scheduled payment plan. For the purpose of escrow agreement, the petitioner submitted the details of amount received and receivables from the real estate schemes. The petitioner stated that it has received Rs. 1900.78 Crores out of Rs. 2433.41 Crores from the home buyers of 10 housing projects. The Authority approved the opening for the Escrow Account subject to the conditions mentioned therein. The Escrow Agreement was signed among the petitioner, the Authority and the ICICI Bank stating that the petitioner made an application for re-schedulement of its installments and it was agreed that an escrow account will be opened for settling the land dues owed to the Authority. The petitioner authorized ICICI Bank to transfer 20% of the receivables received from the allottees of the housing projects in the Authority's bank account till the receipt of the "no dues certificate" from the Authority. The petitioner did not dispute its liability to

make the payment and expressed its commercial difficulty or hardship in performance of the conditions to meet the contractual obligations. A summary of the petitioner's outstanding is as follows:

S. N o.	Head	Amount due as on 12 February 2020 (date of the Cancellation Order) (including interest)	Amount due as on 12 September 2024 (date when the judgment was reserved in the present case) (including interest)
1.	Land Premium	8,15,23,41,447	14,12,24,67,031
2.	Lease Rent	1,03,50,15,204	5,58,87,88,809
3.	Additional compensation	14,93,44,99,056	30,64,56,52,563
4.	Total	INR 24,12,18,55,707	INR 50,35,69,08,403

Failure to develop the SDZ Project:

60. The petitioner also failed to develop the SDZ Project. Despite repeated notices and opportunities by the Authority, the petitioner never properly submitted all the documents required along with the application for part completion of the core area in terms of the building bye laws and the requirements under the allotment letters and the lease deeds. The Authority's survey report concludes that the petitioner has only managed to develop 5.46% of "permissible

covered area" in the core area (19.2 Hec.), falling significantly short of its obligation to develop 40% of the "permissible covered area" in the core area (148 Hec.). On 20 October 2011, the petitioner applied for part completion of 148 Hec. of the core area. Also, on 15 October 2011, the petitioner had applied for completion of main grandstand in the core area. Six notices (from 08 December 2011 to 12 July 2018) were issued by the Authority to the petitioner specifying the defects in the application for part completion of the core area and the lapse of the same in terms of the Building Regulations. However, the petitioner failed to rectify the defects or file a fresh application for the part completion of the core area in the SDZ Project. Three separate notices (from 07 December 2011 to 22 August 2012) were issued by the Authority to the petitioner specifying the defects in the application for part completion of the Main Grandstand in core area and the lapse of the same in terms of the Building Regulations but to no avail. On 13 December 2018, the Authority sent a final notice to the petitioner for its failure to comply with the Building Regulations and proceed in terms thereof. In view of the above ie, the petitioner's persistent and consistent defaults, failure to undertake development of the SDZ Project including housing projects, grievances of the homebuyers and continued non-compliance with the terms of the allotment and lease deeds, the Authority was left with no choice but to issue the Cancellation Order in the end as the last resort.

61. In 2024, the Authority conducted a survey of the SDZ land allotted to the petitioner. Based on the said survey, the Authority prepared a survey report ("Survey Report") verifying the extent of development work undertaken by

the petitioner. The Survey Report demonstrates that the development obligations have not been met by the petitioner at all. The development on site is far short of milestones that the petitioner was required to achieve within the prescribed time as per the Allotment Letters. The Survey Report concludes that the petitioner has only managed to develop 5.46% of covered area in the core area, falling significantly short of its obligation to develop 40% of the "permissible covered area" in the core activity. Further, the petitioner failed to develop numerous facilities in the core area, including a cricket stadium, football stadium, hockey stadium, sports academy, sports training institutes, karting recreation area, gym and health clubs, sports person housing, golf course, basketball/badminton facilities, wrestling facilities, open-air theatre, hostels, transit hostels, guest houses, archery/lake-related activities, pro shops, cultural information centre, museum, auditoriums, staff housing, and sports theme park.

62. The petitioner also failed to develop the non-core area including group housing projects, hospital, college, shopping centres, fire station etc. In the cancellation order, the Authority has particularly noted the petitioner's failure to complete the housing and residential work. The cancellation order also notes the plight of the homebuyers and their complaints to the Authority against the petitioner for the inordinate delay in completion of the housing and residential work. The petitioner's non-development of the housing and residential work, therefore, weighed in as one of the primary factors for the passing of the cancellation order. Non-development of the SDZ Project and failure to obtain necessary approvals (in terms of

the Allotment Letters/Lease Deeds and the Building Regulations) constitutes a material breach of the Allotment Letters/Lease Deeds and a valid ground for the Cancellation Order. Nevertheless, the Authority had the independent statutory power of cancellation under Section 14, which provides for termination "in case of breach of any condition of such transfer or breach of any rules or regulations made under this Act". As demonstrated above, the petitioner's actions breached Clauses 6.1, 8.1, 8.11, 10.1, and 15.1 of the Allotment Letters and the Building Regulations. Thus, the Authority was within its rights to terminate the Allotment Letters and Lease Deeds.

Grievance of the homebuyers:

63. In terms of the SDZ Policy, the Allotment Letters and the Lease Deeds, the petitioner was required to develop the allotted land for various purposes, including residential and group housing projects. However, the petitioner failed to complete even a single housing project. The Cancellation Order was essential in public interest as the petitioner failed to develop the residential and group housing projects, and the homebuyers were suffering due to long delays caused by the petitioner. Further, the petitioner has been admitted into insolvency and its constant poor financial condition is a matter of record. As such, letting the petitioner continue with the SDZ Project would only further prejudice the homebuyers, the Authority and the public at large. The homebuyers of the petitioner were aggrieved by the delaying tactics and the inactions of the petitioner. The Cancellation Order notes the plight of the homebuyers and their complaints to the Authority against the petitioner for the inordinate

delay in completion of the housing and residential work. The petitioner's non-development of the housing and residential work, therefore, weighed in as one of the primary grounds for the passing of the Cancellation Order. In an attempt to mislead this Court, the petitioner has included the development work carried out by the sub-lessees as its own. On the petitioner's showing, it collected an amount of Rs. 1900.78 Crores from the homebuyers of ten (10) housing projects. However, the petitioner has only undertaken three housing projects, as admitted in its writ petition. In the connected writ petition filed by a homebuyers' association [Jaypee Sports City Welfare Society & Anr. v. State of U.P. & Ors., Writ C No. 21532 of 2021), similar allegation has been raised. The Cancellation Order not only addresses the petitioner's breach of contract, but also the homebuyers' difficulties. The Cancellation Order, therefore, was just, fair and reasonable.

Other litigation by the petitioner:

64. The petitioner has a history of litigation, having challenged similar issues multiple times in different proceedings before different courts including the Supreme Court and this Court. Further, the petitioner has failed to disclose about its previous litigations in the present proceedings, wherein it had either raised the issues identical to the ones raised herein or had taken completely contrary stand. The petitioner filed Writ C No. 40702 of 2017 praying for quashing of the minutes of the 51st Board Meeting of respondent No. 2. Letters written by respondent no. 2 to the petitioner dated 15 December 2014, 4 August 2015, 25 August 2015, 26 May 2016, the Show Cause Notice dated 28

March 2017 and finally demand letter dated 17.08.2017 all being acts that are in consequence of the order dated 29th August 2014 passed by the Under Secretary, Government of Uttar Pradesh, to the extent to which demand has been raised for the payment of 64.7% additional compensation as no litigation incentive. This Court passed an interim order staying the demand of additional compensation. The petitioner filed another writ petition No. 47262 of 2017 inter alia challenging the Authority's board decision (in 61st meeting) regarding proportionate taking back of the land. The petitioner's 1st Writ Petition was connected with batch of other matters challenging the demand of additional compensation. The writ petition filed by M/s Shakuntla Educational and Welfare Society (Writ-C No. 28968 of 2018) was the lead petition in this batch. This Court allowed the petitioner's 1st Writ Petition and quashed the Authority's demand for additional compensation including the demand letter dated 15.12.2014. The Authority challenged the High Court's decision setting aside the demand of additional compensation including the demand letters before the Hon'ble Supreme Court. The Supreme Court has set aside this Court's judgment and upheld the demand of additional compensation including the demand letters ("Shakuntla-I"). The Supreme Court held that the demand for additional compensation is in larger public interest. The petitioner filed a miscellaneous application before the Supreme Court seeking modification of the judgment in Shakuntla-I. The petitioner inter alia raised the grounds that the Authority is imposing interest on delayed payment of additional compensation, and it is recovering additional compensation qua the LMC land (resumed land). The Supreme Court dismissed the petitioner's

Modification Application. The petitioner, thereafter, filed a review petition against Shakuntla-I. The Supreme Court dismissed the review petition as well.

Independent statutory power of cancellation under Section 14 of the 1976 Act:

65. Without prejudice to the above, the Authority submits that it has an independent statutory right of cancellation under Section 14 of the 1976 Act. The allocation of land to the petitioner is governed by the 1976 Act. Both the Allotment Letters and Lease Deeds were executed under the powers conferred by this Act. Further, Clause 20.3 of the Allotment Letters states that the terms of both the allotment and lease deeds shall be governed by the provisions of the 1976 Act, along with the applicable rules and regulations. Section 14 empowers the Chief Executive Officer of the Authority to resume a site or building which had been transferred by the Authority and forfeit the whole or part of the money paid in regard to such transfer.

Re: The Cancellation Order protects the interests of the homebuyers and the sub-lessees:

66. The Cancellation Order was essential in public interest as the petitioner failed to develop the residential and group housing projects, and the homebuyers were suffering due to long delays caused by the petitioner. The Authority is fully sympathetic towards the problems faced by home buyers/allottees due to delays in the possession of flats by the petitioner. As a public authority, the respondent Authority is fully committed to the rehabilitation of the group housing projects where the said

homebuyers/ allottees have made bookings. It is also committed towards protecting the interests of the sub- allottees. As demonstrated in the Authority's Supplementary Counter Affidavit dated 26 July 2024, it is willing and ready to safeguard the interest of the third parties created in the land allotted to the petitioner, specifically concerning the homebuyers and sub- lessees of the petitioner. It is submitted that if the Cancellation Order is upheld and the lands allotted to the petitioner become free from the legal encumbrance, the following options are available for rehabilitation of the entire project including the incomplete group housing project undertaken by the petitioner (not sub-lessees, whose rights remain protected under the Cancellation Order). One option is to re-auction the whole land including the group housing projects inter alia with the conditions that the bidder shall pay the outstanding dues of the Authority as on the date of submission of the bid, and, the bidder shall be required to complete the incomplete housing projects of the homebuyers on priority basis and deliver the units booked/ allotted to them expeditiously on the same terms and conditions already entered by homebuyers with the petitioner. Given the appreciation in the value of land, the project will not only be viable, but it will also be economically lucrative to prospective bidders. Such rehabilitation will ensure that the homeowners in the group housing projects receive their housing units as expeditiously as possible. Alternatively, the other option for the Authority is to undertake the development of the housing projects by itself, complete the construction of the housing units and deliver the same to the homebuyers/ allottees. The Cancellation Order ensures that the allotment of any sub-lease would

not be cancelled so long as the dues are regularly and timely paid to the Authority, thus ensuring continuation of sub-leases. The sub-lessees interests under the sub-lease are thus fully protected and they will be able to enjoy the same without any disruption so long as they continue to comply with the obligations under the sub-lease and also those under the relevant lease with the Authority under which the sub-lease has been granted, so far as they are applicable to them. It is also pertinent to note that after passing of the Cancellation Order, the sub-lessees have been making payments directly to the Authority, and their sub-leases have not been cancelled.

Re: The petitioner's challenge to the quantum of dues is frivolous and has no basis:

67. In the present case, the Writ Petition was filed to challenge the Authority's Cancellation Order and raise substantive issues. On the other hand, the petitioner's reconciliation proposal (dated 09 May 2023) was raised in the context of an interim arrangement, which was rejected. The nature and scope of these two types of pleadings differ. Since the grounds raised in the context of interim arrangement are evaluated under a different lens by the court, raising identical grounds to challenge the substantive order (such as the Cancellation Order) is impermissible. The petitioner cannot reintroduce issues that were part of rejected interim arrangement in a legal challenge to the Cancellation Order. The Writ Petition must stand on its own merits. The Authority is entitled to charge additional penal interest (1%+1%+1%= 3%) on the land premium and lease rent. The Authority denies that it is charging any excess interest on the land premium and the lease rent contrary to the

contractual terms. The allotment of the land in the favour of the petitioner was made through the Reservation Letter and the Allotment Letters. They form integral part of the Lease Deeds. In terms of the Reservation Letter, in case of default in the payment of any dues to the Authority, the Allottees would be required to pay penal interest @ prevailing SBI PLR+3% p.a. on defaulted amount compounded half yearly, for the defaulted period. Similarly, in terms of the Allotment Letters in case of any default by the petitioner in payment of any dues, the petitioner would be required to pay additional interest @ prevailing SBI PLR + 3% p.a. on defaulted amount, compounded half yearly for the defaulted period. Clause 3.6 of the Allotment Letters allows for extension in time for depositing the amount by Chief Executive Officer ("CEO") of the Authority in special circumstances for a maximum period of 30 days subject to payment of additional interest @ prevalent SBI PLR+3% p.a. for the extended period. The Authority submits that the imposition of additional penal interest was a reasonable condition for re-scheduling/extension of the payment under the payment schedule, which the petitioner had itself sought and obtained. The petitioner also made payments pursuant to levy of additional penal interest. The petitioner is not entitled to now turn around and dispute the conditions for extension. In terms of the Allotment, the Authority had the power to cancel the petitioner's allotments and the lease deed due to its defaults. Due to the petitioner's persistent defaults, it had fallen under the category of a 'defaulter' and the Authority could have cancelled the petitioner's allotments and lease deeds. However, the Authority took a reasonable and least restrictive measure by levying an additional 1% penal interest and granted extension of payment to the

petitioner. However, despite such reasonable extension, the petitioner failed to make complete payment under the Extension Letters as well. The Authority submits that the additional interest was levied for a proper purpose, rationally connected to the object to be achieved, necessary to fulfil the intended objective, and proportionate in balancing the interests of both parties.

ANALYSIS OF RIVAL CONTENTIONS AND FINDINGS

Issue No. 1: Whether Writ-C No. 6049 of 2020, against cancellation of allotment, is maintainable?

68. Learned Senior Counsel for YEA submitted that the dispute raised by the petitioner is purely contractual and the petitioner is seeking relief arising out of the terms of contract. It involves interpretation of different clauses of the allotment letters and lease deeds and, hence, the matter being purely contractual, the writ petition is not maintainable. It has consistently been held that the scope of judicial review under Article 226 is limited in contractual disputes; contractual actions cannot be questioned on the grounds of equity, equality and proportionality if it can be shown that the action of the Authority was in terms of the contract, such as the present case. In commercial transactions, the rights and obligations of the parties are determined by the contract, and the courts must refrain from adjudicating on purely contractual issues. A writ court cannot be a forum to seek any relief based on terms and conditions incorporated in the agreement between the parties. Reliance has been placed on the judgements of the Supreme Court in **(i) Rajasthan State Industrial Development and Investment**

Corporation and another Vs. Diamond & Gem Development Corporation Limited and another: (2013) 5 SCC 470
(ii) Joshi Technologies International INC. Vs. Union of India: (2015) 7 SCC 728
(iii) Jagdish Mandal Vs. State of Orissa and others: (2007) 14 SCC 517
(iv) Uflex Limited Vs. government of Tamil Nadu and others: (2022) 1 SCC 165
(v) State of Bihar Vs. Jain Plastics and Chemicals Ltd.: (2002) 1 SCC 210
and (vi) ABL International v. Export Credit Guarantee Corporation: (2004) 3 SCC 553.

69. On the other hand, learned Senior Counsel for the petitioner submitted that the YEA, in its counter affidavit did not raise any issue regarding maintainability but the only objection taken is that the scope of judicial review when dealing with the policy decision is narrow. It was submitted that judgement of the Supreme Court in **Rajasthan State Industrial Development** (supra), relied on by the respondent, laid down that generally the court should not exercise its writ jurisdiction to enforce the contractual obligation. The writ can be granted if there was already an existing legal right of the applicant which is being infringed. However, the writ does not create or establish a legal right. In other words, a writ cannot lie in a situation where a suit for specific performance would have to be filed. However, if the right already exists and is being infringed, a writ petition would lie.

70. The Supreme Court, in **ABL International v. Export Credit Guarantee Corporation (2004) 3 SCC 553**, held as under:

“The requirement of Article 14 should extend even in the sphere of contractual matters for

regulating the conduct of the State activity. Applicability of Article 14 to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, the State cannot thereafter cast off its personality and exercise unbridled power unfettered by the requirement of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more. The personality of the State, requiring regulation of its conduct in all spheres by requirement of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirement of Article 14 and contractual obligations are alien concepts, which cannot co-exist. The Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. Therefore, total exclusion of Article 14- non-arbitrariness which is basic to rule of law-from State actions in contractual field is not justified. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but

standard form contracts between unequals. Unlike the private parties the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. **The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters.** This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. **However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the**

domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14.

To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non- arbitrariness at the hands of the State in any of its actions. x x x

From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution.....”.

71. **In M.P. Power Management Company Ltd, Jabalpur vs SKY Power Southeast Solar India Private Ltd and others, (2023) 2 SCC 703**, the Supreme Court extensively dealt with maintainability of a Writ petition arising out of contractual obligations between a private entity and an instrumentality of State and held as under:-

.....The reach of Article 14 enables a Writ Court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can generate causes of action for invoking Article 14. The Court’s approach in dealing with the same, would be guided by, undoubtedly, the

overwhelming need to obviate arbitrary State action, in cases where the Writ remedy provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State.

XXXXXX

.....Termination of contract can again arise in a wide variety of situations. If for instance, a contract is terminated, by a person, who is demonstrated, without any need for any argument, to be the person, who is completely unauthorised to cancel the contract, there may not be any necessity to drive the party to the unnecessary ordeal of a prolix and avoidable round of litigation. The intervention by the High Court, in such a case, where there is no dispute to be resolved, would also be conducive in public interest, apart from ensuring the Fundamental Right of the petitioner under Article 14 of the Constitution of India. When it comes to a challenge to the termination of a contract by the State, which is a non-statutory body, which is acting in purported exercise of the powers/rights under such a contract, it would be over simplifying a complex issue to lay down any inflexible Rule in favour of the Court turning away the petitioner to alternate Fora. Ordinarily, the cases of termination of contract by the State, acting within its contractual domain, may not lend itself for appropriate redress by the Writ Court. This is, undoubtedly, so if the Court is duty-bound to arrive at findings,

which involve untying knots, which are presented by disputed questions of facts. **Undoubtedly, in view of ABL Limited (supra), if resolving the dispute, in a case of repudiation of a contract, involves only appreciating the true scope of documentary material in the light of pleadings, the Court may still grant relief to an applicant. We must enter a caveat. The Courts are today reeling under the weight of a docket explosion, which is truly alarming. If a case involves a large body of documents and the Court is called upon to enter upon findings of facts and involves merely the construction of the document, it may not be an unsound discretion to relegate the party to the alternate remedy. This is not to deprive the Court of its constitutional power as laid down in ABL (supra). It all depends upon the facts of each case as to whether, having regard to the scope of the dispute to be resolved, whether the Court will still entertain the petition.**

.....In a case the State is a party to the contract and a breach of a contract is alleged against the State, a civil action in the appropriate Forum is, undoubtedly, maintainable. But this is not the end of the matter. Having regard to the position of the State and its duty to act fairly and to eschew arbitrariness in all its actions, resort to the constitutional remedy on the cause of action, that the action is arbitrary, is permissible. However, it must be made clear

that every case involving breach of contract by the State, cannot be dressed up and disguised as a case of arbitrary State action. While the concept of an arbitrary action or inaction cannot be cribbed or confined to any immutable mantra, and must be laid bare, with reference to the facts of each case, it cannot be a mere allegation of breach of contract that would suffice. What must be involved in the case must be action/inaction, which must be palpably unreasonable or absolutely irrational and bereft of any principle. An action, which is completely malafide, can hardly be described as a fair action and may, depending on the facts, amount to arbitrary action. **The question must be posed and answered by the Court and all we intend to lay down is that there is a discretion available to the Court to grant relief in appropriate cases.**

72. It is firmly established that the power under Article 226 of the Constitution is plenary in nature and extends even to contractual matters against State or its instrumentality. However, the Court has imposed upon itself certain restrictions in exercise of this power. Thus, while there is no absolute bar to maintainability of writ petition even in contractual matters but it is a matter of judicial discretion whether to interfere in a particular case or not. These principles have been summarised by the Supreme Court in **Joshi Technologies International INC. Vs. Union of India, (2015) 7 SCC 728, Para 69 and 70**, as follows:-

"69.1. The Court may not examine the issue unless the

action has some public law character attached to it.

69.2. Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

69.4. Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

70. Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarised as under:

70.1. At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

70.2. State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discriminations.

70.3. Even in cases where question is of choice or consideration of competing claims

before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc.

70.4. Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.

70.5. Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the licence if he finds it profitable to do so: and he can challenge the conditions under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business.

70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific

performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

70.8. If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction

between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. **Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.**

70.10. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

70.11. The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes."

(emphasis supplied)

73. It has thus, been held that the issues arising out of contract should not be normally examined by the Court as the party has remedy of seeking relief by way of damages unless the action under challenge has public law character attached to it. Once, on the facts of a particular case, it is found that nature of activity or controversy involves public law elements, then the matter can be examined under Article 226 of the Constitution of India.

74. Rajasthan State Industrial Development (supra) cited by learned Senior Counsel for YEA laid down that generally the Court should not exercise its writ jurisdiction to enforce a contractual obligation. The writ can be granted if there was already an existing legal right and which is being infringed. The writ petition would not lie for establishment of a legal right, as the remedy in such a situation, would be a suit for specific performance.

75. Jagdish Mandal and Uflex Limited dealt with power of judicial review concerning evaluation of tenders. It was held that in such matters if the decision relating to award of contract is bonafide and in public interest, the Courts would not interfere even if there was some procedural aberration or error nor on the ground of equity. These judgments, in our considered opinion, would not apply to the facts of the present case.

76. The impugned order of cancellation is being challenged as an illegal, arbitrary and disproportionate executive fiat. The petitioner is not seeking to establish any new right but attempting to safeguard its rights under the allotment made in its favour. The impugned order itself recites that it was passed not only to protect the interest of YEA but also the

sub-lessees and homebuyers. It thus seeks to subserve larger public interest. As such, it cannot be said that the writ petition is liable to be thrown out on the ground of maintainability. However, the exercise of power of judicial review shall have to be within the well established parameters.

77. Issue No. 1 is, thus, answered against YEA and in favour of the petitioner holding the writ petition as maintainable.

ISSUE NO. 2 and 3:

Whether the terms of the allotment letter, except those, specifically referred to and incorporated by reference in the lease deed, survive after the execution of the lease deed vis-a-vis the land parcels which are leased under the lease deeds?

And

Whether the impugned cancellation of the allotment letter by letter dated 12.02.2020 has the consequent effect of cancelling the lease deed, in the absence of specific cancellation of the lease deed?

78. As these issues are inter-connected, they are being addressed simultaneously.

(A) Salient Features of Allotment, Lease and SDZ Policy:

79. A comparison of the terms of the lease deed with the allotment letter reveals that several clauses in the two documents are similar or more or less identical; some clauses have been modified; some clauses have been incorporated by reference and some have been substantially changed.

Clauses which are similar:

Particulars.	Clauses in Allotment Letter.	Clauses in Lease Deed
1. Clauses that are nearly identical in both, the allotment letter and the lease deed.	1. Clause 3.2, 3.5, 3.9 2. Clause 3.10 3. Clause 3.11 4. Clause 5.2 5. Clause 6.1 + 8.12 6. Clause 8.4 7. Clause 8.5 8. Clause 8.10 9. Clause 8.3 10. Clause 9.1	1. Clause 3 2. Clause 11(a) 3. Clause 11(b) 4. Part of Clause 2 5. Clause 4 6. Part of Clause 8 7. Clause 10(i) and (iii) 8. Clause 9 9. Clause 6 10. Clause 14

Clauses which have been incorporated by reference:

Particulars.	Clauses	Clauses

	in Allotment Letter.	in Lease Deed
Clauses in the Allotment Letter which are included in the Lease Deed by reference and incorporation.	1. Clause 3.1, 3.6-3.8 2. Clause 3.9 3. Clause 10 4. Clause 11	1. Clause 3 2. Clause 15 3. Clause 10(ii) 4. Clause 16

Clauses which have been modified or replaced:

Particulars.	Clauses in Allotment Letter.	Clauses in Lease Deed
Clauses in the Allotment Letter that were removed and/ or replaced in the Lease Deed.	1. Clause 2 2. Clause 3.4 3. Clause 4.2 4. Clause 5.1 5. Clause 8.1 6. Clause 8.2	1. Removed 2. Removed 3. Removed + Clause 38 added 4. Removed 5. Removed 6. Removed

Clauses which have been substantially changed:

Particulars.	Clauses in Allotment Letter.	Clauses in Lease Deed
Clauses in the allotment letter that	1. Clause 5.3 2. Clause	1. Clause 23(iv) 2. Clause

were substantially changed in the lease deed.	8.9 3. Clause 16.1 4. Clause 19 5. Clause 20.2 6. Clause 20.3	8. Clause 30 4. Clause 28 5. Clause 37 6. Clause 27.

80. The lease deeds are all identical. It begins with Preamble setting out the background facts leading to execution of the same. The petitioner applied in response to notice inviting application by the lessor for development of SDZ in the development area of YEA with SPORTS as core activity. It discloses the nature of right created i.e., lease, with a specific reference to the allotment letter in pursuance of which the lease was executed. The period of lease, the area of land demised, the description of land in Schedule-II attached to the lease and also the premium i.e., consideration were clearly stated. Paragraph 3 of Preamble stating that the parties had agreed to the demise on '*terms and conditions contained in these presents*' is crucial. It reveals that rights and obligations of the parties in respect of lease hold right would be governed by the terms and conditions set out therein. One of the lease deeds, executed on 25.09.2009, in pursuance of allotment letter dated 20.03.2009 is reproduced below:

“LEASE DEED

This Deed of Lease is made on this
25th day of Sept 2009

Between

Yamuna Expressway Industrial Development Authority (YEA) (Name changed from Taj Expressway Industrial Development Authority vide GoUP Notification No. 1165/77-4-08-65 N/08

Lucknow dated 11th July 2008), a statutory body constituted under the U.P. Industrial Area Development Act, 1976 and having its principal office at A-1, First Floor Commercial Complex, Sector-Beta-II, Greater Noida, District Gautam Budh Nagar, Uttar Pradesh (India) (hereinafter referred to as "Lessor" which expression shall, unless repugnant to the context mean and include its administrators, successors and assigns) of One Part.

And

M/s JPSK Sports Pvt. Ltd. a company incorporated under the Companies Act, 1956, having its Registered Office at Sector-128, Noida 201304, District Gautam Budh Nagar (U.P.). (hereinafter referred to as the "Lessee", which expression shall, unless repugnant to the context mean and include its successors and assigns) of Second Part.

WHEREAS

1. The Lessee, in response to Notice Inviting Application by the Lessor, for development of Special Development Zone (SDZ) in the development area of Yamuna Expressway Industrial Development Authority (YEA) had applied for development of SDZ with SPORTS as Core Activity, and

2. The Lessor, allotted to the Lessee SDZ Sector No. 25 with SPORTS as Core Activity for development of the SDZ vide letter No. YEA-32/2009 dated 20.03.2009 (the Allotment Letter attached hereto of SCHEDULE-I) on the terms and conditions contained in the said Allotment Letter which interalia, include allotment of approx. 646.7530 Hectares land in Villages- Salarpur, Munjkheda, Falehpur Atta, Gunpura, Jaganpur, Afjalpur, Dankaur and Aurangpur in Tehsil Sadar, District Gautam Budh Nagar (U.P.) for a period of 90 years on lease at premium al Rs. 241.86 per sq.m. excluding External Development

charges plus lease rent @ 2.5% per annum of premium.

3. The Lessor in part discharge of its obligations under the said Allotment Letter, hereby agrees to provide on lease and the Lessee hereby agrees to take on lease, 175.3639 hectares of land in Village Gunpura, Tehsil Sadar, Distt. Gautam Budh Nagar (U.P.) (Hereinafter referred to as the Demised Land) for development of SDZ, more particularly detailed in SCHEDULE-II attached hereto, on terms and conditions contained in these presents.

I. NOW THEREFORE THIS LEASE DEED WITNESSETH AS UNDER AND THE PARTIES THERETO AGREE AS FOLLOWS:

(1) The Lessor is the lawful owner of the Demised Land and has a valid right, title and interest therein and is competent to lease the same to the Lessee. Detailed description of the Demised Land and a plan thereof (delineated and marked in the Map) is attached as SCHEDULE-III hereto.

(2) In consideration of the payment of the rent hereunder reserved and of the covenants and conditions on the part of the Lessee hereinafter contained, The Lessor doth hereby demise unto the lessee all that piece and parcel of the Demised Land containing by admeasurement 175.3639 Hectares in Village Gunpura, Tehsil Sadar, Distt. Gautam Budh Nagar (U.P.) more particularly described in SCHEDULE-II hereto together with all and singular liberties, privileges, rights, easements and appurtenances thereto AND also the structure and buildings hereafter to be erected thereon TO HOLD the Demised Land unto the Lessee for the term of 90 (ninety) years (the "Term") commencing from the date of possession of Demised Land.

(3) During the term of the lease, the Lessee shall pay to the Lessor, lease rent @

2.5% of premium per annum in advance (the "Rent Amount") commencing from the month of Sept. 2009. The Lessee has paid to the Lessor Rs. 1,21,83,01,561.00 (Rupees one hundred twenty one crores eighty three lacs one thousand five hundred sixty one only) towards 20% of premium amount in Lessor's Current Account No. 30767210435 IFSC Code SBIN0004324 with Bank of India, Lagerstromia Shopping Complex, Greater Noida (U.P.), through RTGS, for 646.7530 Hectares land which includes 175.3639 Hectares of the Demised Land details of which are set out in the SCHEDULE-II hereto, the receipt whereof the Lessor doth hereby acknowledges. The balance 80% of the Premium shall be paid in 20 half yearly installments alongwith interest on reducing balance @ prevailing SBI PLR. The first half yearly installment mentioned above shall fall due after 180 days from the date of issue of Allotment Letter, in accordance with the provisions of Allotment letter dated 20.03.2009.

(4) The Lessee shall plan the development of SDZ by adhering to land use percentages mentioned herein below:-

% of total area of SDZ

A. Core Activity not less than 35%
(including road & open space)

B. Other Activities

- i) Commercial not more than 20%
- ii) Institutional and amenities not less than 5%
- iii) Roads, open and other circulation areas not less than 25%
- iv) Residential including group housing not less than 15% and plotted Development area

Subject to the above provisions, the Lessee shall have exclusive right to

determine the purpose for which the Demised Land will be used and also the allocation of area of such Demised Land for different uses. The Lessee shall also be free to decide whether the portion of Demised Land decided by the Lessee to be sub-leased/given on leave and licence basis should be in the form of plots or constructed properties. No permission of the Lessor shall be required either for the use of the Demised Land or for sub-leasing/multiple sub-leasing/giving on leave and license basis. The Lessee shall be entitled to modify the Demised Land or part thereof as per the layout plan(s) approved by the relevant authorities. In case land for development of SDZ is allotted to the Lessee in parts, the Lessee shall be entitled to amalgamate/merge the said parts of the allotted land at one location.

(5) The Lessee shall have unfettered right to sub-lease the whole or any part of the Demised Land, whether developed or undeveloped, and whether by way of plots or constructed properties or give on leave and license or otherwise dispose of its interest in the Demised Land or part thereof/permit to any person in any manner whatsoever, without requiring any consent or approval of the lessor or of any other relevant authority. The sub-Lessee(s) of the Demised land shall also be entitled to provide the Demised Land on sub-lease and hence there can be subsequent multiple sub-leases of the Demised Land in small parts. The Lessee/sub-Lessee/licensee, as the case may be, shall however notify to the Lessor the details of all such sub-lease(s) /leave and license(s)/disposals. Till the time such notification is made to the Lessor, the Lessor/sub-Lessor/Licensor, as the case may be, shall continue to remain liable to pay the Rent Amount along with the Lessee. The quantum of Rent Amount

payable to the Lessor shall remain unaffected by any such sub lease(s)/leave and license(s). It is hereby further clarified that the total Rent Amount payable by the Lessee and various sub-Lesseees/transferees shall be to the maximum extent of @ 2.5% of the premium of land being leased per year (various sub-Lesseees/transferees paying pro rata rent for the portion of land held by them). Each sub-lease and/or transfer shall after the execution thereof be notified by the transferor or the sub-Lessor/sub-Lessee to Lessor and till such time, it is so notified, the transferor/sub-Lessor shall remain jointly and severally liable along with the transferee/sub-Lessee for payment of lease rent to Lessor. However, for sub-lease of Core Activity land, prior permission of Lessor shall be required.

(6) For the first transfer of land through sub-lease, no additional charges or transfer premium shall be payable by the Lessee to the Lessor or any authority. However, for subsequent transfers, additional payment shall be made to the Lessor at the rates specified by the Lessor.

(7) Multiple renting shall be admissible to the Lessee and to the sub-lessee(s).

(8) Admissible overall FAR on gross area of land, FAR, ground coverage, permissible height and set back etc. for various uses of land viz. residential, commercial, recreational, institutional etc. shall be as per the policy of Govt. of U.P. for Special Development Zone (SDZ) under development of Yamuna Expressway Industrial Development Authority (earlier known as Taj Expressway Industrial Development Authority) and Zoning Regulations & Building Regulations of Yamuna Expressway Industrial Development Authority as applicable from time to time.

(9) The height of buildings will be governed by the regulations/standards of relevant Airport Authority, as applicable.

(10) The Lessee shall carry out the entire development in the allotted area adhering to :-

(i) Standards and specifications laid down in the building and other regulations of the Lessor/relevant Indian Standards/National Code etc.

(ii) Master Plans and Rules & Regulations of the Lessor and other relevant authorities.

(iii) Government policies and relevant Codes of BIS/IS relating to disaster management in land use planning and construction work.

(11)

a. the annual lease rent may be enhanced on expiry of every 30 years by an amount not exceeding 50% of the lease rent last fixed.

b. The Allottee shall have an option to pay a lump-sum amount equivalent to 11 times of the annual lease rent i.e. 27.5% of total Premium before execution of lease deed, as ONE TIME LEASE RENT.

Note: If the Allottee chooses the option to pay least rent annually at the time of execution of lease deed, he can subsequently exercise his option to pay one time lease rent indicated above with the prior written permission of the YEA/Lessor. In such a case the Allottee shall have to pay lease rent @ 2.5% p.a. of the total Premium till the date of exercising the option and in addition, shall pay 27.5% of the total Premium as One Time Lease Rent.

(12) The land being transferred on lease basis can be converted in free hold in future as per the terms and conditions specified by the Lessor.

(13) The Lessee shall have a right of way to all the lands and premises and

roads adjoining the Demised Land and shall be entitled to enter upon such lands and premises and roads for the purpose of accessing the Demised Land without detriment to the Lessor or public interest.

(14) The Allottee can mortgage the land in favour of banks/financial institutions/lenders for arranging funds for implementation of project, on such terms as may be mutually agreed between lessee, Lessor and Lenders.

(15) Lessor shall carryout external development of the area of SDZs as expeditiously as possible. External Development Charges shall be payable by the Lessee in accordance with the provision of Allotment Letter dated 20.03.2009. Internal development of the area of SDZ shall be carried out by the Lessee.

(16) Lessor shall identify and implement village development scheme and Abadi Extension in the area of SDZ in accordance with the terms of Allotment letter dated 20.03.2009.

(17) The Lessor shall endeavor to help the Lessee in obtaining applicable permits, sanctions, approvals, clearances, etc. for effective enjoyment of the Demised Land.

(18) Maintenance of External Development works for the SDZ shall be carried out by the Lessor and maintenance of works within the SDZ shall be corned out by the Lessee respectively at their own cost.

(19) Upon written request from the Lessee, Lessor shall assist the Lessee in obtaining access to all necessary infrastructure facilities and utilities. including water, electricity, telecommunication facilities etc. at rates and on terms not less favourable to the Lessee than those generally available to the commercial customers.

(20) Various incentives/concessions etc. shall be admissible to the Lessee as per the State Govt. policy/in law from time to time.

(21) That the Lessee/sub-lessee(s) hereby covenants to pay all rates, taxes, charges and taxes already levied or to be levied in future by the Lessor or any local or other authority/Central or State Govt. The Lessee/sub-lessee(s) shall have to take independent connection in his name at his cost for water supply/drainage/sewerage on payment of required charges to local authority for construction purpose and later on for regular drinking water supply etc. The Lessee/sub-lessee(s) shall, it required by the Lessee, also have to take in his own name and at his own cost temporary electric/power connection for construction purposes and later on for regular supply on payment of required charges to the authority as may be responsible for giving such electric/power connection.

(22) The Lessee covenants and warrants that:

i) The Lessee shall follow all laws and bye-laws, rules, building regulation and direction of Lessor and the local municipal or other authority now existing or hereinafter to exist so far as the same relate to the immovable property and so far as they affect the health, safety and convenience of other inhabitant of the place.

ii) The Lessee shall bear legal expenses of execution of this Lease Deed including the registration charges as may be applicable.

iii) The Lessee will permit the members, officers and subordinates of the Lessor and workmen and other persons employed by the Lessor at all reasonable time of the day with 7 days prior notice in writing to enter into and upon the Demised Land and building to be erected thereupon

in order to inspect the Demised Land and carry on necessary works and the Lessee will give notice of the provision of this sub-clause to its sub-lessee(s).

(23) The Lessor covenants and warrants that:

(i) The Lessor has the full right and authority to execute this Deed and to grant the lease of the Demised Land, and that the Lessee, upon payment of the rent and performance of the covenants herein contained, shall peaceably and quietly hold, possess and enjoy the Demised Land during the full term of this lease without any interruption, disturbance, claims or demands whatsoever by the Lessor or by any person/s claiming for and on behalf of the Lessor as per the covenants and provisions of this Lease Deed.

(ii) The Lessor shall grant, transfer, convey and assure, from time to time, all its reversionary rights, title and interests in respect of such part of the Demised Land as may be required by the Lessee/sub-lessee for land use as per applicable Master Plan and other regulations of the local authorities.

(iii) The Lessor hereby covenants that the Lessee/sub-lessee(s) shall enjoy quiet possession of the Demised Land without disturbance by it or its successor in interest or any person claiming title paramount thereto in any manner.

(iv) The Lessor warrants that the Demised Land is free from all encumbrances, claims disputes, encroachments, occupations, litigations, injunctions, mortgages, charges, pledges, lien, hypothecation, security interest, assignment, privilege, or priority of any kind having the effect of security or other such obligations. The Lessor further warrants that if any compensation remains outstanding and payable in respect of the Demised land the same shall be paid and

settled directly by the Lessor without in any way affecting the Lessee's enjoyment of the Demised Land.

(24) The Lessee/sub-lessee(s) shall make such arrangements as are necessary for maintenance of the building(s) and common services situated on the Demised Land and if the buildings are not maintained properly, the Chief Executive Office or any officer authorized by Chief Executive Officer of the Lessor will have the power to get the maintenance done through the authority and recover the amount so spent from the Lessee/sub-lessee(s). The Lessee/sub-lessee(s) will be individually liable for payment of the maintenance amount related to its property. No objection on the amount spent on maintenance of the building by the Lessor shall be entertained and the decision of the Lessor shall be final.

(25) The Lessor shall have full rights and title to all mines and minerals, cools, gold washing, earth oils and quarries in and under the Demised Land of any part thereof and to do all acts and things, which may be reasonably necessary or expedient for the purpose of searching removing and enjoying the same, without affecting the Lessee's/sub-lessee(s) right to peaceful possession and enjoyment.

(26) The Lessor has the right to receive the lease rent annually in advance without having to issue any demand notice therefore.

(27) Any building constructed on any portion of Demised Land (except for Core Activity) may be sub-let, by the Lessee/sub-lessee(s) subject to the terms and conditions as laid down in the bye-laws from time to time. However, the sub-lessee(s) shall follow the statutory laws/bye-laws Master Plan, Building regulations and directions framed under U.P. Industrial Area Development Act,

1976 for the land use and also shall be bound by all covenants and condition contained herein and be answerable in all respect thereof.

(28) That the Chief Executive Officer of the Lessor in consultation with the Lessee may make such amendments, additions and alternations or modifications in these terms and conditions as may be mutually agreed between Chief Executive Officer and the Lessee.

(29) The Lessee shall indemnify the Lessor against all actions, suits, claims, demands and proceedings and any loss or damage or cost or expense that may be suffered by the Lessor on account of anything done or omitted to be done by the Lessee in connection with the development of the SDZ.

(30) The Lessor shall indemnify, defend and hold harmless to the Lessee against any and all proceedings, actions, 3rd party claims for loss, damages and expenses of whatever kind and nature arising out of defect in title and/or the rights of the Lessor in the land transferred to the Lessee.

(31) That the Lessee shall keep the Lessor indemnified against any claims for damages which may be caused to any property belonging to the Lessor/ others in consequence of the execution of the works and also against claims for damages arising from the actions of the Lessee or his workmen or representatives which :-

a. Injures or destroys any building or part thereof or other structure contiguous or adjacent to the Demised Land.

b. Keeps the foundation, tunnels or other pits on the Demised Land open or exposed to weather causing any injury to contiguous or adjacent building.

c. Digs any pit near the foundation of any building thereby causing any injury or damages to such building.

(32) That the damages shall be assessed by the Lessor whose decision as to The extent of injury or damages or the amount payable shall be final and binding on the Lessee.

(33) That the Lessee/sub-lessee(s) shall not display or exhibit any picture posters statuses other articles which are repugnant to the morals or are indecent or immoral. The Lessee/sub-lessee(s) shall also not display or exhibit any advertisement or placard in any part of the exterior wall of the building, which shall be constructed over the Demised Land except at places specified for the purpose by the Authority.

(34) All powers exercised by the Lessor under this Lease Deed may be exercised by the Chief Executive Officer of the Lessor, who may also authorize any of its other officers to exercise all or any of the power exercisable by it under his Lease Deed. A copy of such authorization shall be handed over by the Lessor to the Lessee immediately upon such authorization.

(35) Any relaxation or indulgence granted by the Lessor to the Lessee under this Deed shall not in any way prejudice the legal rights of the Lessor.

(36) The Lessor and the Lessee hereby agree that all notices hereunder to any Party hereto shall be delivered personally or sent by registered or registered mail with acknowledgement due or facsimile to such Party at the address set forth below or such other address as may hereafter be designated in writing by such Party to the other Party. Notices delivered personally shall be deemed to have been received on the date of receipt, notices sent by registered mail shall be deemed to have been received on the tenth day following mailing, and notices sent by facsimile shall be deemed to have been received one (1) business day after transmission provided (i)

receipt is verbally confirmed and (ii) an original copy is mailed promptly within five (5) Business Days thereafter:

(a) Notices to the Lessor to:

Yamuna Expressway Industrial Development Authority (YEA),
A-1, First Floor Commercial Complex,
Sector-Beta-II,
Greater Noida,
Distt. Gautam Budh Nagar, Uttar Pradesh, India.

Attention: Chief Executive Officer
Telephone No. 0120-4291361, Fax:
No. 0120-4291360.

(b) Notices to the Lessee to:

JPSK Sports Pvt. Ltd.
Sector-128, Noida 201304,
Distt. Gautam Budh Nagar Uttar Pradesh

Attention: Shri Sameer Gaur (MD & CEO)

Telephone No.: 0120-4609000, Fax
No.: 0120-4609025

All notices, orders and other documents required under the terms of the Lease or under U.P. Industrial Area Development Act 1976 (U.P. Act No. 6 of 1976) or any rules or regulations made thereunder shall be deemed to be duly served as provided under section 43 of the U.P. Urban Planning and Development Act 1973 as re-enacted and modified by the U.P. President's Act (re-enactment with modification) Act 74 (U.P. Act No. 30 of 1974).

(37) This Lease Deed shall be subject to the jurisdiction of District Court at Gautam Budh Nagar or the High Court of Judicature of Allahabad.

(38) All arrears payable to Lessor shall be recoverable as arrears of land revenue without prejudice to its other rights under any other law for the time being in

force, subject however to the terms of this Deed.

(39) The stamp duty chargeable in respect of instruments of transfer of land for the SDZ, by Lessor to Lessee has been waived vide Govt. of Uttar Pradesh Notification No. KN. 5-3279/XI-2009-500 (54)-2009 dated Lucknow August 17, 2009, attached herewith as SCHEDULE-IV read with letter No. 2922/77-3-09-50 (अवस्थापना)/09टी. सी. dated 26 August, 2009, issued by the Special Secretary, IDC-3 Govt. of Uttar Pradesh attached herewith as SCHEDULE-V and accordingly, no stamp duty is payable on this Lease Deed.

IN WITNESS WHEREOF THE Lessor and the Lessee have caused these present to be executed on their respective behalf on the day, month and year first hereinabove written in the manner hereinafter appearing.”

81. The real bone of contention between the parties is whether as a result of execution of lease deed, Clause 4.2 of the allotment letter which conferred right in favour of YEA to cancel lease in case of default in payment of the premium or the installments would still survive. The said question assumes importance in view of the fact that there was no similar provision in the lease deed. Interlinked with it is the question as to whether cancellation of the allotment would result in forfeiture of the lease and the rights conferred thereunder in favour of the petitioner or not. The contention of learned Senior Counsel appearing for the petitioner is that after the lease deed has been executed, the allotment letter ceases to be effective for the land parcels for which lease deeds have been executed since it has been superseded by the lease deed which is the essential contract between the parties. On the other hand, submission of learned Senior

Counsel for the YEA is that the allotment letters and the lease deed were executed for a common purpose and they subsist together. It is submitted that every contract is to be considered with reference to its object and all of its terms and accordingly, the whole context must be considered to discern the true intent of the parties [**Bihar State Electricity Board Vs. Green Rubber Industries: (1990) 1 SCC 731**]. It is also submitted that where the transaction is not the subject of one document, but several, which referred to each other, or a reading of all, describe the entire contract, then it is open to the Court to consider all of them together. Reliance has been placed on **Manks vs. Whiteley: (1912) 1 Ch. 735; Infrastructure Leasing & Financial Services Ltd. v. HDFC Bank Ltd. and Anr: 2023 SCC OnLine SC 1371; MTNL v. Canara Bank: (2020) 12 SCC 767 and Cox & Kings Ltd. v. SAP India (P) Ltd.: (2024) 4 SCC 1**. It is further submitted that lease deeds were executed in furtherance of the allotment letters and the SDZ policy and since this serves a common purpose, their terms coexist without any inconsistency. The real intent of the parties is to be gathered from the manner in which they understood the contract and which reveals that the petitioner even after execution of lease deed continued to take recourse to various stipulations in the allotment letters to seek benefits in terms of the same and which were also granted to the petitioner. This further reveals that the parties also understood the contract in the manner that the allotment letters and lease deeds would subsist together. The petitioner cannot be permitted to blow hot and cold and contend that the allotment letters stood completely superseded having taken benefits of the stipulations in the allotment letter even after execution of lease deeds.

82. In **Manks vs. Whiteley**, the Chancery Division laid down the law relating to interpretation of a transaction contained in multiple documents as follows:

".....where several deeds form part of one transaction and are contemporaneously executed they have the same effect for all purposes such as are relevant to this case as if they were one deed. Each is executed on the faith of all the others being executed also and is intended to speak only as part of the one transaction, and if one is seeking to make equities apply to the parties they must be equities arising out of the transaction as a whole. It is not open to third parties to treat each one of them as a deed representing a separate and independent transaction for the purpose of claiming rights which would only accrue to them if the transaction represented by the selected deed was operative separately. In other words, the principles of equity deal with the substance of things, which in such a case is the whole transaction, and not with unrealities such as the hypothetical operation of one of the deeds by itself without the others."

83. In **Infrastructure Leasing & Financial Services Ltd. v. HDFC Bank Ltd. (supra)**, the ratio in **Manks v. Whiteley (supra)**, has been applied by the Hon'ble Supreme Court in interpreting a 'Master Facility Agreement' executed between the respondent-Bank and the appellant for providing financial assistance to the appellant and an 'Assignment Agreement' executed between them. The

Hon'ble Supreme Court held that **"where the transaction is not the subject of one document, but several, which refer to each other, or a reading of all, describe the entire contract, then, it is open to the court to consider all of them together."**

84. The above principles of interpretation have been laid down as noted above in respect of multiple documents arising out of a single transaction. These multiple documents were contemporaneously executed. Nonetheless, the principles of interpretation laid down in these judgements in relation to multiple documents arising out of a single transaction is of great relevance. Here we may usefully refer to a judgement of Gujarat High Court in **Creative Infocity Limited vs. Gujarat Informatics Limited (MANU/GJ/0516/2009)**. In the said case, a Concession Agreement dated 01.08.2000 was executed by the respondent, a wholly owned Government of Gujarat Company, incorporated by the State of Gujarat as a 'Government Agency' within the meaning of Section 2(e) of the Gujarat Infrastructure Development Act, 1999 with the object of encouraging private sector participation in various infrastructure projects in favour of the petitioner, a joint venture company. Thereunder, the petitioner was given task of development of Infocity near Gandhinagar. The said concession agreement contemplated execution of lease in favour of the petitioner. In pursuance thereof, a Lease Agreement dated 26.02.2001 was executed. Question arose, as to whether dispute between the parties, could be referred to arbitration, as there was such a clause in the Concession Agreement but not in the Lease Agreement executed in pursuance of the Concession Agreement. In the said backdrop, having regard to the entire scheme and its object and the

correspondence exchanged between the parties, it is held as follows:

"17. As stated above, the Master Lease Agreement was entered into between the defendant and the plaintiff and 116 acres of the land came to be leased to the plaintiff as per Concession Agreement. **Therefore, it can be said that the Master Lease Agreement is in furtherance of Concession Agreement and the parties were to act as provided in Concession Agreement as well as in Master Lease Agreement. Therefore, it can be said that the Concession Agreement can be said to be the main agreement, and therefore, as such both the agreements, Concession Agreement and Master Lease Agreement are required to be read together and cannot be read in isolation,** as sought to be contended on behalf of the plaintiff

.....

..... **Even considering various correspondences between the plaintiff and the defendant i.e. documents which are produced at Exh. 39/1 to 39/9, all throughout the case of the plaintiff is that both the agreements, Concession Agreement and Master Lease Agreement exist and in fact even the plaintiff has admitted the shelter of the Arbitration Clause provided in Concession**

Agreement. Therefore, the contention on behalf of the plaintiff that on execution of the Master Lease Agreement, Concession Agreement does not exist and/or has come to an end cannot be accepted."

(emphasis supplied)

85. Indisputably, the land was allotted to the petitioner in pursuance of and to effectuate the objectives of SDZ Policy of the State. The contentions, therefore, cannot be answered, only on basis of stipulations in the Allotment Letters and the lease deed, divorced from the context and objects of the SDZ Policy and multiple documents executed between the parties, in furtherance of the same, from time to time. We, therefore, proceed to examine in same detail the SDZ Policy and the stipulations in the allocation letter, the reservation letter and the allotment letters. The question of prime importance as noted is whether after execution of 32 lease deeds for different parcels of land in pursuance of 6 allotment letters, the allotment letters stood superseded altogether and what would be the effect of cancelling allotments only and not the leases.

86. The Special Development Zone Project ('SDZ/SDZ Project') in Sector 25, Gautam Budh Nagar was conceived for the planned industrial development of Taj Expressway Industrial Development Area by a policy document contained in Government Order dated 29.12.2007. It is primarily the area along the banks of river Yamuna. The Taj Expressway Industrial Development Authority (for short 'TEA'), later renamed as 'Yamuna Expressway Industrial Development Authority' (for short 'YEA') vide notification dated 11.07.2008 was

identified as nodal agency to implement the SDZ Project in the development area falling under its jurisdiction. Every SDZ would have one main activity as 'core activity' apart from other activities. The core activity could be industrial information technology, bio-technology, institutional sports, recreation or service industry. In order to ensure accelerated high quality development, the allotment of land was divided under two heads: (a) less than 1000 ft. and (b) 1000 ft. or more. The area falling in category (b) was categorized as SDZ. The core activity in any SDZ would cover at least 35% of the total area. The other permissible activities were commercial not exceeding 20%; institutional and services not exceeding at least to the extent of 25%; road and other open areas not less than 25% and housing not less than 15%. Under the policy, applications were to be invited from the public through advertisement in newspapers and electronic media. The eligibility of the applicants which inter alia includes their financial capacity, experience etc. was specified. The selection was to be made by a Committee constituted by the Authority. The proposal of the Committee would be subject to approval by the Board and further approval by the Government. The allotment would be on lease hold basis for a period of 90 years for which execution of lease deed was contemplated between the allottee and TEA. The land would be given on prescribed lease rent and acquisition cost plus external development charges. The acquisition cost, development fee and lease rent would be as prescribed by TEA from time to time. Those aspects which were not provided in the policy/regulations of the Development Authority shall be decided by 'TEA'. The allottee shall have right to sub-lease except the land of core area without any

permission or approval of TEA. In respect of sub-lease of core area, prior permission of TEA was required. Multiple sub-leases were permissible for separate small parcels of land. Multiple tenancies and sub-leases were also permissible. In due course the allottee could obtain free hold right on fulfilment of prescribed conditions. The allottee would present a detailed project report laying down the outlines of the project, land use, essential services, management, implementation and maintenance details etc. The entire development after handing over of possession to the allottee would be under supervision and control of TEA and its Rules and Regulations, as prescribed, from time to time, would be applicable.

87. On 11.06.2008, the petitioner was informed that pursuant to its application dated 19 March 2008 received in the office of TEA on 24.03.2008, registered at Serial No. 3, one SDZ with an area approximately 1000 hectare has been allocated to it for development of 'SPORTS' as core activity. Allotment letter specifying the terms and conditions for allotment of SDZ was to be issued in due course. On 28.08.2008, a reservation letter was issued by YEA in favour of the petitioner reserving 1000 hectare of land in Sector No. 25 for development of SDZ with 'SPORTS' as the 'core activity' on the terms and conditions stipulated therein. Clause 1.1 of the Reservation letter indicates that the reservation was made in anticipation of YEA taking possession of the land in respect of which acquisition proceedings were stated to be in progress. Allotment Letter(s) for the said land in full or parts would be issued in due course of time. Clause 1.1 of the Reservation letter is as follows:

“1.1 The reservation of the above land is being made in your

favour in anticipation of YEA taking possession of land for which acquisition proceedings are already in progress. The Allotment Letter/(s) for the said land in full or parts, shall be issued in due course of time.”

88. The petitioner was required to furnish performance security of Rupees one hundred crores in favour of YEA within sixty days of receipt of Letter of Allotment. The performance security was to be maintained till core activity becomes functional. YEA reserved right in its favour to recover from the performance security any outstanding amount required to be paid by the allottee to YEA in accordance with the terms of allotment, if such amount is not paid within thirty days of service of notice by YEA upon the allottee. The allottee was to replenish the performance security to its full extent. The consideration for allotted land as per Clause 3.2 was classified into two categories, one provisional premium and second final premium. The provisional premium would mean the premium to be fixed in the allotment letter. The final premium would mean the premium which may finally be determined by YEA under the Karar Niyamawali of the Land Acquisition Act or as fixed by any court of law. The premium for the allotted land was to consist of actual acquisition cost including interest which was to be determined subsequently plus external development cost @ 721 per square meter. In addition the allottee was required to pay lease rent @ 2.5% per annum of the premium amount with effect from the date of delivery of possession. The allottee was under obligation to deposit 20% of the provisional premium as mentioned in the allotment letter together with the provisional lease rent after

adjusting the earnest money if not already adjusted against performance security within 90 days from the date of issue of the allotment letter. In special circumstances, power to extend time in depositing the above amount was conferred upon the Chief Executive Officer of YEA upon payment of such charges as are determined by YEA. The balance 80% of the provisional premium was payable in 20 half yearly installments along with interest on reducing balance and prevailing SBI PLR. The provisional premium was liable to be revised from time to time. Rs.725/- per square meter fixed as external development cost was provisional and subject to final computation of the development cost. Clause 5.2 conferred power upon YEA to cancel allotment of land and lease deeds executed in pursuance thereof without any liability on YEA if the default persists even after three notices to the allottee to rectify the defects. Clause 5.2 is reproduced below for convenience of reference :

“5.2 In case of default, the YEA shall issue notice to the Allottee giving a maximum of 30 days time to rectify the default. Not more than three such notices shall be issued and if the default persists, even after expiry of the said notices, YEA may cancel the Allotment of land and lease deeds executed thereof without any liability on YEA.”

89. The provisions relating to sub-lease as contained in the letter of allotment also find mention in the reservation letter (vide Clauses 9.12, 9.13, 9.14). The allottee was also given right to mortgage the property for arranging funds for implementation of the project subject to

certain conditions. The allottee was required to complete minimum 40% of the permissible covered area earmarked for core activity within five years from the date of execution of lease deed. In special circumstances, the said period could be extended. The provisions of U.P. Industrial Area Development Act, 1976 and regulations framed thereunder were made applicable.

90. On 24.02.2009, YEA issued a letter of allotment of first lot of land admeasuring 311.2641 hectares in villages Mathurapur, Mustafabad, Atta Guzaran, Bela Kalan, Aurangpur, Tehsil Sadar, District Gautam Buddh Nagar, as a part of 1000 hectare of land, on terms and conditions laid down in ‘Annexure-1’ appended thereto. The terms and conditions were almost identical as contained in reservation letter except for specifying the premium of allotted land as Rs.941.59/- per square meter excluding external development charges estimated at Rs.574/- per square meter excluding any levy for metro in future. The allottee was required to deposit 20% of the external development cost within ninety days from issue of allotment letter and balance 80% of external development cost in twenty half yearly installments along with the interest on reducing balance at SBI PLR as per the schedule fixed for payment of the premium. Clause 4 of the Allotment letter provided for the consequences of default in payment as follows:

“4. Default in payment:

4.1 In case of default in the payment of any dues (except the performance security) to the Authority, the Allottee would be required to pay additional interest @ prevailing SBI PLR + 3% p.a.

on defaulted amount, compounded half yearly for the defaulted period.

4.2 In case of default, the YEA shall issue notice to the Allottee giving a maximum of 30 days time to rectify the default. Not more than three such notices shall be issued and if the default persists, even after expiry of the said notices, YEA may cancel the Allotment of land and lease deeds executed thereof without any liability on YEA.

4.3 Any payment made by Allottee shall first be adjusted towards the interest due, if any, and thereafter the balance shall be adjusted towards the installment or any other amount due.

4.4 SBI PLR, wherever mentioned in this letter, shall be taken as applicable on the due date of payment.”

91. The allottee was required to execute lease deed and take physical possession within ninety days from the date of issue of the allotment letter. The date of execution of lease deed was to be treated as the date of handing over of actual possession of the land. Clause 7 laid down the mechanism for preparation of DPR by the allottee which is as follows:

“7. Detailed Project Report:

7.1 The Allottee shall prepare and submit a detailed project report (DPR) of the Project to the YEA within a period of 6 months from the date of issue of this allotment letter which may be suitably extended by YEA if circumstances so desire. The report shall comprise details of the

proposed Core Activity, land use, implementation schedule and financial arrangements etc.

7.2 However, since the land has to be transferred to the Allottee in parts, therefore, a concept plan for the complete site shall be submitted and detailed plan for the part land being handed over to the Allottee shall be submitted within six months from the date of possession of land.”

92. Clause 9.1 relates to mortgage of property which is as under:

“9. Mortgage of property:

9.1 The allottee can mortgage the land in favour of banks/ financial institutions/ lenders for arranging funds for implementation of project, on such terms as may be mutually agreed between the Allottee, YEA and the Lenders.”

93. The period for completion of 40% of the permissible covered area of core activity was ten years from the date of execution of lease deed. The Chief Executive Officer was given power to grant reasonable extensions in this regard. Clause 10.1 is as follows:

“10.1 The Allottee shall be required to complete minimum 40% of the permissible covered area of Core Activity within a period of 10 years from the date of execution of last Lease Deed for the land falling in the Core Activity area of SDZ land. However, in special circumstances Chief Executive Officer or any other officer authorized in this behalf,

may grant reasonable extension for completion of the project.”

94. In all, six allotment letters with similar provisions were issued, the details of which are as follows:

S.	Letter No. & Date	Area (Ha) Allotted
1.	YEA Letter No. YEA/48/2009 dated 24.02.2009	311.2641
2.	YEA Letter No. YEA/82/2009 dated 20.03.2009	646.7530
3.	YEA Letter No. YEA/206/2009 dated 10.08.2009	58.4182
4.	YEA Letter No. YEA/393/2010 dated 27.01.2010	20.2960
5.	YEA Letter No. YEA/459/2009 dated 23.06.2010	20.5098
6.	YEA Letter No. YEA/497/2009 dated 07.12.2010	28.0916
TOTAL		1,085.3327

95. Clause 21 provided for the payment schedule of twenty bi-annual installments starting from 23.08.2009 to 23.02.2019.

96. On 25 September, 2009, a lease deed was executed between the Authority and M/s J.P.S.K. Sports Private Limited (merged with petitioner-company) in respect of part of the land comprised in allotment letter dated 20 March, 2009. The allotment letter was annexed with the lease deed as Schedule-1. For ease of reference, Clauses 2 and 3 of the lease deed are reproduced below:-

"2. The Lessor, allotted to the Lessee SDZ Sector No. 25 with SPORTS as Core Activity for development of the SDZ vide letter No. YEA/32/2009 dated 20.03.2009 (the Allotment Letter attached hereto as SCHEDULE-I) on the terms and conditions contained in the said Allotment Letter, which interalia, include allotment of approx. 646.7530 Hectares land in Village- Salarpur, Munjkheda, Fatehur Atta, Gunpura, Jaganpur, Afjalpur, Dankaur and Aurangpur in Tehsil Sadar, District Gautam Budh Nagar (U.P.) for a period of 90 years on lease at premium of Rs. 941.86 per sq.m. excluding External Development charges plus lease rent @ 2.5% per annum of premium.

3. The Lessor in part discharge of its obligations under the said Allotment Letter, hereby agrees to provide on lease and the Lessee hereby agrees to take on lease, 175.3639 hectares of land in Village Gunpura, Tehsil Sadar, Distt. Gautam Budh Nagar (U.P.) (Hereinafter referred to as the Demised Land) for development of SDZ, more particularly detailed in SCHEDULE-II attached hereto, on terms and conditions contained in these presents."

97. The details of demised land are mentioned in Schedule-II and the payment of premium was to be made in accordance with the provision contained in this behalf in the Allotment Letter dated 20.03.2009. Clause-3 which relates to the manner in which premium was to be paid is as follows:

"(3) During the term of the lease, the Lessee shall pay to the Lessor lease rent @ 2.5% of premium per annum in advance (the "Rent Amount") commencing from the month of Sept., 2009. The Lessee has paid to the Lessor Rs. 1,21,83,01,561.00 (Rupees one hundred twenty one crores eighty three lacs one thousand five hundred sixty one only) towards 20% of premium amount in Lessor's Current Account No. 30767210435 IFSC Code SBIN0004324 with Bank of India, Lagerstromia Shopping Complex, Greater Noida (U.P.) through RTGS for 646.7530 Hectares land which includes 175.3639 Hectares of the Demised Land details of which are set out in the SCHEDULE-II hereto, the receipt whereof the Lessor doth hereby acknowledges. The balance 80% of the Premium shall be paid in 20 half years installments along with interest on reducing balance @ prevailing SBI PLR. The first half yearly installment mentioned above shall fall due after 180 days from the date of issue of Allotment Letter, in accordance with the provisions of Allotment letter dated 20.03.2009."

98. The proportion in which development of various activities over the demised land was to be done, remained the same, as was in the reservation and allotment letters. Thus, minimum of not less than 35% of the total area of SDZ was to be developed for core activity i.e. sports, including roads and open spaces. The lease further provided that subject to land use percentages specified, the lessee shall have exclusive right to determine the purpose for

which the demised land will be used and also the allocation of area of demised land for different uses. The allottee had to determine the usage: sub-lease or give on leave and license any part of demised land without seeking permission from the lessor. Clause-5 conferred right to sub-lease any part of the demised land without permission of the authority and core area with permission of the authority. The allottee was also given right to mortgage the land on such terms, as may be mutually agreed between lessee, lessor and the lenders.

99. Clause 38 of the lease deed provided for recovery of arrears payable to the lessor as arrears of land revenue without prejudice to its other rights under any other law for the time being in force subject to the terms of lease deed. Clause 38 is as follows:-

"All arrears payable to Lessor shall be recoverable as arrear of land revenue without prejudice to its other rights under any other law for the time being in force, subject however to the terms of this Deed."

(B) How the parties understood the contract:

100. The essential feature of any binding contract is the meeting of minds i.e., consensus ad idem. How the parties acted pursuant to the contract is a significant indicia to their common understanding of the contract. It thus constitutes an important tool in interpretation of the terms of the contract. The Supreme Court in **Transmission Corporation of Andhra Pradesh Limited Vs. GMR Vemagiri Power General Ltd.:**

(2018) 3 SCC 716, held that the real intendment of the parties to a contract has to be gathered from the manner in which the parties understood the same and for that purpose the correspondence exchanged between them could be taken into consideration. The relevant portion of the judgement is extracted below:-

"25. In the facts and circumstances of the present case, there can be no manner of doubt that the parties by their conduct and dealings right up to the institution of proceedings by the respondent before the Commission were clear in their understanding that RLNG was not to be included within the term "Natural Gas" under the PPA. The observations in Gedela Satchidananda Murthy [Gedela Satchidananda Murthy v. Commr., Deptt. of Endowments, (2007) 5 SCC 677] are considered apposite in the facts of the present case: (SCC pp. 688-89, para 32)

"32. ... 'The principle on which Miss Rich relies is that formulated by Lord Denning, M.R. in Amalgamated Investment & Property Co. Ltd. v. Texas Commerce International Bank Ltd. [Amalgamated Investment & Property Co. Ltd. v. Texas Commerce International Bank Ltd., 1982 QB 84: (1981) 3 WLR 565 (CA)], QB at p. 121:

"... If parties to a contract, by their course of dealing, put a particular interpretation on the terms of it- on the faith of which each of them- to the knowledge of the other- acts and conducts their mutual affairs- they are bound

by that interpretation just as much as if they had written it down as being a variation of the contract. There is no need to inquire whether their particular interpretation is correct or not- or whether they were mistaken or not- or whether they had in mind the original terms or not. Suffice it that they have, by their course of dealing, put their own interpretation on their contract, and cannot be allowed to go back on it.""

(emphasis supplied)

101. Again in **McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181**, the Supreme Court held that:

"112. It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. The construction of the contract agreement, is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot, be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract....."

(emphasis supplied)

102. Clause 3.6 of the Allotment Letter conferred power in the Chief

Executive Officer of YEA in special circumstances to extend by 30 days, the period prescribed for payment of installments subject to payment of additional interest at prevalent SBI PLR + 3% per annum for the extended period. There was no corresponding provision in the lease deeds. However, the petitioner requested for extension of time invoking the said provision from time to time and extensions were also granted. The details of the extensions granted by the authority at the request of petitioner is as follows:-

S. No.	Date of the Petitioner's request	Date of grant of extension
1.	18 February 2014	21 February 2014 @ Pg. 21, the Authority's reply to the Petitioner's 6th Supp. Affidavit
2.	07 August 2014	13 August 2014 @ Pg. 22, the Authority's reply to the Petitioner's 6th Supp. Affidavit
3.	01 December 2014	29 December 2014 @ Pg. 23, the Authority's reply to the Petitioner's 6th Supp. Affidavit

103. Again there was similar provision for payment of additional interest on defaulted amount vide Clause 4.1 in the allotment letters.

To wit –

"In case of default, the YEA shall issue notice to the Allottee giving a maximum of 30 days time to rectify the

default. Not more than three such notices shall be issued and if the default persists, even after expiry of the said notices, YEA may cancel the Allotment of land and lease deeds executed thereof without any liability on YEA."

104. The petitioner applied for re-schedulement of overdue amounts and installments falling due till terminal date vide letters dated 08.03.2018 and 12.04.2018. Therein, the petitioner itself relied on various stipulations in the allotment letters. The said request was accepted by the Chief Executive Officer, YEA vide approval dated 25.01.2018 and the petitioner was provided with a re-schedulement plan. The petitioner, relying on the allotment letters, represented to the Chief Executive Officer, YEA vide letters dated 04.07.2018, 20.09.2018, 03.12.2018, 13.12.2018 and 31.12.2018 that it should be charged only 3% as penalty over and above SBI PLR as stipulated under Clause 4.1 of the allotment letters. It tried to impress upon YEA that it had charged additional penal interest ranging between 1 to 3% over and above 3% stipulated under Clause 4.1 of the allotment letters and therefore, it should recalculate the amount payable by the petitioner under re-schedulement plan.

105. Repeatedly, the petitioner had taken recourse to allotment letters, for seeking various benefits, even after execution of lease deeds. It reveals that there was common understanding that the allotment letters would subsist along with the lease deed for limited purposes, in respect of which there was no contradictory provision in the lease deed and which could co-exist. The execution of lease deeds resulted in de jure conferment of lease hold rights in favour of the petitioner company,

but not complete annihilation of the allotment letter.

(C) Independent Statutory Power of cancellation and resumption:

106. Section 111 of the Transfer of Property Act, 1882 which regulates the right of forfeiture of lease is as follows: -

“111. Determination of lease. - A lease of immoveable property determines-

(a) by efflux of the time limited thereby;

(b) where such time is limited conditionally on the happening of some event-by the happening of such event;

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event-by the happening of such event;

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;

(e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;

(f) by implied surrender;

(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; [or (3) the lessee is

adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event]; and in [any of these cases] the lessor or his transferee [gives notice in writing to the lessee of] his intention to determine the lease;

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.”

107. Clause (g) inter alia invests the lessor with power of forfeiture in case of breach of an express condition which provides that, on breach thereof, the lessor may re-enter. The right of forfeiture is to be exercised by giving notice in writing to the lessee of his intention to determine the lease.

108. In the instant case, both the allotment letters and lease deeds were executed by YEA in favour of the petitioner in exercise of powers conferred by Section 7 of the U.P. Industrial Area Development Act, 1976 (the Act, 1976), which is as follows: -

“7. Power to the Authority in respect of transfer of land. - The Authority may sell, lease or otherwise transfer whether by auction, allotment or otherwise any land or building belonging to the Authority in the industrial development area on such terms and conditions as it may, subject to any rules that may be made under this Act, think fit to impose.”

109. Section 14 of the Act, 1976 provides for forfeiture for breach of conditions of transfer and reads thus: -

“14. Forfeiture for breach of conditions of transfer. -

(1) In the case of non-payment of consideration money or any instalment thereof on account of the transfer by the Authority of any site or building or in case of any breach of any condition of such transfer or breach of any rules or regulations made under this Act, the Chief Executive Officer may resume the site or building so transferred and may further forfeit the whole or any part of the money if any paid in respect thereof.

(2) Where the Chief Executive Officer orders resumption of any site or building under sub-section (1) the Collector may, on his requisition, cause possession thereof to be delivered to him and may for that purpose use or cause to be used such force as may be necessary.”

110. The lease deed specifically provided that the right of recovery of dues as arrears of land revenue was without prejudice to the right of the Authority under any other law. For ease of reference, Clause 38 is extracted below:

“(38) All arrears payable to Lessor shall be recoverable as arrears of land revenue without prejudice to its other rights under any other law for the time being in force, subject however to the terms of this Deed.”

111. The scope of power of an Industrial Development Authority under the Act, 1976 has been explained by the Supreme Court in **ITC Ltd. v. State of UP: (2016) 7 SCC 493**, as follows:

“30. A lease governed exclusively by the provisions of the Transfer of Property Act, 1882 ("the TP Act", for short) could be cancelled only by filing a civil suit for its cancellation or for a declaration that it is illegal, null and void and for the consequential relief of delivery back of possession. Unless and until a court of competent jurisdiction grants such a decree, the lease will continue to be effective and binding. Unilateral cancellation of a registered lease deed by the lessor will neither terminate the lease nor entitle a lessor to seek possession. This is the position under private law. **But where the grant of lease is governed by a statute or statutory regulations, and if such statute expressly reserves the power of cancellation or revocation to the lessor, it will be permissible for an authority, as the lessor, to cancel a duly executed and registered lease deed, even if possession has been delivered, on the specific grounds of cancellation provided in the statute.**

31. Noida Authority is an authority constituted for the development of an industrial and urban township (also known as Noida) in Uttar Pradesh under the provisions of the Act. Section 7 empowers the Authority to sell, lease or otherwise transfer whether by auction, allotment or otherwise, any land or building belonging to it in the industrial development area, on such terms and conditions as it may think fit to impose, on such

terms and conditions and subject to any rules that may be made.

32. Section 14 provides for forfeiture for breach of conditions of transfer. The said section empowers the Chief Executive Officer of the Authority to resume a site or building which had been transferred by the Authority and forfeit the whole or part of the money paid in regard to such transfer, in the following two circumstances: (a) non-payment by the lessee, of consideration money or any instalment thereof due by the lessee on account of the transfer of any site or building by the Authority; or (b) breach of any condition of such transfer or breach of any rules or regulations made under the Act by the lessee.

33. Sub-section (2) provides that where the Chief Executive Officer of the Authority resumes any site or building under sub-section (1) of Section 14, on his requisition, the Collector may cause the possession thereof to be taken from the transferee by use of such force as may be necessary and deliver the same to the Authority. This makes it clear that **if a lessee commits default in paying either the premium or the lease rent or other dues, or commits breach of any term of the lease deed or breach of any rules or regulations under the Act, the Chief Executive Officer of Noida Authority can resume the leased plot or building in the manner provided in the statute, without filing a civil suit. The Authority to resume implies and includes**

the Authority to unilaterally cancel the lease.

36. Therefore, **Noida Authority has the authority, having been empowered by the statute, to cancel the lease and resume possession, without recourse to a civil court by a suit, in two circumstances: (i) non-payment of the premium/rent/other dues; (ii) breach of conditions of transfer or breach of rules or regulations under the Act (the conditions referred to would include any suppression of fact or misstatement or misrepresentation or fraud on the part of the lessee in obtaining the lease).**"

(emphasis supplied)

112. In **New Okhla Industrial Development Authority, Ghaziabad vs. M/s Dabur Containers Private Limited, New Delhi: (2004) 1 SAC 426**, a Division Bench of this Court held that the Act, 1976 is a special law and hence it will prevail over the Transfer of Property Act, 1882, which is a general law, in case of any inconsistency. Accordingly, the contention that forfeiture of lease effected by exercising power under Section 14 of the Act, 1976 was liable to be condoned as per Section 114-A of the Transfer of Property Act was repelled. Relevant observations are extracted :-

"29. We are of the opinion that the U.P. Industrial Area Development Act, 1976 is a special law, and hence it will prevail over the Transfer of Property Act, which is a general law in case of any inconsistency.

Hence, even assuming that any provision of the Transfer of Property Act was violated that would still not help the plaintiff-respondent as in our opinion the action of NOIDA was clearly in accordance with section 14 of the U.P. Industrial Area Development Act, 1976, which Act is a special law for NOIDA area and will prevail over the provisions of the Transfer of Property Act.”

(emphasis supplied)

113. The power under Section 14 of the Act, 1976 is not confined to transfer by lease only. It also applies to transfer by other modes contemplated under Section 7 of the Act, 1976, i.e., sale, auction, allotment or otherwise. Therefore, the legislation has not provided any specific procedure for exercise of the power of resumption of the site or building (except implicit requirement of compliance of the principles of natural justice) unlike Section 111(g) of the Transfer of Property Act, 1882. All that is required is that the order should reveal that the building site is being resumed for breach of any express condition of the lease/transfer.

114. The impugned order, not once, but at several places, mentions about breach of conditions of the lease, and the consequent action to resume the site. This is clear from the following recitals in the impugned order: -

"(a) The Authority in its 64th Board Meeting dated 27.11.2018 at Item No. 64/09, turned down the request of the petitioner made vide letter dated 30.10.2018 and decided that in case

the arrears were not paid by 31.12.2018, action be taken against the petitioner for cancellation/recovery. (second paragraph of internal page 5 of the impugned order)

(b) The petitioner having defaulted in complying with the conditions of allotment and lease deed by not paying arrears by 31.12.2018, permitted by the decision taken in the 64th Board Meeting, the lease deed and allotments are liable to be cancelled with immediate effect. (Clause 1 at internal page no. 7 of the impugned order)

(c) Even after re-schedulement of loan, there was default in payment of second and third installments and replenishment of bank guarantee and even after issuance of defaulter notice, Rs. 225,46,22,814/- was not paid and consequently, proceedings for cancellation of allotment/lease deed are being held. (para 1 of internal page no. 7 of the impugned order)

(d) The petitioner has not paid heed to the grievance of the homebuyers, leading to great resentment amongst them and thus, it had become necessary for the Authority to take over all incomplete housing schemes in their own hands and get the same completed and hand over possession to the homebuyers and thereby resolve their grievances. (1st para of internal page no. 10 of the impugned order)

(e) The petitioner-company had repeatedly committed breach of allotment order and lease deed. (1st

paragraph of internal page no. 11 of the impugned order)

(f) In order to ensure completion of incomplete projects and non-payment of dues of 943.92 crores and non-replenishment of bank guarantee of Rs. 100 crores, the allotment of land in Sector 25 is cancelled. (second last paragraph of internal page no. 11 of the impugned order)"

115. The aforesaid recitals in the impugned order unequivocally lead to the conclusion that the site, i.e. the land demised to the petitioner by thirty two different lease deeds (details mentioned at internal page nos. 2 and 3 of the impugned order), was resumed thereby on the ground of non-payment of consideration money and installments and non-completion of residential projects. Any other interpretation would undermine the statutory power conferred upon the Authority by Section 14 of the Act, 1976.

116. **A.P. Industrial Infrastructure Corporation Limited (supra)**, on which great emphasis has been placed by learned Senior Counsel for the petitioner, is clearly distinguishable. Therein, the appellant-Corporation allotted industrial plots for construction of transport office and godown to the respondents. Clause 17 of the Allotment Orders provided that within two years from the date of 'final allotment and taking possession of the land/plot/shed, the project is not implemented, the allotment will be cancelled'. The allotment was followed by the sale agreements during which period, the appellant-Corporation received full sale consideration for the plot and, thereafter, executed sale deeds in favour of the respondents and wherein there was no such

stipulation. Almost six years after execution of the sale deeds, the appellant-Corporation issued show-cause notices seeking explanation with regard to alleged failure on part of the respondents in utilizing the land for the purpose of godowns. On 20.01.2006, the appellant-Corporation itself approved building plans and in pursuance whereof the respondents commenced construction. The respondent-Corporation replied to the show-cause notices stating that the facilities of roads, water and electricity were provided only in the year 2006 when show-cause notice was issued. On 28.03.2006, the appellant-Corporation cancelled the allotments on the ground that the respondents had failed to establish industrial/business units within the time specified in the allotment letters. The respondents questioned the cancellation of the allotments inter alia on the ground that after execution of sale deeds, the appellant-Corporation was not left with any power to cancel the allotments and the sale-deeds did not contain any such stipulation. The High Court allowed the writ petitions filed by the respondents and quashed the order of cancellation of allotments inter alia on the ground that ordinarily after execution of sale deeds a concluded contract came into existence. The allotment conditions and covenants of agreement of sale did not survive. The findings of the High Court have been noted in Para 11 of the judgement, thus—

"11. It was further held that the appellant Corporation offered industrial plots and the respondents/entrepreneurs gave counter-offer which was accepted by it. At that stage, the conditions of offer, counter-offer and acceptance found expression in the allotment letter (acceptance

of offer subject to conditions) and in the agreement of sale (contract of sale) in terms of Section 54 of the Transfer of Property Act, 1882 (hereinafter referred to as "the Act"). This ultimately resulted in the conclusion of contract by way of execution of the sale deed by vendor in favour of the vendee. Once the contract is concluded, the allotment conditions or covenants of agreement of sale ordinarily cannot be enforced having regard to the various provisions of the Transfer of Property Act, Contract Act, 1872, the Registration Act, 1908 and the Specific Relief Act, 1963, which constitute the Civil Code of India and govern the transfer of immovable property from one person to another. The allotment letter or the sale agreement does not survive once the contract is concluded-on-execution of the registered sale deed resulting in alienation, conveyance, assignment and transfer of title."
(emphasis supplied)

116(i). The view of the High Court was approved and the contention of the appellant-Corporation that it was a sale coupled with condition was repelled. The prominent distinguishable feature is that, in the said case, there was conferment of absolute ownership in favour of the respondents with execution of the sale deeds in their favour after accepting the full sale consideration and there was no condition 'super added' in the sale deeds that construction would be completed in two years. In substance, it was held that the appellant had no right to cancel the sale, as

the allotment orders would not survive. Thus, the Supreme Court noted in the judgement that :-

"15. We do not find any merit in any of the aforesaid arguments. In the first instance, it needs to be emphasised that there is no such condition of completion of construction within a period of two years in the sale deed. Such a condition was only in the allotment letter. However, after the said allotment, the appellant Corporation not only received entire consideration but executed the sale deeds as well. In the sale deeds no such condition was stipulated. Therefore, the High Court is right in holding that after the sale of the property by the appellant Corporation to the respondents, whereby the respondents acquired absolute marketable title to the property, the appellant Corporation had no right to insist on the conditions mentioned in the allotment letter, which cease to have any effect after the execution of the sale deed."
(emphasis supplied)

116(ii). It is noteworthy that the Supreme Court while coming to the said conclusion relied on various provisions of the Transfer of Property Act, which related to absolute transfer of interest in the property i.e., by sale and not in case of limited transfer of interest like lease. This is evident from the discussions in paragraph nos.16 and 17 of the judgement, which are extracted below for ready reference:

"16. Section 5 of the Act defines "transfer" as conveyance of

property from one living person to one or more living persons. Sections 8, 10 and 11 thereof attach sanctity and solemnity to a transfer of immovable property. These provisions read as under:

"8. Operation of transfer.— Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.

Such incidents include, when the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the movable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer,

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

10. Condition restraining alienation.— Where property is

transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him:

Provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same for her beneficial interest therein.

11. Restriction repugnant to interest created.— Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof."

17. Section 55 of the Act deals with rights and liabilities of buyer and seller. As per this provision, when the buyer

discharges obligations and seller passes/conveys the ownership of the property, the contract is concluded. Thereafter, the liabilities, obligations and rights, if any, between the buyer and seller would be governed by other provisions of the Contract Act and the Specific Relief Act, on the execution of the sale deed. The seller cannot unilaterally cancel the conveyance or sale."

116(iii). The said aspect becomes more clear from the discussion made in paragraph no.18 wherein the Supreme Court distinguished its earlier judgement in **Indu Kakkar vs. Haryana SIDC Limited, 1999 (2) SCC 37** solely on the ground that in the said case there was a specific condition in the agreement. Accordingly, Clause 7 of the agreement stipulating that the industrial unit was to be set-up within a specified period failing which the Corporation shall have right to resume the plot was held to be valid and enforceable by placing reliance on Section 31 of the Transfer of Property Act. The submission based on Section 11 of the Transfer of Property Act that any such restriction would be repugnant to interest created was repelled, holding that it applied solely to cases of transfer of 'absolute interest' and not to all kind of transfers. Relevant discussion in this behalf in the said judgement is noted below:

"18. Insofar as the judgment in Indu Kakkar case is concerned, the High Court has rightly held that that would not apply to the facts of this case. On the facts of that case, the Court, in the first instance, came to the conclusion that Clause 7 of the

agreement, which was entered into between the parties, was binding. As per Clause 7, construction of the building for setting up the industry, in respect of which land was given to the appellant in that case, was to start within a period of six months and the construction had to be completed within two years from the date of issue of the allotment letters. Since the appellant had failed to commence or build the construction within the stipulated time, show-cause notice has been issued as to why the plot be not resumed as per Clause 7 of the agreement. In this backdrop, the appellant had challenged the enforceability of Clause 7 of the agreement taking aid of Section 11 of the Act. This contention was repelled in the following manner: (SCC p. 43, paras 16 & 17)

"16. However, the allottee has contended before the trial court that Clause 7 of the Agreement is unenforceable in view of Section 11 of the TP Act. But that contention was repelled, according to us, rightly because the deed of conveyance had not created any absolute interest in favour of the allottee in respect of the plot conveyed. For a transferee to deal with interest in the property transferred "as if there were no such direction" regarding the particular manner of enjoyment of the property, **the instrument of transfer should evidence that an absolute interest in favour of the transferee has been created. This is clearly discernible from Section 11 of the TP Act.** The section rests on a principle that any

condition which is repugnant to the interest created is void and when property is transferred absolutely, it must be done with all its legal incidents. That apart, Section 31 of the TP Act is enough to meet the aforesaid contention. The section provides that-

'on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.'

Illustration (b) to the section makes the position clear, and it reads:

'(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.'

17. All that Section 32 of the Transfer of Property Act provides is that 'in order that a condition that an interest shall cease to exist may be valid, it is necessary, that the event to which it relates be one which could legally constitute the condition of the creation of an interest'. If the condition is invalid, it cannot be set up as a condition precedent for crystallisation of the interest created. The condition that the industrial unit shall be established within a specified period failing which the interest shall cease, is a valid condition. Clause 7 of the Agreement between the parties is,

therefore, valid and is binding on the parties thereto."

19. This legal position is not disputed. However, in the instant case, there was no such stipulation in the agreement to sell or the sale deed. It was in the allotment letter. On the contrary, insofar as Clause 7 of the sale deeds executed is concerned, the only condition imposed is that the purchaser shall use the land for the purpose of putting up a factory or factories duly permitted by the competent authority and for no other purpose. This makes all the difference between the two cases. Here, the undisputed fact is that the agreements/sale deeds entered into between the appellant Corporation and the respondents do not contain any clause which can be construed as "condition super-added".

117. In **Indu Kakkar**, the Supreme Court, relying on Section 31 of the Transfer of Property Act, held that Section 11 is applicable only when an absolute interest is created in favour of the transferee. However, in the said case, industrial site was allotted by State Industrial Development Corporation in favour of the respondents with the condition super-added that it shall cease to exist in case the respondents failed to utilize the land for industrial purposes by constructing the industrial unit and such a condition was enforceable under Sections 31 and 32 of the Transfer of Property Act.

118. As noted above, the instant case is not a case of absolute transfer by sale and, therefore, Sections 10 and 11 of the Transfer of Property Act on which **A.P. Industrial Infrastructure Corporation**

Limited (supra) was grounded are not applicable. Moreover, it was a case based on sole interpretation of the terms of contract. In the instant case, as already discussed, the respondent-Corporation, even independent of Clause 4.2 of the Allotment letter, continued to have power to cancel the lease in view of Clause 38 of the lease deed which saved all rights conferred on YEA under any law for the time being in force including Section 14 of the Act, 1976. The statutory power under Section 14 to resume the site was not whittled down in any manner. The judgment in **A.P. Industrial Infrastructure Corporation Limited (supra)**, is distinguishable and would be of no help to the petitioner.

(D) Findings:

119. Issue nos. 2 and 3 are answered by holding that the allotment letters existed for limited purposes alongwith the lease deeds and, irrespective of Clause 4.2 of the Allotment letters, the YEA had the power to resume the site by virtue of Section 14 of UPIAD Act, independent of, and read with Clause 38 of the lease deeds. The impugned order, thus, has the effect of cancelling the lease deeds.

Issue No.4: Whether the petitioner's earlier Writ C-47262/2017 challenging the decision taken by the respondent in its meeting dated 04.09.2017 for cancelling proportionate land would disentitle the petitioner from challenging present cancellation on the ground of proportionality?

120. From perusal of the record, we find that the challenge in the earlier

Writ Petition No. 47262 of 2017 was essentially based on the ground that there was no occasion even to proportionately cancel the land in view of the fact that the default in payment was due to various actions of the respondents themselves such as not approving building plans, etc.

121. During its pendency, the allotment of entire land was cancelled, which is under challenge in fresh writ petition. Sri Jayant Bhushan, learned Senior Counsel for the petitioner, stated that in view of subsequent development, the challenge to proportionate cancellation has been rendered infructuous. He submitted that in case challenge to the entire cancellation succeeds, the petitioner will avail appropriate remedy for other reliefs. We are also of the view that the previous writ petition has lost its significance in view of subsequent challenge made to the order of 2020 whereby the entire allotment has been cancelled. The previously raised issues merged into subsequent writ petition and, hence, it cannot be said that the earlier writ petition would dis-entitle the petitioner from challenging the present cancellation order on any ground including the ground of proportionality.

122. Issue No.4 is answered in favour of the petitioner and is decided accordingly but, simultaneously, we dispose of the Writ Petition No. 47262 of 2017 as infructuous.

Issue No. 5: Whether the cancellation of the entire allotment for non-payment of some dues is excessive administrative action and hit by the doctrine of proportionality?

And

Issue No. 6: Whether the cancellation of the entire allotment was

only on account of non-payment of dues or also on the account of purported defaults in development/construction?

And

Issue No. 7: Whether if the cancellation of allotment was on account of purported defaults in development/constructions, the cancellation is illegal?

123. While deciding issues No.2 and 3, we have held that it was within the power of YEA to pass the impugned order dated 12.02.2020 and resume the site of demise land in its entirety. However, submission of learned Senior Counsel for the JAL is that action of YEA in taking drastic action of cancelling the entire lease was inappropriate, unreasonable and violative of Article 14 of the Constitution and YEA should have taken least restrictive measures to recover its dues. Thus, it could have exercised power under Clause 38 of the lease which permitted YEA to recover its dues as arrears of land revenue. It would have subverted the ultimate purpose of recovering public money, while at the same time, causing minimal harm to JAL, the homebuyer and the financial institutions.

124. Elaborating the submission, it was urged that the lease deeds gave the petitioner the unfettered right to create third party rights including the power to sub-lease without permission of the Lessor i.e. the respondent No. 2; the permission to mortgage in favour of banks/financial institutions/lenders, etc.; it also gave the power to develop the land and the petitioner has spent a large amount of money in excess of Rs. 2,500 crores in developing the whole SDZ land including construction of the Formula One Racetrack (Buddha International Circuit); moreover, around the date of cancellation order, the

petitioner had paid an amount of Rs. 2294.49 crores (including interest) against allotment amount of Rs. 1659.25 crores towards land premium and Rs. 195.73 crores (including interest) towards lease rent against Rs. 264.42 crores (including interest); the default in the present case was clearly not wilful or dishonest and at various stages, the default ranged between 9% to 25% (total amount payable) when the cancellation was made; on the date when the cancellation was made, the cancellation of the entire allotment at that stage was, therefore, totally disproportionate. It was suggested that present value of the land is much higher than the dues of YEA. The dues of YEA, in case of recovery as arrears of land revenue, could have been satisfied by sale of only some part of the land or other assets of JAL and cancellation of entire allotment of 1000 hectares was per se illegal and arbitrary. It was urged that petitioner has already shown its bona fide by depositing more than Rs.200 crores towards principal amount in pursuance of the interim orders of this Court dated 25.02.2020, 08.02.2021 & 29.09.2022. Considering the amounts deposited by the petitioner and the development undertaken by it, the Cancellation Order is harsh, excessive and unreasonable and does not pass the test of proportionality. Reliance has been placed on the judgement of Supreme Court in **Teri Oats Estates (P) Ltd.**

125. Per contra, the contention of YEA is that the 'proportionality', in all its facets, has no application in the present case, which arises from a commercial and contractual relationship between the petitioner and the Authority; contractual actions cannot be questioned on the grounds of equity and proportionality if it can be shown that the action of the

Authority was in terms of the contract, such as the present case, wherein the Authority terminated the petitioner's Allotments and the Lease Deeds in accordance with Clause 4.2 of the Allotment Letters; the Authority had the power of cancellation of the Allotment and the Lease Deeds on the petitioner's defaults. The petitioner defaulted, which it does not dispute. Further, the petitioner failed to develop the SDZ Project including housing projects and maintain the Performance Bank Guarantee. Thus, there were valid grounds for cancellation and the Authority, in valid exercise of its contractual rights, terminated the Allotment and the Lease Deeds. The Authority took a decision of taking back of proportionate land in its 61st Board Meeting dated 04.09.2017. The same was also informed to the petitioner. The petitioner challenged the said decision before this Hon'ble Court in the connected Writ Petition No. 47262 of 2017 raising a specific ground that the Authority's said decision cannot override the terms and conditions of the Allotment Letter, Reservation Letter and the Lease Deeds and the Authority has no right under the Lease Deeds to take back lands belonging to the petitioner. The petitioner has also disputed the taking back of the proportionate land by letter dated 03.11.2017. In this backdrop and under these circumstances, the Re-Schedulement Plan of the dues was agreed in the 62nd Board Meeting of the Authority and communicated to the petitioner on 28.05.2018. However, the petitioner, even failed to make payment of the first and second installments of the Re-Schedulement letter. It is clear that after having challenged the decision of taking back of the proportionate land in the connected Writ Petition No. 47262/2017, the petitioner is making contrary submissions in the present Writ Petition.

(A) PROPORTIONALITY:

(i) Precedents:

126. In **Teri Oats Estates (P) Ltd.**, on which much emphasis has been placed by Learned Senior Counsel for the petitioner, the Supreme Court explaining the doctrine observed that it is a test of reasonableness to adjudge the validity of any legislative or administrative action. It ensures that government actions are fair, just and not excessive. It requires that any action taken by the State or any administrative authority must be proportionate to the objective it seeks to achieve. Where several choices are available, the least restrictive measure should be taken. The origination of the doctrine in the 19th Century and the guiding principles for its application has been laid down in paras 40 to 53 of the judgement, the relevant parts of which are extracted for ease of reference:

"45. The said doctrine originated as far back as in the 19th century in Russia and was later adopted by Germany, France and other European countries as has been noticed by this Court in *Om Kumar v. Union of India*.

46. By proportionality, it is meant that the question whether while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority

"maintain a proper balance between the adverse effects which

the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve".

47. This Court as far back as in 1952 in *State of Madras v. V.G. Row* observed: (AIR p. 200, para 15)

"The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered them to be reasonable."

48. The principle started gaining momentum in other countries and it was applied and developed in England as noticed by Lord Diplock in *R. v. Secy. of State for the Home Deptt., ex p Brind*. This Court in *Tata Cellular v. Union of India* while opining in concurrence with the judgment of the House of Lords in *Council of Civil Service Unions v. Minister for the Civil Service* that the extent of judicial review should ordinarily be limited to illegality, irrationality and procedural impropriety, observed that they are only the broad grounds but did not rule out addition of further grounds in the course of time and also noticed "Brind".

49. Ever since 1952, the principle of proportionality has been applied vigorously to legislative and administrative action in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article 19(1) of the Constitution of India, this Court had occasion to consider whether the restrictions imposed by legislation were disproportionate to the situation and were not the least restrictive of the choices. In cases where such legislation is made and the restrictions are reasonable; yet, if the statute concerned permitted administrative authorities to exercise power or discretion while imposing restrictions in individual situations, question frequently arises whether a wrong choice is made by the administrator for imposing the restriction or whether the administrator has not properly

balanced the fundamental right and the need for the restriction or whether he has imposed the least of the restrictions or the reasonable quantum of restrictions etc. In such cases, the administrative action in our country has to be tested on the principle of proportionality, just as it is done in the case of main legislation. This, in fact, is being done by the courts. Administrative action in India affecting the fundamental freedom has always been tested on the anvil of the proportionality in the last 50 years even though it has not been expressly stated that the principle that is applied is the proportionality principle. (See Om Kumar)"

(emphasis supplied)

127. In **A.P. Industrial Infrastructure Corporation Limited**, the doctrine of proportionality has been explained by the Supreme Court as follows:

"20. We do not agree with the contention of the appellant Corporation that the doctrine of proportionality is not applicable in these cases. In the realm of Administrative Law "proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities and reached a conclusion or arrived at a decision. **The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise —**

the elaboration of a rule of permissible priorities. De Smith also states that "proportionality" involves "balancing test" and "necessity test". The "balancing test" permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations."

(emphasis supplied)

128. In **Modern Dental College and Research Centre and Others v. State of M.P. and Others**, (2016) 7 SCC 353, the Constitution Bench of Supreme Court applied the doctrine of proportionality to ascertain the reasonableness of the restrictions imposed by legislation. The relevant portion, is extracted —

"63. In this direction, the next question that arises is as to what criteria is to be adopted for a proper balance between the two facets viz. the rights and limitations imposed upon it by a statute. Here comes the concept of "proportionality", which is a proper criterion. To put it pithily, when a law limits a constitutional right, such a limitation is constitutional if it is proportional. The law imposing restrictions will be treated as proportional if it is meant to achieve a proper purpose, and if the measures taken to achieve such a purpose are rationally connected to the purpose, and such measures are necessary. This essence of doctrine of proportionality is beautifully captured by Dickson, C.J. of Canada in *R. v. Oakes*, in the following words (at p. 138):

"To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First, the objective, which the measures, responsible for a limit on a Charter right or freedom are designed to serve, must be "of" sufficient importance to warrant overriding a constitutional protected right or freedom ... Second ... the party invoking Section 1 must show that the means chosen are reasonable and demonstrably justified. This involves "a form of proportionality test..." Although the nature of the proportionality test will vary depending on the circumstances, in each case courts will be required to balance the interests of society with those of individuals and groups. There are, in my view, three important components of a proportionality test. First, the measures adopted must be ... rationally connected to the objective. Second, the means ... should impair "as little as possible" the right or freedom in question ... Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of "sufficient importance". The more severe the deleterious effects of a measure, the more important the objective must be if the measure is to be reasonable and demonstrably justified in a free and democratic society."

64. The exercise which, therefore, is to be taken is to find

out as to whether the limitation of constitutional rights is for a purpose that is reasonable and necessary in a democratic society and such an exercise involves the weighing up of competitive values, and ultimately an assessment based on proportionality i.e. balancing of different interests.

65. We may unhesitatingly remark that this doctrine of proportionality, explained hereinabove in brief, is enshrined in Article 19 itself when we read clause (1) along with clause (6) thereof. While defining as to what constitutes a reasonable restriction, this Court in a plethora of judgments has held that the expression "reasonable restriction" seeks to strike a balance between the freedom guaranteed by any of the sub-clauses of clause (1) of Article 19 and the social control permitted by any of the clauses (2) to (6). It is held that the expression "reasonable" connotes that the limitation imposed on a person in the enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of public. Further, in order to be reasonable, the restriction must have a reasonable relation to the object which the legislation seeks to achieve, and must not go in excess of that object (see *P.P. Enterprises v. Union of India*). At the same time, reasonableness of a restriction has to be determined in an objective manner and from the standpoint of the interests of the general public and not from the point of view of the persons upon whom the

restrictions are imposed or upon abstract considerations (see *Mohd. Hanif Quareshi v. State of Bihar*). In *M.R.F. Ltd. v. State of Kerala*, this Court held that in examining the reasonableness of a statutory provision one has to keep in mind the following factors:

(1) The directive principles of State policy.

(2) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.

(3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.

(4) A just balance has to be struck between the restrictions imposed and the social control envisaged by Article 19(6).

(5) Prevailing social values as also social needs which are intended to be satisfied by the restrictions.

(6) There must be a direct and proximate nexus or reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions, and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise."

(ii) Key Principles of Proportionality :

129. The following principles, therefore, emerge:

(a) The administrative action must have a lawful objective;

(b) The action taken must be appropriate to achieve the intended goal;

(c) The doctrine of proportionality is applied to test an administrative action to find out whether it is just and reasonable and not excessive;

(d) It ensures that discretionary powers are not exercised arbitrarily but reasonably and do not infringe on fundamental rights disproportionately;

(e) The measure adopted must be least restrictive or least burdensome for achieving the purpose; and

(f) The test of reasonableness is to be examined from the stand point of the interest of the general public and not from the point of view of the person against whom action is taken.

(iii) Restrictive Measures taken in terms of the Allotment letter and lease deeds :

130. Undoubtedly, the petitioner had committed default in payment of the sums required to be deposited in terms of Paragraph 3 of the lease deed read with Clause 3 of the Allotment letter. As one of the main grounds of defence is that the impugned order was passed as a last resort and after the Authority had exhausted several other restrictive choices, we first proceed to examine the steps taken in this regard –

(a) Issuance of Default Notices:

Between September 13, 2011, and August 25, 2015, the Authority sent a total of 21 default notices to the petitioner, requesting payment as per the terms of the Allotment Letters and Lease Deeds.

(b) Requests for Extension of Payment Deadlines:

On three separate occasions—via letters dated February 18, 2014, August 7, 2014, and December 1, 2014—the petitioner sought an extension for clearing its dues. In accordance with Clause 3.6 of the Allotment Letter, the Authority granted three extensions on February 21, 2014, August 13, 2014, and December 29, 2014, as a least restrictive measure. Despite this, the petitioner failed to make timely payments.

(c) Rescheduling of Dues:

As of March 31, 2018, the petitioner had an outstanding balance of approximately INR 718 crores. Citing financial constraints, the petitioner requested a rescheduling of payments through letters dated August 22, 2017, March 8, 2018, and April 12, 2018. In response, the Authority agreed to a revised payment plan through a letter issued on May 28, 2018.

(d) Repeated Defaults Despite Rescheduling:

Even after agreeing to a rescheduled plan, the petitioner

failed to make payments for the first two installments for over one and a half years. Specifically, payments for the first installment (approximately Rs.125 crores) and the third installment (approximately Rs.100 crores) were not made. In response, the Authority issued six additional Default Notices on October 16, 2018, December 3, 2018, December 13, 2018, August 19, 2019, October 31, 2019, and December 9, 2019. Instead of paying the overdue amounts, the petitioner continued seeking further extensions under the rescheduled plan.

(e) Final Extension and Non-Compliance:

As another least restrictive measure, the Authority granted an extension until December 31, 2018, for the petitioner to deposit the first installment under the revised plan. However, by the deadline, the petitioner deposited only Rs.10 crores, far below the expected first installment amount of approximately Rs.108 crores. The petitioner, then, requested another extension until February 15, 2019.

(f) Invocation of Performance Bank Guarantee to Cover Defaults:

On June 18, 2019, the petitioner requested the Authority to encash a performance bank guarantee worth Rs. 100 crores to settle outstanding dues. Subsequently, on July 2, 2019, the

Authority invoked the bank guarantee and applied the amount toward the unpaid dues. This action was supposedly based on Clause 2.3 of both the Reservation Letter and the Allotment Letter. On 31st October 2019, the Authority directed the petitioner to restore the performance bank guarantee since the earlier one had been adjusted towards the outstanding. However, the petitioner failed to do so.

(g) Escrow Agreement:

To facilitate payments, both parties entered into an Escrow Agreement on September 24, 2019. However, despite this arrangement, the petitioner failed to fulfill its obligations. By February 28, 2020, only approximately Rs. 47.09 lakh had been deposited in the escrow account.

(h) Final Opportunity to Rectify Defaults:

Despite multiple attempts by the Authority to resolve the situation and provide ample opportunities for the petitioner to clear its defaults, the petitioner failed to comply. As a result, the Authority issued a Show Cause Notice on December 9, 2019, offering a final chance to rectify the defaults.

(iv) Other restrictive measures taken :

131. The record further reveals that when the petitioner insisted upon not cancelling the entire allotment and to act in

proportion to the default committed by it, the Board took up the matter in its meeting dated 04.09.2017 at item No.61/2016 in which decision was taken to resume land proportionate to the default committed by the petitioner. The exact decision is quoted herein-under:-

“संचालक मण्डल द्वारा प्रस्ताव पर विचारोपरान्त निम्न निर्णय लिये गये:-

. प्रस्ताव-1 जो कि विदेश बैंक के पक्ष में बन्धक- अनुमति से सम्बन्धित है को संचालक मण्डल द्वारा अस्वीकार कर दिया गया।

प्रस्ताव-2 प्रस्ताव पर चर्चा के दौरान संचालक मण्डल द्वारा मैं, जेपीएसआई को सैक्टर-25 में आवंटित एस.डी.जेड. योजना के अंतर्गत दिनांक 31.08.2017 तक कुल बकाया धनराशि का संज्ञान लिया गया। तदक्रम में देनदारी के सम्बंध में निर्णय लिया गया कि चूँकि जे०पी० द्वारा प्राधिकरण को दिनांक 31.08.2017 तक एस०डी०जेड० परियोजना की मूल धनराशि, लीज रेंट तथा 64.7 प्रतिशत अतिरिक्त प्रतिकर के सापेक्ष कुल ₹,1453.40 करोड़ की देनदारियों का भुगतान नहीं किया गया है अतः ऐसी स्थिति में उक्त धनराशि के सापेक्ष समानुपातिक भूमि प्राधिकरण द्वारा जे०पी० से वापिस ली जाये। यह भी सुनिश्चित कर लिया जाये कि वापिस ली जाने वाली भूमि जे०पी० द्वारा किसी को सब-लीज, आवंटित अथवा जे०पी० द्वारा आवंटित किसी योजना का भाग न हो।

भविष्य में भी जब-2 जे०पी० द्वारा समय पर किरतों का भुगतान न किया जाये तो डिफाल्टिड धनराशि के सापेक्ष समानुपातिक भूमि समय-2 पर जे०पी० से वापिस ली जाये।

एस.डी.जेड. सैक्टर-25, यमुना एक्सप्रेसवे क्षेत्र में जे०पी० द्वारा स्कैप की गई विभिन्न परियोजनाओं यथा बुद्धा सर्किट-1 आदि के सब-आवंटियों के हितों को सुरक्षित रखते हुये यह निर्णय लिया गया कि जे०पी० द्वारा 31 अक्टूबर, 2017 तक पूर्व निर्णय के आधार पर सभी सब-आपंटियों को वापिस नहीं किया जाता तो समस्त धनराशि के विपरीत समानुपातिक भूमि वापिस ले ली जाए तथा उक्त संस्तुति के साथ प्रस्ताव शासन को इस अनुरोध के साथ प्रेषित किया जाये कि शासन

उक्त भूमि के निस्तारण हेतु भूमि को विक्रय कर आवंटियों को धनराशि वापिस कराने के सम्बन्ध में समुचित व्यवस्था करा दे।”

132. The petitioner challenged the said decision before this Court through Writ Petition No. 47262 of 2017 raising a specific ground that the Authority's said decision cannot override the terms and conditions of the Allotment Letter, Reservation Letter and the Lease Deeds and the Authority has no right under the Lease Deeds to take back lands belonging to the petitioner. The petitioner also disputed the taking back of the proportionate land by letter dated 03rd November 2017. In this backdrop and under these circumstances, the Re-Schedulement Plan of the dues was agreed in the 62nd Board Meeting of the Authority and communicated to the petitioner on 28th May 2018. However, the petitioner even failed to make payment of the first and second instalment of the Re-Schedulement letter. Ultimately, cancellation order was passed.

133. The chain of events establishes beyond doubt that at every stage since after issuance of allotment letters vis-a-vis execution of lease deeds, YEA continued to not only ask the petitioner to act according to contractual stipulations but also restrained itself from taking any strict action which was in fact contemplated by the terms of agreements/lease deeds. YEA accepted request of the petitioner made from time to time, may it be as regards granting further time to make deposits by re-schedulement or otherwise.

(v) Factors considered :

Default in payment of dues :

134. The lease deeds were executed in favour of the petitioner between 2009-11. The last lease deed is dated 28.3.2011. The petitioner had paid 20% of the premium amount in terms of the allotment letter and the balance 80% of the premium was to be paid in twenty half yearly instalments along with interest on reducing balance @ prevailing SBI PLR. The first half yearly instalment had fallen due after 180 days from the date of issue of the allotment letter. The petitioner started making default right from the year 2011. It was served with first default notice on 13.09.2011 followed by twenty more default notices upto August, 2015.

135. As per the terms of agreement between the parties apart from the amount specified towards premium and lease rent, which was payable in twenty half yearly instalments, the petitioner was also liable to pay the cost of land acquisition. It is not in dispute that consequently the petitioner was also liable to pay additional compensation, which constituted a component of the land acquisition cost. The demand in this regard was raised by YEA by letter dated 15.12.2014 for a sum of Rs. 759,19,02,236.54 and the petitioner was permitted to deposit the same in four half yearly instalments.

136. The petitioner in its affidavit dated 12.10.2023 (6th Supplementary Affidavit) disputed the amounts being claimed by YEA towards balance loan premium, lease rent, additional compensation and in paragraph-13 disclosed the amount due according to it as sum of Rs.10,67,78,65,669. Paragraph-13 is extracted below:

“13. That in view of the above submissions it is clear that

the petitioner is only liable to pay a total of Rs.1067,78,65,669/- under the following heads:

(a) Balance Land Premium as on 12.02.2020 i.e. the date of cancellation order - Rs. 547,77,22,591/-),

(b) Lease Rent up to 12.02.2020 i.e. the date cancellation order- 68,68,93,823/-

(c) Additional Compensation 451,40,40,275/-.”

137. In paragraphs 14 & 15 of the same affidavit, the petitioner has stated as follows:

“14. The Petitioner is willing and ready to pay to YEIDA and undertakes to pay the balance amount of Rs. 1067,78,65,669/- as under:-

i) 75% within 6 months from the date of final order of Hon'ble High Court.

ii) Balance 25% within 9 months from the date of final order of Hon'ble High Court

15. That the Petitioner also submits that it will undertake the construction of the housing projects launched by it and shall complete the same within a period of 06 months to 30 months from the date YEIDA approves its building plans.”

138. In response to the said affidavit, the respondent-Authority, has come up with its own stand in paragraph-4 of its affidavit dated 25.10.2023. Paragraph-4 is extracted below:

“4. At the outset, the Authority submits that a total

amount of approximately Rs. 36,21,50,48,491/- [INR 3621 Crores] is pending and due from the Petitioner as of 30 November 2022 under the following heads:

Sl. No.	Head	Amount [INR]
1.	Premium	9,981,785,782.21 [approx. 998 Crores]
2.	Lease Rent	3,580,201,571.85 [approx. 358 Crores]
3.	Additional Compensation	22,653,061,136.90 [approx. 2265 Crores]
Total		36,21,50,48,491 [INR 3621 Crores]

139. At this stage, even if we go by the figures given by the petitioner, we find that the sum which was due against the petitioner was a much higher sum and not merely 9% to 25% of the total amount. The submission in respect of amount due based only on premium and lease rent, does not have any force, in view of the admitted liability to pay a heavy sum towards additional compensation, as well.

Assessment of financial health of the petitioner and failure to fulfill obligations towards homebuyers:

140. Admittedly, the home buyers of various projects of JIL, a Special Purpose Vehicle (SPV) created by the petitioner, approached the Supreme Court in Writ Petition (Civil) No. 744 of 2017 (Chitra Sharma and others vs. Union of India and others) seeking various directions for protection of their interest. In the said case, the Supreme Court has taken notice of

the fact that the RBI constituted a Internal Advisory Committee (IAC). It took up for consideration accounts which were classified either partly or wholly non-performing from amongst the top 500 exposures in the banking system as on 31 March 2017. As a first step, the IAC recommended all such non-performing asset accounts with fund and non-fund based outstandings exceeding Rs 5,000 crores. JIL was one of the twelve accounts in respect of which directions have been issued to banks for initiating insolvency resolution. Subsequently, the IAC recommended that in respect of those accounts where 60% or more had been classified as NPAs as on 30 June 2017, banks may be directed to implement a viable resolution plan within six months failing which the accounts may be directed for a reference under the IBC by 31 December 2017. The petitioner company was one such entity. No viable resolution plan could be found as a result of which it is also required to be referred for CIRP. The judgment also takes note of the fact that JAL was classified under the SMA – II category (demands overdue for more than 60 days) by banks as early as on 3 October 2014 and as an NPA since 31 March 2015. Further observation in the said judgment is that “The facts which have emerged before the Court from the application filed by the RBI clearly indicate the financial distress of JAL and JIL. Accordingly, we accede to the request made on behalf of the RBI to allow it to follow the recommendations of the IAC to initiate a CIRP against JAL under the IBC”.

141. According to the petitioner, it has paid a total sum of Rs.2294.48 Crores under various heads to the respondent-Authority, and had invested Rs.2500 Crores in carrying out development of core and

non core areas, thus, it had spent Rs.4794.48 Crores. The petitioner, in the written note supplied to the Court, admitted that it had so far sold 2500 residential plots between 2011-2016. The petitioner has taken stand that in four of its group housing schemes there is provision for 2750 units out of which 2155 have been sold while 595 remained unsold. The petitioner is stated to have taken huge amount as financial assistance from financial institutions and other lenders against mortgage of different parcels of land of SDZ. It had also created sub-lease in favour of financial institutions to secure financial assistance. However, the exact amount obtained by it as financial assistance by monetizing the land has not been disclosed.

142. In Writ Petition No. 8909 of 2021 filed by Suraksha Asset Reconstruction Limited, it is stated that the petitioner company took financial assistance from different banks and as a consequence of default, a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 dated 21.05.2019 was given to it demanding outstanding amount of Rs.692,54,27,494.92 as on March 31, 2019.

143. Here, we may note that according to Clause 10.1 of the allotment letters, the petitioner had to complete minimum 40 per cent of the permissible covered area of core activity within a period of ten years from the date of execution of last lease deed for the land falling in the core activity area of SDZ land. Vide Clause 15.1 of the allotment letters, it was the obligation of the petitioner to obtain applicable sanctions, approvals and clearances from the Authority. The petitioner also had to

develop non-core area including group housing projects.

144. In the connected writ petition filed by a homebuyers' association [Jaypee Sports City Welfare Society & Anr. v. State of U.P. & Ors., Writ C No. 21532 of 2021], it is stated that most of the flats/plots were allotted by the petitioner from year 2011 onward and at the time of allotment, substantial amount of money was taken from the allottees as per terms of allotment. The petitioner undertook to deliver possession within 18 to 24 months from the date of allotment. Thus, the possession was to be given around the year 2014-15. However, even after lapse of ten years, the petitioner company had failed to complete the projects. Most of the projects have not even started of and the others are partially complete with only skeleton structure in place. The details of the projects of the petitioner company registered with Real Estate Regulatory Authority (RERA) along with status of construction prevailing at the relevant time has been given in paragraph 10 which is as follows:

Status of Projects

Name of Project	Project Type	RERA Registration No.	Original Lause Date	RERA Registration Date	RE R A C o m p l e t i o n D a t e	Current Status
Jaypee Greens Bougain	Large Residential Plots	UPRE RA PRJ 5436	30-08-2012	29-07-2017	31-12-2014	No Infrastructure present on

villas, SDZ, YE W						this plotted development, no proper roads, no water supply, no sewage connection, no parks, club or any other amenities available.
Jaypee Greens Country Homes -I, SDZ, YE W	Residential Plots	UPRE RA PRJ 5440	16-01-2010	29-07-2017	30-11-2011	No Infrastructure present on this plotted development, no proper roads, only kaccha road is built

						with few electric poles with no light, no water supply, no sewage connections, no parks, club or any other amenities available.
Jaypee Greens Country Homes-II, SDZ, YE W	Residential Plots	UP RE RA PRJ 5443	08-05-2012	29-07-2017	30-11-2014	No Infrastructure present on this plotted development, no proper roads, only kachha road is built with

						few electric poles with no light, no water supply, no sewage connections, no parks, club or any other amenities available.
Jaypee Greens Greencrest Homes, SDZ, YE W	Residential Plots	UP RE RA PRJ 5446	18-09-2012	29-07-2017	31-01-2015	No Infrastructure present on this plotted development, no proper roads, only kachha road is built with few

						elect ric poles with no light, no wate r supp ly, no sewa ge conn ectio ns, no park s, club or any other ame nitie s avail able.							ric poles with no light, no wate r supp ly, no sewa ge conn ectio ns, no park s, club or any other ame nitie s avail able.
Jay pee Gre ens Kro wns , SD Z, YE W	Reside ntial Plots	UP RE RA PRJ 544 5	22- 10- 201 0	29- 07- 201 7	28 - 02 - 20 12	No Infra struc ture prese nt on this plott ed deve lopm ent, no prop er road s, only kacc ha road is built with few elect	Jay pee Gre ens Bud dh Circ uit Stu dios -I, SD Z, YE W	Reside ntial Apart ments	UP RE RA PRJ 481 8	22- 04- 201 3	29- 07- 201 7	31 - 03 - 20 21	No actua l work is done , all is in plan ning stage only, no appr ovals avail able. Site is an empt y plot.
							Jay pee Gre ens Kas	Reside ntial Apart ments	UP RE RA PRJ 471	19- 02- 201 1	29- 07- 201 7	31 - 12 - 20	Outs ide brick struc ture

sia I, SD Z, YE W		6			19	work is done and rest all the work s are stop ped since 2012 and no const ructi on has been done since then.
Jay pee Gre ens Kas sia II, III, SD Z, YE W	Reside ntial Apart ments	UP RE RA PRJ 475 1	09- 02- 201 1	29- 07- 201 7	31 - 12 - 20 20	Vari ous towe rs on diffe rent stage s only brick struc ture walls are done and rest all the work s are stop ped since 2012 and no const ructi on has been

						done since then.
Jay pee Gre ens Kov e, SD Z, YE W	Reside ntial Apart ments	UP RE RA PRJ 477 7	29- 06- 201 1	29- 07- 201 7	30 - 06 - 20 22	Few towe rs on diffe rent stage s only brick struc ture walls are done and rest all the work s are stop ped since 2012 and no const ructi on has been done since then. Cons tructi on site is cove red from all arou nd but whe n looki ng insid e

						one can see that whole site is submerged in water for a floor or two in depth and can be seen as if underground water has come out on site.							built with few electric poles with no light, no water supply, no sewage connections, no parks, club or any other amenities available.
Jaypee Greens Sportsville, SDZ, YE W	Independent Houses	UP RE RA PRJ 5424	15-01-2015	29-07-2017	30-06-2020	No Infrastructure present on this plotted development, no proper roads, only kachha road is	Jaypee Greens Villa Expansion Country Homes -II, SDZ,	Independent Houses	UP RE RA PRJ 5415	05-10-2013	29-07-2017	31-03-2020	No Infrastructure present on this plotted development, no proper roads, only kachha road is built

						with few electric poles with no light, no water supply, no sewage connections, no parks, club or any other amenities available.
Jaypee Greens Villa Expansion Greener Homes, SDZ, YE W	Independent Houses	UP RE RA PRJ 5048	14-09-2013	29-07-2017	30-06-2020	No Infrastructure present on this plotted development, no proper roads, only kachha road is built with

						few electric poles with no light, no water supply, no sewage connections, no parks, club or any other amenities available.

145. It is also asserted that in ten residential projects, out of total receivable of Rs.2433.41 Crores, the petitioner company had recovered around Rs.1900 Crores which comes to 80% of the dues and only Rs.532.64 Crores was left to be paid at the time of handing over possession. The said petition also makes a specific reference to the observations made by the Supreme Court in **Chitra Sharma** regarding financial incapacity of the petitioner and loan of around Rs.30,000 Crores, making it bankrupt for all practical purposes. It is pleaded in various paragraphs of the writ petition that the petitioner company is financially incapable of completing the projects and delivering the same to the home buyers. Although, in the said writ petition no counter affidavit

was invited and therefore, the petitioner did not reply to the pleadings made in the writ petition but it has filed several affidavits in Writ Petition No. 6049 of 2020 specifically pertaining to the issues involving the allottees and home buyers and therein, it had failed to offer any satisfactory explanation in relation to its commitment to the homebuyers but only limited its pleadings to the amount spent by it for development of core and non core areas. When the petitioner tried to set up plea of bonafides and equity, it was expected from it to have furnished specific details of the amount raised by it by monetization of land whether by way of sale, allotment, mortgage, charge, collateral security, sub-lease, or any other manner.

146. In fact, we find considerable force in the case set up by the home buyers as well as the Authority, that the petitioner had realized almost 80% of the total receivables from allottees/home buyers and it is for the said reason that escrow arrangement made on 24 September 2019 to facilitate liquidation of dues of YEA, could fetch a meagre sum of Rs.47.09 Lakh approximately and failed to achieve the purpose.

147. According to YEA, a total 61 group housing projects were proposed to be developed by the petitioner in the non core areas. All these 13 housing projects were sub-leased. No development work was undertaken by the petitioner on the remaining projects despite completion of dead line. The petitioner had collected large amounts of the money from home buyers for these projects and it was receiving repeated complaints from the home buyers against the petitioner for its failure to develop the housing projects. Therefore, the YEA, while cancelling the allotment

has also considered the grievance of the home buyers and cancellation order is also intended to protect the interest of the home buyers.

148. We have already noted the facts stated in the impugned cancellation order and it makes a specific reference to the default committed by the petitioner in failing to develop the SDZ project and fulfilling its obligations towards homebuyers. It also specifically mentions about various complaints received from the homebuyers and a meeting convened by the Authority between the representatives of the petitioner-Company and the Homebuyers Association. It also mentions about assurance given by the representative of the petitioner-Company to redress all the grievances of the homebuyers and take steps for completion and delivery of possession to them but that the petitioner-Company failed to abide by its commitment.

149. A close reading of the cancellation order reveals that the basic ground for cancellation was default on part of the petitioner-Company in failing to pay the dues of the Development Authority. Even, last show-cause notice dated 09.12.2019 was for alleged non-payment of the dues of the Authority and not on account of non-development and, therefore, we agree with the submission of learned Senior Counsel for the petitioner that non-development could not be a ground for cancellation. At the same time, we are not inclined to accept the submission that the reference to certain non-development in the cancellation letter is only on account of reiteration of the facts leading to the defaults and cancellation. While holding that the recital regarding non-development was not ground for cancellation it was a

relevant consideration while cancelling the allotment in entirety, even, on ground of non-payment of dues. Likewise, the obligation of the petitioner-Company to the homebuyers, another important stakeholder of the SDZ policy, was also duly kept in mind. It shows that the Authority consciously took into consideration different factors, which were necessary for attaining the goal of planned development of the area and objectives of the SDZ policy. This, in fact, is a strong countervailing factor in favour of the Authority to repel the contention that its action was arbitrary and taken in undue haste.

150. The Authority on basis of these facts came to the conclusion that the only re-course, which was left with it was to cancel the lease. Apart from non-developmental aspect of core and non-core areas and interest of homebuyers, the Authority must have had in mind the looming insolvency of the petitioner evident from its past repeated and consistent defaults. It would be worthwhile to notice at this stage the reply given by the petitioner on 10.01.2020 in response to the last show-cause notice dated 09.12.2019 wherein the petitioner-Company admitted its obligations towards various stakeholders and stated that it had already taken steps to liquidate its hydro and cement plants which had outlived their commercial life of fifty years, worth Rs.50,000 crores, to meet its liabilities towards the lenders. However, the situation did not improve but rather worsened.

151. As elaborated above, the sole and primary objective of the allotment under the SDZ policy was to ensure planned development along the Yamuna Expressway. The respondent being the

nodal agency to oversee proper implementation of SDZ project and as a Development Authority for the area while deciding what action was to be taken in the facts of the instant case should be given sufficient leeway to decide what specific measure would be in larger public interest. For the said purpose, it was competent to, and had rightly, considered different aspects regarding non-development, interest of homebuyers and sub-lessees.

Tests to decide proportionality:

152. In *Subramanian Swamy Vs. Union of India, Ministry of Law & others, 2016(7) SCC 221*, the Supreme Court has held that the test for ascertaining reasonableness in the context of the doctrine of proportionality has to be examined in an objective manner from the standpoint of the interest of general public and not from the point of view of the person upon whom the restrictions are imposed or abstract consideration. The relevant part of the judgement wherein these observations have been made is extracted below:-

"When a law limits a constitutional right which many laws do, such limitation is constitutional if it is proportional. The law imposing restriction is proportional if it is meant to achieve a proper purpose, and if the measures taken to achieve such a purpose are rationally connected to the purpose, and such measures are necessary. Such limitations should not be arbitrary or of an excessive nature beyond what is required in the interest of the public. **Reasonableness is judged with reference to the objective which**

the legislation seeks to achieve, and must not be in excess of that objective. Further, the reasonableness is examined in an objective manner from the standpoint of the interest of the general public and not from the point of view of the person upon whom the restrictions are imposed or abstract considerations."

(emphasis supplied)

153. The Supreme Court, in **State of Madras v. V.G. Row: AIR 1952 SC 196** held that test of reasonableness has to be applied on a fact to fact basis and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases.

154. If we apply the above tests, we are of the view that it was necessary for the Authority to have kept in mind the interest of all the stakeholders and larger public interest and not the point of view of petitioner only against whom the action was directed. Similarly, if the Authority had taken into account only the aspect of realisation of its dues, its action would have been rendered vulnerable.

Teri Oats:

155. As regards proportionality, the petitioner placed very heavy reliance on the judgment in **Teri Oats v. UT of Chandigarh: (2004) 2 SCC 130 ("Teri Oats")**. However, we find that the said judgment is not applicable to the facts of the present case. In the said case, the allottee had completed the construction of the building but could not immediately let out the same because area was underdeveloped. Again in **Teri Oats**, the

lessee had paid the entire principal amount due towards installments and lease rent during the pendency of its writ petition. The lessee therein even paid penalty on the forfeited amount of entire consideration money. However, in the present case, the petitioner has a large outstanding towards the principal amount of land premium, lease rent and additional compensation. In **Teri Oats**, there was no issue of public interest and the harm to the homebuyers. However, the present case involves significant public interest issues, particularly concerning homebuyers who have suffered due to the petitioner's inaction. The Authority's obligation to protect public interest and ensure the planned development of the SDZ project justifies its decision to cancel the allotment.

156. **Teri Oats** was passed in peculiar facts and circumstances of that case. The judgement itself notes that the question as to whether the extreme power of resumption and forfeiture has rightly been applied or not will be dependent upon the factual matrix obtaining in each case. Each case may, therefore, have to be viewed separately and no hard and fast rule can be laid down therefor. In the present case, the Cancellation Order has not been found to be arbitrary but a necessary response to the petitioner's material breaches, which have been well-documented through a series of notices and opportunities granted to the petitioner to comply.

157. Further, the judgment in **Teri Oats** has been distinguished and not relied upon by the Hon'ble Supreme Court in **HUDA v. Des Raj Chawla, (2018) 16 SCC 30** (paragraph 7) which is extracted for ease of reference:

"7. The learned counsel appearing on behalf of the respondents has placed reliance on the decision of this Court in *Teri Oat Estates (P) Ltd. v. State (UT of Chandigarh)* in which it has been laid down that the power of resumption and forfeiture of money deposited by the lessee in case of default in making due payment should be exercised sparingly. However, we find that the said case is totally on different factual matrix. Whereas the plot was to be transferred, there was delay in making payment. As such, the case referred to, has no application to the instant case. Though, power to resumed allotment was not to be on trivial breach but on material breach, we find that the case at hand was the one in which blatant misuse was there. Thus, the power of resumption was rightly exercised."

158. Again in **State (UT of Chandigarh) Vs. Hari Ram**, the judgment in **Teri Oats** was distinguished on facts. The relevant observations are:-

"8. For holding that the cancellation of allotment would cause hardship to the respondent and that one more opportunity has to be given to him to pay the outstanding dues, the High Court has relied upon in *Teri Oat Estates (P) Ltd. v. State (UT of Chandigarh)*. In *Teri Oat Estates*, the respondent thereon earlier paid the instalment amount and during the pendency of the matter before the Court the respondent thereon paid a substantial amount towards

the dues payable together with interest at the rate of 12%. It is in those facts and circumstances, in *Teri Oat Estates*, the Supreme Court held that resumption of the land and the building would cause extreme hardship which may be faced by the parties and the same shall not ordinarily be resorted to. In order to maintain an appropriate balance, in *Teri Oat Estates*, the Supreme Court observed that the matter warrants application of the doctrine of proportionality.

9. In the present case, after the allotment, the respondent has paid only the initial payment and has not paid the first, second and third instalments and the ground rent which fell due on 25-12-1997, 21-12-1998 and 25-12-1999 and in spite of several opportunities, the respondent has not paid the amount. When the respondent has consistently defaulted in payment of the premium/instalments, it is open to the competent authority to take action in accordance with the law."

159. We also find substance in the submission of the Authority based on **Uttar Haryana Bijli Vitran Nigam Ltd. (supra)**, **Shivali Enterprises (supra)**, **Alcon Electronics Pvt. Ltd. (supra)** to the effect that the contract between the parties was for the entire land for the purposes of planned development and once we are satisfied that the petitioner failed to adhere to the terms of the allotment and lease deeds, the Authority was justified in cancelling the entire allotment in public interest and as a last resort keeping in view of the purpose for which SDZ project had been set into motion.

(vi) Attempts made towards amicable settlement but failed:

160. During pendency of the proceedings before this Court a proposal was submitted by the petitioner - company for revival of the project and to liquidate its liabilities towards the Authority as well as homebuyers/allottees. Several attempts were made by the Court to get the dispute resolved amicably. Initially, the Authority, pursuant to resolution dated 02.06.2021 at its 70th Board Meeting, agreed to restore the allotment subject to payment of 10% towards restoration charges. However, the petitioner did not agree to the same. It challenged the same by amendment, but at the time of hearing, no submission was made regarding the validity of the charges except that in case the cancellation is quashed, there would be no question of paying restoration charges. Vide order dated 29.09.2022, this Court again required the petitioner to disclose how it intends to revive the projects and liquidate all its liabilities towards Authority as well as homebuyers. In pursuance thereof, a revised composite settlement proposal was submitted by the petitioner. It was considered by the Board of the Authority at its 75th meeting dated 02 December, 2022 and again the parties failed to resolve the matter amicably. The aforesaid facts are recorded in the order dated 13.07.2023 passed on the application filed by the petitioner to allow it one year time to sell 150 acres of land in the core area Sector 25 under SDZ scheme to raise funds to liquidate the dues of YEA. The order also records the claim and counter claim of the parties in respect of the sum due and payable by the petitioner to YEA, which are extracted below:-

"7. Relying on the chart dated 09.5.2023 submitted by him,

Sri Bhushan would submit, at most YEIDA is claiming Rs. 3621,50,48,489/-. It is inclusive of all demands being made by it from the petitioner (both disputed and undisputed).

8. Referring to its right to contest the cancellation of allotment of land, for the interim, it has been strenuously urged by him that the petitioner is willing to go along with YEIDA and deposit a reasonable amount of money as may be enough to discharge the just dues of YEIDA, as also to secure the disputed amounts, pending this petition.

9. Thus, relying on the counter proposal submitted by YEIDA, it has been submitted, even according to the best case of YEIDA, it has not paid and has yet not incurred any liability to pay interest on additional compensation that may have been paid to any of the original tenure holders/land owners. That notional interest (on additional compensation), has been quantified at Rs. 1506,11,58,900/-. If that be excluded (for the time being) from Rs.3621,50,48,489/- (the total amount being demanded by YEIDA), balance amount would come to about Rs.2115,38,89,589/-.

10. In the first place, to secure that amount, the petitioner has offered to dispose of 150 acres of land in the "Core Area" of Sector-25 such that it may generate enough revenue (to pay off the above noted amount), being roughly Rs. 2715,00,00,000/-. It would be more than enough to discharge the liability of about Rs. 2115 crores, noted above. As to the

balance amount of about Rs. 600 crores, he would submit, the same may be retained in an escrow account that may abide by the final outcome of the writ petition.

11. As to the amount of Rs. 1506 crores and odd being claimed towards interest on additional compensation, Sri Bhushan has urged, that demand has yet not crystallised. In fact, it has no legal basis. In absence of any liability incurred in law and in absence of any computation shown to exist, that demand may be stayed in entirety, during the pendency of writ petition.

12. As to the mode and method to deposit Rs. 2715 crores, as noted above, 150 acres of land in the Core Area has been proposed to be sold. As to the time period, after much deliberation held over the last more than three hearings, it has emerged, not less than one year time would be required to make good that deposit. Here, it may be noted, at one stage petitioner had also proposed that it may give up about 100 acres of land in the Core Area to YEIDA against the demand of Rs. 2115 crores (approximately). However, that proposal was stoutly rejected by YEIDA."

(vii) Insolvency established:

161. It is not in dispute that after the impugned cancellation order was passed, the petitioner, due to its defaults, was admitted to insolvency proceedings before NCLT. The Tribunal, by order dated 03.06.2024 (Annexure no.1 to the petitioner's 8th supplementary affidavit), disposed of the proceedings. The operative

portion of the order of NCLT reads as under:-

"102. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

(e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.

(f) The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with

any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

(g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be."

103. We direct the Financial Creditor to deposit a sum of Rs.3 lakh with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

104. A certified copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a certified copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a certified copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

105. I.A. No. 263 of 2024 is disposed off and IA No. 406 of

2023 is dismissed as infructuous accordingly.

106. List the matter on 08.07.2024 for filing of the progress report/further proceeding."

162. The petitioner challenged the order dated 03.06.2024 before the NCLAT vide Company Appeal (AT) (Insolvency) No.1158-1162 of 2024. NCLAT dismissed the appeal by judgment dated 06.12.2024, Annexure no.2 to Civil Misc. Application No.77 of 2024 filed on behalf of the respondent no.2 that was taken on record by this Court's order dated 03.01.2025 that reads as under:-

"1. Application placed before us as per roster.

2. Ms. Gunjan Jadwani, appearing on behalf of the Resolution Professional, states that she does not intend to make any submission, as the order of NCLAT sought to be brought on record, is a matter of record.

3. Consequently, the application be kept on record."

163. Various Civil Appeals bearing Nos.98-102 of 2025 and 211-212 of 2025 along with various intervention applications were filed before the Apex Court assailing the aforesaid orders. The same were dismissed by the Supreme Court by order dated 10.01.2025, which reads as under:-

"ORDER

We do not find any good ground and reason to interfere with

the impugned judgment(s)/order(s); hence, the appeals are dismissed.

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

164. It is noteworthy that NCLAT, while dismissing the appeal, has duly noted the submission of SBI that more than Rupees Fifty Thousand Crores had been waiting for resolution since 2016.

165. Thus, the apprehension of respondent - Development Authority regarding impending insolvency of the petitioner, while deciding what action it should take in relation to continued defaults committed by the petitioner also stood established. The SDZ policy provided for various parameters to assess solvency of applicants applying for development of SDZ. Although, the petitioner qualified the said criteria and succeeded in procuring allotment but after some time it started committing defaults and progressed to a stage where its ability to complete the project came under serious doubt. The Authority, therefore, while deciding the course of action to be taken, had rightly considered the financial health of the petitioner and its ability to complete the same and once it was in doubt it cannot be said that the authority acted unreasonably and arbitrarily in not taking recourse to further restrictive measures.

B – FINDINGS:

166. Thus, Issue no.5 is decided by holding that the cancellation of entire allotment is not hit by doctrine of proportionality nor was illegal for any other reason.

167. Issues no.6 and 7 are decided by holding that while passing the

cancellation order, the Authority had considered several factors including default in development/construction but the cancellation was primarily on ground of non-payment of the dues of the Authority.

The fate of money paid by the petitioner so far to YEA in pursuance of allocation/allotment/lease:

168. We may note that by order dated 25.02.2020, the petitioner was directed to deposit a sum of Rs.100 crores in two parts, i.e. Rs.50 crores by 10.03.2020 and another Rs.50 crores by 25.03.2020. The petitioner deposited a sum of Rs.50 crores on 09.03.2020 and due to various reasons, it could not deposit remaining Rs.50 crores by 25.03.2020 but deposited only Rs.5 crores on 16.03.2020. Recording these facts and the undertaking given by the petitioner, this Court passed an order dated 08.02.2021 directing the petitioner to deposit Rs.52,50,26,551/- with an observation that after such deposit, in case the petitioner moves an application for re-structuring and re-computing the dues payable by it, the same shall be considered by the respondent authority in accordance with law. The said amount was deposited. Thereafter, by order dated 29.09.2022, the petitioner was directed to deposit a sum of Rs.100 crores. This amount was deposited by the petitioner and an affidavit dated 02.11.2022 was filed to that effect. Accordingly, the petitioner has deposited Rs.50 crores + Rs.5 crores + Rs.52,50,26,551/- + Rs.100 crores (Total Rs.207,50,26,551/-).

169. Although, Shri Manish Goyal submits that, in the facts of the case, the amount deposited by the petitioner is liable to be forfeited by YEA, we are not inclined

to accept the said submission of Sri Goyal. The reason lies in the specific language incorporated in Section 14 of the Act of 1976, which is again quoted as under:-

“14. Forfeiture for breach of conditions of transfer.- (1) In the case of non-payment of consideration money or any instalment thereof on account of the transfer by the Authority or any site or building or in case of any breach of any condition of such transfer or breach of any rules or regulations made under this Act, **the Chief Executive Officer may resume the site or building so transferred and may further forfeit the whole or any part of the money if any paid in respect thereof.**

(2)

170. A bare perusal of Section 14 (1) would reveal that two powers are vested in the Chief Executive Officer under the said provision. The first power is to resume the site or building transferred by the Authority and the second power is to forfeit either the whole or any part of the money, if any, paid by the transferee. In case of forfeiture for breach of conditions of transfer, the Authority is vested with power to resume the site or building and **“may further forfeit the whole or any part of the money, if any, paid in respect thereof”**. Thus, every case of forfeiture of the site does not automatically entail forfeiture of the money paid to the Authority. The Authority is given discretion to **forfeit in whole or any part** of the money paid to it. Undoubtedly, if such power is exercised, it has to be based on consideration of all relevant facts and circumstances. The impugned order does

not record that the Authority while resuming the site has forfeited the money paid to it by JAL. JAL claims that it had invested in excess of Rs.2500 crores in developing SDZ land so far. The total sum deposited by JAL, in relation to which there is no serious dispute, was Rs.2294.49 crores (including interest) towards land premium and Rs.195.73 crores (including interest) towards lease rent. Undoubtedly, the Authority must have had in its mind the fact that despite default, a huge sum was spent over the years in development of the site, and upon resumption it would get partially developed site. Moreover, the plea of proportionality has been repelled treating the impugned order as an order of cancellation of lease simpliciter and not an order of forfeiture of the money paid to the Authority. The Court cannot add words to the order impugned that is to say that it cannot read the order impugned going beyond what it actually recites, particularly when the Court is examining all the aspects relating to the action of the Authority. While we find no error as regards exercise of power of resumption of the site or building, we are satisfied that the second power vested in the Authority, i.e. to forfeit either whole or any part of the money deposited by the petitioner, has not been exercised by YEA. Therefore, we are of the view that the order impugned does not result in either express or implied forfeiture of the amount deposited by the petitioner so far. As a corollary to the same, the Authority shall be obliged to refund to JAL the money received by it till the time lease was cancelled, except to the extent permitted vide paragraph 187(D).

171. As insolvency of YEA has been admitted and proceedings as per IBC are pending before NCLT, therefore, we are of the opinion that the entire money paid by

the petitioner to YEA should be placed at the disposal of NCLT for being dealt with as per provisions of Insolvency and Bankruptcy Code, 2016 as the order passed by NCLT admitting the petitioner to insolvency process, has already been upheld by NCLAT and, then, by the Supreme Court. The amount shall be dealt with as per the directions of Resolution Professional (RP). This is being done so as to take care of the interest of the financial institutions also as the public money is involved in facilitating funds to the petitioner. Though it is urged on behalf of the respondent YEA that it has first charge over assets of the petitioner-company which include cement plants, engineering and constructions division, various five star hotels and certain other plant machinery, we refrain ourselves from expressing any opinion on the said aspect in view of pendency of insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC) before NCLT [**vide Mohammed Enterprises (Tanzania) Ltd vs. Farooq Ali Khan and others: 2025 SCC Online SC 23; Committee of Creditors of KSK Mahanadi Power Co. Ltd. vs. Uttar Pradesh Power Corporation Ltd. and others: 2024 SCC Online SC 4013; Chitra Sharma Vs. Union of India; AIR Online 2018 SC 1215**].

Issue No. 8: Effect of cancellation on sub-lessees in favour of homebuyers and financial institutions

172. The cancellation order specifically mentions that it does not take in its fold the sub-leases. The sub-leases were between JAL and third parties. YEA was not privy to the contract. Sub-leases would not survive, unless appropriate directions are issued to make the same binding upon YEA. The interests of various

stakeholders are diverse and sometimes conflicting, while at other times they align. We recognize that achieving a perfect balance is not possible, but we have made every effort to strike a fair balance in the given situation.

172(i). During course of hearing of the writ petitions, the respondent-Authority was required to clarify its stand in relation to sub-lessees of JAL and the homebuyers. In compliance, an affidavit dated 26.7.2024 was filed on behalf of the Authority by Manager (Admin)/General, YEA disclosing the manner in which YEA would protect the interest of the sub-lessees and homebuyers in case the impugned order is upheld. In respect of homebuyers, the stand taken is as follows: -

Interest of Homebuyers:-

"11. While the present proceedings are pending, and the interim order of status quo (order dated 25 February 2020) remains in operation, the Respondent Authority cannot take any steps for rehabilitation of the incomplete group housing which effects homebuyers/allottees.

12. If the Cancellation Order is upheld and the lands allotted to the Petitioner become free from the legal encumbrance, the following options are available for rehabilitation of the entire project including the incomplete group housing project undertaken by the Petitioner (not sub-lessees, whose rights remain protected under the Cancellation Order).

13. One option is to re-auction the whole land including the group housing projects inter alia with the following conditions:

i. the bidder shall pay the outstanding dues of the Respondent Authority as on the date of submission of the bid; and,

ii. the bidder shall be required to complete the incomplete housing projects of the homebuyers on priority basis and deliver the units booked/allotted to them expeditiously on the same terms and conditions already entered by homebuyers with the Petitioner.

14. Given the appreciation in the value of land, the project will not only be viable, but it will also be economically lucrative to prospective bidders. Such rehabilitation will ensure that the homeowners in the group housing projects receive their housing units as expeditiously as possible, and the project is developed anew.

15. **Alternatively**, the other option for the Respondent Authority is to undertake the development of the housing projects by itself, complete the construction of the housing units and deliver the same to the homebuyers/allottees."

173. Since interest of the homebuyers is vitally involved, therefore vide order dated 26.7.2024, notice was issued to the Authorized Representative (Mr Amar Pal) for the purpose of representation of the homebuyers in the instant litigation. Pursuant thereto, on his behalf, an affidavit dated 28.8.2024 has been filed, listing the issues concerning the homebuyers and the directions which should be passed to protect their interest in case the impugned order is upheld. Thus, it has been prayed on behalf of the

homebuyers that direction be issued to YEA to submit an updated fresh proposal containing detailed mechanism and timelines to ensure completion of the housing projects; authorized representative for the homebuyers be made part of the decision making process/construction committee related to the said project and the views of the homebuyers presented through authorized representative should be considered while taking any decision; existing agreement between the homebuyers and JAL should be honoured by YEA; amount agreed to be paid, amount already paid and the amount payable, should be as per the agreement entered into with JAL and the record maintained in this behalf by YEA and YEA/new developer should honour the same; orders obtained by homebuyers from various courts should be honoured by YEA/new developer in the same manner as it was supposed to be honoured by YEA; homebuyers should not be required to pay any extra charge to YEA/new developer; sale/auction money should be deposited in an Escrow account and the same should be used exclusively for completion of the pending projects; U.P. Real Estate Regulatory Authority be directed to ensure compliance of directions of this Court.

174. In continuation, another affidavit dated 30.8.2024 was filed stating that the Authorized Representative has received a list of homebuyers from the team of Resolution Professional (RP) on 6.8.2024, containing details of 4,638 homebuyers of the Sport City Project of JAL. The same has been enclosed along with the affidavit. It is also stated that Jaypee Sport City Welfare Society, through its representative, participated in a joint audio-video meeting held by the Authorized Representative of the

homebuyers. In the said meeting, 284 individual homebuyers also participated. Thereafter, the Vice President of JPSCWS sent an e-mail (dated 25.8.2024), reflecting the sentiments of the homebuyers and on that basis submissions have been made.

175. Undoubtedly, the homebuyers are one of the major stakeholders in the present dispute. In fact, the main ground which impelled YEA to resort to the extreme step of resumption of the leased land is inordinate delay on part of JAL in abiding by the timelines prescribed for completing the constructions, resulting in immense difficulties to the homebuyers. Further, as noted, YEA has also filed affidavit reiterating its commitment to safeguard the interest of the homebuyers and the steps it would take in this respect. It is therefore necessary to issue directions to ensure that YEA fulfills its commitment and interest of the allottees/homebuyers is protected.

176. The first concern, as noted above, is regarding timely completion of the housing projects. As per pleadings in Writ – C No. 21532 of 2021, JAL was under obligation to deliver the flats/plots to the allottees within 18 – 24 months from the date of allotment. It was around the year 2014 – 2015. Almost five years has elapsed since then. Undoubtedly, a time schedule has to be framed for completion of the housing projects. Accordingly, the following directions are issued: -

176(a). "Interest of the homebuyers of various projects of the petitioner shall not be affected in any manner on account of the impugned order. YEA, as per its commitments, will take over the projects and will ensure completion of the same on same terms and

conditions, as agreed to between the petitioner company and the homebuyers in the following time frame—

- (i) Projects, which are at least 75% complete -- 1 year
- (ii) Projects, which are at least 50 % complete -- 18 months
- (iii) Projects, which are at least 25 % complete -- 30 months
- (iv) others -- 36 months"

176(b). For timely completion of the housing projects, YEA shall ensure that the plan regarding completion of the housing projects and other formalities including selection of developer, is finalized positively within three months from today.

176(c). A Committee comprising of (i) Principal Secretary, Housing and Industrial Development; (ii) Chairman of UPRERA; (iii) CEO, YEA or his nominee and (iv) Authorized Representative for Class of Creditors, i.e. Homebuyers (hereinafter referred to as 'Committee') shall be formed by the State Government within four weeks from today. The said Committee will oversee compliance of timelines regarding completion of the housing projects.

176(d). As noted, an order of status quo has operated in favour of JAL since 25.2.2020 and on account of which, no construction could be made. The homebuyers cannot be made to suffer on account of default on part of JAL as well as the order of status quo. Therefore, we are of the opinion that the period starting from the date of passing of the impugned order, i.e. 11.2.2020 till today should be declared as zero period (dies-non). The position of the homebuyers would be restored to the date

as immediately preceding the date of passing of the impugned order, i.e. 11.2.2020. Accordingly, they would not be charged any interest or penalty or any other amount for the said period. This direction, in our opinion, would to a great extent, nullify the effect of passing of the impugned order and the order of status quo.

176(e). YEA will, within four weeks, appoint a Nodal Officer, who should be a gazetted officer (or equivalent) to decide any issue regarding remaining amount payable by homebuyers. The homebuyers will be at liberty to raise grievance regarding the same before him and it shall be decided within four weeks from the date the dispute in writing is received. While taking decision, the Nodal Officer shall have regard to the terms of allotment/agreement and other relevant factors and the documents/records maintained in this regard by JAL or those filed by the allottee.

176(f). For timely execution and completion of the housing projects, YEA shall at all times make available necessary funds irrespective of the sum collected by it from the allottees. This direction is being issued keeping in mind the own stand of YEA that the value of land has appreciated several times and the housing projects would be economically lucrative and viable.

176(g). Any claim of homebuyers against JAL coming within the purview of pending insolvency proceedings before NCLT, including recovery of any sum from JAL in pursuance of any order or direction against JAL will remain protected.

176(h). Any right or remedy available to the homebuyers under the Real

Estate (Regulation and Development) Act, 2016 and the Consumer Protection Act, 2019, or under any other law, shall also remain protected.

176(i). In Chitra Sharma (supra) it has been noted in paragraph 44 of the judgment that only 8% of the homebuyers have opted for refund, while 92% have chosen not to claim refund. It has been highlighted by the Authorized Representative of the Homebuyers that due to the loss of income, retirement, or the death of the original allottee or the family's primary breadwinner, some allottees may be unable to meet the criteria for obtaining additional bank loans. Furthermore, the physical and financial health of homebuyers may have deteriorated due to old age, illness, or infirmity, making it impractical for them to continue their prolonged struggle to secure a home that has long been denied to them. Therefore, an exit policy should be framed for such allottees.

Given the considerable time that has passed since the project's scheduled completion, we acknowledge that some allottees may wish to opt out and seek a refund. Therefore, a well-defined exit policy must be formulated. This policy should strike a balance between the interests of the authority and the homebuyers. Accordingly, we leave it open to the Committees, which includes homebuyer's representative, to frame the same.

If any allottee chooses to withdraw from the project, the corresponding unit shall become available for sale by YEA. Consequently, all refund claims shall be borne by YEA.

The exit policy, in our opinion, should provide for payment of a reasonable sum as interest on the investments made by

any individual allottee. Keeping in mind the structure of interest during last ten years and to balance the interest of both the sides, we provide that the policy should inter alia provide for refund along with simple interest @ 9% per annum.

The exit policy shall be given wide publicity in press and electronic media.

Interest of sub-lessees :

177. The impugned cancellation order itself provides that interest of the sub-lessees is protected, as sub-lease in their favour has not been terminated. The YEA in supplementary counter affidavit dated 26.07.2024 has clarified its stand in respect of the same as follows:-

"7. As evident from the Cancellation Order itself, the interests of the Petitioner's sub-lessees are protected as the sub-lease in their favour has not been terminated. The Cancellation Order ensures that the allotment of any sub-lease would not be cancelled so long as the dues are regularly and timely paid to the Respondent Authority, thus ensuring continuation of sub-leases.

8. The sub-lessees' interests under the sub-lease are thus fully protected and they will be able to enjoy the same without any disruption so long as they continue to comply with the obligations under the sub-lease and also those under the relevant lease with the Respondent Authority under which the sub-lease has been granted, so far as they are applicable to them. This is evident from the correspondence with the sub-

lessees. By way of illustration, the correspondence with one such sub-lessee is annexed herewith as Annexure 1.

9. After passing of the Cancellation Order, the sub-lessees have been making payments directly to the Authority, and their sub-leases have not been cancelled."

177(a). Protection of the rights of sub-lessees of JAL is possible only when YEA recognises them as its lessees. For said purpose, YEA shall have to enter into lease agreement with the sub-lessees. Undoubtedly, the terms and conditions should be the same, as between JAL and the sub-lessees subject to right of YEA to recover its dues. As a necessary corollary to the above exercise, YEA would be entitled to retain proportionate sum realised from the petitioner till the passing of the impugned cancellation order.

177(b). The necessary documentation work would be carried out in this regard within twelve weeks from today. The YEA shall give individual notices to the sub-lessees within four weeks from today and shall also issue public notice. The sub-lessees will complete the formalities for entering into the lease agreement with YEA within next eight weeks. All expenses in this behalf shall be borne by YEA.

177(c). The above direction is without prejudice to the rights under sub-lease deeds between the sub-lessees and JAL. Upon execution of lease-deed, YEA will stand substituted in place of JAL on same terms and conditions as contained in sub-lease deeds between JAL and sub-lessees.

Interest of Financial Institutions :

178. We cannot ignore the fact that huge interest of financial institutions is also involved in the present case. M/s Suraksha Asset Reconstruction Company Ltd. (Writ – C No. 8909 of 2021) as ‘asset reconstruction company’, claiming security interest, in leasehold rights of some part of the leased land, has also challenged the cancellation order, to protect its security interest.

179. ICICI Bank Limited ("**ICICI Bank**") had filed Civil Misc. Impleadment Application No.5 of 2020, in its individual capacity for its exclusive facility, to protect its interest as (i) a mortgagee and (ii) a sub-lessee, which was allowed vide order dated February 8, 2021. Furthermore, ICICI Bank had also filed an Impleadment Application bearing I.A. No. 6 of 2020 on behalf of the consortium of lenders, i.e. State Bank of India, Union Bank of India (erstwhile Corporation Bank), Punjab National Bank (erstwhile Oriental Bank of Commerce), The Lakshmi Vilas Bank Limited, IFCI Limited, Axis Bank Limited, ICICI Bank, Assets Care and Reconstruction Enterprise Limited (acting in its capacity as trustee of ACRE-86-Trust and assignee of loans of Yes Bank Ltd), LIC of India, Bank of Maharashtra, IDBI Bank, J&K Bank, Bank of India, South Indian Bank Assets Care and Reconstruction Enterprise Limited (acting its capacity as trustee of ACRE-98-Trust and assignee of loans of Karnataka Bank Ltd), Asset Reconstruction Company (India) Limited (assignee of loans of L&T Infrastructure Finance Company Ltd.) and Canara Bank (collectively referred hereinafter as "**Consortium of Lenders**"), which were allowed vide different orders.

179(a). It may be noted that Axis Bank and Standard Chartered Bank have also filed impleadment applications on behalf of their respective consortiums and have also been impleaded in the Writ Petition.

179(b). It has been submitted on behalf of the Consortium of Lenders/Financial Institutions that in order to arrange funds for the purpose of, inter alia, meeting the cost of development and operation of the sports infrastructure project of JAL and payment of other liabilities owed by JAL, JAL approached multiple lenders, including ICICI Bank and the Consortium of Lenders, which extended multiple credit facilities to JAL. The credit facilities were secured inter alia:

(a) in case of ICICI Bank as the sole lender, by an exclusive mortgage/charge over a part of the leasehold property to the extent of 25 acres, in favour of IDBI Trusteeship Services Limited (acting as Security Trustee to ICICI Bank), vide a deed of mortgage dated July 07, 2014. The land parcels admeasuring 23.5 acres were subsequently released by the security trustee (IDBI Trusteeship Services Limited) in favour of JAL vide a deed of re-conveyance dated June 30, 2017. Thus, at present, land admeasuring 1.5 acres of leasehold land (which forms part of land parcels allotted to JAL under the SDZ) continues to be exclusively mortgaged ("**Exclusive Mortgage**") for the benefit of ICICI Bank. The Exclusive Mortgage was duly registered and was validly created in favour/ for the benefit of ICICI Bank; and

(b) in case of Consortium of Lenders, by the common security created for the benefit of the Consortium of Lenders on pari passu basis vide mortgage over a part of certain leasehold land parcels allotted to JAL under the SDZ, to the extent of 588.42 acres, in favour of Axis Trustee Services Limited, i.e. the security trustee acting for the benefit of the Consortium of Lenders. The aforesaid security creation was done by way of the registered mortgage vide Indenture of Mortgage dated September 1, 2015. The aforementioned mortgage was re-mortgaged by JAL by way of a registered mortgage vide Indenture of Mortgage dated December 30, 2016 to re-align the constitution of the consortium of lenders of JAL, thus, securing a total loan of INR 23,490.75 crores.

179(c). It is stated that the Lenders, with a bona-fide intent, disbursed enormous amounts of loans to JAL basis inter alia the strength of the security interest created in favour of/ for the benefit of Lenders. Furthermore, the aforesaid mortgage was validly created in favour/ for the benefit of the Lenders.

179(d). The said cancellation of the allotted plots/ lands by YEA has directly affected the interests of the Lenders in as much as certain parts of the said allotted plots/ lands were mortgaged in favour of/ for the benefit of the Lenders to secure the loan facilities sanctioned by Lenders in favour of JAL.

179(e). As per the Cancellation Order, the cancellation would not have an

adverse impact on the lands that have been sub-leased in favour of various parties so long as YEA's dues are satisfied. Pertinently, YEA in its Supplementary Affidavit dated July 26, 2024 ("Supplementary Affidavit") filed in this Writ Petition, has also acknowledged that the interest of sub-lessees are protected as the sub-lease in their favour has not been terminated.

179(f). However, despite the same, YEA has proceeded to issue ten letters dated July 12, 2024 ("YEA Letters") threatening to cancel the Sub-Lease Deeds on the alleged ground that ICICI Bank is not willing to carry out construction work on the lands sub-leased under the Sub-Lease Deeds, by obtaining the map approvals for the same. While ICICI Bank has made detailed representations in reply to the YEIDA Letters, narrating the challenges in undertaking the construction/ obtaining map approvals, till date ICICI Bank has not received any response/acknowledgement to the response to YEA Letters.

179(g). It is contended that YEA, while it has made submissions on record to protect the interest of sub-lessees, in complete contravention to the same, it has also issued letters threatening to cancel the rights of financial institutions under the Sub-Lease Deeds. Therefore it is submitted that YEA should not be permitted to act in such high-handed manner.

179(h). On the other hand, Shri Manish Goyal, learned Senior Counsel for YEA submitted that JAL being the principal debtor is liable for the loans given by the financial institutions to it. The financial institutions had and will continue to have right to recourse against JAL, the principal debtor, and financial institutions

will be entitled to recover their outstanding loans from it. Moreover, JAL besides the leasehold interest in the land, which is the subject matter of the present litigation, has several other assets of its own and that of its subsidiary companies including cement plants, engineering and construction division assets, heavy construction equipment and machinery, various five-star hotels.

179(i). The financial institutions did not have any interest in the land, which is and continues to be, owned by the Authority. The financial institutions have, however, acquired security interest in the leasehold right that the petitioner has acquired under the lease deeds in its favour through mortgage. Such security interest ceases to subsist once the lease is cancelled due to default of the petitioner in payment of dues under the terms of the Lease.

179(j). Without prejudice to the above, it is submitted that in any event the Authority has the first charge, which has priority over the claims of the Financial Institution.

180. Indisputably, from 09 July 2013 till 15 January 2015, the Authority permitted the petitioner to mortgage the land in core and non-core area from time to time. Around 660 Hec. of land had been mortgaged by the petitioner to its lenders. Four permissions were granted on 09 July 2013, two permissions were granted on 18 November 2013, one each on 22 August 2014, 25 August 2014 and 15 January 2015.

181. These permissions were subject to the condition that the Authority would have first charge over all interests in the land and its claim will have priority over the claims of the banks and financial institutions in whose favour the mortgage is

being created. The said permissions also provide as follows:

"2....The YEIDA's charge on the property shall be Superior first charge over and above first charge of all the lender banks to the extent of the amount payable to YEIDA by JPSI towards installment, interest, penal interest, lease rent, penalties & other dues, if any, in terms of letters of allotment of land and lease deeds executed between YEIDA and JPSI. The mortgage deed to be executed between JPSI and the lender banks/financial institution shall include that the Authority's charge on the land shall always be superior and prior to all other charges created and/or to be created in others favours and shall be subservient to the charge of the Authority by whatever name or nomenclature it may have.

3. JPSI has to ensure the payments to the Authority as envisaged in the lease deeds of the said land in time and in case project financing from bank/financial institutions in the said land contains the cost of land then period payments to the authority shall be made before entering into the mortgage deed and or utilizing this mortgage permission, otherwise authority shall be free to take actions considering as a defaulter in payment as stipulated in the lease deed to recover such amounts."

182. The main crux of the argument of learned counsel appearing on behalf of the Financial Institutions and Consortium of Lenders is that the lease, if

cancelled, would result in great prejudice to the Financial Institutions. Learned counsel do not dispute that the security interest of the Financial Institutions in the land would come to end by operation of law consequent upon resumption of the site. The same is also admitted in paragraph 32 of the writ petition filed by Suraksha Asset Reconstruction Co. Ltd. (Writ-C No. 8909 of 2021). Thus, the remedy of the Financial Institutions would be against the principal borrower as provided by Section 68 of the Transfer of Property Act, 1882. Further, in view of insolvency proceedings before NCLT, we refrain from making any comment in respect of the claim of the lenders or priority of charge of the parties. We clarify that any incidental observation made in the instant order touching upon the claim of lenders/financial institutions except to the extent of sub-leasees in their favour, shall have no effect, nor influence the proceedings pending before NCLT.

183. It is noteworthy that while considering effect of resumption order, it has been held that YEA would be liable to refund the entire money deposited by JAL with the Authority and the same shall be placed at the disposal of NCLT. The said amount would be part of the corpus of JAL to be dealt with as per the provisions of IBC. This will, to some extent, also take care of the interest of the Financial Institutions. More over, the sub-leases in favour of the Financial Institutions as stated in the impugned order and also in the stand taken by YEA in the supplementary counter affidavit dated 26.07.2024 stand protected.

184. One of the concerns of the Financial Institutions is that while on one hand YEA has taken the stand that it will safeguard the interest of the sub-leasees but in complete contravention to the same, it

had issued letters threatening the Financial Institutions to cancel their sub-lease deeds on the ground of breach of condition of lease relating to raising of constructions over the demised land. It is submitted that the Financial Institutions are engaged in banking activities and are forbidden in law to undertake development of land and allied activities. The sub-lease in favour of the Financial Institutions were created with consent of YEA by way of security for the money advanced to JAL.

185. We find considerable force in the submission. Undoubtedly, the Financial Institutions cannot be expected to engage in development of land and construction activity. The sub-lease was obtained by the Financial Institutions to protect the money advanced to JAL. The same was admittedly with the consent of YEA and in terms of the provisions of the allotment orders/lease deeds, YEA is committed to protect interest of the sub-leasees, which would apply to all sub-leases including the lease in favour of financial institutions. We are, therefore, of the opinion that the Financial Institutions should be permitted to assign their interest in favour of third party. Accordingly, we issue the following directions in respect of sub-leases in favour of the financial institutions :-

(a) Sub-leases in favour of the financial institutions will stand protected in terms of the impugned order.

(b) YEA in order to give effect to its commitment that sub-leases would not get affected, would give option to the financial institutions to obtain lease on same terms and conditions, as between the financial institutions and YEA in their own favour or in favour of

their assignee, subject to its right of recovery of dues.

(c) The documentation work shall be completed within four weeks from the date, request is made in this behalf by the Financial Institutions for which the outer limit would be twelve weeks from the date of the passing of the instant order.

(d) YEA would be entitled to retain sum realized from JAL till the passing of the cancellation order on pro-rata basis.

Further Directions:

186. The following amounts shall, within six weeks, be returned by YEA to JAL by transferring the same to the account of RP appointed by NCLT.

(1) Any amount deposited by JAL in pursuance of orders passed in the present litigation along with the prevailing interest (SBI PLR) from the date of deposit till the date of refund.

(2) All other amounts received by YEA so far from JAL in furtherance of the allotment and lease whether prior to cancellation or thereafter in proportion of the area of land resumed. Thus, YEA shall be entitled to retain proportionate amount received for the area covered by sub-leases, which stand excluded from the purview of impugned order.

CONCLUSION:

187. In view of the discussion made above, Writ - C No. 47562 of 2017 is disposed of as infructuous, whereas Writ –

C No. 6049 of 2020, Writ – C No. 21532 of 2021 and Writ – C No. 8909 of 2021 and various intervention applications by homebuyers, sub-lessees, and Financial Institutions stand disposed of with the following directions:-

(A) Homebuyers:

(a) Interest of the homebuyers of various projects of the petitioner shall not be affected in any manner on account of the impugned order. YEA, as per its commitments, will take over the projects and will ensure completion of the same on same terms and conditions, as agreed to between the petitioner company and the homebuyers in the following time frame—

(i) Projects, which are at least 75% complete -- 1 year

(ii) Projects, which are at least 50 % complete -- 18 months

(iii) Projects, which are at least 25 % complete -- 30 months

(iv) others -- 36 months"

(b) For timely completion of the housing projects, YEA shall ensure that the plan regarding completion of the housing projects and other formalities including selection of developer, is finalized positively within three months from today.

(c) A Committee comprising of (i) Principal Secretary, Housing and Industrial Development; (ii) Chairman of UPRERA; (iii) CEO, YEA or his nominee and (iv) Authorized Representative for Class of Creditors, i.e. Homebuyers (hereinafter referred to as 'Committee') shall be formed by the State Government within four weeks from today. The said Committee will oversee compliance of timelines regarding completion of the housing projects.

(d) The period starting from the date of passing of the impugned order, i.e. 11.2.2020 till today should be declared as zero period (dies-non). The position of the

homebuyers would be restored to the date as immediately preceding the date of passing of the impugned order, i.e. 11.2.2020. Accordingly, they would not be charged any interest or penalty or any other amount for the said period.

(e) YEA will, within four weeks, appoint a Nodal Officer, who should be a gazetted officer (or equivalent) to decide any issue regarding remaining amount payable by homebuyers. The homebuyers will be at liberty to raise grievance regarding the same before him and it shall be decided within four weeks from the date the dispute in writing is received. While taking decision, the Nodal Officer shall have regard to the terms of allotment/agreement and other relevant factors and the documents/records maintained in this regard by JAL or those filed by the allottee.

(f) For timely execution and completion of the housing projects, YEA shall at all times make available necessary funds irrespective of the sum collected by it from the allottees. This direction is being issued keeping in mind the own stand of YEA that the value of land has appreciated several times and the housing projects would be economically lucrative and viable.

(g) Any claim of homebuyers against JAL coming within the purview of pending insolvency proceedings before NCLT, including recovery of any sum from JAL in pursuance of any order or direction against JAL will remain protected.

(h) Any right or remedy available to the homebuyers under the Real Estate (Regulation and Development) Act, 2016 and the Consumer Protection Act, 2019, or under any other law, shall also remain protected.

(i) A well defined exit policy, keeping in mind the observations in

paragraph 176(i) shall be framed by the Committee.

(B) Sub-lessees:

(a) YEA shall enter into lease agreement with the sub-lessees. Undoubtedly, the terms and conditions would be the same, as between JAL and the sub-lessees subject to right of YEA to recover its dues. As a necessary corollary to the above exercise, YEA would be entitled to retain proportionate sum realised from the petitioner till the passing of the impugned cancellation order.

(b) The necessary documentation work would be carried out in this regard within twelve weeks from today. The YEA shall give individual notices to the sub-lessees within four weeks from today and shall also issue public notice. The sub-lessees will complete the formalities for entering into the lease agreement with YEA within next eight weeks. All expenses in this behalf shall be borne by YEA.

(c) The above direction is without prejudice to the rights under sub-lease deeds between the sub-lessees and JAL. Upon execution of lease-deed, YEA will stand substituted in place of JAL on same terms and conditions as contained in sub-lease deeds between JAL and sub-lessees.

(C) Financial Institutions:

(a) Sub-leases in favour of the financial institutions will stand protected in terms of the impugned order.

(b) YEA in order to give effect to its commitment that sub-leases would not get affected, would give option to the financial institutions to obtain lease on same terms and conditions, as between the financial institutions and YEA in their own

favour or in favour of their assignee, subject to its right of recovery of dues.

(c) The documentation work shall be completed within four weeks from the date, request is made in this behalf by the Financial Institutions for which the outer limit would be twelve weeks from the date of the passing of the instant order.

(d) YEA would be entitled to retain sum realized from JAL till the passing of the cancellation order on pro-rata basis.

(D) The following amounts shall, within six weeks, be returned by YEA to JAL by transferring the same to the account of RP appointed by NCLT: -

(i) Any amount deposited by JAL in pursuance of orders passed in the present litigation along with the prevailing interest (SBI PLR) from the date of deposit till the date of refund.

(ii) All other amounts received by YEA so far from JAL in furtherance of the allotment and lease whether prior to cancellation or thereafter in proportion of the area of land resumed. Thus, YEA shall be entitled to retain proportionate amount received for the area covered by sub-leases, which stand excluded from the purview of impugned order.

188. Subject to the above directions, the impugned cancellation order dated 12.02.2020 is upheld.

189. No order as to costs.

(2025) 3 ILRA 756

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 03.03.2025

BEFORE

THE HON'BLE SARAL SRIVASTAVA, J.

Writ C No. 7611 of 2019

**C/M of Sri Ramdeo Sanskrit
Mahavidyalaya & Anr. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents**

Counsel for the Petitioners:

Hritudhwaj Pratap Sahi, Ramesh Chandra Tiwari,
Vijay Kumar Singh (Sr. Adv.)

Counsel for the Respondents:

C.S.C., Pankaj Kumar, Raj Mani Vishwakarma

Civil Law - Societies Registration Act, 1860 - Sections 3(A)(4) & 15 - Constitution of India, 1950 - Article 226 - Meeting of Election by President - Validity of - Finding by Prescribed Authority that Manager of Society Ram Chandra Pandey of which Vijay Kumar Dubey was President had authority to call meeting for election, hence, it was as per Clause 9(6) of Bye-Laws of Society - All persons who participated in election are valid Members of Society - Quorum was complete for convening meeting for taking decision for holding election - Members of Society had given prior notice of 15 days before holding election, and 40 members out of 51 members had participated in election - Thus, election of respondent dated 05.03.2006 was legal and subsequent election of Committee of Management held in accordance with law. (Para 33 to 37)

Writ petition dismissed. (E-13)

List of Cases cited:

1. V.C. Charati Vs Hussein Nhanu Jamadar, 1998 (8) SC 120, (Para 9)

2. Mehendi Hasan & ors. Vs St. of U.P. & ors., 2007 (3) AWC 3066 (All)

(Delivered by Hon'ble Hon'ble Saral
Srivastava, J.)

1. Heard Sri G.K. Singh, learned Senior Counsel assisted by Sri Ramesh Chandra Tiwari, learned counsel for the

petitioner, and Sri R.K. Ojha, learned Senior Counsel assisted by Sri R.M. Vishwakarma, learned counsel for the respondents.

2. The petitioner through the present writ petition has assailed the order dated **08.02.2019** passed by the Prescribed Authority/ Sub Divisional Magistrate, Madhiyahu, District Jaunpur, whereby he has held that the election of the petitioner's Committee of Management of the Society, namely, Ramdeo Sanskrit Mahavidyalaya Bareri, District Jaunpur is valid.

3. It appears that there was a long-standing dispute between the parties, and several litigations have been contested by the parties. Lastly, the dispute between the parties crystallized into the order dated **25.02.2009** passed by the Assistant Registrar, Firms, Societies and Chits, Varanasi. There was one more order dated **26.11.2010** passed by the Registrar, Firms, Societies and Chits, U.P. Lucknow accepting the application for renewal of the Society based on documents submitted by Hari Nath Dubey.

4. The order dated **25.02.2009** passed by the Assistant Registrar, Firms, Societies and Chits, Varanasi to the extent it had accepted the claim of Ram Chandra Pandey as Manager of the Committee of Management of the Society and rejecting the claim of the petitioner while maintaining the renewal of certificate of the petitioner's Society was assailed in Civil Misc. **Writ Petition No.23641 of 2009** by Hari Nath Dubey describing himself as Manager of the Committee of Management, Ram Deo Sanskrit Mahavidyalaya, Bareri, District Jaunpur.

5. The **Civil Misc. Writ Petition No.72367 of 2010** was filed by one Ram Chandra Pandey for quashing the order dated **26.11.2010** passed by Registrar, Firms, Societies and Chits, U.P., Lucknow accepting the application for renewal of Society based on documents submitted by Hari Nath Dubey, who was petitioner in **Civil Misc. Writ Petition No.23641 of 2009**.

6. Both the writ petitions i.e., Civil Misc. Writ Petition Nos.23641 of 2009 & 72367 of 2010 were decided together by this Court by the judgement and order dated 03.05.2012 whereby this Court referred the matter to the Prescribed Authority to decide the dispute between the parties on the three issues framed by it in the judgement dated 03.05.2012. The three issues framed by the Court are reproduced below:-

“(i) Person or group of persons who convened the meeting, had the authority to convene the meeting and to hold the election;

(ii) Persons, who have participated in the election are the valid members in term of Section 15 of the Societies Registration Act and entitled to participate in the elections;

(iii) Elections, which have been held, has been strictly held under the provisions as contained in bye laws of the society, preferably within next six months and the order dated 26.11.2010 shall abide by the outcome of the order passed by Prescribed Authority and the list submitted under Sub-Section (4) of Section 3-A shall be amended/modified accordingly.”

7. The Court further directed that the order dated 26.11.2010 shall abide by the outcome of the order passed by the Prescribed Authority and the list submitted under sub-section (4) of Section 3 (A) of the Societies Registration Act shall be amended/modified accordingly.

8. It appears that earlier, there was a Society in the name of 'Sri Ramdeo Dubey Sanskrit Pathshala, Bareri, Jaunpur' registered in the year 1954 (hereinafter referred to as the 'Old Society'). One Ram Deo Dubey was the lifelong President of the Old Society. Raj Deo Dubey, Manager of the Old Society, died in the year 1980, and in his place, Surya Mani Dubey was elected as Manager and Badri Narayan Dubey was elected as President. Subsequently, the election of the Committee of Management of the Old Society was held on 25.12.1981.

9. It transpires that an application for renewal of the Old Society was filed in January 1982. The Assistant Registrar refused to renew the Society and asked Suryamani Dubey, Manager, who applied for renewal of the Society to get a New Society registered. Thereafter, a New Society was registered in the name of "Ramdeo Sanskrit Mahavidyalaya Bareri, Jaunpur" on 26.04.1982 (hereinafter referred to as the 'New Society'). Badri Narayan Dubey was shown to have been elected as President and Suryamani Dubey was shown to have been elected as Manager.

10. Thereafter, subsequent elections of the Committee of Management of the New Society took place. However, in the election of 1984, one Sabhapati Upadhyay submitted an objection and applied for renewal of Old Society, which

was allowed by the Assistant Registrar by order dated 13.08.1986.

11. The **Civil Misc. Writ Petition No.13289 of 1986** was filed by Suryamani Dubey challenging the order dated **13.08.1986** in which an interim order was granted by this Court on **25.03.1988**.

12. In the meantime, it transpires from the record that the Vice Chancellor of Sampurnanand Sanskrit University, Allahabad passed an order in favour of Sabhapati Upadhyay as Manager and Badri Narayan as President on 02.08.1990 which order came to be challenged by Suryamani Dubey by filing Civil Misc. Writ Petition No.20536 of 1990. The said writ petition was allowed by this Court vide order dated 12.12.1990 and the order of Vice-Chancellor dated 02.08.1990 was set aside by this Court. Thereafter, several litigations had taken place between the parties, details of which are not necessary in the facts of the present case, therefore, they are not being delineated as that would unnecessarily burden the judgement.

13. The Prescribed Authority in pursuance of the judgement of this Court dated 03.05.2012 decided the dispute by order dated 08.12.2019 which is impugned in the present writ petition.

14. This Court while remanding the matter to the Prescribed Authority by judgement dated **03.05.2012** framed three issues which have been extracted above.

15. On Issue No.1 "person or group of persons who convened the meeting had the authority to convene the meeting and to hold the election"; the Prescribed Authority considered Clause 9 (6) of the Bye-Laws of the Society, which

provides that the President shall hold the Office for life long, and he has authority to appoint or nominate President who shall continue as President of the New Society life long. Clause 9 (6) of the Bye-Laws further provided that in case, the President does not appoint or nominate anybody as President during his lifetime, the eldest son or the son who stands in the seniority would become the President of the Society.

16. By interpreting the said Clause 9 (6) of the Bye-Laws of the Society, the Prescribed Authority returned a finding that Vijay Kumar Dubey who was the son of Late Badri Narayan Dubey, the erstwhile President of the New Society, became the President of the Society after the death of his father. Hence, the meeting called by the Manager of the Society of which Vijay Kumar Dubey was the President was as per the Bye-Laws of the Society. Consequently, it held that the meeting called by Ram Chandra Pandey, of which Vijay Kumar Dubey was the President, was the authorized person to call the meeting for holding the election on **05.03.2006**. It further held that since under the Bye-Laws of the Society, it is only the eldest son of the President of the Society who could be the President of the New Society, therefore, the meeting called by him was as per law.

17. He further recorded a finding with regard to the petitioner that in the list submitted by Suryamani Dubey, Hari Nath Dubey was not shown as a Member of the Society. He further held that after the death of Suryamani Dubey, petitioner no.2, had submitted papers on the basis of incomplete evidence. He further held that the register submitted by Suryamani Dubey, who was the alleged Manager of the Society, did not reveal the name of Hari Nath Dubey, therefore, the election which was submitted

by the petitioner had been submitted only by changing the name of the Society and no election was conducted.

18. On Issue No.2 framed by this Court "persons who have participated in the election are valid Members in terms of Section 15 of the Societies Registration Act and entitled to participate in the election"; it held that the meeting has been convened by proper person and no dispute has been raised in respect to the Members. Accordingly, he held that all the Members who participated in the election were valid Members of the Society.

19. On Issue No.3 "Elections which have been held, has been strictly held under the provisions as contained in the Bye-Laws of the Society"; the Prescribed Authority returned a finding that the election has been held in accordance with the Bye-Laws of the Society as the quorum of the meeting was complete and due intimation about the election was given to the Members of the Society 15 days before the date of election, and 40 members out of 51 Members had participated in the election. Accordingly, it rejected the claim of the petitioner and declared the election dated **05.03.2006** of the respondents valid.

20. Challenging the aforesaid order, the learned Senior Counsel for the petitioner has contended that the Prescribed Authority has committed manifest illegality and has acted illegally in not deciding the issues framed by this Court in the judgement dated **03.05.2012** in the correct perspective. He further submits that the Prescribed Authority while deciding the dispute had travelled beyond the reference as the dispute has been referred to only concerning the election of 2006, whereas he has returned a finding on the subsequent

election which power he did not have, therefore, the order passed by the Prescribed Authority is in the teeth of law laid down by this Court in a judgement reported in **2007 (3) AWC 3066 (All) Mehandi Hasan and Ors. Vs. State of U.P. and Ors.**

21. Per contra, learned counsel for the respondent would contend that the finding returned by the Prescribed Authority is a finding of fact based on proper appreciation of law and evidence on record, therefore, this Court may refrain from interfering with the order passed by the Prescribed Authority. He submits that since Clause 9 (6) of the Bye-Laws of the New Society provides that the President shall continue to hold the office of President till life long, and he has the authority to appoint or nominate the President during his lifetime, and in case, he does not appoint/nominate the President during his lifetime, his eldest son or senior most son would be the President of the Society, in such view of the fact the finding returned by the Prescribed Authority on the Issue No.1 is correct and based upon proper appreciation of facts and evidence on record.

22. He further submits that a specific finding has been recorded on Issue No.2 that there is no dispute regarding the validity of the member, and in such view of the fact, the finding on Issue No.2 is not liable to interfered with by this Court.

23. Lastly, he contends that the finding returned by the Prescribed Authority that the election of the respondent's Committee of Management dated **05.03.2006** was held as per the Bye-Laws of the Society is based upon proper appreciation of evidence on record and

being a finding of fact does not call for any interference by this Court.

24. I have considered the rival submissions advanced by the learned counsel for the parties and perused the record.

25. Necessary facts have already been delineated above, therefore, they are not being reiterated.

26. At this stage, it would be apt to reproduce Clause 9 (6) of the Bye-Laws of the Society as under:-

“ 9 (6)-अध्यक्ष आजीवन अपना अधिकार ग्रहण करेगा परन्तु स्वेच्छा से अपने उत्तराधिकारी की नियुक्ति कर सकता है। तथा उसके द्वारा मनोनीत उत्तराधिकारी को अध्यक्ष का पूरा अधिकार प्राप्त होगा। यदि अपने जीवन काल में किसी की नियुक्ति नहीं करता है तो यह क्रम वंश परम्परा के ज्येष्ठता क्रम अथवा वरिष्ठता क्रम में अनुसार माना जायेगा।”

27. Perusal of the aforesaid Clause indicates that it provides that the President of the Society shall continue to hold the office of President during his lifetime. The said Clause also confers the power upon the President to appoint or nominate any person as President who shall become the President of the Society and shall have all the powers of President, and in case, he does not appoint any President during his lifetime, his eldest son or senior most son would be the President of the Society.

28. It transpires from the record that earlier a dispute between the parties arose, and an order dated **02.08.1990** was passed by the Vice Chancellor in favour of one Sabhapati Upadhyay and Badri Narayan, which order came to be challenged by the petitioner by filing a **Civil Misc. Writ Petition No.20536 of**

1990, which was allowed by this Court by order dated 12.12.1990 and the order dated 02.08.1990 was set aside. While allowing this writ petition, this Court observed as follows:-

“Two persons cannot constitute a committee of management of the general body. It is also not justified to make life long president and management of the institution. The terms and conditions of compromise, which have been made part of impugned order, being illegal and inconsistent with the Act, Statute and the bye-laws of the society, cannot be sustained. It appears that the Vice-Chancellor has passed the impugned order mechanical on the basis of the compromise without ascertaining the legality of the terms and conditions of the compromise. The order of the Vice-Chancellor is, as such liable to be set aside.”

29. Much emphasis has been laid by the learned counsel for the petitioner on the aforesaid observation in the judgement of this Court in **Civil Misc. Writ Petition No.20536 of 1990** to contend that once this Court has held that it is not justified to make life long President of Management/Institution and the terms and conditions of the compromise which have been made part of the impugned order was held illegal and inconsistent with the Act, Statute and Bye-Laws of the Society, therefore, the judgement of this Court passed in **Civil Misc. Writ Petition No.20536 of 1990** is binding upon the parties, and the parties cannot resile from the judgement. In such view of the fact, the finding returned by the Prescribed

Authority that **Vijay Kumar Dubey** became the President after the death of his father Badri Narayan is illegal. He submits that the observation made by this Court in the judgement dated 12.12.1990 in **Civil Misc. Writ Petition No.20536 of 1990** has virtually invalidated Clause 9 (6) of the Bye-Laws of the Society. In this respect, he has placed reliance upon the judgement of the Apex Court reported in **1998 (8) SC 120 V.C. Charati Vs. Hussein Nhanu Jamadar. Paragraph 9 of the judgement is reproduced herein-below:-**

*“It is submitted by the respondent that the Agricultural Lands Tribunal was not right in dropping proceedings under Section 32-G. Its order of 31.5.1961 is bad in law. He relied upon a decision of the Bombay High Court in the case of **Nago Dattu Mahajan Vs. Smt. Yeshodabai Huna Mahajan** reported in (1976) 78 BLR 427 where this Court has held that under Section 31, the landlords have a choice to avail of one of the two provisions of resumption, namely, either Section 31(1) or Section 31(3). No landlord can avail of both the provisions. Learned counsel for the respondent, therefore, contends that in the present case, the appellant having exercised his choice under Section 31(1), could not have urged in the proceedings under Section 32G his disability as a minor under Section 31(3). The order of 31.5.1961 of the Agricultural Lands Tribunal, however, was not challenged by the respondent. The order of 31.5.1961 has become final and the decision rendered by*

the Agricultural Lands Tribunal as between the appellant and the respondent is binding on both the parties. A decision simply because it may be wrong, would not thereupon become a nullity. It would continue to bind the parties unless set aside. The effect of the decision of 31.5.1961 on the parties therefore, cannot be ignored. In the present case, since the tenant could not complete his purchase by reason of the proceedings under Section 32G being dropped, he cannot now contend that the decision has no legal effect or that the proceedings under Section 32G ought to have been completed and, therefore, he should be looked upon as a purchaser."

30. In the opinion of the Court, the aforesaid argument of learned counsel for the petitioner does not stand to merit since Clause 9 (6) of the Bye-Laws is specific and unambiguously provides that the President of the Society shall continue to hold the Office during his lifetime, and he shall appoint or nominate someone as President who is authorized to discharge all the powers of the President of the Society, and in case, no nomination/appointment has been made by the President during his lifetime, his eldest son or senior most son would become the President of the Society.

31. Clause 9 (6) of the Bye-Laws which is the edifice of the claim of the respondent was not placed before the Court in **Civil Misc. Writ Petition No.20536 of 1990**. There was no issue before the Court as to whether Clause 9 (6) of the Bye-Laws of the Society was against the Act/Statute of the University, and therefore, the same is liable to be struck down or declared invalid.

32. In **Civil Misc. Writ Petition No.20536 of 1990**, the dispute revolved around only in respect to the validity of the order dated 02.08.1990 passed by the Vice Chancellor which was passed on the basis of the compromise entered into between the parties and the Vice Chancellor after noting the compromise between the parties passed the order, this Court did not record any finding as to whether Clause 9 (6) of the Bye-Laws of the Society is against any Statute or any provision of law.

33. Since the aforesaid dispute was not before the Court in **Civil Misc. Writ Petition No.20536 of 1990**, therefore, the finding returned by this Court in the judgement passed in **Civil Misc. Writ Petition No.20536 of 1990** will not be binding upon the parties more so when Clause 9 (6) of the Bye-Laws specifically provides that the President of the Society shall be the President of the Society life long and validity of such Clause has not been assailed by the petitioner in the writ petition. In such view of the fact, the finding returned by the Prescribed Authority on Issue No.1 that the Manager of the Society Ram Chandra Pandey of which Vijay Kumar Dubey was the President had the authority to call the meeting for the election to be held on **05.03.2006** does not warrant any interference by this Court.

34. So far as the finding about the claim of the petitioner returned by the Prescribed Authority on Issue No.1 that the petitioner by changing the name of the Society has submitted the election and his name does not find place in the record submitted by Suryamani Dubey is a finding of fact, which cannot be interfered by this Court unless it is demonstrated that the same is perverse or against the record. In

such view of the fact, this Court does not find any error committed by the Prescribed Authority in deciding Issue No.1.

35. So far as Issue No.2 is concerned, the Prescribed Authority has recorded a categorical finding that no dispute had been raised about the Members of the Society, accordingly, it returned a finding that all the persons who participated in the election are the valid Members of Society. The finding on Issue No.2 is also a finding of fact and does not call for any interference by this Court under Article 226 of the Constitution of India.

36. So far as Issue No.3 is concerned, the Prescribed Authority has recorded a categorical finding that the record reveals that the quorum was complete for convening the meeting for taking a decision for holding the election. It further held that all the Members of the Society had been given prior notice of 15 days before holding the election, and 40 members out of 51 members had participated in the election. The finding returned by the Prescribed Authority on Issue No.3 is based upon proper appreciation of evidence and material on record.

37. Now, so far as the contention of the learned counsel for the petitioner that the Prescribed Authority has erred in law in entering the dispute with respect to subsequent election as he was referred the dispute of the election of 2006 is concerned, this Court does not find any substance in the said argument inasmuch as the Prescribed Authority after recording a categorical finding that the election of the respondent dated **05.03.2006** is legal and in accordance with law has held that the

subsequent election of the Committee of Management has also been held in accordance with law. Therefore, this Court finds that the Prescribed Authority has not travelled beyond the reference inasmuch he has categorically recorded a finding about the election of 2006, and in such view of the fact, the judgment of this Court relied upon by the learned counsel for the petitioner of this Court in **2007 (3) AWC 3066 (All) Mehendi Hasan and Ors. Vs. State of U.P. and Ors.** is not applicable in the facts of the present case.

38. Since this Court has held above that the Prescribed Authority has not committed any illegality in recording the finding on the issues framed by this Court in the judgement dated **03.05.2012**, therefore, this Court is of the view that the writ petition lacks merit and deserves to be dismissed.

39. Consequently, the writ petition is *dismissed* with no order as to costs.

(2025) 3 ILRA 763
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.03.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE VIPIN CHANDRA DIXIT, J.

Writ C No. 8253 of 2022

M/S Manoj Petroleum & Anr. ...Petitioners
Versus
Union of India & Ors. ...Respondents

Counsel for the Petitioners:

Sri Manish Gupta, Sri Punit Kumar Upadhyay, Sri Arun Kumar Gupta (Sr. Adv.)

Counsel for the Respondents:

Sri Arvind Kumar Goswami, Sri Anand Tiwari, Sri Yash Padia

A. Civil Law - Constitution of India, 1950 - Article 12 - State - To determine whether an authority/body would fall under 'State' within the meaning of Article 12 would have to be determined on the cumulative facts of financial, functional, and administrative dominance and/or control of the Government upon such a body. If such control is factually found, then the body would be treated as 'State' within Article 12. (Para 17)

B. Civil Law - Constitution of India, 1950 - Article, 226 - writ of mandamus - Public duty - Scope of issue of a writ of mandamus is basically limited to an enforcement of the public duty. It is the duty of the court to ascertain whether the nature of the duty comes within the peripheral of public duty. The body/authority must be shown to owe that duty or obligation to the public which involves the public law element. A right which purely originates from a private law cannot be enforced taking aid of the writ jurisdiction, irrespective of the fact that such institution is discharging the public duties and/or public functions. Individual wrongs or breach of mutual contracts, without having any public law element as its integral part, cannot be rectified through a writ petition under Article 226. (Para 12)

C. Civil Law - Constitution of India, 1950 - Article 226 - Maintainability of Writ Petition - Private Contractual Dispute - Franchise Agreement - A writ petition under Article 226 was filed by a partnership firm (Petitioner No. 1) engaged in the business of selling petroleum products, challenging the termination of a franchise agreement by Nayara Energy Limited (Respondent No. 3), a private company registered under the Companies Act, 1956. The franchise agreement had been executed solely for commercial purposes involving sale of petroleum

and diesel products. Upon inspection, samples collected from the petitioner's retail outlet failed to conform to required specifications, leading to termination of the agreement. Held: Dispute pertains purely to contractual obligations between two private parties. Relationship between the petitioners and Respondent No. 3 is governed by private law and not public law. Although petroleum products are regulated commodities, the respondent company is not a State or public authority within the meaning of Article 12 of the Constitution, as it is not created by statute nor subject to pervasive financial or administrative control of the Government. Unlike public sector oil companies the respondent company is an independent private entity. Termination of the franchise agreement due to breach of contract terms does not involve any element of public duty. Accordingly, no writ would lie against Respondent No. 3, and the writ petition was held to be not maintainable. (Paras 20–23)

Dismissed. (E-5)

(Delivered by Hon'ble Shekhar B. Saraf, J.)

1. This is a writ petition under Article 226 of the Constitution of India wherein the petitioners have prayed for a writ of certiorari quashing the termination order dated December 28, 2021 passed by Nayara Energy Limited (hereinafter referred to as 'respondent no.3') based on the Lab Testing Report dated August 21, 2021. Petitioners have further prayed for a writ of mandamus commanding the respondents no.1 and 2 to make enquiry on the complaint of the petitioners dated January 31, 2022 and reminder dated March 4, 2022.

FACTS

2. Factual matrix giving rise to the instant writ petition is delineated below:

a. Petitioner no.1 is a partnership firm, registered via partnership deed dated October 2, 2018 between Smt. Sangeeta Pathak (one of the partners of the partnership firm) and Smt. Sonam Singhal (hereinafter referred to as 'petitioner no.2'), created for the purpose of carrying on business of sale of petroleum products (oil), grease, distilled water among other products.

b. Nayara Energy Limited, a company registered under the Companies Act, 1956, originally known as Essar Oil Limited, has acquired authorization from Ministry of Petroleum and Natural Gas, Government of India (hereinafter referred to as 'respondent no.1') to distribute franchise for sale and purchase of essential commodities like petroleum and diesel products to private individuals/firms such as the petitioner no.1.

c. Petitioner no.1 made an application for retail outlets of petroleum and diesel products and consequently respondent no.3 issued letter of appointment dated November 5, 2019 to the petitioner no.1 for sale of Motor Speed Petrol and High Speed Diesel lubes at a retail outlet.

d. In pursuance of aforesaid letter of appointment, a franchise agreement dated January 6, 2020 was executed between petitioner no.1 and respondent no.3 for the supply of Petrol and High-Speed Diesel lubes to the retail outlet of

petitioner no.1, situated at Khasra No.232 Village Narsaina, Tehsil Sayana, District Bulandshahar, Uttar Pradesh.

e. On August 18, 2021, officials of respondent no.3 made a visit to the said retail outlet of petitioner no.1 for conducting inspection and collection of samples of products from the retail outlet. The samples of such products were sent to Bharat Petroleum Corporation Limited (hereinafter referred to as 'BPCL'), Quality Assurance Laboratory, Bijwasan, New Delhi for further examination on August 18, 2021. Out of the drawn samples, BPCL prepared a report dated August 21, 2021 wherein several anomalies were pointed out in the same and it was communicated to respondent no.3 that the sent samples has failed to meet the required specifications.

f. On the basis of the aforesaid test report, the respondent no.3 issued a show cause notice dated August 26, 2021 to the petitioner no.1 directing it to explain the same within fifteen days of the receipt of the notice as to why the franchise agreement dated January 6, 2020 should not be terminated on account of various abnormalities found in the aforesaid report that tantamounted to violation of the terms and conditions of the franchise agreement dated January 6, 2020.

g. The petitioner no.1 replied in detail to the aforesaid show cause notice on September 9, 2021 wherein it has been stated that in the sample of products drawn

from the outlet amongst which there were two major anomalies (a) discrepancy in delivery of petrol as well as diesel by nozzle regarding which a complaint was made to the visiting officer of the respondent company on August 6, 2021 which was never redressed by the respondent company and (b) the collected samples were unendorsed with seal numbers hence it created a doubt on the veracity of the test report as the test report may not have been prepared for the samples drawn from the petitioners' outlet. However, the respondent no.3 found the answers to be unsatisfactory and accordingly terminated the aforesaid franchise agreement, vide order dated December 28, 2021.

h. Aggrieved by the termination, the petitioner no.1 had approached the Central Vigilance Commission (hereinafter referred to as the 'CVC') on January 31, 2022 making a complaint against respondent no.3 for misusing its powers and illegally and arbitrarily terminating the franchise agreement dated January 6, 2020 executed between the petitioner no.1 and respondent no.3.

i. Since no response was received from the CVC, the petitioner no.1 sent a reminder dated March 4, 2022 to the respondent no.1 for redressal of their grievances placed before the CVC.

j. On account of inaction from the side of the aforesaid authorities, the petitioner no.1 has approached this court seeking the

aforementioned reliefs as prayed in this petition.

ISSUE

3. At the very outset, a preliminary objection has been raised by the learned counsel appearing on behalf of the respondent no.3 with regard to maintainability of the present writ petition. He contends that the main dispute in the present writ petition is between the petitioner no.1 and respondent no.3 and the same should not be adjudicated by this Court in its extraordinary writ jurisdiction on the ground that the respondent no.3 is not 'State' as per Article 12 of the Constitution of India. In light of the preliminary objection raised, we are of the view that the same should be dealt by us at the first instance before addressing the matter on merits.

CONTENTIONS OF THE PETITIONERS

4. Sri Arun Kumar Gupta, Senior Advocate, appearing on behalf of the petitioners has made the following submissions with regard to maintainability of the writ petition:

A. Ministry of Petroleum and Natural Gas, Government of India, appoints agents like Hindustan Petroleum Corporation Limited (hereinafter referred to as the 'HPCL'), Indian Oil Corporation Limited (hereinafter referred to as the 'IOCL') which includes other agencies such as respondent no.3 by giving them authority for the sale of essential commodities, such as, petroleum products as the same is prohibited

to be sold in the open market. Therefore, respondent no.3 being the '**extended hand**' of the respondent no.1 comes under the aegis of Central Government and is ultimately discharging functions in public interest on behalf of respondent no.1. Hence, respondent no.3 comes within the meaning of 'State' under Article 12 of the Constitution of India.

B. Respondent no. 3 is an 'instrumentality of the State'. The word 'instrumentality' has been defined in Black's Law dictionary (7th Edition) as, "*a means or agency through which a function of another entity is accomplished, such as a branch of governing body*" and 'agency' means, "*a fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions*". Respondent no.3, as an authorized agent distributes franchise of retail outlets for the sale of petroleum products to private individuals/company on behalf of respondent no.1 through which the functions of the State is accomplished, and therefore, it is an instrumentality and agency of the 'State'.

C. Under entries 52 and 53 in List 1 of the seventh schedule to the Constitution of India, the authority to control the Industries has been vested in the Central Government. Therefore, the Parliament has enacted the Petroleum Act, 1934 to regulate the Petroleum Industry in the country.

From a conjoint reading of both the entries 52 and 53, it is established that Constitution has chosen Central Government, not only to regulate but also take over the control of the Petroleum Industry. Petroleum Products are classified as essential commodities and are dangerously inflammable, and accordingly no private individuals/company can sell or store or transport the petroleum products except as permitted by license issued under the Petroleum Act, 1934. It is also submitted that power of search of the premises of corporations like the petitioner no.1 is made by the officers appointed by the Central Government as per Section 26 of the Petroleum Act, 1934 and power of inspection/sampling are carried on as per Section 14 of the same legislation. Therefore, respondent no.3 is functioning under the control of the Central Government, making it amenable to the writ jurisdiction under Article 226 of the Constitution of India.

D. Nature of work of respondent no.3 is at parity with that of other oil companies like HPCL, BPCL and IOCL working on behalf of respondent no.1 to distribute franchise of retail outlets for the sale of petroleum and allied products and the other oil companies fall under the definition of 'State' under Article 12 of the Constitution of India. Therefore, respondent no.3 is also a 'State' as per Article 12 of the Constitution of India, making it amenable to writ jurisdiction.

E. To buttress the arguments, reliance has placed upon the judgment of the Apex Court in **Ajay Hasia v. Khalid Mujib Sehravardi reported in (1981) 1 SCC 722** wherein six key tests were formulated to determine whether a corporation may be said to be an instrumentality or agency of the Government. It is submitted that the tests are not a rigid set of principles such that if a body falls within any of them, it must ex-hypothesi be considered to be 'State', within the meaning of Article 12 of the Constitution of India. The fifth test as emphasised from the aforementioned judgment is as follows:

“5. If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.”

The respondent no.3, by the of sale of petroleum and allied products, was executing functions of public importance, as only the Central Government has the power to deal with the Petroleum Industry. Falling under one of the tests as laid down in **Ajay Hasia (supra)**, patently makes the respondent no.3 an instrumentality or agency of the Government.

F. To substantiate the arguments, further reliance has been placed on **Pradeep Kumar**

Vishwas v. Indian Institute of Chemical Biology and others reported in **(2002) 5 SCC 111** wherein initially the definition of 'State' was treated as exhaustive and confined to the authorities or thus which could be read as 'Ejusdem Generis' with the authorities mentioned in the definition of Article 12 of the Constitution of India. At a later stage, definition of 'State' came to be established with reference to remedies available against it. Thus, a statutory corporation with regulation framed by such corporation pursuant to statutory powers was considered as 'State' for the reason that the public duty was limited to those which were created by the statute.

G. Another aspect of the matter is that alternative remedy is not an absolute bar to invoke writ jurisdiction, hence writ in the present facts of the case is maintainable. For this, reliance has been placed upon a judgment of the Apex Court in **Ram and Shyam Company v. State of Haryana** reported in **(1985) 3 SCC 267**.

CONTENTIONS OF THE RESPONDENTS

5. Learned counsel appearing on behalf of respondents, challenging the maintainability of the writ petition has made the following submissions:

A. It is admitted by the petitioner that the respondent no.3 is an authorized agent of the respondent no.1, for retail sale of petroleum products. Unlike the

other petroleum corporations like IOCL, BPCL and HPCL, that are, operating in the same domain, the administrative and financial control of the respondent no.3 is completely independent and Central Government has no control over the management or finances of the respondent no. 3. Hence, the respondent no.3 does not come within the ambit of the definition of 'State' as per Article 12 of the Constitution of India.

B. Respondent no.3, a company incorporated under the Companies Act, 1956 is a privately owned and controlled entity, authorized to distribute franchise of retail sale of petroleum products by Ministry of Petroleum and Natural Gas. Consequently, a franchise agreement dated January 6, 2020 was executed between petitioner no.1 and respondent no.3 for the said purpose. The franchise agreement is clearly and essentially a private contract executed by and between private parties untrammelled by Government control.

C. As respondent no.3 is a profit making organization and the said business of sale of petroleum products is not undertaken with the objective of any public welfare but is solely undertaken for the purpose of profit and development of the respondent no.3 itself, hence it is only discharging duties and following directions from the respondent no.1, in pursuance of agreement executed between them. The same can never be treated as discharging functions in public interest.

D. Being a private limited company, there is no element of public law involved in the contractual relationship between petitioner no.1 and respondent no.3.

E. Petitioners have an alternative and efficacious remedy, and without availing the said remedy have approached this Court under writ jurisdiction which is a travesty of law. Clause 20 of the Franchise Agreement provides for grievance redressal establishment and Clause 21 of the same contains an arbitration clause that is integral to the agreement between the parties.

ANALYSIS

6. The limited question for determination before this court is whether the respondents no.3, that is, Nayara Energy Limited falls within the definition of 'State' as enunciated and explicated by the Hon'ble Supreme Court within the ambit of Article 12 of the Constitution of India.

7. Article 12 of the Constitution of India defines the term 'State' for the purpose of enforcing fundamental rights. Fundamental rights are primarily enforceable against the 'State' and its instrumentalities rather than private individuals or bodies. Writ petitions under Article 226 are only maintainable against bodies/persons covered within the terminology of Article 12 of the Constitution of India.

8. The said definition for the term 'State' is provided under Article 12 of the Constitution of India, which is quoted below:

“In this part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”

9. Upon perusal of the above definition, it is clear that term ‘State’ includes:

- (i) The Government and Parliament of India,
- (ii) The Government and Legislature of each State,
- (iii) All local authorities,
- (iv) Other authorities within the territory of India or under the control of the Government of India.

10. The expression local authorities is defined in Section 3(31) of the General Clauses Act, 1897:- ‘*“local authority” shall mean a municipal committee, district board, body of port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.*’ However the term ‘other authorities’ has not been defined in any legislation and therefore the interpretation of the above term has caused a good deal of difficulty, and judicial opinion on its definition has undergone several changes over the years.

11. While considering this question, it is necessary to bear in mind that an authority falling within the expression ‘other authorities’ by reason of its inclusion

within the definition of ‘State’ under Article 12 would be amenable to writ jurisdiction.

12. In the celebrated case of **Ajay Hasia (supra)**, the five-judge Constitutional Bench of the Supreme Court headed by Justice Y.V. Chandrachud, C.J. considered **R.D. Shetty v. International Airport Authority of India** reported in (1979) 3 SCC 489 and laid down the six factors test to determine whether an entity is an instrumentality or agency of the Government. The tests are as follows:

- (i) If the entire share capital of the body is held by the Government;
 - (ii) If the financial assistance given by the government is so significant that it meets almost the entire expenditure of the body;
 - (iii) If the body enjoys a monopoly status conferred or protected by the State;
 - (iv) If there is deep and pervasive State control;
 - (v) **If the functions of the body are of public importance and closely related to governmental functions;**
 - (vi) Transfer of a Government department to the corporation.
- (Emphasis supplied)

13. The relevant paragraphs of judgment in **Ajay Hasia (supra)** have been delineated below for a better understanding:

“9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out

from the judgment in the *International Airport Authority case* [(1979) 3 SCC 489]. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression “other authorities”, it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the *International Airport Authority case* as follows:

“(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character. (SCC p. 508, para 15)

(3) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation

is a State agency or instrumentality. (SCC p. 508, para 15)

(5) If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

(6) ‘Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference’ of the corporation being an instrumentality or agency of Government.” (SCC p. 510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the *International Airport Authority case*, be an “authority” and, therefore, ‘State’ within the meaning of the expression in Article 12.”

“11. We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a government Company or a Company formed under the *Companies Act, 1956* or it may be a

society registered under the Societies. Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an “authority” within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a Company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the Company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression “authority” in Article 12.”

14. In **Pradeep Kumar Biswas (supra)**, the Hon'ble Supreme Court further crystallized the test wherein it has been held that to constitute a body as ‘State’, Government must have a pervasive control over the particular body as has been earlier formulated in **R.D. Shetty (supra)** and **Ajay Hasia (supra)**. The relevant paragraph of the judgment is provided below:

“40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a

State within the meaning of Article 12. The question in each case would be — whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.”

15. Subsequently, the Hon'ble Supreme Court in **Federal Bank Ltd. v. Sagar Thomas** reported in **(2003) 10 SCC 733** has further elaborated on the issue of maintainability of a writ petition against private companies registered under the Companies Act, 1956 carrying on any trade and business to earn livelihood and to make profit out of such activity and stated that they are not discharging public duties. The relevant paragraph of the judgement is delineated below:

“27. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment,

say the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance with those provisions. For instance, if a private employer dispenses with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and has issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to.”

16. In **St. Mary's Education Society v. Rajendra Prasad Bhargava**, reported in **(2023) 4 SCC 498**, the Supreme Court has held that though the Educational Society is affiliated to Central Board of Secondary Education, that would not bring it within the purview of ‘State’. The relevant paragraphs of the above judgement are quoted herein below:

“66. Merely because a writ petition can be maintained against the private individuals discharging the public duties and/or public functions, the same should not be entertained if the enforcement is

sought to be secured under the realm of a private law. It would not be safe to say that the moment the private institution is amenable to writ jurisdiction then every dispute concerning the said private institution is amenable to writ jurisdiction. It largely depends upon the nature of the dispute and the enforcement of the right by an individual against such institution. The right which purely originates from a private law cannot be enforced taking aid of the writ jurisdiction irrespective of the fact that such institution is discharging the public duties and/or public functions. The scope of the mandamus is basically limited to an enforcement of the public duty and, therefore, it is an ardent duty of the court to find out whether the nature of the duty comes within the peripheral of the public duty. There must be a public law element in any action.”

“75.1. An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of

it and the authority to do so must be accepted by the public.

75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has public law element.

75.3. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a constitutional court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within

the domain of a "public function" or "public duty" be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

75.4. Even if it be perceived that imparting education by private unaided school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether "A" or "B" is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered with by the Court. But such interference will be

on the ground of breach of law and not on the basis of interference in discharge of public duty.

75.5. From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character.”

CONCLUSION

17. Upon a perusal of the umpteen judgements cited by both the parties and sifting through the ratios laid down by the Supreme Court in the various judgements, one may extract the principles that would apply to make a company amenable to writ jurisdiction. The said principles are summarised below:

A. To determine whether an authority/body would fall under ‘State’ within the meaning of Article 12 would have to be determined on the cumulative facts of financial, functional and administrative dominance and/or control of the Government upon such a body. If such control is factually found, then the body would be treated as ‘State’ within Article 12.

B. *Simpliciter* because a private institution is carrying out a public duty or function and may come within the definition of ‘State’ under Article 12 of the Constitution of India making it amenable to writ jurisdiction would not by itself make every dispute concerning the said institution

amenable to writ jurisdiction. The same would largely depend upon the nature of the dispute and the enforcement of the right by an individual against such an institution. A right which purely originates from a private law cannot be enforced taking aid of the writ jurisdiction irrespective of the fact that such institution is discharging the public duties and/or public functions.

C. The scope of issue of a writ of mandamus is basically limited to an enforcement of the public duty and therefore it is the ardent duty of the court to ascertain whether the nature of the duty comes within the peripheral of public duty. The public duty cast may be either statutory or otherwise and where it is otherwise, the body/authority must be shown to owe that the duty or obligation to the public involves the public law element.

D. It has to be kept in mind that individual wrongs or breach of mutual contracts without having any public law element as its integral part cannot be rectified through a writ petition under Article 226.

18. The primary contention raised by the learned Senior Advocate appearing for the petitioners is that the present writ petition is maintainable as the respondent no.3 being the extended hand of respondent no.1, is involved in the sale of petroleum products which is an essential commodity and only the Parliament has an absolute right to deal with such commodities and no private individual/company as per entries 52 and 53 in List 1 of the seventh schedule

to the Constitution of India has the power to deal with the same. Therefore, respondent no.3 is an instrumentality or agency of the state. The entries 52 and 53 in List 1 of seventh schedule to the Constitution of India are quoted below:

“52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.”

“53. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.”

19. A bird's eye view of the present writ petition simplifies the issue at hand. The present dispute arises out of the termination of the franchise agreement that had been entered between the parties. Before carrying out the said termination, the respondent no.3 had issued a show cause notice to the petitioner on August 26, 2021 and the same was replied to by the petitioner no.1 on September 9, 2021. After considering the said reply the respondent no.3 terminated the franchise agreement as per the provisions in the said franchise agreement. The reasons for cancellation of the said franchise agreement have been provided in Clauses 4 and 5 of the termination letter dated December 28, 2021. The said paragraphs of the termination order are delineated below:

“4. Under the Franchise Agreement you are obliged to carry out the business as per the terms and conditions contained therein and in compliance of the applicable laws and policies including

Marketing procedure discipline code. The state of affairs at the RO at the time of inspection and failure of samples establishes that you have procured product from sources other than the Company. It also proves that you were operating the RO in violation of applicable provisions in this regards.

5. The aforesaid acts and omissions are flagrant violation of the Franchise Agreement and applicable legal provisions. The same cannot be condoned as requested by you and attracts termination of the Franchise Agreement.”

20. Having heard the learned Senior Advocate appearing on behalf of the petitioner as well as counsel appearing on behalf the respondents, it is clearly established that the relation between the petitioner no.1 and the respondent no.3, both being private entities, is contractual in nature, created via a franchise agreement solely for the purpose of sale of petroleum and diesel products for commercial purpose. Although the sale of petroleum products is governed by guidelines and regulation issued by the Ministry of Petroleum and Natural Gas, a department of the Government of India, the respondent no.3 has been appointed as an agent to distribute franchise to private firms, one of those being the petitioner no.1. The respondent company is purely a private company as it is neither created under a statute nor is it financially or administratively controlled by the Government.

21. Though the respondent no.3 is partly operating in the same domain (distribution and sale of petroleum

products) as Government oil companies such as IOCL, BPCL and HPCL but is distinguishable from the Government companies for the reason that these Government companies are functionally, financially and administratively under the pervasive and deep control of the Government of India while the respondent no.3 is an independent organization wherein the Government does not have any such control.

22. The argument of the petitioner that since sale of petroleum products being an inflammable product is strictly governed by entries 52 and 53 in List 1 of the seventh schedule to the Constitution of India, is an argument in sophistry and does not help the petitioners. It may be noted that entry 45 in List 1 of the seventh schedule to the Constitution of India contains 'Banking'. If the logic of the petitioner were to hold good then all banks public (such as State Bank of India, Punjab National Bank, Bank of Baroda, Canara Bank, Union Bank of India, Indian Bank) or the private (such as HDFC, ICICI, AXIS, IndusInd, Federal Bank, Kotak Mahindra) would fall within the definition of 'State' under Article 12 of the Constitution of India. Similarly, if one were to look into the telecom industry, it is only the government controlled company like BSNL that are treated as 'State' while private companies such as Vodafone, Airtel and Jio do not fall within the meaning of 'State' and are not amenable to writ jurisdiction. The fact that private companies such as Vodafone, Airtel, Jio, HDFC Bank, ICICI Bank, Axis Bank, IndusInd Bank, Federal Bank, Kotak Mahindra Bank amongst others comply with the rules and regulations established by the various Ministries and public regulators such as the Reserve Bank of India (RBI) and Telecom Regulatory

Authority of India (TRAI) do not by itself bring them within the meaning of 'State' under Article 12 as none of these companies are under the pervasive control (functionally, financially and/or administratively) of the Government of India.

23. Upon a perusal of the reasons for termination of the franchise agreement by the respondent no.3 it is crystal clear that the same were as a result of non-compliance and flagrant violation of the franchise agreement. Such being the case, no element of public duty comes into play in the present factual matrix and the arguments raised by the petitioners that the actions of the respondent no.3 in termination of the agreement would be subject to the writ jurisdiction is superfluous and fallacious. Ergo, we are of the view that the petitioner is barking up the wrong tree by pursuing the writ jurisdiction. One may also note that remedial measures have been specifically provided in the franchise agreement itself in relation to a grievance redressal establishment and/or arbitration.

24. In light of the same, this Court is of the view that the objection raised by the respondent no.3 with regard to the maintainability of the writ petition is justified, and accordingly, the writ petition is dismissed as not maintainable. Parties shall be at liberty to approach the alternative mechanisms available to them in accordance with law.

25. This Court would like to acknowledge counsel appearing on behalf of all the parties for the dexterity and equanimity shown during arguments and the extensive and comprehensive research

26. As a legal point was involved in the present writ petition, there shall be no order as to costs.

**B. Poisons Act, 1919, Sections 2, 6, 8 -
U.P. Poisons (Regulation of Possession
and Sale) Rules, 1921, Rules 17-F and 17-**

2. The present petition was initially filed for quashing the order dated 12.02.2012 passed by District Magistrate (Licensing Authority) by which the M.A.-4 license of the applicant was suspended for committing repeated violation of Rule 17-D, 17-E, 17-F, 17-G of U.P. Poisons (Regulation of Possession and Sale) Rules 1921 (hereinafter referred to as the “Rules 1921”) as well as non-obtaining the license of M.A.-2 in pursuance of order dated 28.05.2011 with further direction to show cause why his M.A.-4 license may not be cancelled. Subsequently, an amendment was also made in the writ petition with the

permission of this Court dated 12.11.2018, by which vires of Rule 17-B(b), Rule 17-D(d), Rule 17-F was challenged on the ground that the same is beyond the power of the State Government under Section 2 r/w Section 6 of the Poisons Act, 1919.

3. The petitioner is a company that purchases methyl alcohol to use it for industrial purposes for which the petitioner company had also obtained license M.A.-4 as per Rule 17-B(c) of Rules 1921. The M.A.-4 license permits the license holder to purchase, possess, use or sell methyl alcohol for medical, scientific, educational, industrial or professional purposes. The inspection was made by the District Excise Officer, Jyotibha Phule Nagar, on 20.05.2011 of the premises of the petitioner wherein certain violations of the Rules 1921 were found, which includes purchasing the methyl alcohol from non-licensed unit. Thereafter, a show cause notice dated 01.06.2011 was issued to the petitioner, which he replied to on 13.06.2011. Thereafter, the District Nodal Committee, in its meeting dated 11.08.2011 directed the petitioner to take a license in form M.A.-2. Thereafter, a letter was also issued on 12.10.2011 directing the petitioner to obtain M.A.-2 license. The petitioner challenged the resolution dated 11.08.2011, the order dated 12.10.2011 as well as the vires of Rule 17-D of Rules 1921 before this Court by way of WRIT- C No. 70182 of 2011, which was partly allowed vide order dated 07.12.2011 by quashing the resolution dated 11.08.2011 and the order dated 12.10.2011 with further direction to pass a fresh order after considering the petitioner's reply dated 13.06.2011. However, the Court refused to declare Rule 17-D(d) of the Rules 1921, as ultra vires. In pursuance of the order dated 07.12.2011 passed in WRIT- C No.

70182 of 2011, the impugned order dated 12.02.2012, has been passed, which is under challenge.

4. The contention of learned counsel for the petitioner is that it is not in dispute that the applicant is purchasing and storing methyl alcohol for use in industrial purposes. It is not involved in the sale of methyl alcohol. An M.A.-2 license is for possession for sale as well as sale of methyl alcohol. Therefore, the petitioner cannot be directed to obtain M.A.-2 license. It is further submitted by learned counsel for the petitioner that the State, under Section 2 of the Poisons Act, 1919 has power to regulate the possession for sale as well as sale of any poison. Therefore, the State cannot frame rules for regulating the possession of poison for any other purpose except the sale. Therefore, Rule 17-B(b), 17-B(c), 17-D(d) and 17-F of the Rules 1921 are ultra vires to Section 2 of the Poisons Act, 1919 being beyond the power of the State Government because the same lies within the power of Central Government u/s 3 of the Poisons Act, 1919.

5. Per contra, learned Standing Counsel vehemently opposed the contention of learned counsel for the petitioner and submitted that the petitioner himself obtained M.A.-4 license under Rule 17-B(c). Therefore, it is bound to follow Rules 17-B, 17-D and 17-F of the Rules 1921. It is further submitted by learned Standing Counsel that Section 8 of the Poisons Act, 1919 gives power to frame rule in addition to rule making power under Section 2 except on the subject of rule making power of the Central Government under Section 3 of the Poisons Act, 1919.

6. After considering the submissions of learned counsel for rival parties and perusal of the record, it is not in

dispute that the petitioner is M.A.-4 license holder under Rule 17-B(c) to purchase, possess, use and sell methyl alcohol for industrial purposes, and it is also not in dispute that the petitioner is not involved in the business of selling methyl alcohol. Rule 17-D of Rules 1921 further imposes a duty on M.A.-4 license holder to purchase the methyl alcohol from M.A.-1, M.A.-2 or M.A.-3 license holder. For reference, Sections 17-B and 17-D of Rules 1921 (existing before amendment made in the year 2014) are being quoted as under :

17-B. Possession and sale of Methyl Alcohol without licence is prohibited-

(a) Any industry in the State producing Methyl Alcohol as a by-product shall not sell it except under a licence granted by the Licensing Authority in Form M.A.-1.

(b) Unless exempted from the operation of these rules, no person shall keep, possess for sale or sell whether by wholesale or retail Methyl Alcohol except under a licence granted by the licensing Authority in Form M.A.-2 and Form M.A.-3 for wholesale and retail respectively.

(c) No person shall purchase, possess, use or sell Methyl Alcohol for medical, scientific, educational, industrial or professional purpose or for the purpose of any act without a licence granted by the Licensing Authority in Form M.A.-4.

(d) No person shall purchase, possess, use or sell Methyl Alcohol in the form of thinners, paints and varnishes in

quantities exceeding two litres without a licence in Form M.A.-4.

(e) No person or industry in the State shall store, possess, distribute, transfer or sell Methyl Alcohol under any licence to any person or industry without mixing a colouring agent and prudent colour as prescribed by the Excise Commissioner, Uttar Pradesh.

(f) The word and sign 'Poison' will be prominently written and displayed on all places and containers where or wherein, Methyl Alcohol or any of its products is stored or contained.

17-D. Sources of supply-

(a) No manufacturer of Methyl alcohol in the State of Uttar Pradesh shall sell Methyl Alcohol except under a licence in Form MA 1.

(b) Licensee holding a licence in Form M.A.-2 shall not obtain his supply of Methyl Alcohol except from-

(i) any licensee of the State holding a licence in Form M.A.-1 for possession and sale by wholesale of Methyl Alcohol:

(ii) any part of India outside the State of Uttar Pradesh under a permit granted by the Collector in Form M.A.-5.

(c) A licence holder in Form M.A.-3 shall obtain his supply of Methyl Alcohol from a licence holder in Form M.A.-2.

(d) A licence holder in Form M.A.-4 shall obtain his supply of Methyl Alcohol from a licence holder in Form M.A.-1, M.A.-2 or M.A.-3 as decided by the Licensing Authority, in the case of the M.A.-4 licence intending to

purchase and sell Methyl Alcohol in the form of thinners, pants and varnishes, he shall be permitted to do so from a MA-4 licensee who is authorised to manufacture such products.

(e) Licence holders in Form M.A.-2 and M.A.-3 shall not receive at their licensed premises any Methyl Alcohol except under a permit granted by the Collector in Form M.A. 5 Export of Methyl Alcohol out of Uttar Pradesh shall be allowed under a permit granted by the Collector in Form M.A.-7 only from the premises of a licence holder having M.A.-Tor M.A.-2 licence.

(f) The licence holders in Form M.A.-1 and M.A.-2 shall not remove or allow any person to remove any Methyl Alcohol from his licensed premises without a transport permit granted by him in Form M.A.-6.

7. From the above rules, it is clear that an M.A.-2 license is required to be taken only for the purpose of possession for sale and sale of Methyl alcohol as wholesaler and not for possession of methyl alcohol for using it for industrial purposes. As per Section 17-D(d), M.A.-4 license holder shall purchase methyl alcohol from the license holder who is having M.A.-1, M.A.-2 and M.A.-3 license. Therefore, if supplier of methyl alcohol within or outside the State does not have M.A.-1, M.A.-2 and M.A.-3 license then license holder of M.A.-4 cannot purchase methyl alcohol from that supplier. There is no provision in Rules 1921 permitting the M.A.-4 license holder to purchase or procure methyl alcohol from unlicensed suppliers, even within the State but if it

wants to purchase the same from the supplier of outside the State then it is permissible only after obtaining M.A.-2 license. It is also clear from the above analysis that M.A.-4 license holder can also sell methyl alcohol for the purpose mentioned in Rule 17-B(c) of Rules 1921, but if it wants to sell or possess the same for any other purpose not mentioned in Rule 17-B(c), then it has to obtain M.A.-2 license as wholesaler or M.A.-3 license for being a retailer and it is a wholesaler with M.A.-2 license can purchase methyl alcohol for any purpose, including the purpose mentioned in Rule 17-B(c) from outside the State.

8. From the impugned order, it is clear that the petitioner had purchased/procured the methyl alcohol, even for industrial purposes from the supplier within and outside the State though none of them was having M.A.-1, M.A.-2 or M.A.-3 license. Though for purchasing methyl alcohol from outside the State under the permit of the Collector, M.A.-2 license is necessary, but if the petitioner wants to purchase Methyl alcohol from the licensed supplier within the State, then it is not required to obtain M.A.-2 license and the same is permissible on M.A.-4 license as per Rule 17-D(d), subject to the condition that it has to purchase it from a license holder having M.A.-1, M.A.-2 and M.A.-3 license but in the present case, petitioner purchased the methyl alcohol from unlicensed suppliers.

9. So far as the contention of learned counsel for the petitioner that Rules 17-B and 17-D of Rules 1921 are beyond the scope and power of the State Government is concerned, for that purpose, it is necessary to consider Sections 2, 3 and 8 of the Poisons Act, 1919. Section 2 of the

Poisons Act, 1919 authorizes the State Government to frame rules for regulating the possession for sale and sale of Methyl alcohol, and Section 3 authorizes the Central Government to frame rules regarding the regulation of the purchase of poison from outside the country which is not the case herein and Section 8 of Poisons Act, 1919 further authorizes the State to make rules in addition to the rule making power u/s 2 of the Poisons Act, 1919. Except the area covered u/s 3 of the Poisons Act, 1919 for carrying out the purpose and object of the Poisons Act, 1919. Therefore, it is absolutely clear that, except to regulate the import of methyl alcohol from outside India, the State Government is authorized to frame rules to regulate, sell, purchase and possession of poison. Sections 2, 3 and 8 of Poisons Act, 1919 are being quoted as under :

2. Power of the State Government to regulate possession for sale and sale of any poison.—

(1) The State Government may by rule regulate within the whole or any part of the territories under its administration the possession for sale and the sale, whether wholesale or retail, of any specified poison.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the grant of licences to possess any specified poison for sale, wholesale or retail, and fixing of the fee (if any) to be charged for such licences ;

(b) the classes of persons to whom alone such licences may be granted ;

(c) the classes of persons to whom alone any such poison may be sold ;

(d) the maximum quantity of any such poison which may be sold to any one person ;

(e) the maintenance by vendors of any such poison of registers of sales, the particulars to be entered in such registers, and the inspection of the same ;

(f) the safe custody of such poisons and the labelling of the vessels, packages or coverings in which any such poison is sold or possessed for sale ; and

(g) the inspection and examination of any such poison when possessed for sale by any such vendor.

3. Power to prohibit importation into the States of any poison except under licence.—The Central Government may, by notification in the Official Gazette, prohibit, except under and in accordance with the conditions of a licence, the importation into [India] [across any customs frontier defined by the Central Government] of any specified poison, and may by rule regulate the grant of licences.

8. Rules.—(1) In addition to any other power to make rules hereinbefore conferred the State Government may make rules generally to carry out the purposes and objects of this Act [except section 3]

(2) Every power to make rules conferred by this Act shall be subject to the condition of the rules being made after previous publication.

(3) All rules made by the Central Government or by the State

Government under this Act shall be published in the [Official Gazette] and on such publication shall have effect as if enacted in this Act.

[(4) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. rule.

(5) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.]

10. From the perusal of Rules 17-B and 17-D of Rules 1921, it is clear that these rules were framed in the exercise of power u/s 2 and 8 of Poisons Act, 1919. Therefore, the contention of learned counsel for the petitioner that Rules 17-B and 17-D of Rules 1921 are ultra vires being beyond the scope and power of the State Government, is misconceived, hence is rejected.

11. In view of the above analysis, this Court holds that Rule 17-B(b), 17-B(c) and 17-D(d) of Rules 1921, are within the scope and power of the State Government u/s 2 and 8 of the Poisons Act, 1919.

12. So far as the contention of learned counsel for the petitioner that Rule 17-F of Rules 1921 by which power of confiscation of Methyl alcohol by the District Magistrate, which was acquired, stored, sold, or used by any person or industry in contravention of the provisions of Rules 1921, is beyond the scope of Section 6 of the Poisons Act, 1919, is concerned, to decide this issue, it is relevant to mention that initially Poisons (Regulation of Possession and Sale) Rules 1921 was framed in the exercise of power u/s 2 of the Poisons Act, 1919. Subsequently, by way of amendment dated 27.07.1995, Rule 17 to 17-I were added as special provisions with respect to Methyl alcohol in exercise of power u/s 2 r/w 8 of Poisons Act, 1919. Rule 17-F of Rules 1921 provides specific power of confiscation to District Magistrate regarding Methyl alcohol, which was acquired, stored, sold, or used by any person or industry in contravention of the provisions of these rules. Thereafter, Rule 17-H of Rules 1921, further provides prosecution and punishment as per the provisions of Section 6 of the Poisons Act, 1919, which was related to the violation of Rules 2 and 3 of the Poisons Act. Rule 17-F and Rule 17-H of Rules 1921 are being quoted as under :-

17-F. Confiscation – Any Authorised Officer, if satisfied that Methyl Alcohol has been acquired, stored, sold or used by any person or industry in contravention of the provisions of these rules, will be

competent to take possession of the same and report the matter to the District Magistrate. The District Magistrate will be competent to confiscate or get destroyed the same same in the presence of the Authorised Officer.

17-H. Prosecution and punishment – Any person found in possession of Methyl Alcohol in contravention of these rules shall be liable for prosecution and punishment under the provisions of the Poisons Act, 1919 (Act No.XII of 1919), as amended from time to time.

13. From the perusal of the above quoted rules, it is clear that these rules provide special provisions with respect to Methyl alcohol, though these rules do not apply to other poison which is not methyl alcohol. For that reason, special power of confiscation has been provided under Rule 17-F, but for other punishment, provision of Section 6 of the Poisons Act has been adopted by Rule 17-H of the amended Rules 1921. This Court also holds that power of confiscation is not contrary to Section 6 of the Poisons Act and is valid. Therefore, the contention of learned counsel for the petitioner that Rule 17-F is beyond the provisions of Section 6 of Poisons Act, 1919, so far as confiscation is concerned, is absolutely misconceived and, hence, rejected.

14. In the present case, it is not in dispute that the petitioner has purchased the methyl alcohol from a supplier based within the State who does not have an M.A.-1, M.A.-2 or M.A.-3 license and also procured methyl alcohol from a supplier based outside the State without having M.A.-2 license. Therefore, prima facie,

there is a violation of provisions of Rules 1921 and for reason there appears to be no illegality in show cause notice/order. However, the impugned order is simply a show cause notice by which the license of the petitioner has been suspended. The petitioner can file an objection against that show cause notice or appeal under Rule 17-I.

15. Given the above, the present writ petition is disposed of with liberty to the petitioner to file an objection or appeal against the show cause notice within 15 days. In case such objection or appeal is filed by the petitioner against the impugned show cause notice, the same shall be considered and decided by the District Magistrate within the next one month without being influenced by the observation made hereinabove.

(2025) 3 ILRA 784
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.03.2025

BEFORE

THE HON'BLE SARAL SRIVASTAVA, J.

Writ C No. 16710 of 2015

C/M Janta Prasar Samiti & Anr.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Counsel for the Petitioners:

Yogish Kumar Saxena

Counsel for the Respondents:

C.S.C., Vineet Kumar Singh

Civil Law - U.P. Societies Registration Act, 1860 - Sections 4 & 25(1) - Petitioner after death of his father claimed appointment to post of Manager on basis of addition in Clause 8(ख) in bye-laws of

Society - Prescribed Authority rejected claim of petitioner - Validity of - Impugned order - Once specific rider was put by Clause 10, no amendment or addition in Clause 8(ख) could be made by General Body of Committee of Management exercising power under Clause 10 - Any addition or amendment in Clause 8(क)(ख)(ग) of bye-laws of Society could be made after amendment in Clause 10 in accordance with bye-laws of Society by removing rider which stipulated that it would not affect Clause 8 (क)(ख)(ग) - Therefore, amendment/addition in Clause 8(ख) was invalid, and there was no waiver of right by respondent no.4 for being appointed as Manager, being senior most legal heir, he claimed his right immediately after death of his father. (Para 15, 30, 31, 34)

Writ petition dismissed. (E-13)

(Delivered by Hon'ble Saral Srivastava, J.)

1. Heard Sri Y.K. Saxena, learned counsel for the petitioners, learned Standing Counsels for the State, and Sri H.N. Singh, learned Senior Counsel assisted by Sri Abhishek Dwivedi, learned counsel for the respondent.

2. The petitioners through the present writ petition have assailed the order dated 16.02.2015 passed by respondent no.2-Sub-Divisional Magistrate-Derapur, Kanpur Dehat whereby the Prescribed Authority has rejected the claim of petitioners for continuing as Manager of the Society namely Sri Janta Prasar Samiti Sadaramau Manepur, Post Jhinjak, District Kanpur Dehat.

3. There is a society registered in the name of Sri Janta Prasar Samiti Sadaramau Manepur, Post Jhinjak, District Kanpur Dehat (hereafter referred to as 'Society') under the provisions of U.P. Societies Registration Act, 1860. According to Clause 8(ख) of the bye-

laws of the Society, the senior most successor of life long Manager Sri Harishchandra Singh shall be nominated as Manager of the Society.

4. It appears that during the life long of Harishchandra Singh, the petitioner who was the fifth son of Harishchandra Singh, was appointed as Manager of the Society and he continued to work as Manager till the demise of Harishchandra Singh who died on 11.03.2009.

5. After the death of Harishchandra Singh, respondent no.4-Arvind Kumar Singh who is the second son and the senior most successor of late Harishchandra Singh, claimed his right to be appointed as Manager on 09.06.2009 on the ground that under the bye-laws of the Society, he being the senior most legal heir/successor of late Harishchandra Singh is entitled to be appointed as Manager.

6. The claim of respondent no.4 was contested by the petitioner on the ground that an addition after the word 'Or (अथवा)' has been made in the main Clause 8(ख) of the bye-laws of the Society by adding "or the persons Sri Abhishek Kumar Singh, Smt. Uma Singh and Sri Virendra Singh Bhadauria who have been inducted as life members of the Society may appoint any person as Manager of the Society who has shown devotion, sincerity, and dedication in carrying out the objects of the Society." Accordingly, the petitioner claimed that he had been appointed as Manager on the basis of the aforesaid addition in Clause 8(ख) in the bye-laws of the Society.

7. According to the petitioner, after the addition in Clause 8(ख) of the bye-laws of the Society, the petitioner was elected as Manager on 28.02.2006 and the list of

office bearers was registered for the year 2005-06 on 28.02.2006. Consequently, he pleaded that his appointment as Manager is valid and is in accordance with the bye-laws of the Society.

8. The objection of respondent no.4 against the appointment of the petitioner was rejected by the Sub-Registrar vide order dated 06.11.2009. Respondent no.4 preferred a Writ Petition No.70071/2009 challenging the order of Sub-Registrar dated 06.11.2009 which was allowed by this Court by judgment and order dated 02.04.2013 permitting respondent no.4 to approach the Prescribed Authority. This Court further directed the Prescribed Authority to decide the claim of the parties in the light of the observation made in the judgment and order dated 02.04.2013 in Writ Petition No.70071/2009.

9. The record further reveals that against the judgment of this Court dated 02.04.2013, the petitioner preferred Special Appeal No.672/2013 which remains pending, and in the meantime, the Prescribed Authority decided the application of respondent no.4 in compliance with the judgment and order of this Court dated 02.04.2013 in Writ Petition No.70071/2009.

10. The Prescribed Authority by the impugned order held that the addition or amendment in Sub-Clause (ख) of Clause 8 of the bye-laws of the Society could not be made because of Clause 10 of the bye-laws of the Society. He further held that for the said reason, the petitioner has no right to continue as Manager. He further recorded in the order that the petitioner neither submitted any objection nor replied to the objection of the respondent.

Accordingly, he concluded that the petitioner cannot continue as Manager.

11. Challenging the aforesaid order, learned counsel for the petitioners has submitted that the Prescribed Authority has erred in law in holding that there cannot be any amendment in Clause 8(ख) of the bye-laws of the Society inasmuch as the incorporation in Clause 8(ख) of the bye-laws of the Society is only an alternative mode for providing appointment of Manager, in a contingency if there is no senior legal heir or successor of late Harishchandra Singh. Accordingly, he submits that the finding returned by the Prescribed Authority that there can be no amendment in Clause 8(ख) of the bye-laws of the Society is perverse and based upon the misrepresentation of Clause 10 of the bye-laws of the Society.

12. He further submits that this Court while remanding the matter has directed the Prescribed Authority to decide the issue as to whether respondent no.4 has waived his right to continue as Manager, but the Prescribed Authority has failed to return any finding on the said issue. In such view of the fact, the impugned order cannot be sustained in law.

13. Per-contra, Sri H.N. Singh, learned Senior Counsel for the respondent contends that it is evident from Clause 10 of the bye-laws of the Society that no amendment in Clause 8 (क)(ख)(ग) can be made. It is submitted that the petitioner might have some case in case Clause 10 of the bye-laws of the Society had been amended in accordance with bye laws of the Society by deleting in Clause-10 that “no amendment in Clause 8 (क)(ख)(ग) in the bye-laws of the Society can be made”, only

thereafter any amendment in Clause (क)(ख)(ग) could be made.

14. It is submitted that since under the bye-laws of the Society, it is categorically stated in Clause 10 of bye-laws of the Society that no amendment in Clause 8 (क)(ख)(ग) can be made, therefore, neither any amendment nor any addition in Clause 8 (क)(ख)(ग) could be made because of rider put by Clause 10 of the bye laws of the Society. Therefore, the amendment in the bye-laws of Clause 8 (ख) is per se illegal and is void given rider of Clause 10 of the bye-laws of the Society. Accordingly, it is contended that in such view of the fact, the petitioner has no right to continue as Manager of the Society and the question of waving his client's right to be appointed as Manager by respondent no.4 does not arise.

15. He further submits that it is not the case where respondent no.4 has waived his right inasmuch as it was only late Harishchandra Singh, who could work as Manager, and only after his death, respondent no.4 could be appointed as Manager under the bye-laws of the Society. In the instant case, the petitioner immediately after the death of Harishchandra Singh raised an objection and claimed appointment to the post of Manager. Therefore, there was no waiver of the right on the part of the petitioner in claiming the post of Manager of the Society.

16. Heard Sri Y.K. Saxena, learned counsel for the petitioners, and Sri H.N. Singh, learned Senior Counsel for the respondent, and perused the record.

17. Before dealing with the controversy, it would be apt to reproduce unamended Clause 8(अ) of the Society:-

"(8) प्रबन्धकारिणी समिति:-

(अ) गठन:-

(क) प्रबन्धक पद पर वर्तमान पदासीन व्यक्ति आजीवन प्रबन्धक रहेगा और भविष्य में प्रबन्धक पद पर कोई निर्वाचन नहीं होगा।

(ख) वर्तमान प्रबन्धक का पद रिक्त होने की दशा त्याग पत्र/मृत्यु से / में उसका वैधानिक ज्येष्ठ उत्तराधिकारी ही वैध प्रबन्धक माना जायेगा जिसकी स्थिति एवं शक्ति पूर्णतया (8-क) के अनुसार होगी।"

18. It would also be apposite to reproduce amended Clause 8 of the bye-laws of the Society:

"8- प्रबन्धकारिणी समिति:-

(अ) गठन:-

(क) प्रन्धक पद पर वर्तमान पदासीन व्यक्ति आजीवन प्रबन्धक रहेगा और भविष्य में प्रबन्धक पद पर कोई निर्वाचन नहीं होगा।

(ख) वर्तमान प्रबन्धक का पद रिक्त होने की दशा त्याग पत्र या मृत्यु से / में उसका वैधानिक ज्येष्ठ उत्तराधिकारी ही वैध प्रबन्धक माना जायेगा जिसकी स्थिति एवं शक्ति पूर्णतया 8-क के अनुसार होगी अथवा समिति ने सर्व सम्मति से श्री अभिषेक कुमार सिंह श्रीमती उमा सिंह तथा श्री वीरेन्द्र सिंह भदौरिया को उनके संस्था के प्रति अटूट श्रद्धा, निष्ठा एवं भवन मरम्मत में विशेष आर्थिक योगदान एवं महत्वपूर्ण कार्यों के आधार पर आजीवन विशिष्ट सदस्य बनाया है भविष्य में यदि यह तीनों सदस्य अन्य किसी व्यक्ति को उसके संस्था के प्रति विशेष योगदान पर बहुमत या सर्व सम्मति से आजीवन विशिष्ट सदस्य बनाना चाहें तो बना सकेंगे। यही आजीवन विशिष्ट सदस्य भविष्य में प्रबन्धक का पद रिक्त होने की दशा में अपने में से बहुमत या सर्व सम्मति से प्रबन्धक चुनेगे और इस प्रकार चुना हुआ व्यक्ति ही प्रबन्धक होगा, शेष प्रबन्ध समिति का चुनाव यथास्थिति के अनुसार संपन्न होगा।"

19. Clause 10 of the bye laws of the Society reads as under:

"संस्था के नियमों व विनियमों में संशोधन साधारण सभा के 2/3 सदस्यों के बहुमत से किया जा सकेगा परन्तु धारा-8,क,ख,ग पर इसका कोई प्रभाव नहीं पड़ सकेगा"

20. According to the unamended Clause 8 (अ)(क) of the bye-laws of the Society, the person appointed as Manager shall continue to be Manager for the life and no election of the Manager shall take place.

21. According to the unamended Clause 8 (अ)(ख), on the vacancy of the Manager by way of resignation/death, the senior most legal heir of the Manager shall be appointed as Manager, and he shall exercise all the powers and carry on all the duties of the Manager.

22. There is an addition/amendment in Clause 8(ख) and by addition, another mode of appointment of Manager is provided that "the three persons namely Abhishek Kumar Singh, Smt. Uma Singh and Sri Virendra Singh Bhadauria who have been inducted life members of the Society can also nominate/appoint a person as Manager who has shown allegiance, sincerity, and dedication in carrying out the work and object of the Society."

23. According to the petitioner, the addition in Clause 8 (अ)(ख) has been made only to provide an alternative mode to fill up the vacancy of Manager in case no senior most legal heir of the Manager is available or in case he refuses to accept the post of Manager. Therefore, this is not an amendment and only an addition which

provides to fill up the vacancy in a particular contingency.

24. At this stage, it would be apt to refer to Clause 10 of the bye-laws of the Society which has already been extracted above, which states that amendment in the bye-laws of the Society can be made only by 2/3 Members of the General Body of the Society by majority. However, this clause will not affect Clause 8 (क)(ख)(ग) of the bye-laws of the Society.

25. At this stage, it would be apt to refer to the earlier judgment of this Court whereby this Court vide judgment and order dated 02.04.2013 permitted respondent no.4 to file an application before the Prescribed Authority to decide the dispute which reads as under:

"The aforesaid aspect of the matter has completely been ignored by the Deputy Registrar while passing the order impugned. Further the issue as to whether resolution had been passed in any valid meeting of the general body convened for the purpose has also not been finally adjudicated. Merely because amendments have been signed by certain office bearers cannot ipso facto lead to a conclusion that a valid meeting of the general body has taken place. It had to be examined as to whether agenda for such meeting was circulated in accordance with the bye-laws among members and that a valid meeting for the purpose did take place amongst the valid members. A finding had to be returned as to Whether any valid amendment has been made in Class 8 (kha) as well as could the Clause

B (kha) be amended in view of Clause 10.

Even otherwise on simple reading of amended Clause 8 (kha), this Court finds that said clause is in two parts, (a) which declares that senior-most legal heir of the present manager would automatically be treated to be manager, if the earlier manager tenders his resignation or expires, thereafter there is the other clause starting from the word "अथवा" (b) which confers a power upon three persons named, namely, Abhishek Kumar Singh, Smt. Uma Singh and Virendra Singh Bhadauriya to elect a new manager in case of vacancy from among themselves.

In the opinion of the Court for harmonizing the two clauses it is but necessary to hold that it is only when the senior-most legal heir of outgoing manager becomes incapacitated or otherwise refuse act as the secretary/manager then that three persons mentioned in the Clause can exercise their power to elect the manager from among themselves. The first preference for being treated to be manager is therefore, with the senior-most legal heir of the outgoing manager.

In the facts of the case it is not in dispute that eldest son of Harish Chandra Singh namely, Ashok Kumar had expired during his life time. Petitioner is the second eldest son of Harish Chandra Singh, the earlier manager/secretary. Therefore, he has a preferential right to be treated as the manager after the resignation/death of Harish

Chandra Singh in terms of the amended clause also.

However, the question remains as to whether the petitioner had waived his right in view of respondent no.4 being elected as the manager in 2006 and thereafter the list of office bearers being registered, with respondent no.4, as the manager under Section 4 of Act, 1860.

For determining the said issue, it is but necessary to examine amongst others as to whether respondent no.4 ever exercised powers of the manager/secretary of the society subsequent to his alleged election as manager in 2006 or not, which requires consideration of the relevant documents of the society and the accounts etc. maintained in that respect. Waiver of a right is essentially an issue of fact which is to be culled out from the evidence to be produced by the parties and their conduct.

In the totality of the facts on record this Court is of the opinion that the present writ petition be disposed of by permitting the petitioner to file a reference petition under Section 25 (1) of the Societies Registration Act, 1860 before the Prescribed Authority within two weeks from today, along with a certified copy of this order challenging the order of acceptance of respondent no.3 as the manager/secretary of the society and his continuance as such. If such petition is filed, the Prescribed Authority shall enter into the dispute and shall decide the same in light of the observations

made above, preferably within two months from the date of receipt of the reference petition after affording opportunity of hearing to the petitioner and respondent nos. 3 to 5 and after examining the original records of the society. He shall pass a reasoned speaking order. Order Impugned passed by the Deputy Registrar shall abide by the orders to be passed by the Prescribed Authority as indicated above. All consequential action shall be taken Immediately thereafter in terms of the order passed by the Prescribed Authority as indicated above.

With the aforesaid direction/observations, the present writ petition is disposed of."

26. The extracted portion of the judgment of this Court reveals that this Court has permitted the petitioner to submit an application before the Prescribed Authority with a direction to the Prescribed Authority to decide the issue as to whether any valid amendment has been made in Clause 8(ख) of the bye-laws of the Society as well as could the Clause 8(ख) be amended in view of Clause 10. This Court further directed the Prescribed Authority to return the finding as to whether the petitioner in the writ petition (respondent no.4 in the present writ petition) had waived his right in view of respondent no.4 (petitioner no.2 in the present writ petition) being elected as Manager in the year 2006 and thereafter, the list of office bearers being registered with respondent no.4 under the provisions of U.P. Societies Registration Act, 1860.

27. Now the Court proceeds to analyse in the present case as to whether

the Prescribed Authority while deciding the application of respondent no.4 returned the finding on the aforesaid two issues or not.

28. So far as the question as to whether the amendment could be made in Clause 8(ख) of the bye-laws of the Society in view of Clause 10 is concerned, the impugned order reveals that a finding has been returned by the Prescribed Authority on the issue. Though the finding may not be elaborate, but the Prescribed Authority recorded a finding that no amendment could be made in Clause 8(ख) of the bye-laws of the Society.

29. The Prescribed Authority has not returned any finding on the issue whether respondent no.4 has waived his right to continue as Manager of the Society.

30. This Court could have remitted the matter in the absence of any finding returned by the Prescribed Authority on the issue whether respondent no.4 has waived his right or not. In the present case, the dispute has been pending for long and the main question for consideration in the present case is whether any valid amendment or addition could be made in Clause 8 (ख) of the bye laws of the Society in view of Clause 10 of the bye-laws Society. In case the answer to the said question is 'affirmative', this Court is of the view that no further finding with respect to the question whether respondent no.4 has waived his right needs to be recorded by the Prescribed Authority, and if the answer of the said question is in 'negative' then it is a case of remand.

31. In the instant case, this Court has already extracted Clause 10 of the bye laws of the Society which stipulates that any amendment in the bye-laws can be

made by 2/3 Members of the Society on a majority basis. However, this clause would not affect Clause 8 (क)(ख)(ग) of the bye-laws of the Society. Clause 10 is specific and unambiguous and stipulates that the said Clause of the bye-laws of the Society would not affect Clause 8 (क)(ख)(ग) of the bye-laws of the Society which means that Clause 10 puts rider on the power of the General Body of the Society to amend Clause 8 (क)(ख)(ग) of the bye-laws of the Society. Once a specific rider is put by Clause 10 of the bye-laws of the Society, this Court is of the view that no amendment or addition in Clause 8(क) could be made by the General Body of the Committee of Management exercising the power under Clause 10 of the bye-laws of the Society. Any addition or amendment in Clause 8(क)(ख)(ग) of the bye-laws of the Society could be made only after the amendment in Clause 10 in accordance with bye-laws of the Society by removing the rider placed by Clause 10 in the bye-laws of the Society that “it would not affect or impact Clause 8 (क)(ख)(ग) of the bye-laws of the Society.”

32. In the instant case, there is nothing on record to indicate that any amendment in Clause 10 of the bye-laws of the Society has been made and the rider put by Clause 10 that it would not affect Clause 8 (क)(ख)(ग) of the bye laws of the Society has been removed.

33. This Court is of the view that no amendment in Clause 8 (क)(ख)(ग) can be made so long as the rider stipulated in Clause 10 of the bye laws of the Society that it would not affect Clause 8 (क)(ख)(ग) of the bye laws of the Society remains in existence. In such view of the fact, this Court is of the view that the

amendment/addition in Clause 8 (ख) of the bye-laws of the Society could not be made by the Committee of the Management or General Body of the Society in the exercise of power in Clause 10 of the bye laws of the Society. Therefore, an addition/amendment in Clause 8 (ख) of the bye laws of the Society is per se illegal and against the spirit of the bye-laws of the Society. Thus, the argument of the learned counsel for the respondent with regard to the fact that it is only an addition to meet out certain exigencies in Clause 8(ख) does not stand to merit and is rejected.

34. Since this Court has held that no amendment/addition in Clause 8 (ख) could be made by the Committee of Management or General Body of the Society in the exercise of power in Clause 10 of the bye-laws of the Society therefore, the amendment/addition in Clause 8(ख) is invalid, and it is only the original clause that remains in existence. Therefore, it is only respondent no.4 who could be appointed as Manager being the senior most legal heir of the Manager.

35. Since the petitioner has been claiming his appointment by virtue of amendment in Clause 8 (ख) and that has been declared by this Court to be invalid, therefore, the appointment of the petitioner as Manager was against bye laws of the Society. In such view of fact, the question of waiver of the right of respondent no.4 does not arise.

36. At this juncture, it is also pertinent to note that under the bye-laws of the Society, the right of respondent no.4 to be appointed as Manager accrues only after the death of Harishchandra Singh. Therefore, in such view of the fact, there

was no waiver of the right by the respondent no.4 for being appointed as Manager as respondent no.4 claimed his right to be appointed as Manager immediately after the death of Harishchandra Singh.

37. Thus, for the reasons given above, the writ petition lacks merit and is *dismissed* without any order as to costs.

(2025) 3 ILRA 792
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.03.2025

BEFORE

THE HON'BLE VIKRAM D. CHAUHAN, J.

Writ C No. 23088 of 2018

Satyaveer **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Counsel for the Petitioner:

Sri Bharat Singh, Sri Bheshaj Puri, Ms. Priti Chaudhary

Counsel for the Respondents:

C.S.C.

Criminal Law - Indian Penal Code, 1860 - Sections 147, 323, 504, 506 & 171C - Criminal Law (Amendment) Act, 2013 - Section 7 - Petitioner was granted firearm licence with respect to .32 Bore Revolver, cancelled by D.M. on account of pendency of criminal case - Held, no material has been relied to demonstrate as to how petitioner was a threat to public peace and tranquility - Mere pendency of criminal case cannot ipso facto amount to cancellation of arms licence - Only report of SSP has been relied upon, which contains details of criminal case - Prosecution failed to demonstrate that petitioner has in any manner misuse his firearm and there was no conviction

against petitioner - Thus, impugned order quashed and authorities are directed to restore firearm licence. (Para 8, 9, 12)

Writ petition allowed. (E-13)

(Delivered by Hon'ble Vikram D. Chauhan, J.)

1. Heard Ms. Priti Chaudhary, Advocate holding brief of Sri Bheshaj Puri, learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State-respondents.

2. It is submitted by learned counsel for the petitioner that the initially the petitioner was granted two firearm licence. One being .32 Bore Revolver and the other being 12 Bore Rifle. The present matter is in respect of the cancellation of arms licence pertaining to .32 Bore Revolver. By means of the impugned order dated 7.12.2012 the firearm licence of the petitioner has been cancelled on the ground of pendency of a criminal case being Case Crime No.1056 of 2010, under Sections 147, 323, 504, 506, 171C I.P.C. and Section 7 Criminal Law Amendment Act. The licence of other 12 Bore Rifle has already been restored on the similar facts by this Court by order dated 23.7.2013, which has been accepted by the respondents. Thereafter, the licence in respect of the .12 Bore Rifle has been restored. The order dated 23.7.2013 passed in Writ C- No.32621 of 2012 is extracted hereunder:-

"An arms license of the petitioner has been cancelled on the ground of pendency of a criminal case, quite apart from the fact that the case, which has been registered relates to a minor dispute and in any case, the weapon of the petitioner was not misused.

In the light of the aforesaid, the impugned orders cannot be sustained and are quashed.

The writ petition is allowed."

3. Learned counsel for the petitioner submits that the firearm licence of the petitioner was already been deposited with the police station concerned on account of ensuing elections taking place and the first information report pertains to the physical assault and there is no allegation against the petitioner that the firearm in question has been used by the petitioner in the alleged occurrence.

4. Learned counsel for the petitioner fairly submits that the criminal trial in the present case is pending consideration. However, learned counsel for the petitioner submits that solely on the strength of the criminal prosecution of the petitioner where the petitioner is not alleged to have used the firearm in the occurrence cannot be a ground for cancellation of the firearm licence. More particularly, when there are no material circumstances to demonstrate that the petitioner is a threat to public peace and tranquility. The impugned order was subject matter of challenge before the Appellate Authority. The petitioner had filed a review application before the District Magistrate concerned, which was rejected by order dated 30.8.2013 against which an appeal was preferred, which was rejected by order dated 7.9.2017.

5. Learned counsel for the petitioner further submits that thereafter, the appeal was filed against the original order dated 7.12.2012, which has been rejected by order dated 12.4.2018 being barred by limitation.

6. Learned Standing Counsel submits that the petitioner was involved in Case Crime No.1056 of 2010, under Sections 147, 323, 504, 506, 171C I.P.C. and Section 7 Criminal Law Amendment Act and on the aforesaid basis, the licence of the petitioner has been cancelled by the impugned order dated 7.12.2012. Thereafter, the petitioner has preferred a review application, which was rejected by order dated 30.8.2013. Against the order passed on the review application, an appeal was preferred, which stands rejected by order dated 7.9.2017. Thereafter, against the original order dated 7.12.2012, the appeal was preferred, which has been rejected by order dated 12.4.2018 being barred by limitation.

7. Learned Standing Counsel however, could not dispute the fact that in the similar circumstances in respect of another firearm licence of the petitioner, this Court on 23.7.2013 has restored the licence of the petitioner and the same was not challenged before any higher Court.

8. In the present case, it is to be seen that the petitioner was granted firearm licence with respect to .32 Bore Revolver, which stood cancelled by impugned order dated 7.12.2012 on account of pendency of a criminal case being Case Crime No.1056 of 2010, under Sections 147, 323, 504, 506, 171C I.P.C. and Section 7 Criminal Law Amendment Act. It is not the case of the State that the petitioner has used the firearm in respect of which the licence was granted. The District Magistrate concerned in the impugned order dated 7.12.2012 has recorded a finding that the petitioner is having criminal antecedent and the continuation of the arms licence would disturb the public peace and tranquility.

9. A perusal of the order dated 7.12.2012 would demonstrate that no material has been relied in the impugned order to demonstrate as to how the petitioner is a threat to public peace and tranquility. It is a settled law that mere pendency of a criminal case cannot ipso facto amount to cancellation of the arms licence. It is also settled law that unless the individual is convicted, he is deemed to be innocent. Therefore, it is imperative on the part of the District Magistrate to record a specific finding. No material has been relied upon by the District Magistrate. Only the report of the SSP dated 29.11.2010 has been relied upon, which contains the details of criminal case. Neither it has been demonstrated before this Court that the petitioner has in any manner misuse his firearm and till date there is no conviction against the petitioner.

10. It is to be noted that in the similar circumstances the another arms licence of the petitioner has already been restored by order dated 23.7.2013 in Writ C-No.32621 of 2012, which has not been challenged.

11. Since the circumstances in the present case and the aforesaid writ petition were similar and the learned Standing Counsel could not show any material before this Court to demonstrate that the petitioner is a threat to public peace and tranquility. Mere pendency of a criminal case in which there is no allegation that the petitioner has misused the firearm, it cannot be said that the petitioner is a threat to public peace and tranquility.

12. Accordingly, the impugned order dated 12.4.2018 passed by respondent no.2, order dated 7.9.2027 passed by respondent no.2 and orders dated 7.12.2012

and 30.8.2013 are hereby quashed. The writ petition is allowed. The District Magistrate concerned is hereby directed to restore the firearm licence of the petitioner within a period of 30 days from the date of production of a certified copy of this order. While restoring the firearm licence of the petitioner, the District Magistrate would be at liberty at the time of renewal of arms licence to decide whether the renewal can be granted on account of events after passing of the order dated 7.12.2012.

(2025) 3 ILRA 794

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 18.03.2025

BEFORE

**THE HON'BLE MANOJ KUMAR GUPTA, J.
THE HON'BLE ANISH KUMAR GUPTA, J.**

Writ C No. 31219 of 2024

Kalyan Singh ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Dilip Kumar Goswami, Himanshu Pandey, Sunil Kumar Pandey

Counsel for the Respondents:

Sri Akhilesh Kumar Sharma, C.S.C.

Civil Law - Constitution of India, 1950 - Article 226 - Refund of registration money - YEIDA advertised scheme for allotment of residential plots - Scheme contemplated reservation of 17.5% of total plots for persons whose land acquired/purchased for planned development - Earlier, land of father of petitioner acquired but he died before launch of scheme, petitioner applied under 'farmers category' - Submitted online application alongwith registration money, accepted, included in draw of lots - Held, petitioner was interested in

making payment of allotment money, for obtaining lease deed, requested to issue notice to his two brothers, who were not ready to sign on no objection certificate - No action was taken by YEIDA, petitioner applied for return of registration money - Not a case of surrender as given under Clauses 18(iv) and 18(v) of brochure - Petitioner requested to return of registration money, in view of condition not provided in brochure but imposed subsequently i.e., ten months after issuance of allotment letter - In absence of any condition in brochure, petitioner cannot be suffer by forfeiture of registration money - Impugned order quashed. (Para 2, 4, 13 to 15)

Writ petition allowed. (E-13)

(Delivered by Hon'ble Manoj Kumar Gupta,
J. & Hon'ble Anish Kumar Gupta, J.)

1. By means of the instant petition filed under Article 226 of the Constitution, the petitioner has challenged the order dated 04.04.2024 passed by respondent no.2, Yamuna Expressway Industrial Development Authority (for short 'YEIDA'), forfeiting the allotment money of Rs.3,98,520/- in respect of Plot No.104, Block-E, Sector-16, area 162 sq. mtrs. allotted in favour of the petitioner under the 'farmers category'.

Background Facts:

2. The facts in brief are that YEIDA acquired, inter alia, Khasra no.531 area 1.2840 hectare belonging to Jagpal Singh, father of the petitioner. The compensation for the acquired land was duly paid to the father of the petitioner. The father of the petitioner died on 21.03.2017 leaving behind widow Smt. Nirmala, two married daughters and five sons including the petitioner herein. The YEIDA

advertised a scheme in the year 2023 for allotment of residential plots of different sizes. The scheme contemplated reservation of 17.5% of the total plots for persons whose land had been acquired/purchased by YEIDA for planned development or for constructions of Jewar Airport. As the land of the father of the petitioner was also acquired by YEIDA for planned development but he had died on 21.03.2017 before launch of scheme on 08.08.2023, therefore, the petitioner claiming right through him, applied for allotment under the 'farmers category'. Clause 15D prescribes eligibility for allotment under this category and the same is extracted below:

"D. Eligible Farmers whose land has been acquired/purchased by YEIDA or in Jewar Airport.

The detailed eligibility conditions and the procedure for allotment under this category are enumerated as follows:

(i) Only those farmers are eligible to apply under this scheme, whose land has been acquired/purchased and unhindered/without encroachment possession has been taken by YAMUNA EXPRESSWAY INDUSTRIAL DEVELOPMENT AUTHORITY or in Jewar Airport before closing date of this scheme. (Undertaking-1 on Stamp Paper of Rs. 100/- is to be given by the applicant farmer as per Performa given in the Brochure)

(ii) In case a land owner has been already allotted residential plot/ built up flats in his/her name or his/her spouse/dependent children, in any of the residential

schemes of the Authority, he/she shall not be eligible to apply under this scheme.

(iii) The applicant farmer should have received the compensation of his/her acquired land on or before closing date of this scheme. Those farmers who have encroachment on any acquired land of authority or have filed any writ/suit against authority are not eligible for allotment in this scheme.

(iv) In case there is more than one joint-khatedar, all joint khatedar can apply under this scheme. Draw between all such eligible joint khatedar of a khata shall be made and one successful applicant, out of all joint-khatedars, shall be selected and will be included in the final draw of lots.

(v) Under this category, successful applicant/allottee cannot transfer the allotted plot up to five years from the date of allotment.

(vi) No encroachment should have been done by the applicant on land acquired/purchased by Yamuna Authority irrespective of acquired land or any other land against which the application for allotment is being made in this Scheme. A declaration to this effect shall have to be given on Stamp Paper of Rs. 100/- by the applicant farmer as per Performa given in the application form (Undertaking-II).

(vii) The applicant has received entire compensation of the land acquired without any contest/litigation. The applicant has to submit Form-11/certified Benana

Copy issued by the Competent Authority with the application.

(viii) The applicant farmer and all Khatedars, shall submit an affidavit stating that they shall not file a legal case in any court for enhancement of compensation or claim of additional land.

(ix) If, on verification or at any stage it is found that there is a violation of any of the above mentioned conditions then the application will be rejected and registration money will be refunded without any interest.

(x) If under this category the applicants are less than the number of plots reserved, then the leftover plots shall be included in the draw for general category."

3. The procedure for submitting application by online mode was, inter alia, as follows:

"16. PROCEDURE TO APPLY

(i) The application can be Only submitted online on the website of the Yamuna authority i.e.

www.yamunaexpresswayauthority.com through payment gateway/net banking.

(ii) The application form can be collected on payment of Rs. 500/-+18% GST from online on the website of the Yamuna authority i.e.

www.yamunaexpresswayauthority.com through payment gateway net banking.

(iii) The application form duly completed and signed along with the required registration

money and all the required annexures shall be submitted to online i.e. www.yamunaexpresswayauthority.com through net banking on the page of this brochure on any working day during the period between the date of opening and the date of closure of this scheme.

(iv) If the application is incomplete in any respect whatsoever or if any column is left blank or if the photo is not pasted at the designated place or mentioning an incomplete or untrue address or no signature or thumb impression found on the declaration or entered wrong details in application form, the application shall not be considered at all."

4. In terms of the stipulations in the scheme, the petitioner submitted online application alongwith registration money of Rs.3,98,520/-. The application was duly accepted and was allocated distinct number. It was included in the draw of lots in which, the petitioner was successful and, accordingly, allotment letter dated 01.11.2023 was issued in favour of the petitioner. It reveals that the petitioner was allotted Plot no.104 of Block-E of Sector-16 having an area of 162 sq. mtrs. Vide letter dated 08.11.2023, the petitioner was required to submit indemnity bonds on affidavit of Rs.100 alongwith copy of Form No.11(2) of the Land Acquisition Act to establish that the land was acquired by YEIDA and compensation was paid before the closing of the Scheme and thus he was eligible to apply under the 'farmers category'. The petitioner, accordingly, submitted two indemnity bonds alongwith copy of Form No.11. It is relevant to mention that footnote to letter dated

08.11.2023 stipulated that where the applicant had applied after death of original tenure holder (farmer), the applicant shall also file succession certificate and no-objection certificate from other heirs. It seems that two brothers of the petitioner namely, Rakesh Kumar and Amit Kumar did not give no-objection to the petitioner. Therefore, the petitioner filed a representation before YEIDA on 28.11.2023 bringing to its notice the said fact and also requested it to issue notice to his brothers and, in case, they do not file any objection, to execute lease deed in favour of the petitioner. On 05.12.2023, the Manager (Property), YEIDA issued a letter to the petitioner once again requiring him to submit no objection certificate and indemnity bonds on prescribed format and Form No.11 to support the claim under the 'farmers category', by 31.12.2023, failing which, the allotment would be cancelled.

5. At this stage, the petitioner approached this Court seeking quashing of the letter dated 05.12.2023 but the said petition was got withdrawn with liberty to pursue the grievance before the Authority. Accordingly, the writ petition was dismissed vide order dated 17.01.2024. The petitioner, thereafter, again made representation to the Authorities on 21.02.2024 stating that while other brothers have given no objection, his two brothers are not ready to sign the no objection certificate. The petitioner also stated that he even offered the plot to his brothers but that was also not accepted. Therefore, once again he prayed for issuing notice to his two brothers. However, when no action was taken in the matter, the petitioner realizing that he would not be able to furnish no-objection by his two brother, made applications on 28.02.2024 and 15.03.2024 for refund of the allotment money. The

application of the petitioner dated 28.02.2024 seeking refund of allotment money has been rejected relying upon Clause 18 (iv) of the brochure.

Submissions of counsel for the petitioner:

6. Learned counsel for the petitioner submitted that the impugned order is wholly illegal and is a result of arbitrary exercise of power. There was no condition in the brochure to furnish no objection certificate. The said condition was introduced illegally for the first time vide letter dated 08.11.2023. It is urged that the respondents could not have introduced any such condition after draw of lots. In alternative, it has been submitted that the said condition, even if valid, would not bring the case of the petitioner under Clause 18(iv) of the brochure. The said clause would apply only to a case of surrender and not to a case like the present one. Even if the Authority was competent to cancel the allotment, it should have returned the allotment money and could not have fortified the same.

Submission of counsel for the respondent:

7. On the other hand, learned counsel for YEIDA submitted, placing reliance on the counter affidavit, that although in the brochure there was no specific condition for submitting no-objection but, under Clause 28, the Chief Executive Officer was competent to add/alter/modify the terms and conditions of allotment and the additional condition imposed by YEIDA was in exercise of the said power. He submits that since, the petitioner failed to submit no-objection certificate, therefore, the Authority has

rightly proceeded under Clause 18(iv) of the brochure. He further submits that the petitioner in his application and affidavits stated that he has received compensation whereas the compensation was paid to his father. According to the policy, only original tenure holder (farmer) was entitled to apply. As the petitioner had applied on basis of rights claimed through his father, therefore, he was rightly required to submit no objection certificate from other heirs and as he failed to submit no objection certificate, therefore, the allotment money has been rightly forfeited under Clause 18(iv) of the brochure.

Analysis:

8. Under Clause 15D, as already noted, farmers whose land had been acquired/purchased by YEIDA for planned development or for Jewar Airport were entitled to apply. The indemnity bond in Form 1 was for verifying the claim that the land was acquired/purchased by YEIDA. Indemnity bond no.2 was in shape of a declaration that the applicant was not in illegal possession of any land of YEIDA or Jewar Airport and would not cause any hindrance in the development work. The petitioner had given undertaking in Proforma nos.1 and 2 as required and there is no dispute about it. The petitioner in his online application mentioned his name as the applicant and also duly mentioned the name of his father Jagpal Singh as the farmer whose land was acquired.

9. Under Clause 16(iv), the YEIDA was having power to decline to consider any application, which was incomplete in any respect or if any column was left blank or any wrong fact was mentioned therein. The YEIDA duly accepted the application, allotted a unique

number to it and also included it in the draw of lots. Thus, it can safely be inferred that the application was complete in all respects.

10. Obviously, the purpose of reservation in favour of farmers was to rehabilitate them. In absence of any specific bar in the brochure for heir of original tenure holder to apply, the eligibility of the petitioner to apply under the said category cannot be doubted. However, in the impugned order, there is an observation that as per brochure, only farmer whose land was acquired could have applied, but in that event, sub-clause (ix) of Clause 15D would apply, whereunder, at the stage of verification of the eligibility, if any violation is noticed, the application was liable to rejection and the registration money refunded without any interest.

11. The controversy can be examined from another angle, which leads to the same conclusion. The brochure is completely silent as regards submission of no-objection certificate. The said condition was introduced for the first time vide letter dated 08.11.2023 much after the petitioner had deposited the registration money and was declared successful in the draw of lots. Apparently, the said condition was introduced to avoid future disputes between the heirs of the original land holder (farmer), which is also understandable but at the same time, if the same would have been part of brochure and known to the petitioner, he may not have applied. So, while we find no illegality or arbitrariness on part of YEIDA in requiring the petitioner to furnish no objection certificate from other heirs, YEIDA also cannot be held entitled to forfeit the entire application money on the said ground.

12. Here, it is worthwhile to notice that action purports to be taken under Clause 18(v) but in the impugned order as well as the counter affidavit reliance has been placed on Clause 18(iv). Clauses 18(iv) and 18(v) are as follows:

"(iv) In the case of surrender at any time after allotment but before expiry of due date and deposit of allotment money then after deducting 10% of registration amount the balance shall be refunded without any interest thereon.

(v) In case of surrender at any time after due date of deposit of allotment money but before execution of lease deed then after deduction of amount equivalent to registration money, the balance if any shall be refunded without any interest thereon."

13. Clauses 18(iv) and 18(v) applied to different situations as is evident from bare reading of the said clauses. The common feature was that these would apply to case of surrender of the allotment by the allottee. In the instant case, as we have noted, the petitioner, all through, was interested in making payment of the allotment money and obtaining lease deed in his favour. He repeatedly requested YEIDA to issue notice to his two brothers, who were not ready to sign on the no objection certificate and in case there was no valid objection, to execute lease deed in his favour. However, when no action was taken by YEIDA on the said applications, the petitioner realizing that now, it would be futile exercise to pursue the application any further, applied for return of the registration money. Thus, it cannot be said to be a case of surrender as envisaged

under Clauses 18(iv) and 18(v) of the brochure. It is a case where the petitioner got compelled to request for cancellation of the allotment and return of registration money, in view of a condition not specifically provided for in the brochure but imposed subsequently vide letter dated 08.11.2023 i.e., ten months after the issuance of allotment letter. It seems that YEIDA also never contemplated a situation, which has emerged in the present case and, therefore, no provision was made to deal with such applications. In its subsequent residential scheme floated on 05.07.2024, YEIDA has specifically provided for filing of no-objection certificate, in such a situation. The condition is as follows:

"If the farmer (whose land has been acquired/purchased) has died, then all the legal heirs will give consent in favor one legal heir and will also provide the death certificate and legal heir certificate of the farmer. Only one plot will be allotted by the authority"

14. Had any such condition been part of the Brochure and the petitioner would have failed to comply with the same, YEIDA may be justified in forfeiting the registration money. However, in the instant case, as already noted, in the absence of any such condition in the brochure, the petitioner cannot be made to suffer by way of forfeiture of the registration money nor his case would fall under Clause 18(iv) or 18(v) of the brochure.

15. Accordingly, the impugned order forfeiting the allotment money is hereby quashed. Respondent no.2 is directed to refund the registration money to the petitioner within three weeks from the

date of communication of the instant order alongwith the account details and upon completion of other formalities, if any.

16. The writ petition is **allowed** accordingly.

(2025) 3 ILRA 800
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.03.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE VIPIN CHANDRA DIXIT, J.

Writ C No. 31628 of 2024

M/S Bharat Entp. ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
 Sr. Advocate, Sri Vaibhav Shandilya

Counsel for the Respondents:
 C.S.C., Sri Udit Chandra

(A) Constitutional Law - Writ Jurisdiction - Arbitrary withholding of bank guarantee despite completion of work and absence of determined liability - Constitution of India - Article 226 Writ court can intervene when authority acts in arbitrary or malafide manner dehors the contract - Writ Court may exercise jurisdiction despite existence of arbitration clause if authority acts arbitrarily or disputed facts can be verified by affidavits - Arbitrary action - Withholding of bank guarantee - Disputed liability - Alternative remedy - Withholding entire bank guarantee without established liability is arbitrary; partial security may be retained in terms of contract.(Para - 2 to 8)

Bank guarantee submitted by contractor withheld by respondents citing possible liabilities from employee deaths and GST dues - though such liabilities were neither accrued nor

determined - petitioner contested arbitrariness of withholding. **(Para - 2,3,4,5,6)**

HELD: - The retaining of the entire bank guarantee appears to be arbitrary and without any basis in law. Certain amount is required to be detained by the respondent authorities keeping in mind Clause 14.3 of the agreement. Petitioner is directed to deposit Rs. 50 lakhs with the respondent authorities within four weeks. Upon deposit, the bank guarantee will be released. **(Para -8)**

Writ petition disposed of. (E-7)

(Delivered by Hon'ble Shekhar B. Saraf, J.
& Hon'ble Vipin Chandra Dixit, J.)

1. Heard learned counsel appearing on behalf of the parties.

2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner has made the following prayers:-

"It is therefore most respectfully prayed that this hon'ble Court may be pleased to issue a writ of Mandamus directing the respondents no.2 and 3 to release the bank guarantee no.2000811BGP00004 dated 05.3.2020 submitted by the petitioner at the time of execution of the agreement for SE,EDC,Ghazipur issued from IDBI Bank Limited Sagra branch Varanasi against security deposit in favor of Administrative officer for managing director Purvanchal Vidyut Vitran Nigam Limited Varanasi submitted by the petitioner, with the respondent no. 3 within a specific period fixed by this hon'ble Court.

And/or pass any other order or direction as this hon'ble court may deem fit and proper."

3. The factual matrix in the present case indicates that the respondent authorities have withheld the bank guarantee that was submitted by the petitioner at the time of the execution of the agreement in lieu of certain sums that may become payable by the contractor to seven employees who had died during the execution of the works. Further more, respondents have raised an issue with regard to payment of G.S.T. liability of a sum of Rs.11,80,79,376/- along with interest which has not been paid by the petitioner. The respondent authorities have relied on Clause 14.3 of the agreement that reads as follows:-

"14.3 : In the event of any accident and/or injury, in respect of which compensation may become payable under the Workmen's Compensation Act-VIII of 1923 including all amendments thereof, Authorized officer of Discom shall have full powers to retain out of any sums payable/becoming payable to the Contractor, any sum as may be deemed sufficient to meet such liability on receipt of award of compensation from the competent authority under the said act, and the same shall be adjusted from this amount. Any shortfall shall be recovered and any excesses shall be refunded. The opinion of the Authorized officer of Discom shall be final in regard to all matters arising under this clause."

4. Learned counsel appearing on behalf of the respondents submits that there

being an alternative remedy in the form of an arbitration clause, the petitioner should be relegated to the forum of arbitration.

5. Sri Udit Chandra, learned counsel appearing on behalf of the respondent authorities has further submitted that there are several issues with regard to non-payment of provident fund by the petitioner/contractor, non-payment of G.S.T. and liability that may arise out of death of seven employees being the reason for retaining the bank guarantee as security.

6. Per contra, learned counsel appearing on behalf of petitioner has submitted that the liability arising out of payments to be made by the petitioner for the death of seven employees still has not been ascertained and the matter is pending before the Commissioner, Employees Compensation. He further submits that with regard to the G.S.T., appeal has been filed by the petitioner and the same is pending before the Appellate Authority, Prayagraj. In light of above, he submits that the respondents' actions of not releasing the bank guarantee for a sum of Rs.2,24,00,000.00 is absolutely malafide and arbitrary. He further submits that the liability that has been calculated by the respondent authorities for a sum of Rs.1,51,29,371.41/- with regard to payment for the death of the workmen is unsubstantiated and without any basis in law.

7. We have perused the documents placed before us and also heard the learned counsel appearing on behalf of the parties. It is trite law that when an authority acts in an arbitrary or malafide manner dehors the contract entered into between the authority and the private party, the writ court can intervene to nullify such malafide action. However, one is to realize that the extra

ordinary writ jurisdiction is a discretionary jurisdiction wherein this Court is required to exercise judicial discretion relying upon the law laid down as per the judgments of the Supreme Court. Further more, when an alternative remedy is available in the form of arbitration, this Court would only intervene when the facts are not disputed or the disputed facts are such that can be examined and verified by this Court upon exchange of affidavits. In the present case, we find that even after completion of the works the bank guarantee for a sum of Rs.2,24,00000.00 has been detained for liabilities that have not yet accrued and not determined. Even from the perusal of counter affidavit filed by the respondents we have not been able to understand the basis of the calculation of Rs.1,51,29,371.41.

8. This Court is duty bound to ensure that the equitable justice is done between the parties and in the present case the retaining of the entire bank guarantee on the pretext that certain liabilities may arise, appears to be far-fetched in nature. It is to be kept in mind that even the liabilities payable to the employees is covered by the Employees State Insurance Act and the Employees Provident Fund Act. Although, the retaining of the entire bank guarantee appears to be arbitrary and without any basis in law, nonetheless, we are of the view that certain amount is required to be detained by the respondent authorities keeping in mind Clause 14.3 of the agreement. Upon suggestion given by the Court, learned counsel appearing on behalf of the petitioner is willing to deposit a sum of Rs.50,00,000/- to be kept as security for any liability that may accrue with regard to the labour dues and G.S.T. dues. Accordingly, the petitioner is directed to deposit Rs.50,00,000/- with the respondent

authorities within a period of four weeks from date. Immediately upon deposit of the said amount of Rs.50,00,000/-, the bank guarantee will be released by the respondent authorities preferably within 48 hours of the said deposit.

9. We make it clear that our findings above are only tentative in nature and these findings should not be used in any proceedings that may take place at a later stage including the proceedings of arbitration, if the petitioner so chooses to go for such arbitration.

10. With the above directions, the writ petition is disposed of.

11. We make it clear that this order is peremptory in nature and no further time shall be granted to the petitioner to deposit the above Rs.50,00,000/-. In case of default of deposit of the said amount within the time frame as aforesaid, the authority shall be at liberty to act in accordance with law.

(2025) 3 ILRA 803
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.03.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE VIPIN CHANDRA DIXIT, J.

Writ C No. 39180 of 2024

Seema Padalia & Anr. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
 Sri Rahul Sahai, Sri Saumitra Anand

Counsel for the Respondents:
 C.S.C., Sri Kaushalendra Nath Singh

(A) Constitutional Law – Writ Jurisdiction – Refund of Stamp Duty – Indian Stamp Act, 1899 – Article 226 Constitution of India; Rule 218, U.P. Stamp Rules as amended by 5th Amendment Rules, 2021 - Law of Limitation is procedural and retrospective unless it extinguishes a vested right – Refund cannot be denied merely on technical grounds of limitation - Expiry of limitation may bar the remedy but not the right - Technicalities cannot defeat a just claim. (Para -7)

Petitioners purchased stamps in 2015 for execution of tripartite sale and sublease deed but agreement could not be executed due to NOIDA's refusal - application for refund filed in 2024 was rejected on ground of Rule 218 as amended by U.P. Stamp (5th Amendment) Rules, 2021 - Claim held time-barred by authority. **(Para - 3,4,5,6)**

HELD: - Impugned order rejecting refund on technical grounds quashed. Agreement preceded amendment. Refund justified as per Supreme Court ruling. Authority to reconsider refund within three months. **(Para - 9,10)**

Writ petition disposed of. (E-7)

List of Cases cited:

1. Harshit Harish Jain & anr. Vs St. of Maha. & ors., 2025 Law Suit (SC) 105

2. M.P. Steel Corporation Vs Commissioner of Central Excise, 2015 7 SCC 58

(Delivered by Hon'ble Shekhar B. Saraf, J. & Hon'ble Vipin Chandra Dixit, J.)

1. Heard learned counsel for the parties and perused the record.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioners with the following reliefs :-

"i. Issue a writ, order or direction in the nature of certiorari for quashing the impugned order dated 16.05.2024 passed by respondent no. 3 vide patrank No. 314/Sa.Ma. Ni.-Pratham/2024 whereby the petitioners' application for refund of stamp has been rejected. (Annexure-1 to the writ petition).

ii. Issue a suitable order or direction for declaration of the Rule 218 as substituted/amended by U.P. Stamp 5th amendment Rules 2021 as ultra vires the Indian Stamp Act, 1899.

iii. Issue a suitable writ, order or direction in the nature of mandamus directing the respondent no. 2 to 4 to refund the stamp duty in accordance with law by allowing the application dated 27.04.2024."

3. The factual matrix of the case is that the petitioners sought to enter into a tripartite agreement of sale-deed and sublease deed with respect to super structure of residential unit and land, respectively, with the New Okhla Industrial Development Authority (lessor) and one M/s AGC Realty Private Ltd. (lessee) for dwelling unit No. W-1101 on 11th Floor, Tower W in complex known as "Homes 121" constructed over Plot No. GH - Sector 121 Noida, Gautambudh Nagar. In this behalf the total sale consideration was to be of Rs. 87,37,470/- and the stamp duty was assessed at Rs. 4,37,000/-. The petitioners being desirous of entering into the said agreement purchased the requisite stamp as per the following breakup on 22.09.2015 :

25,000 x 17
10,000 x 1
1,000 x 2

4. Thereafter, an agreement was drawn upon the aforesaid stamps, however, the same was not presented for registration and accordingly remained unused and unutilized. There was a restriction imposed on transfer and sale of flats by NOIDA in the project "Home 121" of which the property in question was a part. Consequently, the agreement did not fructify as the New Okhla Industrial Development Authority did not assent/join in the said transaction. The petitioners were not aware as to the restriction on sale and transfer of flats in project "Home 121" till the time Noida Authority backed out from the agreement. The petitioners were under a bonafide belief that the agreement would be executed soon and kept awaiting its execution and registration.

5. When it became clear that the sale/sublease agreement would not be processed, the petitioners surrendered their allotment of the flat in November, 2023 as the builder expressed its inability to execute the agreement without the consent of NOIDA. Thereafter, by means of application dated 27.04.2024, the petitioners approached the respondent nos. 2 and 4 seeking refund of stamps worth Rs. 4,37,000/-.

6. The matter was placed before the respondent no. 3 who proceeded to pass the impugned order dated 16.05.2024 on the pretext that an amendment has been introduced being U.P. Stamp (5th Amendment) Rules, 2021, whereby the Rule 2018 has been substituted and a condition had been imposed which contemplates that stamp would not be renewed or returned after 8 years from its purchase and therefore, the claim of the petitioners was time barred.

7. Counsel on behalf of petitioners submits that the amended provision that took place in the year 2021 would not apply to the present case as the stamps were purchased in the year 2015 before the amendment. Learned counsel for the petitioners has placed reliance on a judgment of Supreme Court in Harshit Harish Jain & Anr. vs. State of Maharashtra & Ors. reported in 2025 Law Suit (SC) 105, wherein, a three Judges Bench had dealt with a similar issue with regard to the Bombay Stamp Act, 1958. The issue before the Supreme Court has been delineated in paragraph no. 5 and thereafter, the Supreme Court has relied upon M.P. Steel Corporation vs. Commissioner of Central Excise, 2015 7 SCC 58 to examine the applicability of amending the limitation period on an accrued cause of action. The Supreme Court has, however, gone on to hold in paragraph nos. 10 and 11 that a legitimate refund should not be denied on technical grounds of limitation and has held that equitable balance is required to be kept in mind in fiscal or quasi judicial orders. Relevant paragraph nos. 5,9,10 and 11 are reproduced herein below :-

"5. Having heard the learned counsel for the Appellants and the Respondents, the primary issue for consideration before us is whether the amended six-month limitation, introduced by the 24.04.2015 amendment to Section 48(1) of the Act governs the Appellants' claim for stamp duty refund, particularly when the Cancellation Deed was executed prior to the amendment but registered thereafter.

9. Moreover, in M.P. Steel Corporation v. Commissioner of

Central Excise, 2015 7 SCC 58, this Court has held that amendment to provision as to limitation is inapplicable to accrued cause of action where the amendment has reduced the period earlier provided. The relevant paras of this judgement have been extracted hereunder:

"53. Shri A.K. Sanghi, learned Senior Counsel appearing on behalf of the Revenue, has strongly contended before us that the present appeal must attract the limitation period as on the date of its filing. That being so, it is clear that the present appeal having been filed before Cestat only on 23-5-2003, it is Section 128 post amendment that would apply and therefore the maximum period available to the (2015)7 SCC 58 appellant would be 60 plus 30 days. Even if time taken in the abortive proceedings is to be excluded, the appeal filed will be out of time being beyond the aforesaid period.

54. It is settled law that periods of limitation are procedural in nature and would ordinarily be applied retrospectively. This, however, is subject to a rider. In New India Insurance Co. Ltd. v. Shanti Misra, [(1975) 2 SCC 840 : (1976) 2 SCR 266], this Court held : (SCC p. 844, para 5)

5. "On the plain language of Sections 110-A and 110-F there should be no difficulty in taking the view that the change in law was merely a change of forum i.e. a change of adjectival or procedural law and not of substantive law. It is a well-established proposition that such a change of law operates

retrospectively and the person has to go to the new forum even if his cause of action or right of action accrued prior to the change of forum. He will have a vested right of action but not a vested right of forum. If by express words the new forum is made available only to causes of action arising after the creation of the forum, then the retrospective operation of the law is taken away. Otherwise, the general rule is to make it retrospective.”

55. In answering a question which arose under Section 110-A of the Motor Vehicles Act, this Court held : (Shanti Misra case [(1975) 2 SCC 840 : (1976) 2 SCR 266] , SCC p. 846, para 7)

7. “... ‘(1) Time for the purpose of filing the application under Section 110-A did not start running before the constitution of the tribunal. Time had started running for the filing of the suit but before it had expired the forum was changed. And for the purpose of the changed forum, time could not be deemed to have started running before a remedy of going to the new forum is made available.

(2) Even though by and large the law of limitation has been held to be a procedural law, there are exceptions to this principle. Generally the law of limitation which is in vogue on the date of the commencement of the action governs it. But there are certain exceptions to this principle. The new law of limitation providing a longer period cannot revive a dead remedy. Nor can it suddenly extinguish a vested right of action

by providing for a shorter period of limitation.”

56. This statement of the law was referred to with approval in *Vinod Gurudas Rajak v. National Insurance Co. Ltd.*, [(1991) 4 SCC 333] as follows : (SCC p. 337, para 7).

7. “It is true that the appellant earlier could file an application even more than six months after the expiry of the period of limitation, but can this be treated to be a right which the appellant had acquired. The answer is in the negative. The claim to compensation which the appellant was entitled to, by reason of the accident was certainly enforceable as a right. So far the period of limitation for commencing a legal proceeding is concerned, it is adjectival in nature, and has to be governed by the new Act—subject to two conditions. If under the repealing Act the remedy suddenly stands barred as a result of a shorter period of limitation, the same cannot be held to govern the case, otherwise the result will be to deprive the suitor of an accrued right. The second exception is where the new enactment leaves the claimant with such a short period for commencing the legal proceeding so as to make it unpractical for him to avail of the remedy. This principle has been followed by this Court in many cases and by way of illustration we would like to mention *New India Insurance Co. Ltd. v. Shanti Misra*, [(1975) 2 SCC 840 : (1976) 2 SCR 266] . The husband of the respondent in that case died in an

accident in 1966. A period of two years was available to the respondent for instituting a suit for recovery of damages. In March 1967 the Claims Tribunal under Section 110 of the Motor Vehicles Act, 1939 was constituted, barring the jurisdiction of the civil court and prescribed 60 days as the period of limitation. The respondent filed the application in July 1967. It was held that not having filed a suit before March 1967 the only remedy of the respondent was by way of an application before the Tribunal. So far the period of limitation was concerned, it was observed that a new law of limitation providing for a shorter period cannot certainly extinguish a vested right of action. In view of the change of the law it was held that the application could be filed within a reasonable time after the constitution of the Tribunal; and, that the time of about four months taken by the respondent in approaching the Tribunal after its constitution, could be held to be either reasonable time or the delay of about two months could be condoned under the proviso to Section 110-A(3).” Both these judgments were referred to and followed in *Union of India v. Harnam Singh*, [(1993) 2 SCC 162 : 1993 SCC (L&S) 375 : (1993) 24 ATC 92], see para 12.

57. The aforesaid principle is also contained in Section 30(a) of the Limitation Act, 1963:

30. “Provision for suits, etc., for which the prescribed period is shorter than the period prescribed by the Indian Limitation

Act, 1908.—Notwithstanding anything contained in this Act—

(a) any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, may be instituted within a period of seven years next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908, whichever period expires earlier:”

58. The reason for the said principle is not far to seek. Though periods of limitation, being procedural law, are to be applied retrospectively, yet if a shorter period of limitation is provided by a later amendment to a statute, such period would render the vested right of action contained in the statute nugatory as such right of action would now become time-barred under the amended provision.”

10. Even if one were to hold that the Appellants’ claim is examined under the amended six-month period, we are of the considered opinion that a mere technical delay should not, by itself, extinguish an otherwise valid claim. The scheme of stamp duty refund provisions is designed to ensure fairness when the underlying transaction is rescinded for bona fide reasons. The Appellants were compelled to cancel the purchase due to the developer’s inability to deliver timely possession, and were in no way remiss or at fault.

11. Denying a legitimate refund solely on technical grounds of limitation, especially when the timing of registration fell close to the legislative amendment,

fails to strike the equitable balance ordinarily expected in fiscal or quasi-judicial determinations. A measure of discretion or consideration for good faith conduct is not alien to statutory processes that safeguard citizens from unjust enrichment by the State. It has been laid down by this Court in *Bano Saiyed Parwaz v. Chief Controlling Revenue Authority & Inspector General of Registration & Controller of Stamps*, 2024 SCC Online SC 979 that the limitation provision in stamp law (to seek refund of stamp duty) should not be enforced so as to oust the remedy when the applicant is otherwise not blameworthy. The relevant paras of the same have been reproduced hereunder:

“14. In *Committee-GFIL v. Libra Buildtech Private Limited*, wherein the issue of refund of stamp duty under the same Act was in question, this Court has observed and held inter alia as under:

“29. This case reminds us of the observations made by M.C. Chagla, C.J. in *Firm Kaluram Sitaram v. Dominion of India*, [1953 SCC OnLine Bom 39: AIR 1954 Bom 50]. The learned Chief Justice in his distinctive style of writing observed as under in para 19: (*Firm Kaluram case*, SCC OnLine Bom) 2024 SCC OnLine SC 979

“19. ... we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person.”

We are in respectful agreement with the aforementioned observations, as in our considered opinion these observations apply fully to the case in hand against the State because except the plea of limitation, the State has no case to defend their action.

32. In our considered opinion, even if we find that applications for claiming refund of stamp duty amount were rightly dismissed by the SDM on the ground of limitation prescribed under Section 50 of the Act yet keeping in view the settled principle of law that the expiry of period of limitation prescribed under any law may bar the remedy but not the right, the applicants are still held entitled to claim the refund of stamp duty amount on the basis of the grounds mentioned above. In other words, notwithstanding dismissal of the applications on the ground of limitation, we are of the view that the applicants are entitled to claim the refund of stamp duty amount from the State in the light of the grounds mentioned above.”

15. The legal position is thus settled in *Libra Buildtech* (supra) that when the State deals with a citizen it should not ordinarily rely on technicalities, even though such defences may be open to it.

16. We draw weight from the aforesaid judgment and are of the opinion that the case of the appellant is fit for refund of stamp duty in so far as it is settled law that the period of expiry of limitation prescribed under any law may bar the remedy but not the right and the appellant

is held entitled to claim the refund of stamp duty amount on the basis of the fact that the appellant has been pursuing her case as per remedies available to her in law and she should not be denied the said refund merely on technicalities as the case of the appellant is a just one wherein she had in bonafide paid the stamp duty for registration but fraud was played on her by the Vendor which led to the cancellation of the conveyance deed.”

8. Counsel on behalf of respondents submits that the amended U.P. Stamp Act would apply in the present case as the petitioners' application for refund was made subsequent to the said amendment.

9. Upon perusal of the averments made, the documents annexed and after going through the ratio of Supreme Court in ***Harshit Harish Jain & Anr (supra)***, we are of the view that in the present case the impugned order rejecting the refund of the petitioners is passed on technical reasons only. From the facts, it is clear that the agreement between the parties has taken place prior to the amendment that has been carried in the stamp papers, and accordingly, following the ratio of the Supreme Court Judgment, it is crystal clear that the benefit of refund of the stamp duty would be applicable in the present case.

10. The impugned order does not take into consideration the ratio of the Supreme Court judgement. Accordingly, the said order is quashed and set aside with the direction upon the authority concerned to once again examine the refund application of the petitioners keeping in view the judgment of the Supreme Court cited above within a period of three months from date.

11. With the above observation,
the writ petition is disposed of.

(2025) 3 ILRA 809
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.03.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE KSHITIJ SHAILENDRA, J.

Writ C No. 41735 of 2024

Vijay Kumar Dixit ...Petitioner
Versus
Union of India & Ors. ...Respondents

Counsel for the Petitioner:
Manoj Kumar Singh

Counsel for the Respondents:
A.S.G.I., Nishant Mehrotra, Pranjal Mehrotra

(A) Constitutional Law – Writ Jurisdiction – Recovery of professional fees from empanelled advocate based on internal inquiry – Constitution of India – Article 226 – Principles of natural justice to be followed when stigma is cast – Orders demanding recovery of excess payment without hearing and inquiry report held stigmatic and violative of natural justice – Internal financial investigation – Denial of inquiry report – Absence of show cause – Stigmatic action by State instrumentality – Authority casting stigma must ensure due process including copy of inquiry report and opportunity of response.(Para - 3,6,7,8,9,11)

Petitioner, an empanelled advocate with FCI - was served multiple orders demanding refund of Rs.17,16,767/- as excess payment based on an internal committee report - without being served a copy of such report or given opportunity to participate in the inquiry – recovery was being sought by the client (F.C.I.) against the Advocate (petitioner) by way of setting off alleged excess payments against the payments

that were due to be paid to the petitioner in future. **(Para - 2,3,6,10)**

HELD: - Authorities had overstepped their limits by passing the impugned orders, which were definitely stigmatic in nature. Not only did the orders put a stigma on the petitioner, but they were also an attempt to deprive the petitioner of valuable compensation for services offered by him. The impugned orders could not be sustained and were quashed and set aside. Liberty was granted to f.C.I. to proceed de-novo in accordance with law. **(Para -8,11,12)**

Writ petition disposed of. (E-7)

List of Cases cited:

1. Improvement Trust, Ropar through its Chairman Vs S. Tejinder Singh Gujral & ors., 1995 Supp (4) SSC 577

2. K.N. Mishra Vs St. of U.P. & ors., 2006 (4) ADJ 473 (All) (DB)

3. Prithipal Singh Vs St. of Punj. & ors., 2003 Supreme Court Cases (L&S) 103

4. St. of Har. & anr. Vs Jagdish Chander, (1995) 2 Supreme Court Cases 567

5. U.P. St. Road Transport Corp. & ors. Vs Brijesh Kumar & anr., AIR 2024 SC 4424

(Delivered by Hon'ble Shekhar B. Saraf, J.
& Hon'ble Kshitij Shailendra, J.)

1. Heard Shri Shashi Nandan, learned Senior Counsel assisted by Shri Manoj Kumar Singh, Advocate for the petitioner and Shri Nishant Mehrotra, learned counsel for the respondent-Corporation.

2. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved of by several orders dated 05.03.2024 (Annexure No. 13), 24/28.06.2022 (Annexure No. 10), 24.06.2022 (Annexure No. 8) and 16.02.2022 (Annexure No. 5) passed by the

respondent-Corporation, wherein it has been claimed that excess payments of professional fees were made to the petitioner for services as an empanelled Advocate of the Corporation for the financial years 2017-18, 2018-19 and 2019-2020 amounting to Rs.17,16,767/- (rupees seventeen lac sixteen thousand seven hundred sixty seven). The orders impugned are based on a report formulated by a Committee that was constituted by the office of the Food Corporation of India. It appears that this Committee carried out an inquiry and based on such inquiry, the impugned orders have been passed demanding the alleged excess payments made to the petitioner.

3. Mr. Shashi Nandan, learned Senior Advocate appearing for the petitioner submits that the entire procedure followed by the Authority is unknown in law and is a gross violation of principles of natural justice inasmuch as even no copy of inquiry report was ever served upon the petitioner nor was he allowed to participate in such inquiry. He further submits that in the guise of demanding excess payment, the Authority has cast a stigma on the petitioner, which would obviously be taken as a stand for termination of the empanellment of the petitioner at a later stage.

4. Per contra, Mr. Nishant Mehrotra, learned counsel appearing on behalf of Food Corporation of India submits that there is no provision in law for providing the inquiry report of the Committee to the petitioner as the same was an internal financial investigation carried out by the Committee. The purpose of the inquiry was to carry out audit of the payments being made to the lawyers and other persons. He relied upon the judgment

of Hon'ble Supreme Court in **Improvement Trust, Ropar through its Chairman vs. S. Tejinder Singh Gujral and others, 1995 Supp (4) Supreme Court Cases 577** and a Division Bench judgment of this Court in **K.N. Mishra vs. State of U.P. and others, 2006 (4) ADJ 473 (All) (DB)** to buttress his argument that writ petition by an Advocate for recovery of fees is not maintainable.

5. In this particular case, no counter affidavit has been called for by us as we find that the matter hinges the principles of natural justice qua inquiry, which fact was undisputed before us.

6. The record clearly shows that the inquiry report of the Committee was never provided to the petitioner as also stated by the petitioner in response to the notice issued to him subsequent to the inquiry. Furthermore, the petitioner was never put to show cause with regard to any of the excess payments of professional fees made to him prior to issue of demand notice. In fact the demand notices were in the nature of orders to deposit the amount in bank account of the Corporation. It is not in dispute that the petitioner was never a part of the inquiry.

7. Upon considering the various facts and circumstances of the case, we are of the view that any order that is passed by an Authority that has the flavour of stigma being cast upon a person is required to be carried out in a particular manner where there is a due process of law. Such process of law requires the person against whom such stigma is being cast to be granted an opportunity to place his case. The person should also be provided a copy of inquiry report, if any, and, thereafter, given a chance to submit his response to the same.

The above ingredients are obviously missing in the present case.

8. Ergo, we are of the view that the Authorities had overstepped their limits by passing the impugned orders, which are definitely stigmatic in nature. Not only do the orders put a stigma on the petitioner but are also an attempt to deprive the petitioner of valuable compensation for services offered by him.

9. The issue as to when an action of an instrumentality of the State casts a stigma on a person, the principles of natural justice must be followed, is no res-integra. Such an issue normally comes before the courts in service matters. However, the principle remains the same in all actions undertaken by the instrumentality of the State. In this regard, we may refer to judgment of Hon'ble Supreme Court in **Prithipal Singh vs. State of Punjab and others, 2003 Supreme Court Cases (L&S) 103**, wherein a constable working in Punjab police as a temporary employee was discharged from service and the Hon'ble Supreme Court, having found the discharge order as stigmatic, annulled the decision of the employer on the ground that principles of natural justice were not followed and no opportunity of hearing was afforded to the constable before passing the discharge order. **State of Haryana and another vs. Jagdish Chander, (1995) 2 Supreme Court Cases 567** is also an authority on the same point. Recently, the Hon'ble Supreme Court in **U.P. State Road Transport Corporation & others vs. Brijesh Kumar & another, AIR 2024 SC 4424**, has held that determination of services of the employee on the ground of misconduct as alleged but without holding any regular inquiry or affording opportunity of hearing to him and simply based upon some report,

copy whereof was not even supplied to the employee and no show cause notice having been issued to him, the termination was apparently stigmatic in nature, which could not have been done without following the principles of natural justice.

10. We do not need to join issue with the judgments cited by learned counsel appearing on behalf of the respondents as the principle therein is accepted by us that an Advocate cannot file a writ petition for recovery of this professional fees. However, the present factual matrix of the case is completely different, wherein recovery is being sought by the client (F.C.I.) against the Advocate (petitioner) by way of setting off alleged excess payments against the payments that are due to be paid to the petitioner in future.

11. In light of above discussion, the impugned orders dated 05.03.2024 (Annexure No. 13), 24/28.06.2022 (Annexure No. 10), 24.06.2022 (Annexure No. 8) and 16.02.2022 (Annexure No. 5) by the respondent-Corporation cannot be sustained and are **quashed and set aside**.

12. Liberty is granted to the Food Corporation of India to proceed de-novo with the investigation against the petitioner, if it wishes to do so. However, the Corporation must comply with the principles of natural justice as enunciated above.

13. The writ petition stands **disposed of**.

(2025) 3 ILRA 812

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: LUCKNOW 17.03.2025

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1001723 of 2003

Pawan Kumar ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
A.N. Mishra, Virendra Misra

Counsel for the Respondents:
C.S.C.

(A) Revenue Law – Stamp Duty – Legality of orders under Stamp Act and interpretation of agreement vis-à-vis transfer of possession – Indian Stamp Act, 1899 – Sections 56 & 47A/33 – U.P. Zamindari Abolition and Land Reforms Act, 1950 – Section 164 – Indian Registration Act, 1908 – Relevant Provisions - Transfer of possession alone is not sufficient for applicability of Section 164; transfer of possession must be in pursuance of transfer of holding - Registered instrument necessary for value exceeding Rs.100 - Legal pre-condition for Section 164 not established - agreement to sell cannot confer title.(Para - 6,8,14,15,16)

Petitioner challenged orders passed under the Indian Stamp Act - regarding deficiency of stamp duty on tenancy agreement and subsequent revision - both orders passed without recording reasons or findings. **(Para - 2 to 5)**

HELD: - Court quashed the orders passed under Sections 56 and 47A/33 of the Indian Stamp Act, holding that they lacked reasons and findings. Mere delivery of possession under an unregistered agreement does not constitute a valid transfer under Section 164 of the U.P. ZA & LR Act. **(Para -16 to 18)**

Writ Petition allowed. (E-7)

List of Cases cited:

1. Mohammad Fasih, Appellant Vs Munir Khan & anr., Respondents, 1987 All. L.J. 617

2. Umesh Chand & ors. Vs Board of Revenue, U.P., Alld. & ors., 2002 SCC Online All 1508 : 2002 All LJ 680

3. Rama Shanker & ors. Vs D.D.C., Writ B No.5314 of 1980

stamp of value of Rs.1200/-. The ADM (F&R)/Collector Stamps, Barabanki discarded the explanation and response submitted by the petitioner on 14.09.1998 and also ignored the report submitted by the Tehsildar without making any finding and observation and decided the case finally on 09.06.1999.

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri Virendra Misra, learned counsel for the petitioner and learned Additional Chief Standing Counsel for the respondent - State.

2. By means of present writ petition, the petitioner is challenging the order dated 14.05.2003 passed by Commissioner, Faizabad Division, Faizabad in revision No.73 Barabanki under Section 56 of Indian Stamp Act; Pawan Kumar Agrawal Vs. State of U.P. and others and order dated 05.03.2001 passed by Additional District Magistrate, (Finance and Revenue) (ADM - F&R), Barabanki in case No.80/2000-01 under Section 47A/33 Indian Stamp Act; State of U.P. Vs. Pawan Kumar Agrawal.

3. Factual matrix of the case is that the petitioner took a piece of land area measuring 130 Ft. in east to west side and 350 Ft. in north-south length of Gata No.171 and 173 situated at revenue village Satrahi Pargana and Tehsil Haidergarh, District Barabanki. A notice was issued by the Collector, Stamps, Barabanki, which was replied by the petitioner on 14.09.1998 and specifically denied the allegations and justified the assessment of stamps of instrument of tenancy of land in question.

4. The Tehsildar, Haidergarh prepared a report and found a deficiency of

5. The Tehsildar, without assigning any reason, observation and finding decided the restoration application filed by the petitioner vide order dated 05.03.2001. Against the order passed by ADM (F&R), the petitioner preferred a revision against order dated 05.03.2001, which was also dismissed by the Commissioner without assigning any reason and without giving any finding on the report of the Tehsildar and explanation of the petitioner. Hence, the present writ petition has been filed before this Court.

6. Submission of learned counsel for the petitioner is that in view of Section 164, U.P. Zamindari Abolition and Land Reforms Act (U.P. ZA&LR Act), the agreement in question would be deemed to be a transfer inasmuch as it was admitted therein that possession over the property in suit had been delivered to the respondents in pursuance of the said agreement. Since possession over the property had been transferred to the respondents in pursuance of the said agreement, the agreement was for all purposes a sale of the property. This submission also is on the face of it untenable. Section 164, U.P. ZA&LR Act deals with transfer with possession by a bhumidhar. It contemplates transfer of any holding or any part thereof made by a bhumidhar by which possession is transferred to the transferee for the purpose of securing any payment of money referred to in the said section. On the face of it for

the application of Section 164 transfer of possession alone is not sufficient. What is required by the section is transfer of possession made in pursuance of transfer of any holding or part thereof. Since an agreement of sale does not have the effect of transferring any holding or part thereof even if possession was transferred of the holding in pursuance of the said agreement, it cannot be said that the agreement amounted to a sale under Section 164. Section 164 contemplates transfer by a bhumidhar. In support of his submission, he placed reliance upon a judgment in the case of Mohammad Fasih, Appellant Vs. Munir Khan and another, respondents; 1987 All. L.J. 617, paragraph 16.

7. Next submission of learned counsel for the petitioner is that on perusal of impugned order, it is clear that any transfer of any holding regarding an amount of Rs.100/- or more can be only executed by registered documents. "Any transfer of any holding" referred to under Section 164 of U.P. ZA&LR Act refers to transfer of any interest in any holding if the value is more than 100 rupees of immovable property, the transfer has to be effected in accordance with law. No right or interest can pass in in immovable property in a manner contrary to provisions of Transfer of Property Act and Indian Registration Act.

8. His next submission is that transfer of possession alone is not sufficient. What is required by the section is transfer of possession made in pursuance of transfer of any holding or part thereof. Thus, the applicability of Section 164 transfer of possession has to be in pursuance of transfer of any holding. Transfer of any holding is condition precedent for transfer of possession. Thus even if possession is

transferred by bhumidhar without transferring any interest in the holding, the said transfer cannot be covered by Section 164 of U.P. ZA & LR Act. In support of his submissions, he placed reliance upon a judgment in the case of Umesh Chand and others Vs. Board of Revenue, U.P. Allahabad and others; 2002 SCC Online All 1508 : 2002 All LJ 680, paragraph 18, 19, 20 & 21.

9. He further placed reliance upon a judgment in the case of Rama Shanker and others Vs. D.D.C.; Writ B No.5314 of 1980 decided on 18.02.2020, wherein Division Bench of this Court was followed as referred hereinabove. Relevant paragraphs are 18, 19 & 20.

10. On the other hand, learned Additional Chief Standing Counsel submitted that the impugned order passed by the respondents do not suffer from any infirmity or illegality and are just and valid.

11. His next submission is that on the basis of agreement possession was transferred to the transferee, therefore, the judgment relied upon by learned counsel for the petitioner do not apply to the present facts and circumstances of the case.

12. I have considered the submissions advanced by learned counsel for the parties and perused the material on record as well as judgments relied upon by learned counsel for the petitioner.

13. To resolve the controversy involved in the matter, relevant portion of the judgments relied upon are being quoted below:

i) Mohammad Fasih, Appellant V. Munir Khan and another, Respondents; 1987 All. L.J. 617:

"16) Counsel for the respondents in this connection urged that in view of S. 164, U.P. Zamindari Abolition and Land Reforms Act, the agreement in question would be deemed to be a transfer inasmuch as it was admitted therein that possession over the property in suit had been delivered to the respondents in pursuance of the said agreement. According to him since possession over the property had been transferred to the respondents in pursuance of the said agreement the agreement was for all purposes a sale of the property. This submission also is on the face of it untenable. Section 164, U.P. Zamindari Abolition and Land Reforms Act, deals with transfer with possession by a bhumidhar. It contemplates transfer of any holding or any part thereof made by a bhumidhar by which possession is transferred to the transferee for the purpose of securing any payment of money referred to in the said section. On the face of it for the application of S. 164 transfer of possession alone is not sufficient. What is required by the section is transfer of possession made in pursuance of transfer of any holding or part thereof. Since an agreement of sale does not have the effect of transferring any holding or part thereof even if possession was transferred of the holding in pursuance of the said agreement it cannot be said that the agreement amounted to a sale under S. 164. Moreover, S. 164

contemplates transfer by a bhumidhar."

ii) Umesh Chand and others V. Board of Revenue, U.P., Allahabad and others; 2002 SCC Online All 1508 : 2002 All LJ 680:

"18. From the above discussions, it is clear that any transfer of any holding regarding an amount of Rs. 100 or more can be only executed by registered documents. "Any transfer of any holding" referred to under Section 164 of U.P. Zamindari Abolition and Land Reforms Act refers to transfer of any interest in any holding if the value is more than 100 rupees of immovable property, the transfer has to be effected in accordance with law. No right or interest can pass in immovable property in a manner contrary to provisions of Transfer of Property Act and Indian Registration Act. The Division Bench of this Court in Mohd. Fasih v. Munir Khan, 1987 ALJ 617, considered the scope and ambit of Section 164 of U.P. Zamindari Abolition and Land Reforms Act. The Division Bench held in paragraph 16,

"16. Counsel for the respondents in this connection urged that in view of Section 164, U.P. Zamindari Abolition and Land Reforms Act, the agreement in question would be deemed to be a transfer inasmuch as it was admitted therein that possession over the property in suit had been delivered to the respondents in pursuance of the said agreement. According to him since possession

over the property had been transferred to the respondents in pursuance of the said agreement the agreement was for all purposes a sale of the property. This submission also is on the face of it untenable. Section 164, U.P. Zamindari Abolition and Land Reforms Act. deals with transfer with possession by a bhumidhar. It contemplates transfer of any holding or any part thereof made by a bhumidhar by which possession is transferred to the transferee for the purpose of securing any payment of money referred to in the said section. On the face of it for the application of Section 164 transfer of possession alone is not sufficient. What is required by the section is transfer of possession made in pursuance of transfer of any holding or part thereof. Since an agreement of sale does not have the effect of transferring any holding or part thereof even if possession was transferred of the holding in pursuance of the said agreement it cannot be said that the agreement amounted to a sale under Section 164. Moreover, Section 164 contemplates transfer by a bhumidhar."

19. The Division Bench in the aforesaid judgment has clearly held that under Section 164, transfer of possession alone is not sufficient. It held "what is required by the section is transfer of possession made in pursuance of transfer of any holding or part thereof." Thus, for applicability of Section 164, transfer of possession

has to be in pursuance of transfer of any holding. Transfer of any holding is condition precedent for transfer of possession. Thus, even if possession is transferred by bhumidhar without transferring any interest in the holding, the said transfer cannot be covered by Section 164 of U.P. Zamindari Abolition and Land Reforms Act. As observed above, transfer of any right in a holding by bhumidhar can be made of a value more than Rs. 100 by registered document. The Division Bench has also clearly held that even if by registered agreement to sale, transfer of possession is made by bhumidhar, the said transfer will not be covered by Section 164 of U.P. Zamindari Abolition and Land Reforms Act since by agreement to sale, no right or interest is transferred in the holding. When by registered agreement to sale with transfer of possession does not come within Section 164 of U.P. Zamindari Abolition and Land Reforms Act, there is no question of applying provisions of Section 164 of U.P. Zamindari Abolition and Land Reforms Act in the facts of the present case whereas, as noted above, only a plain receipt of revenue stamp was given by the father of defendants as advance for transferring the land in dispute. The case of the plaintiff, as noted above, clearly indicates that the transaction was more or less in the nature of agreement to sale. In view of the Division Bench pronouncement, it is clear that provisions of Section 164 of U.P. Zamindari Abolition and Land

Reforms Act are not attracted in the facts of the present case.

20. This Court in several other decisions has taken the same view. In *Data Ram v. Additional Civil Judge, Bulandshahr and Anr.*, 1978 ALJ 840, this Court held that there must be a transfer of holding in law, such as to transfer some right, title or interest of the tenure holder in the holding. It was held in paragraph 4 that :

"4. Having given the matter my anxious consideration, I am unable to agree with the contention of the learned counsel. Although Section 164 speaks of "any transfer of any holding or part thereof made by a bhumidhar", it does not mean that the transfer of holding spoken of thereby may be merely a transfer of possession over land included in the holding. There must be a transfer of the holding in law, such as to transfer some right, title or Interest of the tenure holder in the holding. A transfer of interest in holding cannot be effected in case of property valued at more than Rs. 100 without a registered Instrument. Even if there is transfer of possession under an unregistered agreement, there is no transfer of any right, title or interest of the tenure-holder in the holding. In my opinion a bare transfer of possession of land by a tenure-holder; may be for securing any payment of any advance to him, is not covered by Section 164 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. The object of Section 164 is to convert such transactions as a Zarpeshgi lease or a usufructuary mortgage into

sale, and not to convert mere transfers of possession of land by a tenure holder without any transfer of Interest in the holding into sales. In this view of the matter the order of the Additional Civil Judge cannot be said to suffer from any error of law."

21. In 1978 Rev. Dec 307 : (1978 All LJ 836) *Kedar v. District Judge, Banda* it was held that :

"Before this provision applies, the transaction in question has to be a transfer. An agreement to sell cannot be held to be transfer as contemplated by this section, for no title passes to another person as a result of the transaction. This apart, even assuming that such an agreement would fall within the purview of Section 164 of the Act, inasmuch as the Instrument evidencing it was not a registered one, no title at all could pass under this document as the consideration in the agreement to sell was in excess of Rs. 100. This contention must, therefore, be rejected."

iii) Rama Shanker and others V. D.D.C., Writ B No.5314 of 1980 decided on 18.02.2020:

19. The division bench in the case of *Mohd. Fasih (supra)* also had the occasion to examine the same issue. It specifically dealt with the precise submission being advanced by learned Senior Counsel for the petitioners, at page 41 of the report, wherein it was observed as under:-

"Counsel for the respondents in this connection urged that in view of Section 164 of

the U.P. Zamindari Abolition and Land Reforms Act the agreement in question would be deemed to be a transfer inasmuch as it was admitted therein that possession over the property in suit had been delivered to the respondents in pursuance of the said agreement. According to him since possession over the property had been transferred to the respondents in pursuance of the said agreement the agreement was for all purposes a sale of the property. This submission also is on the face of it untenable. Section 164 of the U.P. Zamindari Abolition and Land Reforms Act deals with transfer with possession by a Bhumidhar. It contemplates transfer of any holding or any part thereof made by a Bhumidhar by which possession is transferred to the transferee for the purpose of securing any payment of money referred to in the said section. On the face of it for the application of Section 164 transfer of possession alone is not sufficient. What is required by the section is transfer of possession made in pursuance of transfer of any holding or part thereof. Since an agreement of sale does not have the effect of transferring any holding or part thereof even if possession was transferred of the holding in pursuance of the said agreement it cannot be said that the agreement amounted to a sale under Section 164."

20. In view of the authoritative pronouncement of law made by the division bench and in absence of any contrary law being

shown to exist, the submission being advanced on the strength of Section 164 of the Zamindari Act, clearly does not survive for any active consideration. Since a simple agreement to sell does not have the effect of transferring any holding, mere passing of possession, even if proved, could not have given birth to title in favour of Nepal, under section 164 of the Zamindari Act. The essential pre-condition of Section 164 of the Zamindari Act, was never claimed or proven to have existed. Indisputably, the burden to prove such fact was on Nepal, which was never discharged. Existence or otherwise of such contract as may have given rise to possession in favour of Nepal would remain a factual plea. It was never raised before the fact finding authorities. It cannot be raised now."

14. In the case of **Mohammad Fasih (Supra)**, it has been held that since possession over the property had been transferred to the respondents in pursuance of the said agreement, the agreement was for all purposes a sale of the property. This submission also is on the face of it untenable. Section 164, U.P. ZA&LR Act deals with transfer with possession by a bhumidhar. It contemplates transfer of any holding or any part thereof made by a bhumidhar by which possession is transferred to the transferee for the purpose of securing any payment of money referred to in the said section. On the face of it for the application of Section 164 transfer of possession alone is not sufficient. What is required by the section is transfer of possession made in pursuance of transfer of any holding or part thereof. Since an

agreement of sale does not have the effect of transferring any holding or part thereof even if possession was transferred of the holding in pursuance of the said agreement, it cannot be said that the agreement amounted to a sale under Section 164. Section 164 contemplates transfer by a bhumidhar.

15. In the case of **Umesh Chand and another (Supra)**, it has been held that it is clear that any transfer of any holding regarding an amount of Rs.100/- or more can be only executed by registered documents. "Any transfer of any holding" referred to under Section 164 of U.P. ZA&LR Act refers to transfer of any interest in any holding if the value is more than 100 rupees of immovable property, the transfer has to be effected in accordance with law. No right or interest can pass in in immovable property in a manner contrary to provisions of Transfer of Property Act and Indian Registration Act.

16. In the case of **Rama Shanker and others (Supra)**, it has been held that since a simple agreement to sell does not have the effect of transferring any holding, mere passing of possession, even if proved, could not have given birth to title in favour of Nepal, under section 164 of the Zamindari Act. The essential pre-condition of Section 164 of the Zamindari Act, was never claimed or proven to have existed.

17. In view of facts and circumstances of present case, the judgments relied upon by learned counsel for the petitioner are fully applicable to the present case and in view of reasoning recorded therein, the writ petition deserves to be allowed.

18. Accordingly, the impugned order dated 14.05.2003 passed by

Commissioner, Faizabad Division, Faizabad in revision No.73 Barabanki under Section 56 of Indian Stamp Act; Pawan Kumar Agrawal Vs. State of U.P. and others and order dated 05.03.2001 passed by Additional District Magistrate, (Finance and Revenue) (ADM - F&R), Barabanki in case No.80/2000-01 under Section 47A/33 Indian Stamp Act; State of U.P. Vs. Pawan Kumar Agrawal are hereby quashed.

19. The writ petition succeeds and is **allowed**.

20. No order as to costs.

(2025) 3 ILRA 819

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 19.03.2025

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1002243 of 2001

Raju

...Petitioner

Versus

The Collector Sitapur & Ors.

...Respondents

Counsel for the Petitioner:

Avadhesh Kumar

Counsel for the Respondents:

C.S.C., R.N. Gupta

(A) Revenue Law - Unauthorized occupation - U.P. Zamindari Abolition and Land Reforms Act, 1950 - Section 122-B - Chapter VIII Rule 12 Explanation II of Rules of the Court - Legal requirement of inspection and proof – Failure to conduct inspection in presence of petitioner or counsel and lack of reliable measurement renders order illegal - Illegality in assuming possession without basis in revenue record - Reliance on defective

measurement and unproved Lekhpal report is erroneous - Courts below erred in relying on unverified and non-proven materials - Reports of Lekhpal not proved, no basis for assumption of possession, inspection not per rules - Orders passed on unverified report and without complying procedural fairness are unsustainable.(Para -20,21,22,23)

Petitioner alleged to have unauthorisedly occupied 2000 sq.ft. of Gaon Sabha land - constructed a house - proceedings initiated under Section 122-B on report of Lekhpal - petitioner contested claim asserting construction on ancestral land - Spot inspection conducted without petitioner or counsel - Assistant Collector directed eviction and penalty - Revision dismissed by Collector. **(Para - 4 to 11)**

HELD: - Placement of reliance on the report submitted by Naib Tehsildar was wholly erroneous and the order passed on that basis suffered from apparent illegality. Courts below had misconstrued the fact that the complaint of the Lekhpal was not proved in any manner, therefore, the reliance placed thereon was not acceptable in the eyes of law. Accordingly, the impugned orders were set aside. **(Para - 21,22,23)**

Writ Petition allowed. (E-7)

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri Avadhesh Kumar, learned counsel for the petitioner and learned Additional CSC for the respondent - State.

2. Notice was issued to respondent No.3 and on the basis of office report dated 22.01.2025 notice was found deemed to be sufficient upon respondent No.3 in view of provisions contained under Chapter VIII Rule 12 Explanation II of Rules of the Court, therefore, the matter is ready for final disposal.

3. By means of present writ petition, the petitioner is challenging the orders dated 27.11.2000 passed by Additional Tehsildar / Assistant Collector, Sitapur - annexure 5 to the writ petition and order dated 19.01.2001 passed by the Collector, Sitapur annexure - 7 to the writ petition.

4. Factual matrix of the case is that on the basis of report of Lekhpal in regard to plot No.114M/.251 hectare, which was recorded as banjar ghas on revenue papers, a notice was issued to the petitioner that he has unauthorisedly occupied 2000 sq.ft. land and has constructed a house unauthorisedly and damaged gaon sabha property worth Rs.50,000/-.

5. On the said report of Lekhpal dated 14.07.1998 case No.85/190 under Section 122-B U.P. ZA&LR Act was registered as Gaon Sabha Khagesia Mau VS. Raju and thereafter a notice under Section 49-Ka was issued to the petitioner.

6. On receiving the said notice under Section 49-Ka, the petitioner filed an objection on 18.01.1999 on the ground that he was a poor fellow of backward caste and as per family settlement, he got constructed a shot and house to his brother over the portion allotted to him over plot No.113/3 area .045 and in front of the house of the petitioner, there was a land of gaon sabha plot No.114, which was lying vacant and there was no possession of the petitioner and a false report was made by the Lekhpal. Copy of the khatauni extract for the year 1396-1401 F. is annexed as annexure 1 to the writ petition.

7. On 22.09.1998, Satendra Kumar - Lekhpal and on 15.02.2000 Ram Sahai Verma - Lekhpal were produced for oral

testimony. ON 11.08.2000, the petitioner produced Abdul Razzak- Pradhan of Gaon Sabha Khagesia Mau, who deposed that he was knowing the petitioner, who was having five brothers - Asha Ram, Ram Asrey, Nankai, Chhotey Lal and Raju (petitioner) and their ancestral house was situated in the village and Ram Swarup - Pradhan had executed a patta of the land in favour of Ram Asrey on which the house was constructed, where the petitioner was living.

8. On 09.10.2000, the petitioner filed an application that he had not occupied even one inch of the disputed plot No.114 of Gaon Sabha Khagesia Mau and therefore, the measurement in presence of counsel for the petitioner be made. On 20.10.2000, the Naib Tehsildar, Khairabad District Sitapur submitted his report to the Tehsildar that he went on the spot and found the possession of the petitioner over plot No.114.

9. The measurements made by the Naib Tehsildar, Khairabad or Lekhpal were made in absence of the petitioner. Moreover, the measurements were not made by fixed points or from Chaumera or Tihadda. No field book was prepared and even the measurements were not cross checked. On 27.11.2000, the Apar Tehsildar / Assistant Collector, Sitapur passed an order to vacated plot No.114 measuring 2000 sq.ft. situated in village Khagesia Mau and a penalty of Rs.5500/- was also imposed.

10. It is stated in the order impugned that on moving an application on behalf of the petitioner on 19.10.2000, the spot inspection was made on 20.10.2000 by him himself and the measurement was made by the concerned Lekhpal and by

measurement and inspection, it was clearly proved that the house of the petitioner was constructed over plot No.114.

11. Against the order of Assistant Collector, Sitapur, the petitioner preferred a revision before the Collector, Sitapur on 08.01.2001 denying the possession over the disputed plot No.114 pointing out that his house is constructed over plot No.113/3 area .045. The Collector, Sitapur also dismissed the revision on 19.01.2001 on the ground that by measurement and spot inspection, it was proved that house was constructed by the petitioner over disputed plot No.114 without any permission.

12. While assailing the impugned orders, submission of learned counsel for the petitioner is that the Collector, Sitapur has committed manifest error of law in affirming the judgment and order of the trial court without perusing the lower court record as in the order of trial court it was mentioned that he himself conducted spot inspection, whereas, the same was made by the Naib Tehsildar, Khairabad and not by the trial court.

13. His next submission is that the Naib Tehsildar made inspection in absence of the petitioner in spite of the fact that he requested that the spot inspection be made in presence of his counsel.

14. His further submission is that both the courts below have relied upon spot inspection as well as measurement but no detail has been given that in what manner and how the measurement was made as neither any fixed point was made nor Chaumera or Tihadda was traced out and it was made from two fixed points and no field book was prepared and even cross check was not made of the area.

15. His next submission is that the trial court has not taken in to consideration that no order was passed on the application moved by the petitioner on 19.10.2000 that the measurement be made in presence of counsel for the petitioner and apart from it, the spot inspection was not made in presence of counsel for the petitioner as required and no detail of spot inspection was given to the petitioner and the petitioner was not given opportunity to rebut the same.

16. He submitted that both the courts below have not taken into consideration the fact that reports of Lekhpal could not be proved as it was given by Lekhpal Satendra Kumar and statement was given by Ram Sahai Verma, therefore, the statement of Lekhpal, who was not the complainant is liable to be ignored.

17. Last submission of learned counsel for the petitioner is that the report was also not reliable as details of measurement is not given, scale of measurement is not given and particulars of zarib is also not mentioned.

18. On the other hand, learned Additional CSC for respondent - State submitted that both the orders passed by the lower court are just and valid and no infirmity or illegality has been committed by the courts below. The writ petition is misconceived and is liable to be dismissed with costs.

19. I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

20. On perusal of record, it is evident that the proceeding was initiated on

the complaint of Lekhpal, who was not examined by the Assistant Collector while passing the impugned order. Another Lekhpal was examined and relying on his statement, the order was passed.

21. On perusal of record, it is also not clear that the spot inspection was made on the basis of revenue records, which was available at the time of inspection. It is also not clear that on what basis it was assumed that possession of the petitioner is on plot No.114 and not on plot NO.113/3. There is no whisper about the application filed by the petitioner for inspection in presence of his Advocate and immediately on 20.10.2000, the inspection was not made in presence of Advocate of the petitioner nor intimation was given to the petitioner, therefore, placement of reliance on the report submitted by Naib Tehsildar is wholly erroneous and the order passed on that basis suffers from apparent illegality.

22. It is also revealed that the statement of fact given by the Lekhpal and report was also not proved while considering the material by the trial court as well as revisional court, therefore, the order appears to be malacious in nature. The courts below have misconstrued the fact that the complaint of the Lekhpal was not proved in any manner, therefore, reliance placed thereon is not acceptable in the eyes of law. The submission made by learned Additional Chief Standing Counsel is devoid of merit and the orders impugned are liable to be set aside by this Court.

23. Accordingly, the impugned orders dated 27.11.2000 passed by Additional Tehsildar / Assistant Collector, Sitapur - annexure 5 to the writ petition and order dated 19.01.2001 passed by the Collector, Sitapur annexure - 7 to the writ petition are hereby set aside.

24. The writ petition succeeds and is allowed.

25. No order as to costs.

(2025) 3 ILRA 823
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 12.03.2025

BEFORE

THE HON'BLE MANISH MATHUR, J.

Writ C No. 1003067 of 2015

Smt. Bigni Devi ...Petitioner
Versus
U.P. Cooperative Tribunal Lko. & Ors. ...Respondents

Counsel for the Petitioner:

Sudeep Seth, Manoj Kumar, Sridhar Awasthi

Counsel for the Respondents:

C.S.C., K.S. Pawar, Rakesh Kumar Chaudhary,
Rakesh Srivastava

A. Civil Law – UP Cooperative Societies Act, 1965 – Sections 2(c), 12, 13 & 14 – Cancellation of allotment – Model bye laws – Notified by the Registrar – Modification or amendment carried in the bye laws, but not adopted by the Society – Applicability – Held, a model bye law notified by the Registrar is not automatically applicable upon a society and is in fact required to be first adopted by the society whereafter procedure is required mandatorily to be followed – It would therefore be the bye laws of 1976 which would govern the issue in dispute and not the bye laws of 1979 which were never adopted by the society. (Para 31 and 35)

B. Civil law – UP Cooperative Societies Act, 1965 – Sections 2(c), 12, 13 & 14 – Cancellation of allotment – Allotment was made in favour of two members of the same family – Validity challenged –

Prohibition of one family – Prohibition was provided in the bye laws of 1976, but not in the bye laws of 1979 – Applicability – Held, the prohibition of one 'family' having more than one plot in the society was not present in the bye laws of 1976 – Since there was no such prohibition in the bye laws of 1976, it is held that cancellation of petitioner's allotment of plot by means of deed dated 24th March, 1986 was not in accordance with law. (Para 4, 41 and 42)

Writ petition allowed. (E-1)

List of Cases cited:

1. Ishwar Nagar Cooperative Housing Building Society versus Premanand Sharma & ors.; AIR 2011 SC 548

(Delivered by Hon'ble Manish Mathur, J.)

1. Heard Mr. Sudeep Seth learned Senior Counsel assisted by Mr. Shridhar Awasthi learned counsel for petitioner, learned State Counsel for opposite party No.1, Mr. Rakesh Kumar Chaudhary learned counsel for opposite party No.2 and Mr. Rakesh Srivastava learned counsel for opposite party No.3.

2. Petition has been filed challenging order dated 23rd July, 2010 passed in an arbitration case No. 128-E of 2008 upholding cancellation of plot of petitioner. Also under challenge is the judgment and order dated 7th May, 2015 whereby appeal No.161 of 2015 preferred by petitioner has been rejected.

3. Learned counsel for petitioner submits that petitioner submitted an application dated 5th November, 1985 for being admitted as a member of the opposite party No.3 Sri Saraswati Cooperative Housing Society Limited, Kanpur, which was allowed and in pursuance thereof, registered lease deed in perpetuity was

executed in favour of petitioner vide deed dated 24th March, 1986 allotting plot No. 45 situate in Daheli, Sujanpur, Kanpur whereupon petitioner constructed a residence in the year 1993 and is being duly assessed for house tax. It is submitted that petitioner is residing alongwith her younger daughter on the said plot.

4. It is further submitted that without any prior notice to petitioner and in an ex parte manner, the aforesaid lease has thereafter been cancelled by the society vide resolution dated 26th October, 2008 on twin grounds that petitioner's husband, Mr. Haridwar had earlier been allotted plot No. 44 in the same society vide deed dated 10th October, 1984 and therefore in terms of bye laws applicable upon the society, two members of the same family could not have been allotted plots in the society simultaneously. Second ground for cancellation was that petitioner failed to make any permanent residential construction over the plot in question within a period of three years from the date of allotment as stipulated in the bye laws of the society.

5. Learned counsel for petitioner submits that at the time of allotment of plot in favour of petitioner, it was the model bye law of 1976 which was applicable and as per bye law 5 thereof, no such prohibition was indicated prohibiting two persons of the same family from being allotted a plot simultaneously.

6. It is also submitted that the petitioner even otherwise has made permanent construction over the plot in question within the stipulated period of three years; a fact which has been noticed in the impugned order as well and therefore there was no occasion to uphold

cancellation of plot of petitioner on that ground.

7. It has been further submitted that the allotment having been made in the year 1986, even otherwise could not have been cancelled after a period of more than 22 years and was therefore barred by limitation.

8. Learned counsel for opposite party No.3 has refuted submissions advanced by learned counsel for petitioner with the submission that at the time of allotment in favour of petitioner vide lease deed dated 24th March, 1986, it was in fact the model bye laws of 1979 which were prevalent in the society and not bye laws of 1976. It is submitted that since petitioner's husband had already been allotted and transferred plot No.44 in the same society, petitioner was ineligible to become a member of the society and for allotment of plot in terms of bye law 5 of the bye laws of 1979.

9. It is also submitted that as per bye law-3 (11) of the bye laws of 2004, the petitioner had not constructed a house over plot No.45 within stipulated time limit and by merely constructing a room measuring 10 ft x 12 ft, the same would not come within connotation; 'residential house', since in terms of bye law 3(11) of Bye laws of 2004, a residential house connotes a complete dwelling unit comprising a living room, a kitchen, latrine and a bathroom as defined therein.

10. It is submitted that it was during proceedings initiated against one Smt. Pratima in an arbitration case filed against her by the society that the discrepancies in allotment in favour of petitioner came to light whereafter

resolution dated 26th October, 2008 was passed by the society cancelling deed dated 24th March, 1986 in favour of petitioner and in pursuance of provisions of U.P. Cooperative Societies Act, 1965, the arbitration case was filed against petitioner who was accorded full opportunity to defend her case.

11. It is further submitted that although earlier the society was governed by the model bye laws of 1976 in terms of notification dated 15th June, 1976 issued by the State Government in exercise of power under Section 3(2) of the Act 1965, all the urban cooperative housing society were registered in terms thereof and the model bye laws issued from the office of Housing Commissioner in the year 1965 were made applicable upon all such cooperative housing societies which continued till the year 2004 when new model bye laws as framed by the Housing Commissioner were enforced in terms of Section 14 of the Act 1965 and were adopted by the society with information of such adoption being submitted to the Deputy Housing Commissioner vide letter dated 26th December, 2004 and the earlier bye laws of 1979 was surrendered.

12. It is therefore submitted that in terms of bye law 3(10) of the bye law of 1979, the term 'family' has been defined to include husband, wife and dependent children and it is in accordance with bye law 5(1) of the said bye laws of 1979 that two or more members of the same family are prohibited from being allotted a plot in the society simultaneously. It is also submitted that the unfurnished small room constructed by petitioner over plot No. 45 in the society is inhabitable and even otherwise, the petitioner never resided therein and is in fact is a resident of 122/9,

Labour Colony (J.K. Colony), Jajmau, Kanpur Nagar and the fact of petitioner's actual residence was proved by evidence.

13. He has also adverted to bye law 3(11) of the bye laws of 2004 to submit that the construction made by petitioner over plot No.45 does not come within definition of a 'house' in terms of the said provision of bye laws of 2004, which he submits would have retrospective effect. It is in such circumstances that the committee of management of the society in its meeting held on 26th October, 2008 resolved to cancel petitioner's allotment over plot No.45.

14. It is also submitted that since knowledge with regard to illegal allotment in favour of petitioner came to notice of the society in another arbitration case pertaining to one Smt. Pratima in the month of September-October, 2008 in terms of pleadings made in written statement therein, it cannot be said that there is any inordinate delay in passing of resolution in cancellation of petitioner's allotment.

15. Learned counsel for opposite party No.2 on the basis of instructions submits that office of Housing Commissioner does not have any copy of the model bye laws of 1979 available with them but has brought on record various other model bye laws of the year 1979 as applicable to other societies. He further submits that the model bye laws are required to be implemented upon the society concerned in terms of Section 14 of the Act of 1965.

16. Learned counsel for petitioner in rebuttal thereof submits that the procedure for amendment of earlier bye laws or even adoption of model bye laws

framed from the office of the Housing Commissioner are required to be enforced and implemented in terms of procedure indicated in the Act of 1965, which has not been followed with regard to bye laws of 1979, which are not registered in the office of Registrar and therefore it is only approved bye laws of 1976 which governed the case of petitioner.

17. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, the questions required to be adjudicated upon in the present petition are framed as follows:-

(1) Whether allotment pertaining to petitioner would be governed by the bye laws of 1976, 1979 or 2004?

(2) Whether cancellation of allotment of plot in favour of petitioner in view of bye law 5 of the bye laws of 1979 is valid ?

(3) Whether the constructions raised by petitioner over plot No. 45 in the society in question in pursuance of allotment in her favour are in terms of the bye laws applicable upon the society ?

Answer to question No.(1)

18. With regard to aforesaid question, it would be relevant to advert to Section 2(C) of the Act of 1965, which defines bye laws as registered bye laws of a cooperative society for the time being in force. Section 7 of the said Act pertains to registration of the proposed bye laws and indicates that if the Registrar is satisfied that the proposed bye laws of the

society are not inconsistent with the provisions of the Act and the rules and complies with requirements thereunder, the said bye laws would be registered. Section 12 of the Act 1965 pertains to amendment of bye laws of cooperative society and prescribes that a cooperative society may, subject to provisions of the Act and Rules, amend its bye laws in the manner prescribed and that no such amendment would be valid and operative unless it has been registered under this Act. The relevant provision is as follows:-

"12. Amendment of bye-laws of a Co-operative Society.- (1) *A co-operative society may, subject to the provisions of this Act and rules, amend its bye-laws in the manner prescribed ;*

Provided that no such amendment shall be valid and operative unless it has been registered under this Act.

(2) *The proposal for an amendment of the bye-laws shall be forwarded to the Registrar and if the Registrar is satisfied that the proposed amendment-*

(i) is not contrary to the objects specified in section 4 of the Act ; and
[(ii) is not contrary to the other provisions of the Act or the rules, he shall register the amendment within one month from the date of receipt of such

proposal. If the Registrar does not register the amendment within one month then it will be deemed that he has refused to register the amendment and in this case it will be obligatory for the Registrar to intimate the society within next one month, the reasons for not registering the amendment.]

*(3) [*****]2"*

19. Section 13 of the Act indicates that an amendment of bye laws of a cooperative society would come into force on the day it is expressed to come into operation on a particular day after registration or in other cases on the day on which it is registered.

20. It is Section 14 of the Act of 1965, which has been relied upon by learned counsel for opposite parties to indicate enforcement of the bye laws of 1979, in terms of which allotment of petitioner has been cancelled. Section 14 of the Act is as follows:-

"14. Power to direct amendments in bye-laws.- (1) *Where the registrar is of the opinion, whether on the representation of a member of a co-operative society, or otherwise, that an amendment in the bye-laws of a co-operative society is necessary or desirable in the interests of such society, or in public interest, he may, under such circumstances as may be prescribed, by order in writing issued to the society by registered post, require the society*

to make the amendment within such time as he may specify in the order.

(2) If the society fails to make the amendment within the time specified, the Registrar may, after giving the society an opportunity of being heard, [X X X]3 register such amendment and issue to the society by registered post a copy of the amendment certified by him as a copy and such copy shall be conclusive evidence that the amendment has been duly made and such copy registered."

21. The aforesaid provision clearly pertains to amendment of bye laws which have already been approved by the Registrar for its enforcement.

22. With regard to notification of model bye laws for the purposes of implementation upon a cooperative society, it is Chapter III of the U.P. Cooperative Societies Rules, 1968 which is relevant.

23. Rule 13 of the said Rules indicates that a Registrar may frame model bye laws for each class of society or societies and makes such changes therein from time to time as he may consider necessary. Rule 14 provides that the model bye law as are appropriate for a society in the opinion of Registrar may be adopted by such society with such modifications, if any, as may be considered necessary by the society having regard to its requirements.

24. A conjoint reading of Rules 13 and 14 therefore clearly indicate that although model bye laws may be framed and notified by the Registrar but are required to be adopted by the society having regard to its requirements and

therefore would not be automatically applicable.

25. Chapter IV of the Rules 1968 pertains to procedure regarding amendment of bye laws. Rules 24, 29, 31, 32 and 33 of the said Rules are as follows:-

"24. An amendment in the bye-laws of a co-operative society including substitution of the entire set of bye-laws by new bye-laws may be made by a resolution passed by the votes of at least two-thirds of the members of the general body of the society present and voting at the general meeting called for the purpose: Provided that in case of model bye-laws of amendment previously approved by the Registrar or amendment required by the Registrar to be made under sub-section (1) of Section 14, the resolution may be passed by simple majority only.

29. Where the Registrar registers an amendment under Rule 28(1), he shall-

(a) make or cause to be made under his signature-

(i) an entry regarding amendment in the relevant column of the registration register,

(ii) an endorsement regarding amendment in the office copy of the original bye-laws in his office,

(b) retain for his office record one copy of the amendment so registered,

(c) send or cause to be sent a certified copy of the registered amendment-

(i) to the co-operative society concerned,

(ii) to the central society, if any, to which the society concerned is affiliated,

if in his opinion the said amendment is of any significance to the central society,

(d) return or cause to be returned to the society,-

(i) the registration certificate noting therein the date of registration of amendment of bye-laws, and

(ii) the original bye-laws with endorsement regarding amendment.

[29A. Where the bye-laws of a co-operative society are substituted by a new set of bye-laws. The Registrar may nominate the First Committee of Management including the Chairman and the Vice-Chairman. The nominated Committee of Management shall hold office till the Committee of Management is duly constituted:

Provided that the Registrar shall nominate the Committee of Management only in those Societies where elected Committee of Management is not existing. In case of the societies where the bye-laws have been substituted by a new set of bye-laws but the elected Committee of Management is still existing, the Registrar shall have powers to nominate the Committee of Management only after the expiry of term of the elected Committee of Management]

31. Where the Registrar issues an order for amendment of a bye-law under sub-section (1) of Section 14, the order shall contain-

(a) the text of proposed amendment;

(b) the period within which such amendment is required to be adopted by the society;

(c) reasons for proposing the amendment.

32. *If the society objects to make the proposed amendment the Registrar shall consider the objections of the society and if satisfied that the objections of the society are correct, he may drop further proceedings, and if not satisfied, he shall take further action as provided under sub-section (2) of Section 14.*

33. *Where an amendment has been registered under sub-section (2) of Section 14, an entry thereof shall be made in the register maintained for the purpose in Form 'I' and a copy of the amendment so registered shall be sent to the co-operative society concerned. Action as provided in sub-rules (a), (b) and (c) of Rule 29 shall also be taken in regard to that amendment. If the society has sent registration certificate and original registered bye-laws to the Registrar, action as provided under sub-rule (d) of Rule 29, shall also be taken."*

26. A conjoint reading of Sections 12, 13 and 14 of the Act of 1965 and the rules indicated herein above make it evident that either in case of amendment of existing bye laws of society or in case of applicability of model bye laws as notified by the Registrar, the same are not automatically applicable upon a cooperative society. The provisions of Rule 13 and 14 make it evident that once model

bye laws have been framed, they are required to be adopted by the society which such modifications, if any, as may be considered necessary.

27. Similarly in the case of amendment in existing bye laws of a society, the same is required to be adopted by a resolution passed by votes of at least two thirds of the members of the general body of society present and voting at the general meeting called for that purpose in terms of rule 24 of the Rules 1968. The proviso to Rule 24 also indicates that in case of amendment required to be made of existing bye laws due to model bye laws, the same are also required to be adopted in terms of Section 14(1) of the Act of 1965 by a resolution of the general body is required to be passed by a simple majority. Thus even in case of amendment in existing bye laws of a cooperative society in terms of model bye laws issued by the Registrar, its adoption by the society in the manner contemplated under Rule 24 of Rules 1968 is mandatory.

28. Once the procedure pertaining to amendment of existing bye laws in terms of Rule 24 of the Rules 1968 has been implemented, the Registrar is required to register that amendment in terms of Rule 29 of the Rules as indicated herein above.

29. Since the opposite parties have placed reliance upon Section 14 of the Act of 1965 to submit that model bye laws of 1979 were automatically applicable upon the society, consideration of Rules 31, 32 and 33 of Rules of 1968 is required and as per which, once an order under Section 14(1) of the Act is made, an order for amendment of bye law is required to be issued containing specifications indicated in Rule 31.

30. It is only in case if the society objects to implement the proposed amendment that the Registrar is required to take action as provided under Section 14(2) of the Act read with Rule 32 of the Rules of 1968. Rule 33 of the Rules provides that where an amendment has been registered under section 14(2) of the Act, an entry thereafter is required to be made in the Register in Form 'I' and a copy of the amendment is also to be sent to the cooperative society concerned whereafter proceedings in terms of Rule 29 is required to be undertaken.

31. Considering aforesaid aspects, it is evident that a model bye law notified by the Registrar is not automatically applicable upon a society and is in fact required to be first adopted by the society whereafter procedure indicated herein above is required mandatorily to be followed. The same is the situation with regard to amendment of any existing bye laws even if the same has been issued in terms of Section 14 of the Act of 1965.

32. Upon applicability of aforesaid provision in the present facts and circumstances of the case, it is obvious from pleadings made on behalf of opposite parties 2 and 3 that no such approved bye laws of 1979 have been brought on record. Not only that, the said opposite parties have failed to bring on record any order passed under Rule 31 or any document in terms of Rule 33 of the Rules of 1968, which is an imperative aspect.

33. Considering the Sections of the Act 1965 and the Rules of 1968 which have been quoted herein above, the submission of opposite parties that the bye laws of 1975 are automatically implemented upon the societies is hereby rejected.

34. The opposite parties in their pleadings have clearly admitted the fact that prior to issuance of the model bye laws of 1979, the bye laws of 1976 were applicable upon the society.

35. In view of what has been held herein above, this Court finds that it would therefore be the bye laws of 1976 which would govern the issue in dispute and not the bye laws of 1979 which were never adopted by the society.

36. So far as the bye laws of 2004 are concerned, although learned counsel for opposite party No.3 has submitted that the provisions thereof would be applicable retrospectively, an examination of the bye laws of 2004 however make it evident that there is no provision therein making the said bye laws effective retrospectively. The aspect of bye laws or rules applicable upon an cooperative society being retrospective in nature has been considered by Supreme Court in the case of **Ishwar Nagar Cooperative Housing Building Society versus Premanand Sharma and others**, AIR 2011, Supreme Court 548 in the following manner:-

"12. The learned counsel for the respondent-1 further contended that the Rule 25 is not applicable to the respondent-1's case as the said rule is not retrospective and the alleged 'disqualification' of purchasing the said property had incurred prior to the adoption of the Rules. We are of the considered opinion that the aforesaid contention of the learned counsel for the respondent-1 is misconceived. Merely because a person who had become a member of the society at a point of time

when the disqualification mentioned in Rule 25 was not in existence and because of the said rule would now cease to be a member of the society does not necessarily mean that the said rule is retrospective. "A statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time precedent to its passing". (See Craise on Statute Law. 17th edition page 386). Reference may also be made to Queen v. Vina reported at (1875) 10 Q.B 195 wherein the Statute enacted that every person convicted of felony shall be for ever disqualified from selling spirits by retail. It was held that the disqualification applied to every convicted felon irrespective of whether he was so convicted prior to or after the Act came into operation.

15. The most concrete cases wherein laws are made retrospective are those in which the date of commencement is earlier than enactment, or which validate some invalid law, otherwise, every statute affects rights which would have been in existence but for the statute and a statute does not become a retrospective one because a part of the requisition for its action is drawn from a time antecedent to its passing. Applying that to the present case, the conclusion is inescapable, that Rule 25(2) is not retrospective. All that Rule 25(2) does is that it operates in future, though the basis for taking action is the factum acquiring a plot in the past. Thus

when by virtue of Rule 25(2), a member is deemed to have ceased to be a member of the society, the cessation operates from April 2, 1973, when the rules came into force."

37. In view of aforesaid judgment and the fact that there is no specific condition indicated in the bye laws of 2004 pertaining to its retrospective application, the submission of learned counsel for opposite party No.3 pertaining to retrospective application of the bye laws of 2004 is hereby rejected.

38. Upon consideration of aforesaid discussion, it is evident that it is only the bye laws of 1976 which would be applicable in the case of petitioner.

39. Question No.1 therefore is answered in favour of petitioner.

Answer to Question No.(2)

40. Once it has been held as discussed herein above that it is bye laws of 1976 and not of 1979 which would operate, consideration of the said bye laws of 1976 become relevant. It is relevant that in paragraph 18 of the writ petition, it has been stated that as per bye law 5 of the bye laws of 1976, the only stipulation was that any person residing in the area of operation of society and did not have his residence, could become a member of the Society. It is also stated that in bye law 42 of the said bye laws, it was provided that no member would be permitted to be allotted/possessed of more than one plot. It is also stated that the word 'family' has not been mentioned or defined in said bye laws. These averments have not been denied in paragraph 16 of the counter affidavit filed by opposite party

No. 3 which only places reliance on the model bye laws of 1979.

41. Thus it is evident that the definition of the term 'family' has been incorporated for the first time in the model bye laws of 1979 and the prohibition of one 'family' having more than one plot in the society was not present in the bye laws of 1976.

42. In view thereof, since there was no such prohibition in the bye laws of 1976, it is held that cancellation of petitioner's allotment of plot by means of deed dated 24th March, 1986 was not in accordance with law.

43. The question therefore is answered in favour of petitioner.

Answer to Question No.3

44. With regard to the aforesaid question, it has been submitted by learned counsel for petitioner that in terms with the bye laws prevalent in the year 1976 and in terms of allotment order, a dwelling unit was constructed upon plot No. 45 in the society by petitioner within stipulated time period.

45. The aforesaid aspect has not been disputed either by the opposite parties in their counter affidavit or even in the impugned orders.

46. On the contrary a perusal of award dated 23th July, 2010 clearly refers to a spot inspection report to the effect that construction of a room having an area of 10 ft. x 12 ft. is existing over the said plot with trees and garden existing over remaining area. Despite recording such a finding, the impugned award thereafter holds that the said

plot is not being utilized for residential purpose.

47. The opposite party No.3 in its counter affidavit has placed reliance on the bye laws of 2004 to submit that the construction made by petitioner on the said plot did not answer the definition of a house as contained in the said bye laws since the construction made did not have room for a kitchen, toilet and bath room as defined in bye law 3(11) of bye laws of 2004.

48. The counter affidavit does not advert at all to any definition of a house or dwelling unit in terms of the bye laws of 1976.

49. Once it has already been held that bye laws of 2004 would not be applicable in the present dispute, the definition of a 'house' as is being relied upon by answering opposite party, deserves to be rejected.

50. The award dated 23th July, 2010 clearly indicates the fact that a permanent construction exists over plot in question and therefore it can naturally be deduced that the said construction has been made by petitioner within stipulated time period. The bye laws of 1976 not adverting to any specifications pertaining to a 'house' or 'dwelling unit', in the considered opinion of this Court, the said construction would come within the definition of a house in terms of bye laws of 1976.

51. Considering aforesaid discussion, it is evident that cancellation of allotment in favour of petitioner on the aforesaid ground is also liable to be rejected.

52. The question is therefore answered in favour of petitioner.

53. In view of discussions made herein above, this Court comes to the conclusion that cancellation of allotment in favour of petitioner vide resolution dated 26th October, 2008 by the society and its being upheld by means of award dated 23d July, 2010 passed in case No. 128-E of 2008 and by the Cooperative Tribunal vide judgment and order dated 7th May, 2015 passed in appeal No. 161 of 2015, being against provisions of law are hereby quashed by issuance of writ in the nature of Certiorari. A further writ in the nature of Mandamus is issued commanding the opposite parties not to interfere in peaceful possession of petitioner over plot No. 45 situate in Scheme No.2, Daheli, Sujampur, Kanpur.

54. Resultantly the petition succeeds and is allowed. Parties to bear their own cost.

(2025) 3 ILRA 833
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 10.03.2025

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 3000181 of 1997

Surya Lal & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:

Balram Yadav, Mohammad Aslam Khan, Mohd Aslam Khan, Mohd. Sartaj Ahmad, Mohd. Aslam Khan

Counsel for the Respondents:

C.S.C.

A. Ceiling Law – UP Imposition of Ceiling on Land Holdings Act, 1960 – Sections 5(6), 10 (1) & 10(2) – Surplus land – Notice for

declaration issued – Sale-deed regarding share of land, in question was executed prior to 24.01.1971 – Effect – How far Prescribed Authority has jurisdiction to decide the validity of Sale-deed – Held, the Prescribed Authority had no jurisdiction to put the validity of sale deed to test since its jurisdiction arose only when the deed of transfer had been effected on or after the appointed day – Sub-section 6 of Section 5 did not confer jurisdiction on the authorities to determine the validity of the sale and therefore the findings recorded by such an authority on the contents of the sale deed or the adequacy or otherwise of the sale consideration could also not be gone into – *Ramadhhar Singh's case* relied upon. (Para 36)

Writ petition allowed. (E-1)

List of Cases cited:

1. Raja Mahipal Singh (Deceased) through LRs Vs St. of U.P. & ors.; 2007 SCC Online All 2334 : (2007) 102 RD 792
2. Writ C No. 55503 of 2002; Vyas Prasad Vs Addl. Commissioner, Gorakhpur & ors. decided on 20.07.2017
3. Civil Appeal Nos. 5798-5799 of 2008; Bachhaj Nahar Vs Nilima Mandal & ors. decided on 23.09.2008 (S.C.)
4. St. of U.P. Vs Amar Singh etc.' AIR 1997 Supreme Court 1534
5. Ramadhhar Singh Vs Prescribed Authority & ors.; 1994 Supp (3) SCC 702

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Mohd. Arif Khan, learned Senior Counsel assisted by Sri Mohd. Aslam Khan, learned counsel for the petitioners and Sri S.P. Maurya, learned Additional CSC for respondent - State.

2. By means of present writ petition, the petitioners are challenging the

impugned order dated 12.08.1997 passed by Additional Commissioner, Judiciary, Faizabad Division, Faizabad in Appeal No.47 (Ceiling) as well as against impugned order dated 31.12.1993 passed by the prescribed authority (Ceiling), Bahraich, in case No.812 under sub Section 2 of Section 10 of U.P. Imposition of Ceiling on Land Holdings Act.

3. Brief fact of the case is that a notice dated 10.11.1989 was issued in the name of the petitioners and their fathers requiring them to show cause why the land should not be declared surplus under sub section 1 of Section 10 of U.P. Imposition of Ceiling on Land Holdings Act. Earlier to the said notice issued against the petitioners, a notice dated 18.05.1989 was also issued in the name of deceased Prabhoo after his death, who was the father of petitioner No.4 to 7 and grand father of petitioner Nos.1 to 3.

4. The petitioners objected to the said notice through their objections dated 11.01.1990 stating therein that the notice was illegal, arbitrary as the petitioners and their fore-fathers were not having land beyond the limitations prescribed under Imposition of Ceiling on Land Holdings Act because father of petitioner No.4 to 7 and grand - father of petitioner Nos.1 to 3 had already died much earlier. Not only this, but the land in dispute was already transferred to the petitioner Nos.4 to 7 and petitioner Nos.1 to 3 through registered sale deed dated 02.02.1970 and also on the ground that petitioner Nos.4 to 7 and father of petitioner Nos.1 to 3 were major on the date the ceiling Act was imposed in the year 1972 amongst other grounds.

5. Thereafter, oral and documentary evidences were produced

through the witnesses to establish the case that the petitioner Nos.4 to 7 and father of petitioner Nos.1 to 3 were major at the time of imposition of ceiling on land holdings act and it was also proved that the sale deed was executed before 24.01.1971 and all the transferees were separately in possession of their land as well as two bighas land was grove land and about one acre land was Usar land.

6. Thereafter, the objection was decided by the prescribed authority (Ceiling), Bahraich vide order dated 31.12.1993 and rejected the objections without application of mind judicially in as much as failed to appreciate the evidence already on records.

7. Feeling aggrieved with the said arbitrary and illegal order, the petitioner filed appeal No.47 before the Commissioner, Faizabad Division, Faizabad on the ground that the order passed by the prescribed authority was grossly erroneous in law as no specific and relevant issues were framed and also on the ground that the prescribed authority failed to appreciate the sale deed in the name of the petitioners, executed in the year 1970. It was also alleged in the appeal that the assessment was erroneously done without considering the position of land in as much as was irrigated and un-irrigated.

8. The Additional Commissioner, Judicial decided the appeal of the petitioners vide order dated 12.08.1997 and rejected the same again without considering and examining the evidences on record only on the basis of extraneous and irrelevant facts.

9. The Court below failed to give any finding on the point of pleading that

the petitioner Nos.4 to 7 and father of petitioner Nos.1 to 3 were major at the time of Imposition of Ceiling on Land Holdings Act in the year 1972 and so no benefit of additional 2 hectares of land to which all the major adult sons of deceased Prabhoo was given while determining ceiling area.

10. The Court below also failed to consider evidenciary value of the sale deed executed before 24.01.1971, whereas the provisions of Imposition of Ceiling on Land Holdings Act clearly lays down that the sale deed executed before the said date would be taken into consideration while determining the ceiling area.

11. The impugned orders passed by the courts below do not contain any finding on the point of irrigated and un-irrigated land as well as grove land, whereas on the said point, the petitioners had categorically pleaded and had tried to prove through the evidences and hence the orders passed by the Courts below are erroneous in the eye of law.

12. The petitioner had submitted documentary evidence i.e. true and certified copy of the family register showing the family members of the petitioners separately on the basis of basic year 1978 relevant in the determination of family members as petitioner's families were living separately before the year 1978 and were having cultivating transferred holdings separately but the courts below failed to examine the evidenciary value of the said document and decided the objection without taking into account the facts.

13. The registered sale deeds were executed on required stamp papers on the basis of valuation of the land transferred to

petitioner Nos.4 to 7 and grand father of petitioner Nos.1 to 3 by the deceased Prabhoo, who was sole tenure holder of the holdings in question.

14. It is also stated that valuation was made properly on the rates fixed for the area and no dispute was raised at any stage by the registering authorities or any authority and as such the said sale deed executed in favour of the petitioners were relevant to take into consideration while determining the ceiling area but the prescribed authority failed to consider the said sale deeds executed on 02.02.1970 and on 03.02.1970, as such the impugned orders are not sustainable in the eyes of law.

15. The tenure holder, namely, Prabhoo had already died on 15.08.1988 before the issue of notice and the land was mutated in the name of petitioners even on the basis of sale deed and were living separately during the life of deceased Prabhoo. The matter was beyond jurisdiction of ceiling Act and no notice can be issued in the eyes of law.

16. A notice dated 18.05.1989 was issued in the name of deceased Prabhoo after his death, who was father of petitioner Nos.4 to 7 and grand father of petitioner Nos.1 to 3. The petitioners objected to the said notice through their objections dated 11.01.1990 stating that the notice was illegal, arbitrary as the petitioners and their fore-fathers were not having land beyond the limitation prescribed under Imposition of Ceiling on Land Holdings Act because father of petitioner Nos.4 to 7 and grand father of petitioner Nos.1 to 3 had already died much earlier. Not only this, but the land in dispute was already transferred to the petitioner Nos.4 to 7 and 1 to 3 through

registered sale deed dated 02.02.1970 and on the ground that petitioner Nos.4 to 7 and father of petitioner Nos.1 to 3 were major on the date of ceiling Act was imposed in the year 1972.

17. The objection was decided by the prescribed authority (Ceiling), Bahraich vide order dated 31.12.1993 and was rejected. The petitioner, feeling aggrieved with the said order, filed Appeal No.47 before the Commissioner, Faizabad Division, Faizabad on the ground that the order passed by the prescribed authority was grossly erroneous in law as no specific and relevant issues were framed and also on the ground that that the prescribed authority failed to appreciate the sale deed in the name of the petitioners executed in the year 1970.

18. The Additional Commissioner, Judicial decided the appeal of the petitioners vide order dated 12.08.1997 and rejected the appeal again only on the basis of extraneous and irrelevant facts. Hence, the present writ petition has been filed before this Court.

19. Submission of learned Senior Counsel for the petitioner is that the impugned order was passed without applying the judicial mind while examining the evidence on record. He submitted that the courts below failed to give any finding on the point of pleading that the petitioner Nos.4 to 7 and father of petitioner Nos.1 to 3 were major at the time of Imposition of Ceiling of Land Holdings Act in the year 1972.

20. He next submitted that the courts below have also failed to consider the evidence of sale deed executed before 24.01.1971 in accordance with provisions of

sub section 6 of Section 5 of the Act. He submitted that courts below passed the impugned orders without mentioning about pleadings and reasons raised by the petitioners.

21. He further submitted that the respondents failed to decide the dispute in accordance with law. He submitted that the tenure holder, namely, Prabhoo had died on 15.08.1988 before the issuance of notice and the land was mutated in the name of petitioners even on the basis of sale deed and were living separately during life of deceased Prabhoo. He submitted that the matter was beyond jurisdiction of Ceiling Act and no notice can be issued in the eyes of law, as such, the proceeding was illegal, arbitrary, and prejudicial to the the petitioners.

22. He next submitted that the impugned orders do not contain any evidence on the point of irrigated and un-irrigated land as well as grabbed land area. He submitted that certified copy of the family register showing the family members of the petitioners separately on the basis of basic year 1978 relevant in determination of family members. He submitted that the registered sale deeds were executed on required stamp papers on the basis of valuation of land transferred to the petitioner Nos.4 to 7 and grand father of petitioners Nos.1 to 3 by the deceased Prabhoo, who was the sole tenure holder of the holdings in question. The valuation was made properly on the rates fixed for the area and no dispute was raised at any stage by the registering authorities and as such, the whole proceeding was illegal, arbitrary and prejudicial to the petitioners. In support of his submissions, he placed reliance upon following judgments:

**a) Raja Mahipal Singh
(Deceased) Through LRs Vs.**

**State of U.P. and others; 2007
SCC Online All 2334 : (2007) 102
RD 792.**

**b) Vyas Prasad Vs. Addl.
Commissioner, Gorakhpur &
others; Writ-C No.55503 of 2002
decided on 20.07.2017.**

23. On the other hand, learned Additional CSC for the respondents - State submitted that the Courts below have given concurrent finding against the petitioners and held that the sale deed in question was a fake transaction between the father and son and therefore, the vendees are only ostensible owners. The contention of the petitioners that the notice has been issued in the name of dead person is not correct because under Rule 19 of the rules framed under U.P. Imposition of Ceiling Act provides that if the tenure holder was alive on 08.06.1973 then the notices shall always be issued in the name of deceased tenure holders and service shall be effected on the heirs of the deceased tenure holders.

24. He further submitted that the alleged sale deed was fake transaction made to avoid and forfeit the purpose of provisions of Ceiling Act. Moreover, the alleged sale deeds are not genuine because the sale deed is between the father and son and it cannot reasonably be presumed that no consideration passed between the vender and vendees, therefore, there is no illegality in the orders impugned and the writ petition is not maintainable and deserves to be dismissed. In support of his submissions, he placed reliance upon following judgments:

**a) Bachhaj Nahar Vs.
Nilima Mandal & ors. ; Civil
Appeal Nos.5798-5799 of 2008
(arising out of SLP (C)**

**Nos.23766-67 of 2005) D/- 23-9-
2008.**

**b) State of U.P. Appellant
Vs. Amar Singh etc., respondents
; AIR 1997 Supreme Court 1534.**

25. I have considered the submissions advanced by learned counsel for the parties and perused the material on record as well as the judgments relied upon by learned counsel for the parties.

26. To resolve the controversy involved in the matter, the judgments relied upon by learned counsel for the parties are being quoted herein below:

i) Judgments relied upon by
learned counsel for the petitioner:

**a) Raja Mahipal Singh
(Deceased) Through LRs
(Supra):**

5) From the above it is quite clear that the appellate Court judged the four gift deeds and one sale deed in favour of Dhani Ram on the touch stone of section 5(6)(b). In this regard appellate Court was not correct. Section 5(6)(b) deals with the transfer deeds made after 24.1.1971. Of Course in certain circumstances even the deeds prior to 24.1.1971 may be ignored after holding them to be sham, fictitious or collusive transactions. However, some distinction has to be drawn in between the deeds prior to 24.1.1971 and after the said date. The same criteria which is applicable to post 24.1.1971 deed can not be applied to pre 24.1.1971 deed.

6. *Learned Counsel for the petitioner has cited a division bench authority of this Court in Yadunath v. State. In para 18 of the said judgment it has been held that transfer deeds executed before 24.1.1971 may also be looked into by the prescribed authority to ascertain as to whether the transaction was sham, fictitious and collusive or not.*

b) Vyas Prasad Vs. Addl. Commissioner, Gorakhpur & others (Supra):

15. *In the said judgment, the Hon'ble Supreme Court held that under the provisions of the Act itself, the validity of the sale deed executed prior to 24th January 1971, the appointed day, could not be gone into by the Prescribed Authority. Sub-Section 6 of Section 5 of the said Act says that in determining ceiling area applicable to a tenure-holder, any transfer of land made after 24th day of January 1971, which, but for the transfer would have been declared as surplus land under the Act shall be ignored and not taken into account. The proviso (b) thereto, inter alia, provides that a transfer proved to the satisfaction of the Prescribed Authority to be in good faith and for adequate consideration and an irrevocable instrument, not being a benami transaction or for immediate or deferred benefit of the tenure-holder or other members of his family, is outside the scope of the aforesaid sub-Section. Thereafter Explanation (ii) provides that the*

burden of proving that a case was within clause (b) of the proviso shall rest with the party claiming its benefit.

16. *The Supreme Court held in Ramadhar Singh (supra) that the existence of the sale deed being a registered sale deed was not questioned and the fact that it was executed prior to January 24, 1971 was also not in dispute therefore any inquiry regarding the validity of such a sale deed under sub-Section (6) of Section 5 was totally misplaced. The Prescribed Authority had no jurisdiction to put the validity of sale deed to test since its jurisdiction arose only when the deed of transfer had been effected on or after the appointed day. Sub-section 6 of Section 5 did not confer jurisdiction on the authorities to determine the validity of the sale and therefore the findings recorded by such an authority on the contents of the sale deed or the adequacy or otherwise of the sale consideration could also not be gone into. 17. With regard to the argument made on behalf of the petitioner that the registered sale deed made in favour of alleged Moti Ram Naik being of a date prior to the appointed day and thus could not be looked into at all on the basis reliance placed on the judgment rendered in the case of Ramadhar Singh Vs. Prescribed Authority & others 1994 Supp (3) SCC 702, the said argument is wholly misconceived and hence liable to be rejected.*

18. *The judgment in the case of Ramadhar Singh (supra) was held to be per incurium and in*

Sant Singh Vs. ADJ. Jhansi 1996 (3) SCC 400. The Hon'ble Supreme Court in Sant Singh (supra) has held that in view of the specific language used in Section 5 (6) of the Rural Ceiling Act. The Prescribed Authority in determining the ceiling applicable to a tenure-holder shall ignore any transfer of land made after the 24.1.1971, which, but for the transfer would have been declared as surplus land under the Act. However, the proviso further says thus "provided that nothing in the sub-section shall apply to ----- (a) a transfer in favour of any person (including the Government) referred to in sub-section 2 (b) a transfer proved to the satisfaction of the Prescribed Authority to be in good faith and for adequate consideration and under an irrevocable instrument, not being a benami transaction, or for immediate or deferred benefit of the tenure-holder; or other members of the family, is outside the scope of the aforesaid sub-section. Thereafter, Explanation II provides that the burden of proving that a case falls within clause (b) of the proviso shall rest with the party claiming its benefit.

ii) Judgments relied upon by learned counsel for the respondent:

a) Bachhaj Nahar Vs. Nilima Mandal & ors. (Supra):

9. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial.

Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.

b) State of U.P. Appellant Vs. Amar Singh etc. (Supra):

5. Thus, on and from the date the Amendment Act came into force, namely, January 21, 1971, the tenure-holder shall not hold throughout the State of Uttar Pradesh, any land in the aggregate in excess of ceiling area applicable to him. Explanation I adumbrates that in determining ceiling area applicable to a tenure-holder, all lands held by him in his own right, whether in his own name or ostensibly in the name of any other person, shall be taken into account. In other words, as on the date the Amendment Act came into force, the land must held by tenure-holder in his own right and the lands ostensibly in the name of any other person shall be taken into account. In this case, admittedly, the alienations came to be made by Kishun Singh in favour of his sons and daughters-in-law. Normally, one would expect that if there is any compelling legal necessity to

alienate the land, one would sell the land to third parties and that too, as prudent vender for valuable consideration not to the sons and daughters-in-law. The object appears to be, as rightly pointed out by the District Judge, that the alienations were made by registered instruments in favour of his sons and daughters-in-law only to see that the provisions of the Act are defeated and the lands do not pass into the hands of strangers. It is true that the evidence was adduced by the respondents as regards proof of mutation. Mutation was effected on the basis that sale deeds came to be executed in favour of sons and daughters-in-law. Therefore the mutation officer was not concerned at that stage to find out whether the sales were benami or ostensibly intended to defeat the provisions of the Act. It is settled law that mutation entries are only for the purpose of enabling the State to collect the land revenue from the person in possession but it does not confer any title to the land. The title would be derived from an instrument executed by the owner in favour of an alienee as per Stamp Act and registered under Registration Act. The alienees being sons and daughters-in-law the tenure-holder remained to be the owner and holder of the land. The sons and daughters-in-law are only ostensible owners under Explanation I to Section 5(1) of the Act. It is true that Lekh Pal has not categorically stated whether the respondents remained in possession in their own right after the

alienation. It is not in dispute that the father and sons remained to be members of the joint family and were cultivating the land. Under these circumstances, one would normally expect that Lekh Pal may not be in a position to categorically assert whether respondents remained in possession in their own right as owners or were cultivating land on their own or on behalf of the coparceners. Under these circumstances, the findings of the High Court are illegal. The case falls under Explanation I of Section 5(1) and the burden is always only on the respondents to establish that they were not ostensibly owing the land but remained in their own right as owners. Accordingly, we hold that Kishun Singh was the holder of the land. He was a tenure-holder as on the date and, therefore, ceiling area has to be computed treating him to be the owner of the land; besides himself, he had eight sons who are entitled to the respective additional ceiling area given to them under the Act. The authorities are, therefore, directed to compute the ceiling area accordingly and take possession of the surplus land.

27. A notice dated 18.05.1989 was issued in the name of deceased Prabhoo after his death, who was the father of petitioner No.4 to 7 and grand father of petitioner Nos.1 to 3. The petitioners objected to the said notice through their objections dated 11.01.1990 stating therein that the notice was illegal, arbitrary as the petitioners and their fore-fathers were not having land beyond the limitations prescribed under Imposition of Ceiling on

Land Holdings Act because father of petitioner No.4 to 7 and grand - father of petitioner Nos.1 to 3 had already died much earlier. Not only this, but the land in dispute was already transferred to the petitioner Nos.4 to 7 and petitioner Nos.1 to 3 through registered sale deed dated 02.02.1970 much prior to the amendment incorporated vide amendment dated 24.01.1971, therefore, the sale deed executed in favour of petitioner Nos.4 to 7 and grand father of petitioner Nos.1 to 3 are genuine documents and do not suffer from any infirmity or illegality. The judgment relied upon by learned counsel for the petitioner in the case of **Raja Mahipal Singh (Deceased) Through LRs (Supra)** is fully applicable to the present facts and circumstances of the case.

28. The objection was decided by the prescribed authority (Ceiling) Bahraich vide order dated 31.12.1993 and was rejected. The petitioner feeling aggrieved filed appeal No.47 before the Commissioner, Faizabad Division, Faizabad on the ground that the order passed by the prescribed authority was grossly erroneous in law as no specific and relevant issues were framed and also on the ground that the prescribed authority failed to appreciate the sale deed in the name of the petitioners, executed in the year 1970 much prior to the amendment incorporated under Ceiling Act, 1952, therefore, due to non framing of issues on the evidence, the impugned orders apparent illegality and are liable to be set aside.

29. The Additional Commissioner, Judicial decided the appeal of the petitioners vide order dated 12.08.1997 and rejected the appeal again only on the basis of extraneous and irrelevant facts. Hence, the present writ petition has been filed

before this Court. The impugned orders have been passed without applying the judicial mind while examining the evidence on record. The courts below failed to give any finding on the point of pleading that the petitioner Nos.4 to 7 and father of petitioner Nos.1 to 3 were major at the time of Imposition of Ceiling of Land Holdings Act in the year 1972.

30. The courts below have also failed to consider the evidence of sale deed executed before 24.01.1971 in accordance with provisions of sub section 6 of Section 5 of the Act. The courts below passed the impugned orders without mentioning about pleadings and reasons raised by the petitioners.

31. The respondents failed to decide the dispute in accordance with law. The tenure holder, namely, Prabhoo had died on 15.08.1988 before the issuance of notice and the land was mutated in the name of petitioners even on the basis of sale deed and were living separately during life of deceased Prabhoo. The matter was beyond jurisdiction of Ceiling Act and no notice can be issued in the eyes of law, as such, the proceeding was illegal, arbitrary, and prejudicial to the petitioners.

32. The impugned orders do not contain any finding on the point of irrigated and un-irrigated land as well as grove land. Certified copy of the family register showing the family members of the petitioners separately on the basis of basic year 1978 relevant in the determination of family members. The registered sale deeds were executed on required stamp papers on the basis of valuation of the land transferred to petitioner Nos.4 to 7 and grand father of petitioner Nos.1 to 3 by the deceased Prabhoo, who was sole tenure

holder of the holdings in question. The valuation was made properly on the rates fixed for the area and no dispute was raised at any stage by the registering authorities, as such the whole proceeding was illegal and arbitrary and prejudicial to the petitioners.

33. Learned ACSC has urged that courts below have given concurrent finding against the petitioners and held that the sale deed in question was a fake transaction between the father and son and therefore, the vendees are only ostensible owners. Other submission of learned ACSC is that under Rule 19 of the rules framed under U.P. Imposition of Ceiling Act provides that if the tenure holder was alive on 08.06.1973, notices shall always be issued in the name of deceased tenure holders and service shall be effected on the heirs of the deceased tenure holders. In this regard, it is stated that it is quite clear that the appellate court has not considered the sale deed executed in favour of the petitioner Nos.4 to 7 and grand father of petitioner Nos.1 to 3.

34. It is quite clear that the appellate Court judged the four gift deeds and one sale deed in favour of Dhani Ram on the touch stone of section 5(6)(b). In this regard appellate Court was not correct. Section 5(6)(b) deals with the transfer deeds made after 24.1.1971. Of Course in certain circumstances even the deeds prior to 24.1.1971 may be ignored after holding them to be sham, fictitious or collusive transactions. However, some distinction has to be drawn in between the deeds prior to 24.1.1971 and after the said date. The same criteria which is applicable to post 24.1.1971 deed can not be applied to pre 24.1.1971 deed. Transfer deeds executed before 24.1.1971 may also be looked into by the prescribed authority to ascertain as

to whether the transaction was sham, fictitious and collusive or not.

35. In the present case, without there being any material on record, the prescribed authority as well as appellate court have come to the conclusion that the sale deed executed in favour of petitioner Nos.4 to 7 and grand father of petitioner Nos.1 to 3 are sham transaction without any basis in law. Hon'ble Supreme Court in the case of **Vyas Prasad (Supra)** held that while considering the validity of sale deed executed prior to 24.01.1971, the appointed day, could not be gone into by the Prescribed Authority. Sub-Section 6 of Section 5 of the said Act says that in determining ceiling area applicable to a tenure-holder, any transfer of land made after 24th day of January 1971, which, but for the transfer would have been declared as surplus land under the Act shall be ignored and not taken into account. The proviso (b) thereto, inter alia, provides that a transfer proved to the satisfaction of the Prescribed Authority to be in good faith and for adequate consideration and an irrevocable instrument, not being a benami transaction or for immediate or deferred benefit of the tenure-holder or other members of his family, is outside the scope of the aforesaid sub-Section. Thereafter Explanation (ii) provides that the burden of proving that a case was within clause (b) of the proviso shall rest with the party claiming its benefit.

36. In the case of Ram Adhar (Supra), Hon'ble Supreme Court has held that the existence of the sale deed being a registered sale deed was not questioned and the fact that it was executed prior to January 24, 1971 was also not in dispute therefore any inquiry regarding the validity of such a sale deed under sub-Section (6) of Section 5 was totally misplaced. The Prescribed Authority had no jurisdiction to put the validity

of sale deed to test since its jurisdiction arose only when the deed of transfer had been effected on or after the appointed day. The sale deed executed in favour of petitioner Nos.4 to 7 and grand father of petitioner Nos.1 to 3 have never been challenged before any forum nor cancelled at any point of time, therefore, the finding recorded by both the courts below are not tenable in law and is liable to be set aside. Sub-section 6 of Section 5 did not confer jurisdiction on the authorities to determine the validity of the sale and therefore the findings recorded by such an authority on the contents of the sale deed or the adequacy or otherwise of the sale consideration could also not be gone into. With regard to the argument made on behalf of the petitioner that the registered sale deed made in favour of petitioner Nos.4 to 7 and grand father of petitioner Nos.1 to 3 being of a date prior to the appointed day and thus could not be looked into at all on the basis reliance placed on the judgment rendered in the case of Ramadhar Singh Vs. Prescribed Authority & others 1994 Supp (3) SCC 702.

37. The arguments advanced on behalf of learned ACSC are totally misconceived and the finding returned by both the courts below are not tenable in law. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.

38. In the present case, both the courts below have failed to take into consideration the evidence on record and the finding returned on perverse grounds are not liable to be accepted.

39. In view of findings returned herein above, the order dated 12.08.1997 passed by Additional Commissioner, Judiciary, Faizabad Division, Faizabad in Appeal No.47 (Ceiling) as well as order dated 31.12.1993 passed by the prescribed authority (Ceiling), Bahraich, in case No.812 under sub Section 2 of Section 10 of U.P. Imposition of Ceiling on Land Holdings Act are wholly erroneous and are not sustainable in the eyes of law and are hereby quashed.

40. The writ petition succeeds and is allowed.

41. The matter is remanded back to the prescribed authority to lead evidence on the subject matter involved in the present writ petition and to record finding in regard to sale deed that how it is a fake transaction, once it has been executed by paying sufficient stamp duty and on other points raised by the petitioners.

42. No order as to costs.

(2025) 3 ILRA 843
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 26.03.2025

BEFORE

THE HON'BLE JASPREET SINGH, J.

Writ C No. 1005313 of 2013

Usha Devi @ Urmila Devi & Ors.

...Petitioners

Versus

Malti Devi & Ors.

...Respondents

Counsel for the Petitioners:

Lakshman Singh

Counsel for the Respondents:

G C Verma, Sunita Dwivedi

A. Civil Law -Code of Civil Procedure,1908 - Order IX Rule 13-Ex-parte Decree-Sufficient cause-Restoration of suit-Petitioners sought to set aside ex-parte judgment and decree dated 24.10.2008 passed in a suit for permanent injunction, claiming non-service of notice and lack of knowledge of amendment in plaint-Trial court and Appellate Court both rejected their application under Order IX Rule 13 CPC-The court held that "sufficient cause" must be construed liberally where no gross negligence or mala fide exists-It was found that the petitioners had promptly filed an application under Order IX Rule 13 CPC, had contested the suit earlier, and were dependent on their counsel-The court emphasized the primacy of substantive justice over technicalities and held that denial of opportunity to contest caused potential irreparable loss-Accordingly the ex-parte decree was set aside, and the original suit restored.(Para 1 to 37)

B. It is well settled that where technicalities are pitted against substantive justice, it is substantive justice which should be preferred as the Court lean in favour of doing substantive justice rather than to foreclose the rights of the parties by adopting a hyper-technical view. (Para 28)

The writ petition is allowed. (E-6)

List of Cases cited:

1. Ram Nath Sao @ Ram Nath Sahu & ors. Vs Gobardhan Sao & Ors., (2002) 3 SCC 195
2. Esha Bhattacharjee Vs M/C of Ragnathpur Nafar Academy & Ors.(2013) 12 SCC 649
3. Kumari Sahu Vs Bhubanananda Saha & Ors., MANU/SCOR/15950/2025

4. Rafiq & anr. Vs Munshilal & anr. (1981) 2 SCC 788

5. Revajeetu Builders & Developers Vs Narayanaswamy & Sons & ors. (2009) 10 SCC 84

6. Vinod Seth Vs Devinder Bajaj & anr. (2010) 8 SCC 1

(Delivered by Hon'ble Jaspreet Singh, J.)

1. Heard Shri Lakshman Singh, learned counsel for the petitioners and Ms. Sunita Dwivedi, learned counsel appearing for the private-respondents No.1 to 3.

2. The petitioners have approached this Court seeking to assail the order dated 24.04.2013 passed by the Additional District Judge, Court No.9, Pratapgarh in Misc. Civil Appeal No.91 of 2011, whereby an appeal preferred by the petitioners under Order XLII Rule 1(d) CPC was dismissed, as a consequence, the order passed by the trial Court dated 17.09.2011, whereby the application of the petitioners under Order IX Rule 13 CPC was dismissed, was affirmed.

3. The brief facts giving rise to the instant petition are being noticed hereinafter:-

4. The predecessor-in-interest of the respondents No.1 to 3, namely Gajendra Prasad had instituted a suit for permanent injunction in the Court of Civil Judge (Junior Division), Sadar, Pratapgarh. The present petitioners were impleaded as defendants No.3 and 4. The contentions of the plaintiff/predecessor of the respondents No.1 to 3 was that they are in the peaceful possession of the property in dispute and on the eastern side there was a drain which was being utilized for the drainage of the

dirty water but the defendants in order to expand their construction were attempting to cover and destroy the said drain and in such circumstances, the suit for injunction was filed seeking a decree of permanent injunction.

5. Initially, the suit was contested by the petitioners by filing their written statement, however, thereafter, the matter was set ex-parte on 22.11.2006. Ultimately, the suit filed by the plaintiffs came to be decided by an ex-parte judgment and decree dated 24.10.2008.

6. The petitioners being aggrieved against the ex-parte judgment and decree dated 24.10.2008 moved an application under Order IX Rule 13 CPC which came to be registered as Misc. Case No.65/2008. The grounds raised by the petitioners were:-

(i) during pendency of the suit, some of the defendants had died and their legal heirs were not brought on record, hence, the judgment was bad as it was pronounced against dead persons.

(ii) the suit proceedings had been transferred from one Court to the other, but no notice was issued either to the defendants or their counsel and for the said reason, the defendants were not aware as to where and how the proceedings were being taken forward, hence, a case of sufficient cause was made out.

(iii) the plaintiffs had got the plaint amended, but since the suit had been set ex-parte, no notice of the same was issued, hence, the defendants were prevented from sufficient cause from contesting the

proceedings and as soon as they received the information regarding ex-parte judgment and decree dated 24.10.2008, the petitioners had moved an application which was within time and in such circumstances, the Court would have taken a liberal view and the application deserved to be allowed.

7. The said application came to be contested and the original plaintiff filed their written objection, the same was considered by the trial Court, however, the trial Court did not find favour with the contentions of the defendants/petitioners. Accordingly, by means of the order dated 17.09.2011, the application under Order IX Rule 13 CPC was rejected.

8. The petitioners being aggrieved, preferred an appeal in terms of Order 43 Rule 1(d) CPC and the same was registered as Misc. Case No.91/2011 and the first appellate Court also did not find favour with the contentions of the petitioners and dismissed the appeal by means of the order dated 24.04.2013.

9. The petitioners, thereafter, assailed the two orders in the instant petition and primarily the contention is that since the petitioners have a substantial case on merit, the least that should have been done was to have provided an opportunity of hearing to the petitioners. The delay, if any, could have been compensated in terms of costs, however, this aspect of the matter was not taken note of by the two Courts while rejecting the application of the petitioner under Order IX Rule 13 CPC.

10. It is further urged that since there was never any contention raised on behalf of the plaintiffs that the defendants

have encroached upon or have raised constructions over the disputed land in question and only after the matter was set ex-parte on 22.11.2006 did the plaintiffs move an application for amendment and thereafter the plaintiffs included a prayer of mandatory injunction seeking to direct the defendants from removing the offending constructions, which had seriously jeopardized the rights of the petitioners.

11. It is urged that this was also an incorrect statement inasmuch as the defendants had purchased the property from their predecessor and they had already raised constructions and the true and correct facts were not brought on record by the plaintiffs while instituting the suit and in such circumstances, it was imperative that at least an opportunity of hearing should have been granted to the petitioners and failing which the petitioners are susceptible to suffer irreparable injury. For the aforesaid reasons, it is urged that the ex-parte orders deserves to be set aside.

12. Ms. Dwivedi, learned counsel appearing for the private-respondents No.1 to 3 while opposing the aforesaid submissions has pointed out that three grounds which were raised by the petitioners in their application under Order IX Rule 13 CPC in itself are contrary to the material on record and this has been noticed by the two Courts while rejecting the said application.

13. It is further urged that insofar as the grounds that the suit was transferred from one Court to other of which notice was not sent to the defendants is concerned, it has been pointed out that the respondents No.1 to 3 had filed a supplementary affidavit dated 28.08.2024 before this Court and along with the said affidavit, the

certified copies of the order-sheets were brought on record, which indicated that after transfer, the file was received by the transferee Court and the order-sheets dated 13.08.2008 clearly indicates that the petitioners through counsel was present.

14. It is urged that in this light, it cannot be said by the petitioners that they were not aware of the proceedings. The order-sheet subsequent thereto dated 10.09.2008 also indicates that the counsel for the defendants was present.

15. In the aforesaid circumstances, where the defendants already had notice and was aware of the proceedings, hence, there was no requirement that at each and every step notice should have been issued to the defendants repeatedly.

16. It is further urged that insofar as the non-service of the summons as far as the other defendants are concerned that also does hold water for the reason that it is the case of the defendants that they had purchased the property by means of the sale-deed dated 21.08.2003 and the suit came to be filed thereafter. If any of the defendants had died, at best, it would have been the successors of the aggrieved party, who could take this plea, however, since the defendants were contesting the claim of the plaintiffs on their own merits, hence, they are not permitted to espouse the cause of the other co-defendants. Even otherwise, once the property had been sold, there was no requirement of sending notice to the other defendants and as such the present set of petitioners, who were co-defendants cannot take the benefit of non-service of notice to the other co-defendants, who apparently had lost their rights, since, they had transferred the property even prior to the institution of the suit and on account of

non service of summons on the legal heirs of the deceased party did not prejudice the case of the present petitioners.

17. It is, thus, urged that for all the aforesaid reasons, the order impugned do not require any interference and the writ petition deserves to be dismissed.

18. The Court has considered the rival submissions and also perused the material available on record.

19. The facts in between the parties are not disputed inasmuch as the suit was preferred by the plaintiffs wherein the defendants had appeared and filed their written statement. The proceedings were set ex-parte against the contesting defendants/the present petitioners on 22.11.2006.

20. The record would further indicates that one of the co-defendants from whom the petitioners had purchased the property had died. Since, the sale had already taken place prior to the institution of the suit, accordingly, there was no requirement for the legal heirs of the said deceased-defendant to have been compulsorily served. Moreover, there is another reason that the death of the co-defendants is not going the impact the rights of the present petitioners inasmuch as the suit was for the relief of permanent injunction. Necessarily, a relief of permanent injunction is in personam and not in rem. The plaintiffs are dominus litis and it is always open for the said plaintiffs to contest the suit for injunction against any person against whom there is a threat. In this regard, if the defendants, who were the original owner of the property had died and since he had transferred his rights in the premises to the defendants, thus, there

could not have any impact on the rights of the present petitioners, unless clear prejudice was demonstrated, which needless to say could not be established.

21. It has also been indicated by the learned counsel for the petitioners that at any point of time the successors of the original defendants who had sold the property to the petitioners never came forward to contest in terms of Order XXII Rule 4 Sub-rule (4), where a party, who has not contested the proceedings or did not file its written statement, then with the leave of the Courts, upon his death, it is not necessary to bring his legal heirs on record.

22. In light of the aforesaid propositions of law, the first submissions of the learned counsel for the petitioners that they were prejudiced because of not issuing of notice to the other defendants does not have any legs to stand and is turned down.

23. The other submission made by the learned counsel for the petitioners regarding no notice being sent to the petitioners or their counsel upon transfer of the suit for one Court to another, this also does not have much weight inasmuch as from the certified copies of the order-sheets, which have been brought on record by the private-respondents No.1 to 3 along with the supplementary affidavit dated 28.08.2024 would indicate that the learned counsel for the petitioners was present before the transferee Court on 13.08.2008 as well as 10.09.2008. Once the presence of their counsel was in the proceedings, then to say that no notice was available or known to the present petitioners also is not substantiated. Consequently, the said submission of the learned counsel for the petitioners also fails.

24. Lastly, the submission that the suit came to be amended after the proceedings were set ex-parte which has impacted the rights of the plaintiffs-petitioners is concerned, if this is examined, it would reveal that the proceedings were set ex-parte on 22.11.2006. The plaint came to the amended in the year 2008 referring to a cause of action which accrued in 2006. Once the proceedings had been taken forward ex-parte, it was either the duty of the petitioners to have moved an appropriate application under Order IX Rule 7 CPC to get the ex-parte order dated 22.11.2006 recalled.

25. Having skipped this remedy, the effect would be that the said order dated 22.11.2006 merged with the ex-parte judgment and decree passed by the trial Court on 24.10.2008. Thereafter, the petitioners had a remedy of Order IX Rule 13 CPC and in furtherance thereof, an application under Order IX Rule 13 CPC was moved by the petitioners on 04.11.2008 i.e. within two weeks of the passing of the ex-parte judgment and decree dated 24.10.2008.

26. In the aforesaid circumstances, where the petitioners had approached the Court without much delay inasmuch as the said ex-parte decree came to the knowledge of the petitioners and the said decree on account of the amendment made in the plaint had the impact of raising a cloud over the constructions made by the defendants which was already pleaded in the written statement filed on 23.05.2006, apparently was a contestable plea. However, as per the amended plaint, it was indicated by the plaintiffs that the offending construction had been raised only during pendency of the suit in the year 2006,

which shall be evident from the copy of the plaint which is at running page 63 of the paper-book and in Paragraph-10 it states that the cause for removing the offending constructions accrued on 21.01.2006.

27. In this view of the matter, where certain conflicting claims are to be adjudicated and in the aforesaid circumstances and the averments in the application under Order IX Rule 13 CPC, this Court does not find that the conduct of the defendants was so negligent that it did not deserve an opportunity of hearing. The suit had been contested on behalf of the defendants by the petitioner No.1 Usha Devi and it is stated that she was dependent on her counsel as her husband was in service outside the District of Pratapgarh.

28. It is now well settled that where technicalities are pitted against substantive justice, it is substantive justice which should be preferred as the Court lean in favour of doing substantive justice rather than to foreclose the rights of the parties by adopting a hyper-technical view.

29. It is not disputed that the application under Order IX Rule 13 CPC came to be filed within two weeks of passing of the ex-parte judgment. It is clearly mentioned in the application under Order IX Rule 13 CPC that the petitioner No.1 Usha Devi was dependent on her counsel in absence of her husband and she had no other means of knowing about the proceedings except what was told to her by her counsel. The Court is required to see whether the petitioners were prevented by sufficient cause for appearing in the case which led to the ex-parte decree

30. The word 'sufficient cause' came to be considered by the Apex Court in

Ram Nath Sao alias Ram Nath Sahu & Ors. v. Gobardhan Sao & Ors., (2002) 3 SCC 195 and it was held as under:-

"12. Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished should

not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

31. The Apex Court in *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors.*, (2013) 12 SCC 649 has held as under:-

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

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

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

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

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

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

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

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

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

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

21.10. (x) If the explanation offered is concocted or

the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

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

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

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

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

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

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

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial

discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

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

32. Very recently, the Apex Court in **Kumari Sahu v. Bhubanananda Sahu & Ors.**, MANU/SCOR/15950/2025 has held as under:-

"10. We are aware of the caution that needs to be exercised in matters relating to condonation of delay of longer durations. However, it must be noted that balancing of scales of justice becomes imperative when it comes to such matters, especially given the socio-economic background of a large number of India's population who approach these doors of justice as litigants.

11. We find it relevant to produce here a paragraph from **Rafiq and Another v. Munshilal and Another (1981) 2 SCC 788**, a case which had a very similar factual matrix regarding delay due to Counsel's fault, the following was observed:

"3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded

by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. Maybe, we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. **Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr A.K. Sanghi invited us to do, the only one who would suffer would not**

be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned Advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs 200 should be recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr A.K. Sanghi."

(Emphasis is mine)

12. Even though the above-quoted case law is from the year 1981, we cannot deny the fact that

the ground reality of a considerable proportion of litigants being completely dependent on their counsel remains the same, especially in regions with lower economic and educational prowess."

33. Thus, the principles that can be culled out from the aforesaid decisions and if applied to the instant case would reveal that the word 'sufficient cause' must be construed liberally and the explanation furnished must be accepted unless gross negligence can be imputed to the party seeking indulgence of the Court.

34. In the instant case, the reliance and dependence on the counsel is not disputed. Husband of Usha Devi being away on account of work is not disputed. It is also not disputed that Usha Devi and her husband did not have a dilatory attitude while contesting the proceedings and apart from what they were told or advised by their counsel, they had no other means of gaining knowledge coupled with the fact that the application under Order IX Rule 13 CPC was moved within time. Hence, this Court is of the view that an opportunity should have been granted to the petitioners rather than condemning them unheard.

35. The record also shows that a Coordinate Bench of this Court vide order dated 09.09.2013 had protected the rights and the execution of the ex-parte decree has not been done. The delay in the proceedings can be mitigated by compensating the private-respondents by awarding costs in light of the principles laid down by the Apex Court in **Revajeetu Builders and Developers v. Narayanaswamy & Sons and others, (2009) 10 SCC 84** and **Vinod Seth v.**

Devinder Bajaj and another,
(2010) 8 SCC 1.

36. In the aforesaid circumstances, this Court is of the view that ends of justice can be met by allowing the writ petition, setting aside the ex-parte judgment and decree dated 24.10.2008 on payment of costs of Rs.30,000/- [Rs.20,000/- shall be payable to the plaintiffs and Rs.10,000/- shall be deposited with the District Legal Service Authority, Pratapgarh] within a period of two weeks from today. The proceedings of O.S. No.1486/2003 shall stand restored to its original number where **the parties shall appear before the trial Court on 16.04.2025**. The suit shall proceed from the stage the plaintiffs had moved an application for amendment. The defendants shall be given reasonable opportunity to contest the suit including by filing their objections to the amendment application. The parties shall be free to lead fresh evidence. The parties are directed to cooperate in the proceedings of O.S. No.1486/2003. Any party choosing to misuse the liberty shall be saddled with costs to be enhanced progressively. The trial Court shall endeavour to decide the O.S. No.1486/2003 expeditiously preferably within a period of six months from the date parties appear before the trial Court. It is made clear that if the costs, as directed by this Court, are not paid then the proceedings shall not be revived.

37. With the aforesaid observations, the writ petition is **allowed**.

(2025) 3 ILRA 853
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 10.12.2024

BEFORE

THE HON'BLE VINOD DIWAKAR, J.

Application U/S 482 No. 25039 of 2024

Raju Maurya **...Applicants**
Versus
State of U.P. & Ors. **...Opposite Parties**

Counsel for the Applicants:
R P Jain

Counsel for the Opposite Parties:
G.A., Ranjana Singh, Shesh Nath Singh
Yadav

Criminal Law-The Code of Criminal Procedure, 1973-Sections 82 & 83
Application for release of the attached goods- In the present case, without determining the truth- whether it was a case of elopement or active companionship the police charge-sheeted eight family members without ascertaining the facts from the boy against whom allegations were made regarding the elopement of a young girl. Furthermore, the police attached all movable and immovable goods present in the family's house without verifying the ownership of the property---The court overlooked the critical fact that the seized property did not belong to the alleged absconder--- There is an urgent need for both trial courts and the police to adhere to minimum legal and procedural standards while issuing and executing judicial orders. Such orders must be passed and implemented in a manner that is fair, lawful, and transparent, ensuring the protection of constitutional rights and upholding public trust in the judicial system particularly crucial in matters involving (i) the issuance of proclamations for absconding persons, (ii) the attachment of property, (iii) the identification and seizure of assets belonging to proclaimed offenders, and (iv) the adjudication of claims and objections related to such attachments. By ensuring strict adherence to legal principles and procedural safeguards, the judiciary and law enforcement agencies can uphold the rule of law, protect individual rights, and restore public confidence in the justice system---Proceedings against the applicant and other accused persons stand quashed. **(Para 19, 26 30 & 32)**

Petition allowed. (E-15)

List of Cases cited:

St. of Bihar & anr. Vs J.A.C. Saldanha & ors.
1980 SCC(CRI) 272

(Delivered by Hon'ble Vinod Diwakar, J.)

1. Heard Shri R.P. Rajan, learned counsel for the applicant, Shri Vibhav Anand, learned A.G.A. for the State-respondent, learned counsel for the opposite party no.2, and perused the record.

2. Shri Mohit Agarwal, Commissioner of Police, Varanasi, appeared virtually through video conferencing.

3. The present application has been preferred with the prayer to quash the impugned order dated 1.4.2024, passed in Special Session Trial No.1203 of 2021, arising out of Case Crime No. 212 of 2021, under Sections 363, 366, 368 I.P.C. read with section 16/17 of POCSO Act, registered at P.S. Chaubepur, District-Varanasi, pending trial in the court of learned Additional District and Sessions Judge/Special Judge (POCSO Act), Court No.3, Varanasi, whereby the applicant's application for release of the goods was rejected.

4. After hearing learned counsel for the applicant, on examining the seizure memo of goods attached and perusal of the impugned order, this Court vide order dated 11.11.2024 directed the Commissioner of Police, Varanasi, to appear virtually through video conferencing and file a personal affidavit containing the day-to-day steps taken by the police to recover Awadhesh Maurya and Jyoti Yadav, who had gone missing on 10.05.2021. The

relevant portion of the aforesaid order has been extracted below:

"3. Learned counsel for the applicant submits that the applicant is the real brother of Awadhesh Maurya, who was working as driver in the informant's firm. In the First Information Report, it is alleged that the brother of the applicant has abducted minor daughter of the complainant, and the applicant and two-three unknown persons assisted him in abduction. The younger brother of the applicant is also made a co-accused in the instant case, who is still missing along with the daughter of the complainant prior to the date of registration of FIR. Learned counsel further submits that no evidence to support the bald allegation surfaced during the investigation qua applicant. At belated stage of investigation with ulterior motives, the applicant's name has been roped in the instant case at behest of mother of the victim along with other co-accused.

4. The main accused Awadhesh Maurya- who is stated to have eloped the complainant's daughter- could not be traced by the police, and therefore, proceedings u/s 82 & 83 Cr.P.C. have been initiated, consequently, the police attached the applicant's family property, earned by the father-accused. Subsequently, the father of the applicant moved an application for release of the goods, which was partly allowed by court, and vide order dated 14.02.2022 and a loader (tempo) bearing A7L1144062 was released in favour of father of applicant. After that the applicant moved an application for release of his goods, but due to certain error, the application was not pressed, and consequently dismissed. The applicant again moved another application for release of the seized household articles,

which was rejected by the trial court vide impugned order 01.04.2024.

5. On perusal of the impugned order, it is nowhere mentioned that the attached property was purchased from the earning of the co-accused Awadhesh Maurya, neither any receipt regarding purchase of the seized goods is on record. The trial court has erroneously failed to consider the fact that the applicant and his father (co-accused) are regularly joining the court proceedings, and therefore, the property (household goods) cannot be attached without satisfying itself that the seized property is earned by the absconder, and there is no proof on record to this effect. Therefore, trial court is directed to immediately after receipt a copy of this order release the entire goods seized vide seizure memo 25.12.2021 and shall ensure that the goods are in the same condition as it were at the time of seizure. The compliance report shall be forwarded to this Court on or before the next date of hearing.

6. During the course of arguments, the applicant's counsel has raised serious apprehension that his younger brother and the victim have been done to death by the complainant and his family members. Since, there is a strong whisper in the village about the honour killing of his brother and the victim by the complainant. The police has also not taken a serious step to locate the co-accused Awadhesh Maurya and the victim- Jyoti Yadav since both disappeared from the village.

7. After taking overall stock of facts-circumstances of the case, I find that the applicant's apprehension is reasonable, and therefore, the Commissioner of Police, Varanasi, is directed to file his personal affidavit containing the day-to-day steps taken by the police to locate Awadhesh

Maurya and Jyoti Yadav, and shall remain present before this Court virtually through video conferencing at 10:00 a.m.”

5. In terms of the aforesaid order, learned A.G.A. handed over the personal affidavit of the commissioner of police to the Court, and the same has been taken on record. Upon examining the contents of the affidavit, the following facts have been noted;

5.1 An FIR being Case Crime No. 212 of 2021, under Sections 363, 366, 368 of the I.P.C., was lodged by Shri Shambhu Yadav at P.S. Chaubepur, District Varanasi, alleging that on 10.05.2021 the complainant's minor daughter, aged about 17 years, had been eloped with one Awadhesh Maurya, and since then, her whereabouts have remained untraceable.

5.2 After registration of the FIR, the complainant's statement was recorded on the same day by the investigating officer and possible hideouts of the accused and victim were searched on 15.05.2021. Thereafter, based on CDR analysis, the possible hideouts in Mumbai was also searched on 28.05.2021.

5.3 A team was constituted under the C.O. Pindra, Commissionerate Varanasi to locate the accused and victim. Talash-Gashti was also issued, and a public broadcast was also made on 26.08.2021 on Doordarshan and Akashwani.

5.4 After collecting evidence, co-accused Subhash Maurya, Akshay Maurya, and Ajit Maurya were arrested on 20.06.2021, while co-accused Surya Nath Maurya and Raju Maurya were arrested on 17.09.2021. All the accused were sent to jail.

5.5 On 18.09.2021, two police teams were reconstituted to search for the accused and the victim by the S.P. (Rural),

Commissionerate Varanasi: (a) One team was formed by the local police, and (b) Another team was constituted by the Crime Branch.

5.6 Proceedings under Section 82 Cr.P.C. were initiated against accused Awadhesh Maurya on 27.09.2021, followed by proceedings under Section 83 Cr.P.C. on 09.11.2021.

5.7 The accused's location was traced to Maharashtra; however, despite all efforts, the police could not recover the victim.

5.8 From 13.05.2021 to 04.12.2024, the police documented the steps taken during the investigation in **104 case diary entries**, but no fruitful results were obtained.

6. The personal affidavit of the Commissioner of Police further reveals that upon receipt of the order passed by this Court, the Assistant Commissioner, Sarnath, Varanasi, was directed to investigate the lapses committed by the investigating officers and submit a report within ten days. Subsequently, on 05.12.2024, the Commissioner of Police reconstituted a team under the Assistant Commissioner of Police, Sarnath, comprising the In-Charge of the Surveillance Cell, the In-Charge of S.O.G., Commissionerate Varanasi, and the Investigating Officer of P.S. Chaubepur, Varanasi. The team was instructed to utilize all available resources to recover the victim.

7. As a result, the victim was successfully recovered, and the accused, Awadhesh Maurya, was arrested by the police on 07.12.2024 from Pimpalgaon, District Nashik, Maharashtra. The police obtained a transit remand from the learned Judicial Magistrate, F.C. Pimpalgaon,

Niphad, District Nashik, Maharashtra. Subsequently, charges under Section 68 of the IPC and Sections 16/17 of the POCSO Act were added. The accused was later released on bail. *It has come to light that the boy and the girl got married soon after leaving their village and had been living together happily in Nashik prior to their arrest. Recently, they were blessed with a child.*

8. With regard to the direction for the release of the attached goods, the same were released by the learned Additional District and Sessions Judge/Special Judge (POCSO Act) in favour of the applicant, Raju Maurya, vide order dated 07.12.2024. The goods were released through a Supurdginama, annexed on page 29 of the personal affidavit, in compliance with the order dated 11.11.2024.

9. To summarize the background of the case, an FIR was registered alleging that a 17-year-old girl had eloped with a young boy from the same village. During the investigation, the police arrested five members of the boy's family, who were later released on bail. A chargesheet was filed against all five male and three female members of the household, who had secured anticipatory bail from the court. Additionally, the police attached the entire household goods used by the family on 25.12.2021. The list of the attached goods is outlined below:

Sr. No.	Description of Items	Quantity	Value in (Rs.)
1.	Old used bicycle	2 pieces	100
2.	Old used Cot	1 piece	80
3.	Old used table	1 piece	20
4.	Wooden plank	1 piece	15
5.	Stool	2 pieces	28

6.	One stone plate of grinder	1 piece	5
7.	Wooden bed	1 piece	75
8.	Small battery	2 pieces	40
9.	Charger	1 piece	10
10.	Big-size tin box	1 piece	50
11.	Wooden plank	2 01	80
12.	Iron drum	1 piece	15
13.	A plastic drum with 10 kg of rice	1 piece	80
14.	Kathari (bed sheet)	4 piece	16
15.	Bed sheet	1 piece	35
16.	Blanket	2 piece	8
17.	Wooden plank	2 piece	100
18.	Make-up box with stool	017	30
19.	Iron Almirah		120
20.	Mattress	02	15
21.	Old used tin box	01	
22.	Old ladies purse	01	20
23.	Old Saree	06	24
24.	Male dhoti	02	3
25.	Gamchha	03	3
26.	Suit Salwar	02	4
27.	Old Jacket	01	2
28.	Ladies old shawl	01	1
29.	Kids school dress	01	1
30.	Old leggings	01	1
31.	Old frock	02	1
32.	Half sweater	02	2
33.	Muffler	01	1
34.	Ladies muffler	01	1
35.	Stole	05	5
36.	Blouse	01	2
37.	Maxi	06	6
38.	Suit salwar	06	6
39.	Pillow	06	6

40.	Small bed kathari	10	10
41.	Small LG TV	01	150
42.	Small grinder stone	1 pair	5
43.	Tin drum with 10 kg wheat	01	25
44.	Tin drum with 10 kg rice	01	25
45.	Wooden double bed	01	25
46.	Broken plastic ataini	01	2
47.	wooden dholak	01	1
48.	Plastic tal	01	2
49.	broken small tin box	02	1
50.	Ceiling fan	01	15
51.	Grindstone hand grinder	01	2
52.	one bucket iron/steel	02	2
53.	small steel bowl	04	1
54.	Steel lota	01	1
55.	Steel glass	01	1
56.	Old used iron griddle	01	5
57.	Old used tongs	02	2
58.	Old used steel plate	01	1
59.	Small steel sieve	01	1
60.	Old used steel plate	01	1
61.	Old used broken roller	01	2
62.	Old used a small spoon	03	2
63.	Old used rope	01	1
64.	Five packets rice	150 kg	
65.	Six packets wheat	160 kg	600

66.	Two packets paddy	45 kg	320
67.	Broken iron dhai	01	5
68.	Four packets wheat	80 kg	160
69.	Old used winnowing basket	01	1
70.	A bottle of 20 ml oil	01	1
71.	An iron bottle of 50 gram turmeric without cap		2
72.	Plastic bottle of 5-gram chilli		1
73.	Plastic bottle of 50-gram salt		1
74.	A broken comb and a small mirror		2
75.	Wooden bench	01	1
76.	Wall clock	01	5
77.	Old used broom	01	2
78.	Broken hand-made fan	02	1
79.	A red colour plastic bottle of 5 litre	02	2
80.	Old used CFL bulb	05	20
81.	Broken plastic chair	02	20
82.	Iron crusher	01	450
83.	Diesel engine	01	1250
84.	Old Alfa Tempo Goods vehicle	01	15,000
85.	Old iron rod	01	750
86.	Ruined iron thrasher	01	35

	machine		
87.	Fodder machine	01	50
88.	Old used jaggery cauldron	01	50
89.	Broken window	01	10

10. After the attachment of the goods, the father of the boy filed an application for their release. Vide order dated 14.02.2022, a loader bearing No. A7L1144062 was released in favour of the applicant, whereas the application for the release of other goods was rejected.

11. Thereafter, on 02.05.2023, the applicant filed another application for the release of the goods, submitting that none of the attached goods were purchased by the co-accused, Awadhesh Maurya, nor did any of the articles mentioned in the seizure memo belong to him. Therefore, the household goods had been attached in contravention of the law. However, the said application was withdrawn as not pressed on 19.02.2024.

12. Subsequently, a third application was filed by the applicant, reiterating that all the accused in this case, namely:

(i) Subham Maurya, (ii) Akshay Maurya, (iii) Ajit Maurya, (iv) Surya Nath Maurya, (v) Raju Maurya, (vi) Savitri Devi, (vii) Kanchan Maurya, and (viii) Malti Maurya are on bail, and the goods attached by the police do not belong to the co-accused, Awadhesh Maurya. The applicant further submitted that the goods are deteriorating with each passing day and that the entire family has been facing hardship in managing their day-to-day

affairs. However, the application was rejected by the impugned order.

13. Had the police acted responsibly and conducted a free, fair, and unbiased investigation in a professional manner, the two families would not have endured the trauma they suffered. The entire family of the young boy has been virtually left to starve on the streets due to the actions of the police, who failed to consider the consequences of their decisions. The entire investigation prima facie appears to be a botched-up investigation for reasons best known to the investigating officers who had been part of the investigation team, time to time. The actions of the investigating officer are reminiscent of the old colonial style of policing, carried out at the dictates of their masters-the rulers of India, the British- at the cost of the rule of law and human values.

14. A brief historical overview of policing in India may provide valuable context for understanding the necessity of police reforms. The police system in colonial British India was fundamentally designed to serve the interests of the British Empire. The British colonial government established a centralized police force in India after the Revolt of 1857, formalized through the Indian Police Act of 1861.

15. It appears, based on the given facts, that the Indian police system, rooted in colonial legacies, continues to operate under an authoritarian and feudal framework, which stands in stark contrast to the principles of a community-driven model of policing. Implementing such a model requires extensive training programs and resources to equip officers with the skills necessary for community engagement, conflict resolution, and

problem-solving. The lessons from this dark chapter in history serve as a reminder of the importance of accountability, ethical governance, and the protection of civil liberties in any democratic society.

16. A fair and effective investigation is the backbone of the criminal justice system. Any act that compromises the integrity of an investigation can lead to serious procedural consequences, potentially undermining justice and eroding public confidence in law enforcement. A flawed investigation can result in either wrongful convictions or wrongful acquittals, both of which are grave miscarriages of justice. As in the present case, without determining the truth-whether it was a case of elopement or active companionship- the police charge-sheeted eight family members without ascertaining the facts from the boy against whom allegations were made regarding the elopement of a young girl. Furthermore, the police attached all movable and immovable goods present in the family's house without verifying the ownership of the property.

17. The purpose of Section 82 Cr.P.C. (corresponding to Section 84 of the Bhartiya Nagrik Suraksha Sanhita, 2023) is not to penalize an absconding person but to secure their presence. In contrast, Section 174-A of the IPC (corresponding to Section 209 of the Bhartiya Nyay Sanhita, 2023) prescribes punishment for a person who fails to appear at the specified place and time as required by a proclamation issued under sub-section (4) of Section 82 Cr.P.C. If declared a proclaimed offender, such a person may face imprisonment for up to seven years and a fine.

18. A harmonious reading of Sections 84 and 85 of the BNSS, 2023, reveals that

if a court has "reason to believe" (whether based on evidence or otherwise) that a person against whom a warrant has been issued has absconded or is deliberately concealing himself to evade execution, the court may publish a written proclamation. This proclamation requires the person to appear at a specified place and time, not less than 30 days from the date of its publication.

19. Furthermore, the court issuing a proclamation under Section 84 BNSS may, for "reasons to be recorded" in writing, order the attachment of any movable or immovable property belonging to the proclaimed person. Such an order may be passed after the court is satisfied- by affidavit or other means- that the person:

(a) is about to dispose of all or part of his property, or

(b) is about to remove all or part of his property from the local jurisdiction of the court. In such cases, the court may simultaneously order the attachment of the property while issuing the proclamation, provided that it follows the procedure and satisfies the requirements outlined in Sections 85(2), 85(3)(a)-(d), 85(4)(a)-(d), 85(5), and 85(6) of BNSS, 2023.

20. For Reference, **Black's Law Dictionary** defines "*belonging*" as: "*which pertains to, is connected with, or is the rightful property of a person or entity*". Similarly, **Stroud's Judicial Dictionary** defines "*belonging*" as: "*that which is the rightful property or legally attached to a person or entity, either by ownership, possession or association*". The ownership may be absolute or qualified, depending on the nature of legal eyes conferred by the statutes, contracts, or any other binding precedent or customary practices.

21. In **State Of Bihar & Anr v. J.A.C. Saldanha & Ors**, the Supreme Court reiterated that an inquiry must be distinguished from investigation and trial, as each serves a different legal purpose. The "inquiry" means every inquiry, other than the trial conducted under BNSS, 2023 by the Magistrate or Court. Inquiry by the Magistrate or Court ensures procedural fairness and protects individuals from unwarranted prosecution. It involves a conscious and judicious application of the judge's mind to assess facts and evidence and determine if legal action is warranted. The primary purpose of an inquiry is to determine whether a prima facie case exists against the accused, warranting a trial. A trial involves the formal adjudication of guilt or innocence, with the prosecution presenting evidence and the accused being given the opportunity for defence.

22. This Court has observed that the procedure adopted by the police, particularly in rural areas, to enforce attachment orders under Section 83 Cr.P.C. is barbaric and devoid of legal propriety. It has been noted that the police, acting lawlessly, forcibly enter villages or residential areas with a large contingent of officers, often engaging in abusive behaviour and wanton destruction. They demolish mud or brick structures, destroy huts made of chaff or mud, and seize all household belongings, both movable and immovable, without verifying ownership or purchase details.

23. In cases where an absconder resides within a joint family, the entire household's possessions are indiscriminately seized, without any effort to ascertain legal ownership. Such actions are carried out ruthlessly, in blatant contravention of legal procedures, and in

violation of property rights and fundamental legal safeguards.

24. In the present case, neither was the court satisfied with the requirements of Section 83 Cr.P.C., nor did the police verify the ownership of the seized goods. Such violations by the courts and the police have become routine.

25. It is the fundamental duty of criminal courts to ensure that the police conduct a fair, impartial, and thorough investigation. The court must be *prima facie* satisfied with the evidence collected during the investigation against the accused before taking cognizance of the case. In the present matter, upon examining the list of seized goods, it is evident that the conduct of the police reflects a blatant disregard for their duties and responsibilities. This Court is compelled to observe that the officer responsible for procuring the proclamation order and subsequently enforcing it has demonstrated a profound lack of respect for his position, as well as a complete disregard for basic human values. Such actions not only undermine the integrity of the judicial process but also erode public trust in law enforcement agencies.

26. At the same time, the court also failed to exercise its independent judicial mind in evaluating the material presented against the accused, all of whom are family members of Awadhesh Maurya. Additionally, the court overlooked the critical fact that the seized property did not belong to the alleged absconder. The entire family has been subjected to prosecution without determining whether the young girl left voluntarily or was enticed by Awadhesh Maurya, a young man from the same village. Ironically, eight family members are facing criminal prosecution

based solely on the unverified assertions of the complainant and his wife, a claim that has been disproven following the recovery of the boy and girl.

27. Trial courts bear a statutory obligation to supervise actions taken in connection with the enforcement of orders passed by constitutional courts. As the first line of justice in the judicial system, magistrates and district and sessions courts play a pivotal role in safeguarding public confidence in justice. When judges fail to apply an independent judicial mind, or when the police neglect their duties, it causes irreparable damage to the rule of law and undermines public trust in the administration of justice. This Court strongly condemns both the judge's approach and the police's conduct in this case, as such lapses are a matter of grave concern for constitutional courts.

28. This Court has consistently emphasized the need to sensitize trial court judges, urging them to cultivate sharp legal acumen, a profound sense of responsibility toward their positions, and a commitment to enhancing their legal knowledge with diligence and dedication. It is imperative for judges to adopt a progressive and reformative approach, aligning with the evolving demands of justice and the expectations of a dynamic legal system. By doing so, they can ensure fairness, efficiency, and public trust in the judiciary, which is the cornerstone of a robust democratic society.

29. It is essential to underscore that the collective conscience of judges must serve as the guiding force behind their decisions. Judges must fully engage their judicial minds, demonstrating unwavering responsibility and diligence in discharging

their duties. Regrettably, it has been observed that some judges resort to applying the "rule of exception" as a blanket approach, often to conceal a lack of confidence, efficiency, or a shallow understanding of the law. In the present case, the trial court failed to adhere to statutory provisions and legal requirements, particularly in declaring the co-accused a proclaimed offender, issuing the attachment order, and rejecting the application for the release of goods. Such lapses not only undermine the integrity of the judicial process but also erode public trust in the administration of justice. Therefore, it is crucial for judges to adopt a progressive and reformative approach, ensuring that their decisions are rooted in fairness, legality, and a deep sense of accountability.

30. There is an urgent need for both trial courts and the police to adhere to minimum legal and procedural standards while issuing and executing judicial orders. Such orders must be passed and implemented in a manner that is fair, lawful, and transparent, ensuring the protection of constitutional rights and upholding public trust in the judicial system. This is particularly crucial in matters involving (i) the issuance of proclamations for absconding persons, (ii) the attachment of property, (iii) the identification and seizure of assets belonging to proclaimed offenders, and (iv) the adjudication of claims and objections related to such attachments. By ensuring strict adherence to legal principles and procedural safeguards, the judiciary and law enforcement agencies can uphold the rule of law, protect individual rights, and restore public confidence in the justice system.

31. Based upon the aforementioned deliberations, the following directions are issued:

For the Courts

31.1 At the time of issuing a written proclamation requiring a person to appear at a specified place and time, not less than 30 days from the date of publication of such proclamation, the court shall record "*reasons to believe*" in its order that the person against whom a warrant has been issued has absconded or is concealing himself to evade execution of the warrant. The order must clearly satisfy the requirements of Section 84 of the BNSS.

31.2 Before issuing an order of attachment of property, whether movable, immovable, or both, the court shall record "*reasons in writing*" affirming that the attached property "*belongs*" to the proclaimed person. The order must also satisfy the requirements of Section 85 of the BNSS and reflect the independent application of judicial mind by the court, explicitly noting that the attached property is owned by the proclaimed person.

31.3 If any claim or application is submitted, or an objection is raised regarding the attachment of property under Section 85 of the BNSS by a person other than the proclaimed person, asserting an interest in the property and claiming that it is not liable for attachment, the court shall conduct a proper inquiry before the final disposal of the claim or application.

31.4 For clarity, in the present context, the term "any property, movable or immovable, or both, 'belonging' to the proclaimed person" refers to rightful ownership, possession, or control of the property by an individual against whom a written proclamation has been issued by the court, requiring them to appear at a specified place and time, not less than 30 days from the date of publication of such proclamation.

For the Police

31.5 The Investigating Officer shall explicitly specify the details of the property "belonging" to the absconding person in an application under Section 85 of the BNSS. The officer must also accurately and clearly document the ownership, possession, or association of the attached property in the seizure memo. If it is not possible to ascertain ownership, the benefit of the doubt shall be given to the proclaimed offender, particularly in cases involving shared households or common household items.

31.6 The execution of judicial orders shall not be excessive, coercive, or beyond the legal scope and procedure established by law. Law enforcement officers must ensure that the enforcement of attachment orders should be carried out in a fair, proportionate, and legally compliant manner, avoiding unwarranted hardship on innocent individuals.

32. In light of the facts and circumstances outlined above, it is evident that continuing the legal proceedings against the applicant and the other accused persons arising out of the impugned charge- sheet filed in Case Crime No.212 of 2021, u/s 363, 366, 368 IPC and 16/17 of the POCSO Act, P.S. Chaubepur, District Varanasi, would serve no meaningful purpose and would amount to a futile exercise. Given that the chances of conviction are bleak, and considering that accused Awadhesh Maurya and his wife have been living together- solemnised marriage and blessed with a child recently - since the alleged incident, the ends of justice would be best served by quashing the proceedings against them. Accordingly, to prevent the abuse of the process of law and to uphold the principles of fairness and

justice, the proceedings against the applicant and other accused persons stand quashed.

33. As the order dated 11.11.2024 has already been complied with and the applicant has received the goods, no fresh order is required for release. Accordingly, the present application is allowed in the aforesaid terms.

34. The **Registrar (Compliance)** is directed to send a copy of this order to:

(i) The Director General of Police (D.G.P.), Uttar Pradesh, who shall, in turn, forward the order to the Police In-Charge of all Districts. The Police In-Charge of each District shall then ensure that a copy of this order is circulated to all Station House Officers (S.H.Os.) for strict compliance, reference, and record.

(ii) The D.G.P., Uttar Pradesh, shall issue a notification/Government Order (G.O.) in accordance with this order to all concerned officers/S.H.Os. and shall ensure its full compliance.

(iii) A departmental inquiry shall be initiated against all police officers involved in the investigation of the present case up until the intervention by this Court. The inquiry shall be concluded in a time-bound manner.

(iv) All District Judges shall immediately convene a meeting with all judges within their respective judgeships to ensure compliance with this order in letter and spirit. The minutes of the meeting shall be recorded and maintained for future reference and record.

35. The learned District Judges and the Director General of Police (D.G.P.), Uttar Pradesh, are directed to file their respective compliance reports within four

weeks from the date of receiving a copy of this order. The reports shall be submitted through the Registrar General of this Court for Court's record.

(2025) 3 ILRA 864

**APPELLATE JURISDICTION
CRIMINAL SIDE**

DATED: ALLAHABAD 27.02.2025

BEFORE

**THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE DINESH PATHAK, J.**

Criminal Appeal No. 2348 of 2021

Akram & Anr. ...Appellants
Versus
State of U.P. ...Opposite Party

Counsel for the Appellants:

Amrendra Pratap Singh, Desh Ratan Chaudhary, Harishchandra Yadav, Ishwar Chandra Tyagi, Masoom Alam, Praveen Kumar Singh, Syed Imran Ibrahim, Syed Shahnawaz Shah

Counsel for the Opposite Party:

G.A.

Criminal Law - Criminal Procedure Code, 1973 - Sections 161, 313 & 342 - Indian Penal Code, 1860 - Sections 34, 201, 302, 364, 404 & 411 - Evidence Act, 1872 - Section 27 - Criminal Appeal – against conviction and sentenced – disappearance and suspected murder case - FIR – offence of abduction and murder - allegation was that the accused killed deceased due to the reason that he was in love with same girl - During investigation, recoveries of a mobile phone, weapon, skeletal remains, and clothing were made on the basis of the accused's St.ments, - chargesheet - Trial - conviction and sentenced - Appeal – court finds that, recoveries were illegal under Section 27 of the Evidence Act due to lack of independent witnesses and memos, contradictions in eyewitness testimonies weakened the "last seen" theory, no DNA test

was conducted despite medical advice, and motive was neither established through evidence nor put to the accused under Section 313 Cr.P.C. – held, major procedural and evidentiary lapses, and the prosecution failed to prove guilt beyond reasonable doubt - hence, Appeal is allowed – directions issued for acquitting the appellants and setting aside the trial court's judgment. (Para – 12, 14, 15)

Criminal Appeal Allowed. (E-11)

List of Cases cited:

1. Subramanya Vs St. of Karn. reported in (2023) 11 SCC 255,
2. Digamber Vaishnav & anr. Vs St. of Chhatisgarh 2019 4 SCC 522,
3. Daryao Singh Vs St. of M.P. reported in 1991 2 SCC 588,
4. Sharad Birdhichand Sarda Vs St. of Maha. reported in (1984) 4 SCC 116,

(Delivered by Hon'ble Siddhartha Varma, J.
&
Hon'ble Dinesh Pathak, J.)

1. Upon the disappearance of one Salman on 6.11.2011, a Gumshudgi/missing report was got reported by his father Shamim S/o Bundu Hasan. In the Gumshudgi report, it was stated that the younger son of Shamim had, from his telephone number 8126580512, rung up the missing son of Shamim at his phone number 8126573540 and the missing son- Salman had informed the son who had rung up that he was at Sidki, Saharanpur and he would be reaching in half an hour. However, when Salman did not reach his house, the Gumshudgi Report was got reported on 07.11.2011. This was exhibited as 'Exhibit Ka-2'. When, however, a search was made and Salman was not found then on 15.11.2011 a First Information Report was got lodged by the father of the missing

son. It was categorically stated that the son of the first informant had left the house on his Tempo No.UP 11 T 5974 on 06.11.2011 in the morning and had gone to Saharanpur for the purpose of carrying passengers. It had further been stated that as per the missing report at about 11.00 A.M. on 06.11.2011, the missing son Salman had stated that he was in Sidki, Saharanpur and would come back in about half an hour. But when he did not come back by that time then, the first informant along with his relatives and acquaintances tried to search him out. In the First Information Report itself, there was an averment that the first informant was doubting that certain miscreants had kidnapped his son Salman for the purposes of murdering him. The First Information Report was lodged u/s 364 I.P.C. which gave rise to Case Crime No. 363 of 2011. The scribe of first informant was one Mohd. Mehtab. Thereupon, the investigation commenced on 27.11.2011. Akram, one of the accused was arrested at around 11.30 AM, and, from his possession, a mobile phone was also recovered. However, on the arrest, the accused Akram had stated that he had kidnapped the son of the first informant Salman with the help of his Jija known by the name of Shameen on 06.11.2011 and they together had hidden the dead body in Village Korwal Alampur, Police Station-Bhabreda, District- Haridwar, Uttarakhand by the side of a canal in an agricultural field and the mobile phone had been retained by the accused. Thereafter on 27.11.2011 after the arrest of Akram, arrest memo was prepared and it was exhibited as 'Exhibit Ka-5'. Thereafter, on 02.12.2011, the accused Shameem was also arrested and from his possession also a mobile phone was recovered and was retained with the police and the recovery memo of it was

prepared as 'Exhibit Ka-9'. During the preparation of both the recovery memos vis-a-vis accused Akram and Shamim, no independent witness of the area was present.

2. On the information given by arrested persons- Akram and Shamim, the weapon by which the alleged murder had taken place i.e. the iron rod of around two Baalisht (around 18 inches) was also recovered. This recovery was also done without the presence of any independent witness. Thereafter, the Tempo No. UP 11 T 5974 was also recovered on 15.11.2011 and the recovery memo with regard to it was prepared as 'Exhibit Ka-18'. Thereafter, it appears that a search was made by the police of the dead body and after quite sometime on 27.11.2011, after its recovery, the inquest report was got prepared. The dead body was found in a sugarcane field. Here, it may be stated that the dead body which was found by the police was nothing else but a collection of bones. It was only a skeleton. There was no flesh found on it and the inquest report, which was prepared on 27.11.2011 in the presence of the Abdul Sattar, Riyasat, Abdul Rahman, Shamim and Mohd. Shahjad, clearly stated that the dead body was found in a state which was not recognizable and only loose bones were found. Thereafter, a post mortem was done on whatever was left of the dead body on 28.11.2011 at 12.00 noon and in post mortem report, in the column where the cause of death had to be given it was categorically stated that it could not be ascertained and the doctor desired a DNA Test for the identification of the dead body and for the cause of the death. Upon investigation, having been completed, a charge-sheet was submitted by the police in the court under Sections

364/302/201/404/411 IPC. Here it may be mentioned, Akram was arrested on 27.11.2011 and Shamim was arrested on 2/3.12.2011 and Abdul Sattar was got arrested on 13.12.2011. The Court, thereafter, on 05.02.2013 framed charges against the three accused namely Akram, Shamim and Abdul Sattar. When they denied the charges and claimed trial, the trial commenced.

3. From the side of the prosecution, as many as nine prosecution witnesses appeared to prove the case of the prosecution. PW-1 Narendra Kumar was a Constable who had stated in his examination-in-chief that two years prior to the recording of the statement, he was posted in Saharanpur and that he was the person who had lodged the Gumshudgi Report. He also proved the Chik of the Gumshudgi. PW-2 Shamim (father of the deceased) had, in his examination-in-chief, chronologically narrated as to in what manner, his son had disappeared on 06.11.2011. Thereafter, he had stated as to how he had lodged the missing report initially and thereafter, how the relatives and the acquaintances had tried to search out the missing son- Salman. He had thereafter stated that on 21.11.2011, Shahjad and Liyaqat whom he had met in the village had informed him that his son Salman on 06.11.2011 in the morning at about 08.00 AM was seen taking Shamim and Akram on his Tempo at Saharanpur. Thereafter, the PW-2 had stated that how on 27.11.2011, the accused Akram had taken the PW-2 and the other police personnel to the sugarcane field where the bones were discovered along with the blue pant which was smeared with blood and mud. He had also stated that a shirt with check print was also discovered. Similar was case of the baniyan. He had stated that

the police had sealed all those clothes and thereafter, the dead body was taken for post mortem. In the examination-in-chief he had stated that the motive, as to why Akram had killed his son, was that he was in love with one Benazir and the same girl was also liked by Akram, the accused who wanted to marry her forcefully. In the cross-examination, he had stated that though in the First Information Report, he had stated that he had met Shahjad and Liyaqat for the first time on 21.11.2011 after the disappearance of his son, in the examination-in-chief he had stated that when he was searching for his son along with the other relatives and acquaintances, then Shahjad was also searching for him.

4. PW-3 is Shahjad who has stated that he had seen the deceased going with Akram and thereafter he had himself gone away to Delhi along with Liyaqat and he has stated in his statement-in-chief that on 20.11.2011 after he had come back from Delhi, he had informed the father of the deceased Shamim that he had seen Salman on the date when he had disappeared. In his cross examination when he was asked as to why he had gone to Delhi, he had stated that he had gone to Delhi along with his friend for an outing. Upon being asked, as to by which train he had gone he had stated that he did not know the name of the train. Further upon being asked as to where he had stayed, he had stated that he did not know the name of the Mohalla where his friend had taken him. He has thereafter stated that he had only stayed in Delhi and he had not gone about site seeing. Thereafter, he stated that he came from Delhi along with Liyaqat. He has also stated that upon coming from Delhi, his statement under Section 161 Cr.P.C. was recorded by the police.

5. PW- 4 Liyaqat is again the witness who had seen the deceased going with the accused. He has stated that Shahjad the PW-3 was a friend of his and that he had accompanied him to Delhi in search of work.

6. PW-5 is the Sub-Inspector Kulveer Singh Tomar who was the Investigating Officer. He has stated that how he had arrested the accused persons and how they had also confessed about the crime. He has also stated how the accused had helped the police in recovering the dead body and how besides the dead body, they had helped the police in recovering the clothes of the deceased also. On page no. 63 of the Paper Book, he has stated that after the dead body was recovered along with clothes, he had prepared a "Shinakht Memo". In the cross-examination, this witness was asked as to how he was co-relating the blue pants and the brown shirt which was found by the side of the dead body with the clothes which the deceased was wearing on the date when he had disappeared, he had stated that in the missing report itself the colour of the clothes had been given. However, when he was asked as to in whose handwriting this information was given in the missing report, he has stated that it was wrong to say that sentence showing the colour of the clothes was added subsequently. He has also very categorically stated that for the first time, the statement of Shahjad was recorded on 21.11.2011 and that of Liyaqat was recorded on 24.11.2011 under Section 161 Cr.P.C.

7. P.W.-6 is Dr. S.N. Singh, who had conducted the post mortem and has very categorically stated that for the correct identification of the deceased, DNA test of the bones was required and also he has

stated that cause of death also could have been only known by the DNA test. He has also stated that he had given the bones to the police for a proper DNA test.

8. P.W.7 is Ajay Kumar Chauhan who was the second Investigating Officer and he had denied the fact that the F.I.R. was ante-dated or ante-timed. He has, however, stated in the case diary there were any number of over writings. He has also stated that there was no sample sent for DNA testing and there was also no report given of any expert.

9. P.W.8 is Ashok Kumar Tyagi who was a retired Head Constable in the Police and he had proved the chik as was prepared by the Constable Anil Kumar. He has stated that Anil Kumar was though alive, it was not known where he was at that time.

10. P.W.9 is Bhagwan Mahar, who has stated how on the pointing out of the accused persons the dead body (skeleton) of the deceased was found. He has also stated about the discovery of the clothes.

11. Thereafter, the statements of the three accused were recorded under Section 313 Cr.P.C. and they had all denied the commission of crime. Thereafter, when the court of the learned Additional Sessions Judge, Fast Track Court No.2, Saharanpur by his judgment and order dated 25.02.2021 in Sessions Trial No. 434 of 2012 convicted the two accused Akram and Shameem under Sections 364, 302, 201, 404 read with Section 34 I.P.C. and had sentenced them, the instant appeal was filed.

12. Learned counsel for the appellants has made the following submissions :

(i) The recovery of the mobile phone and of the weapon by which the alleged murder had taken place under Section 27 of the Evidence Act was bad in law. Learned counsel for the appellants relying upon a judgment of Supreme Court in the case of **Subramanya vs. State of Karnataka** reported in (2023) 11 SCC 255 submitted that under Section 27 of the Evidence Act as per the judgment aforementioned, before the alleged recovery was to take place, a memo had to be prepared as to what was to be got recovered. This memo necessarily had to be prepared in the presence of two independent witnesses. However, since that had not been done, the entire recovery under Section 27 of the Evidence Act became bad in law.

(ii) Learned counsel for the appellants further stated that it is settled law that circumstance of last seen together cannot by itself form the basis of holding the accused guilty of any offence. Though, the needle of suspicion would, to a large extent, point to the accused being the culprit, there had to be a strong backing of other circumstances to convict the accused with the alleged crime he was charged for. Learned counsel for the appellants further states that if the evidence of "last seen" does not inspire confidence or is not trustworthy, then there should not be any conviction. Learned counsel for the appellants relied upon paragraphs 40, 41 and 42 of the judgment reported in **2019 4 SCC 522; Digamber Vaishnav and Anr. vs. State of Chhatisgarh**, therefore the same are being reproduced here as under:

"40. The prosecution has relied upon the evidence of PW 8 to show that the accused and victims were last seen together. It is settled that the circumstance of last seen together cannot by itself form the basis of holding accused guilty of

offence. If there is any credible evidence that just before or immediately prior to the death of the victims, they were last seen along with the accused at or near about the place of occurrence, the needle of suspicion would certainly point to the accused being the culprits and this would be one of the strong factors or circumstances inculpatating them with the alleged crime purported on the victims. However, if the last seen evidence does not inspire the confidence or is not trustworthy, there can be no conviction. To constitute the last seen together factor as an inculpatating circumstance, there must be close proximity between the time of seeing and recovery of dead body.

41. In Arjun Marik v. State of Bihar [Arjun Marik v. State of Bihar, 1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551] , it has been held as under: (SCC p. 385, para 31)

"31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded."

42. In Kanhaiya Lal v. State of Rajasthan [Kanhaiya Lal v. State of Rajasthan, (2014) 4 SCC 715 : (2014) 2 SCC (Cri) 413] , the Court has reiterated that the last seen together does not by itself lead to the inference that it was the accused who committed the crime. It is held thus: (SCC p. 719, para 12)

"12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant."

Learned counsel for the appellants thereafter submitted that if the evidence is perused in its entirety, it becomes clear that Sahazad had seen the accused and the deceased together while the vehicle on which they were seated was moving. However, when Liyaqat was narrating how he had seen the two accused along with the deceased then the vehicle was stationary. There was contradiction despite the fact that both had seen the accused at the same point of time. Therefore learned counsel for the appellants states that the evidence of the two prosecution witnesses namely PW-3, Sahazad, and PW-4, Liyaqat, were not reliable at all.

(iii) Learned counsel for the appellants further states that the recovery of the skeleton was in no manner a reliable evidence. To top it all no recovery memo was prepared. No independent witness was present at the time of the recovery of the skeleton. Furthermore, the skeleton itself was such a piece of evidence which required a further investigation and this is what also the doctor who had conducted the post-mortem had very categorically stated that for the identification of the deceased and for knowing the cause of death of the deceased, a DNA test was imperative. However, in the instant case no DNA test was done. Learned counsel for the appellants further relied upon a judgment of Supreme Court in **Daryao Singh v.**

State of M.P. reported in 1991 2 SCC 588 and relied upon paragraphs 7, 8 and 9 and had stated that by merely looking at the bones, one could not by any stretch of imagination, make any expert whatsoever to come to the conclusion as to what was the age of the deceased and as to how many days prior to the recovery of the bones, the death had taken place. Since learned counsel for the appellants relied upon paragraphs 7, 8 and 9 the same are reproduced here as under:

"7. Strong reliance was, however, placed by the learned counsel for the appellant on the evidence of PW 2 — Dr Sharma. This witness has after describing the various injuries stated that the body was cold, rigor mortis had passed off and the body was decomposed when he performed the post-mortem examination on the morning of September 27, 1970. He also noticed blisters containing reddish fluid all over the body. The abdomen was swollen and greenish discoloration was noticed. In his opinion death was caused on account of the brain injury. In paragraph 6 of his deposition he stated "the duration of injury since death was 36 to 48 hours". In cross-examination he said:

"As the dead body was decomposed externally and internally blisters had formed all over the body, scrotum distended, marks of swelling on body, presence of maggots on body; all these symptoms do indicate that the duration of injury since death could be 14 to 20 days also."

On the basis of these statements made by PW 2, counsel for the appellant strongly argued that death must have taken place long before September 25, 1970 since blisters had appeared on the body. In this connection he placed reliance on the table found at page 134 of Modi's Medical

Jurisprudence and Toxicology (12th edn.).

It reads as under:

	<i>Putrefactive Changes</i>	<i>Time</i>
1.	Greenish coloration over the iliac fossae. The eyeballs, soft and yielding.	1 to 3 days after death
2.	Green coloration spreading over the whole abdomen, external genitals and other parts of the body. Frothy blood from mouth and nostrils.	3 to 5 days after death.
3.	Abdomen distended with gas. Cornea fallen in and concave. Purplish red streaks of veins prominent on the extremities, sphincters relaxed, nails firm.	8 to 10 days after death.
4.	Body greenish-brown. Blisters forming all over the body. Skin peels off. Features unrecognizable. Scrotum distended. Body swollen up owing to distension. Maggots on the body. Nails and hair loose and easily detached.	14 to 20 days after death.
5.	Soft parts changed into a thick, semi-fluid, black mass. Skull, abdomen and thorax burst. Bones exposed. Orbits empty.	2 to 5 months after death.

It is indeed surprising that no such submission was made on behalf of defence before the trial court as well as the High Court. Even in the memo of appeal no such precise contention appears. However, we have thought it proper to examine the submission on merits rather than reject in on a technical ground.

8. Counsel for the appellant strongly relied on this statement of PW 2 — Dr Sharma and contended that the presence of blisters all over the body is a sure pointer to the fact that death had taken place 14 to 20 days before the post-mortem examination. It may be recalled that the deceased was 45 years of age and was the victim of violent attack with lethal weapons in which he had suffered a fatal semi-circular wound on the scalp 6" × 4" extended by 2" to the left mid-line. In addition thereto he had received incised wounds on his left forearm resulting in fractures. His right leg was cut into two pieces 6" below the tibia, liquefied blood was oozing out, maggots were present, blisters were seen all over the body and the soft cuticle peeled off easily. There was another cut wound on the left leg exposing the tibia. A 5" wound was seen at the right side of the mouth. It was the scalp injury which caused the death.

9. It is common knowledge that after death the body starts to cool down to the surrounding temperature. The cooling of the body is the earliest phenomenon which is followed by post-mortem lividity resulting from discontinuance of blood circulation and collection of blood in certain parts under gravitational action, depending on the position of the dead body. The stoppage of blood circulation and the inaction of the natural defensive mechanism results in the bacteria present in the body as well as those that enter from outside getting scattered in every part of the body setting in the process of putrefaction, unless special care is taken to prevent the same. Decomposition is thus essentially the process of putrefaction which is dependent on environmental and climatic conditions. In the present case death had occurred on September 25 and the dead body lay in the police station with

the wounds exposed till it was brought to the hospital at 5.20 p.m. on the next day. The body remained in the same condition in the hospital till 7 a.m. on the next day when the post-mortem examination was undertaken. The body thus remained fully exposed to the heat and humidity of the month of September for over thirty hours and hence it is not surprising that the rigor mortis had passed off. Ordinarily after rigor mortis has passed off, the process of putrefaction sets in but it may set in even earlier during summer depending on the heat and humidity. Body changing colour and emitting foul smell, are the two special characteristics of the decomposition process. The first external evidence of putrefaction is the formation of greenish discoloration of the abdominal skin over the iliac fossae which occurs within six to twelve hours in summer and spreads all over the body within twelve to eighteen hours of death. As time passes they deepen in colour and become purple. With the spread of bacteria, there is gradual development of gases in the intestines within twelve to eighteen hours and liquefaction also takes place and soon spreads to other parts of the body. Putrefaction thus results in general disintegration of the tissues due to residual enzymatic activity in the cells causing widespread formation of gases emitting foul smell and if the body is exposed, as in the present case, flies lay eggs on exposed wounds forming maggots. The body gets bloated and liquefied, the skin loses coherence, the superficial layers peel off easily and blisters are formed. It is, therefore, not surprising that owing to the formation of gases the penis and the scrotum were swollen and there was the presence of maggots."

(iv) Learned counsel for the appellants therefore submitted that the

recovery of the skeleton and the clothes was absolutely doubtful and no reliance could be placed on it. Furthermore, while making this submission learned counsel for the appellants also drew the attention of the Court to the missing report which had mentioned about the colour of the clothes and it was pointed out that the handwriting in which the colour of the clothes and the description of the clothes was written was in an absolutely different handwriting. Learned counsel for the appellants had submitted that even if there was an assertion made in the statements given before the Court that there were recoveries of the clothes of the dead-body but at no place, any recovery memo of those clothes was prepared and, therefore, they were absolutely an in-admissible piece of evidence. Also the argument of the learned counsel seemed believable when he submitted that the insertion in the missing report of the colour of the clothes was done after the clothes were placed near the skeleton. He stated that when the dead-body had decomposed it was highly improbable that the clothes were intact

(v) Learned counsel for the appellants has hammered extensively on the issue that the case was of circumstantial evidence and the two prosecution witnesses namely PW-3, Sahazad, and PW-4, Liyaqat had got their statements recorded under Section 161 Cr.P.C. before the Police on 21.11.2011 and 24.11.2011 respectively and, therefore, the case brought forth by the prosecution vis-a-vis the circumstantial evidence had no legs stand. Learned counsel for the appellants relied upon a judgment of Supreme Court in the case of **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in (1984) 4 SCC 116 and has relied upon paragraph 153 wherein the five golden principles which had to be followed for conviction on the

basis of a circumstantial evidence had been laid down by the Supreme Court. The paragraph 153 of the judgment is being reproduced here as under:

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

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

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

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human

probability the act must have been done by the accused."

(vi) Further, the learned counsel for the appellants stressed, that the question with regard to there being a motive was never put to the accused and therefore there was no answers/statements to motive under Section 313 of Cr.P.C. on record. He submitted that therefore there could be no finding arrived at on the basis of motive in the case at hand, and in this regard the paragraphs no. 143, 144 and 145 of the very same judgment i.e. **Sharad Birdhichand Sarda (Supra)** become important and the same are being reproduced hereunder:

"143. Apart from the aforesaid comments there is one vital defect in some of the circumstances mentioned above and relied upon by the High Court viz. Circumstances 4, 5, 6, 8, 9, 11, 12, 13, 16 and 17. As these circumstances were not put to the appellant in his statement under Section 313 of the Criminal Procedure Code, 1973 they must be completely excluded from consideration because the appellant did not have any chance to explain them. This has been consistently held by this Court as far back as 1953 where in the case of Hate Singh Bhagat Singh v. State of Madhya Pradesh [1951 SCC 1060 : AIR 1953 SC 468 : 1953 CrL LJ 1933] this Court held that any circumstance in respect of which an accused was not examined under Section 342 of the Criminal Procedure Code cannot be used against him. Ever since this decision, there is a catena of authorities of this Court uniformly taking the view that unless the circumstance appearing against an accused is put to him in his examination under Section 342 of the old Code (corresponding to Section 313 of the Criminal Procedure Code, 1973), the same cannot be used against him. In Shamu Bahu

Chaugule v. State of Maharashtra [(1976) 1 SCC 438 : 1976 SCC (Cri) 56] this Court held thus: [SCC para 5, p. 440: SCC (Cri) p. 58]

“The fact that the appellant was said to be absconding, not having been put to him under Section 342, Criminal Procedure Code, could not be used against him.

144. To the same effect is another decision of this Court in Harijan Megha Jesha v. State of Gujarat [1979 SCC (Cri) 652: AIR 1979 SC 1566 : 1979 Cri LJ 1137] where the following observations were made: [SCC (Cri) p. 653, para 3]

“In the first place, he stated that on the personal search of the appellant a chedi was found which was blood stained and according to the report of the serologist, it contained human blood. Unfortunately, however, as this circumstance was not put to the accused in his statement under Section 342, the prosecution cannot be permitted to rely on this statement in order to convict the appellant....

145. It is not necessary for us to multiply authorities on this point as this question now stands concluded by several decisions of this Court. In this view of the matter, the circumstances which were not put to the appellant in his examination under Section 313 of the Criminal Procedure Code, 1973 have to be completely excluded from consideration.”

(vii) Learned counsel for the appellants has further submitted that even though a motive had been carved out that the deceased was in love with one Benazeer and that very Benazeer was also liked by Akram, but Benazeer was never produced in the witness box.

13. Sri Amit Sinha, learned Additional Government Advocate,

however, supported the judgment of the trial Court and very vehemently argued that if the statement of P.W.5-Kulveer Singh Tomar is perused it becomes clear that the recovery of the skeleton was done in the best possible manner. Sri Amit Sinha further states that no fault could be found with the discovery of the dead-body which was definitely done on the pointing of the accused.

14. Having heard Sri Mohd. Samiuzzaman Khan assisted by Sri Mohammad Wadood, learned counsel appearing for the appellant no.1, Akram; Sri Syed Imran Ibrahim, learned counsel appearing for the appellant no. 2, Shameem, and Sri Amit Sinha, learned Additional Government Advocate, we are of the view that the Appeal deserves to be allowed. If the recovery as was done under Section 27 of the Evidence Act is perused, we find that it was definitely not done as per the law laid down by the Supreme Court in the case of **Subramanya (Supra)**. We also find that no independent witness was there at the time of the recovery. Furthermore, we find that when the recovery of the skeleton and the clothes which were worn by the deceased were recovered then also no independent witness accompanied the police party. In fact, as has been stated in the statement of the PW-5, even though the accused had accompanied the Police, no recovery memo etc. had been prepared and when that was missing, definitely, no case was there of the prosecution to be proved or disproved and therefore it could be said that the prosecution had absolutely no case. Still further we are of the view that the doctor who had conducted the post-mortem himself had stated that a DNA test was required for the identification of the deceased and for the finding out of the

cause of death. However, neither the investigating agency nor the prosecution at any stage made any effort to get the DNA test done. Also we are of the view that the case was that of the circumstantial evidence. However, none of the evidence was such which would make the Court believe that there could be only one conclusion and that was that Akram and Shamim had done away with the deceased Salman. Further, we are definitely of the view that if the motive had to be established then the accused had to be confronted with a definite question when they were giving their statement under Section 313 of Cr.P.C. Also we are of the view that a very important witness namely Benazeer who could have definitely been produced in the witness box, was never produced by the prosecution in the witness box. Thus having found that the recovery under Section 27 of the Evidence Act and the recovery of the skeleton were bad and also when we find that a DNA test which was essential and compulsory was not done then the Court can arrive at only one conclusion and i.e. that the accused had been wrongly implicated in the case and that the charges as were levelled against the appellants were never proved.

15. The appellants are acquitted of all the charges. The judgment and order dated 25.02.2021 is quashed and is set-aside.

16. The instant Criminal Appeal is accordingly, **allowed**.

(2025) 3 ILRA 874
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.03.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ A No. 10743 of 2018

Raj Kiran Singh ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Ajay Kumar Srivastava, Samir Sharma
 (Senior Adv.)

Counsel for the Respondents:

Anadi Krishna Narayana, C.S.C., Mangla Prasad Rai (Senior Adv.), Sarveshwar Lal Srivastava, U.S. Singh Visen

A. Service Law – Termination - The enquiry officer had admittedly failed to make a specific indictment on either of the two elements which composed the first charge. By omitting to make a specific finding in regard to the charge, the enquiry officer erred in law.

The enquiry report did not find whether the petitioner was guilty of negligence or corruption. Either the conductor is guilty of negligence or he is guilty of corruption. **Indictment on one element of the said charge would automatically lead to exoneration on the other aspect of the charge.** In the facts of this case he cannot be held guilty of both acts of misconduct simultaneously. In absence of clear cut indictment and due to the broad brushed finding of guilt, the petitioner was disabled from tendering an effective defence of his case and to state the mitigative factors in his favour. (Para 7)

B. The indictment made by the enquiry officer on the second charge is vitiated on account of non application of mind to the defence of the petitioner in this regard.

The defence of the petitioner against the second charge was that the load factor had been incorrectly calculated. The passengers who had used the monthly passes and the condition of the vehicle were not considered while determining the load factor. (Para 9)

The disciplinary authority placed exclusive reliance on the aforesaid findings of the enquiry

officer while passing the impugned order dated 20.02.2016. The defence tendered by the petitioner was consistently overlooked by all the authorities below. The impugned orders passed by the appellate authority dated 27.07.2016 and the revising authority dated 07.03.2018 fare no better. Hence, aforementioned orders are set aside. (Para 10, 11, 14)

The matter is remitted the respondent No.5-Regional Manager, U.P. State Road Transport Corporation, Aligarh with directions. All entitlements claimed by the petitioner shall be determined after the final order is passed in pursuance of this judgment. (Para 15, 16)

Writ petition allowed. (E-4)

(Delivered by Hon'ble Ajay Bhanot, J.)

1. Shri Samir Sharma, learned Senior Counsel assisted by Shri Ajay Kumar Srivastava, learned counsel appear for the petitioner. Learned Standing Counsel appears for the respondent No.1-State and Shri Sarveshwar Lal Srivastava, learned counsel appears for the respondents No.2 to 6.

2. The petitioner has assailed the order of termination of his services passed by the disciplinary authority on 20.02.2016.

3. The facts in brief are. The petitioner was a conductor in Uttar Pradesh State Road Transport Corporation (UPSRTC). On 10.10.2005 the petitioner was taking the bus from Delhi to Farrukhabad. A surprise inspection of the bus was conducted at Gola Kuan. The inspecting party found that seven persons who had boarded from Etah and were travelling to Dhumari, were without tickets. The aforesaid passengers claimed that they worked for Delhi Transport Corporation and were entitled to monthly free travel. However, no documents were produced to

establish their entitlement to free passes. Hence, the penalty was levied on the aforesaid passengers.

4. A charge-sheet was drawn up on 22.10.2005 against the petitioner. The first charge was that the petitioner had enabled ticket-less passengers to travel. Alternatively the petitioner would have charged the passengers at their destination and pocketed the money. The gravamen of the second charge was that the average load factor of the bus from April to September, 2005 was much lower than the average load factor of the depot.

5. Upon service of the said charge-sheet the enquiry proceedings ensued. The petitioner has tendered his defence before the enquiry officer. The enquiry officer found the petitioner guilty of both the charges.

6. As seen above the first charge was comprised of two alternative arraignments namely corruption or negligence which are mutually exclusive.

7. The enquiry officer had admittedly failed to make a specific indictment on either of the two elements which composed the first charge. The enquiry report did not find whether the petitioner was guilty of negligence or corruption. Either the conductor is guilty of negligence or he is guilty of corruption. Indictment on one element of the said charge would automatically lead to exoneration on the other aspect of the charge. In the facts of this case he cannot be held guilty of both acts of misconduct simultaneously. By omitting to make a specific finding in regard to the charge, the enquiry officer erred in law. In absence of clear cut indictment and due to the broad

brushed finding of guilt, the petitioner was disabled from tendering an effective defence of his case and to state the mitigative factors in his favour.

8. This issue assumes significance in view of the fact that the inspecting party had also found that the passengers had passed themselves as Delhi Transport Corporation staff and had claimed entitlement to free travel.

9. The defence of the petitioner against the second charge was that the load factor had been incorrectly calculated. The passengers who had used the monthly passes and the condition of the vehicle were not considered while determining the load factor. The indictment made by the enquiry officer on the second charge is vitiated on account of non application of mind to the defence of the petitioner in this regard.

10. The disciplinary authority placed exclusive reliance on the aforesaid findings of the enquiry officer while passing the impugned order dated 20.02.2016. The defence tendered by the petitioner was consistently overlooked by all the authorities below.

11. The impugned orders passed by the appellate authority dated 27.07.2016 and the revising authority dated 07.03.2018 fare no better. The aforesaid orders fail to redeem the said illegalities committed by the enquiry officer and the disciplinary authority despite specific objections raised by the petitioner.

12. According to the counter affidavit filed by the respondents, the petitioner was a habitual defaulter and had been found guilty of taking ticketless

passengers on a number of occasions. These facts aggravated the misconduct.

13. Admittedly, the petitioner was not noticed on his past conduct before the impugned order of punishment was passed.

14. In the wake of the preceding discussion, the impugned order of termination dated 20.02.2016 and the orders passed by the appellate authority dated 27.07.2016 and the revisional authority dated 07.03.2018 are liable to be set aside and are set aside.

15. The matter is remitted the respondent No.5-Regional Manager, U.P. State Road Transport Corporation, Aligarh with the following directions:

I). The respondent No.5-Regional Manager, U.P. State Road Transport Corporation, Aligarh shall issue a fresh notice to the petitioner consistent with the observations made above. The show cause notice may also contain the details of the past record of punishments imposed on the petitioner in case the same are proposed to be relied upon against him. The petitioner shall tender a reply to the said show cause notice.

II). Upon receipt of the aforesaid reply the respondent No.5-Regional Manager, U.P. State Road Transport Corporation, Aligarh shall pass a fresh order consistent with the observations made in the order.

III). The exercise shall be completed within a period of six months from the date of receipt of a certified copy of this order.

IV). It shall be open to the respondents to remit the matter with a direction to return specific findings in light of the observations made on the basis of

evidence already tendered in the earlier enquiry proceedings.

16. All entitlements claimed by the petitioner shall be determined after the final order is passed in pursuance of this judgment.

17. The writ petition is allowed to the extent indicated above.

(2025) 3 ILRA 877

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 07.03.2025

BEFORE

**THE HON'BLE SAURABH SHYAM
SHAMSHERY, J.**

Writ - A No. 14995 of 2024

Dr. Suman Jain ...Petitioner
Versus
U.O.I. & Ors. ...Respondents

Counsel for the Petitioner:
Siddharth Khare, Sr. Adv.

Counsel for the Respondents:
A.S.G.I., Hem Pratap Singh, Prem Narayan Rai, Rahul Agarwal

A. Service Law – Selection - The contention that for the purpose of selection committee there must be three Experts of Palaeography has no legal basis, since consideration for promotion was for the post of Senior Professor (Academic Level 15) at AIHC and Archaeology and not for any specific topic such as Palaeography. (Para 9)

It is the case of the petitioner that when she faced the Selection Committee, she came to know that three experts being its members were not the experts of her subject i.e. Paleography, therefore, according to her, the Selection Committee was not constituted in terms of

above referred regulation, therefore, she has approached this Court. (Para 4)

Petitioner was initially appointed as a Lecturer in Palaeography in Department of AIHC and Archaeology under a Special Assistant Programme. Later on, she was promoted on the post of Lecturer (Senior Scale) in the Department of AIHC & Archaeology and in similar manner she was promoted as a Reader, Associate Professor, and Professor (Stage-V) in the Department of AIHC and Archaeology and not in a specific subject i.e. Palaeography. (Para 9)

In the curriculum of B.A. (Hons.) in AIHC and Archaeology, there is one core subject i.e. 'Ancient Indian Palaeography and Epigraphy' in its 6th Semester, therefore, in the entire course, Palaeography is one of the core subject out of 20 core subjects. In the post graduation, out of six specialised courses only one is of 'Palaeography and Epigraphy'. (Para 10, 11)

B. The petitioner has not come up with a case that she is only taking classes in subject Palaeography. (Para 12)

C. There is no doubt about petitioner's expertise on subject Palaeography, but such expertise does not require that in the Selection Committee, three experts ought to be in subject of Palaeography only. In Clause 5 (IV)(iii) of notification dated 18.07.2018 for Experts it is provided that minimum of 10 years experience in the subject/field, which has a wide connotation and could not be restricted as contended by the petitioner. All the three experts are specialized in the field of Archaeology, which includes many topics or subjects including 'Palaeography'. (Para 13, 14)

D. In the Website of BHU, there are details of petitioner, that she is working in the Department of Ancient Indian History, Culture and Archaeology. No mention is made in respect of subject of Palaeography, therefore, argument in this respect has no ground. The three Experts were qualified to be part of Selection Committee and any objection to it is rejected. (Para 15)

Writ petition dismissed. (E-4)

Precedent distinguished:

1. Monika Bansal Vs U.O.I. & ors., 2024:AHC:190635 (Para 6, 16)

2. Dipanwita Singha Roy Vs U.O.I. & ors., Writ-A No. 4884 of 2024 (Para 6, 16)

3. Triloki Nath Singh Vs Bhagwan Din Misra & ors., AIR 1990 SC 2063 (Para 6, 16)

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Kauntey Singh, learned counsel for petitioner and Sri Rahul Agarwal, learned counsel for respondent-University.

2. Petitioner before this Court is working at the respondent University namely Banaras Hindu University since 1996 and has faced a Selection Committee for the post of Senior Professor (Academic Level 15) in the Department of Ancient Indian History Culture (AIHC) and Archaeology under Career Advancement Scheme for the first time.

3. The petitioner was earlier appointed on the post of Lecturer in Palaeography in Department of AIHC and Archaeology under a 'Special Assistant Programme'. Later on, she was promoted on the post of Lecturer (Senior Scale) in the Department of AIHC & Archaeology and in similar manner she was promoted as a Reader, Associate Professor, and Professor (Stage-V) in the Department of AIHC and Archaeology and now in terms of a Notification dated 18.7.2018 of the University Grants Commission, she has to face a selection committee, constituted for the post of Senior Professor (Academic Level 15)

in terms of Clause 5.1 (iv) of said notification.

4. It is the case of the petitioner that when she faced the Selection Committee, she came to know that three experts being its members were not the experts of her subject i.e. Paleography, therefore, according to her, the Selection Committee was not constituted in terms of above referred regulation, therefore, she has approached this Court. The Constitution of Selection Committee for the post of promotion of post of Senior Professor in the University is reproduced hereinafter:

“IV. Senior Professor

(a) The selection Committee for the post of Senior Professor in the University shall consist of the following persons:

I. Vice Chancellor who shall be the Chairperson of the Committee.

II. An academician not below the rank of Senior Professor/Professor with minimum ten years experience who is the nominee of the Visitor/Chancellor, wherever applicable.

III. Three experts not below the rank of Senior Professor/Professor with a minimum of ten years experience in the subject/field concerned nominated by the Vice-Chancellor out of the panel of names approved by the relevant statutory body of the University.

IV. Dean(not below the rank of Senior Professor/Professor with minimum ten years experience) of the faculty, wherever applicable.

V. Head/Chairperson (not below the rank of Senior Professor/Professor with

minimum ten years experience) or Senior most Professor (not below the rank of Senior Professor/Professor, with a minimum of ten years' experience) of the Department/School

VI. An academician (not below the rank of a Senior Professor/Professor with minimum ten years experience) representing SC/ST/OBC/Minority /Women / Differently-abled categories, if any of candidates representing these categories is the applicant, to be nominated by the Vice Chancellor, if any of the above members of the selection committee do not belong to that category.

(b) Four members, including two outside subject experts, shall constitute the quorum."

5. For reference prayers sought in this Writ Petition are reproduced hereinafter:-

"(i) a writ, order or direction of a suitable nature commanding the respondent to produce the recommendations of the selection committee which met on 29.07.2024 for promotion as Senior Professor (Academic Level 15) in the Department of Ancient Indian History, Culture & Archeology, Banaras Hindu University and to quash the same.

(ii) a writ, order or direction of a suitable nature restraining the respondent from undertaking any proceedings in pursuance to the recommendation of selection committee which met on 29.07.2024, for promotion as Senior Professor (Academic Level 15), Department of Ancient Indian History, Culture & Archeology, Banaras Hindu University, Varanasi.

(iii) a writ, order or direction of a suitable nature commanding the respondent to re-convene a meeting of the selection committee for consideration of the petitioner for promotion as Sr. Professor Academic Level 15 after including therein external experts in the subject/field of Paleography within a period to be specified by this Hon'ble court.

(iv) a writ, order or direction in the nature of which this Hon'ble court may deem fit and proper under the circumstances of the case.

(v) award cost to the humble petitioner throughout of the present writ petition."

6. Learned Senior Counsel appearing on behalf of petitioner refers paragraph no.22 of the Writ Petition, wherein details of three Experts are mentioned, that they were not expert in the subject of Palaeography. He further submitted that there are two co-ordinate Bench judgments i.e. Writ-A No. 12176 of 2024 Dr. Monika Bansal Vs. Union of India & Ors, Neutral Citation No:2024:AHC:190635 and Writ-A No.4884 of 2024, Dr.Dipanwita Singha Roy Vs. Union of India & 5 Ors, Neutral Citation No.2025:AHC:21621 that such issue was considered about the expertise of experts and respective Special Appeals are pending before Division Bench of this Court and they are distinguishable on facts.

7. Per contra, learned counsel for the respondent University has placed reliance on aforesaid two judgments and submitted that the issue has already been settled and there is no reason for this Court to take any contrary view. It was held in Dr. Monika Bansal (Supra) that objection

to the Constitution of a Selection Committee on ground that Experts were not from discipline of Periodontology was rejected as experts were Dentists Experts from prestigious Institutions.

8. In order to appreciate contentions of learned Senior Counsel and in order to scrutinize as to whether details disclosed in regard to earlier promotions of the petitioner were correct or it was half baked truth, therefore, I have checked the official website of Banaras Hindu University as well as documents annexed along with present Writ Petition and following facts were revealed being mentioned therein in a simple language, which does not require knowledge of Palaeography.

9. Correct position of facts are that petitioner was initially appointed as a Lecturer in Palaeography in Department of AIHC and Archaeology under a Special Assistant Programme. Later on, she was promoted on the post of Lecturer (Senior Scale) in the Department of AIHC & Archaeology and in similar manner she was promoted as a Reader, Associate Professor, and Professor (Stage-V) in the Department of AIHC and Archaeology and not in a specific subject i.e. Palaeography, therefore, the contention that for the purpose of selection committee there must be three Experts of Palaeography has no legal basis, since consideration for promotion was for the post of Senior Professor (Academic Level 15) at AIHC and Archaeology and not for any specific topic such as Palaeography.

10. I have also perused the curriculum of B.A. (Hons.) in AIHC and Archaeology and in its 6th Semester there is one core subject i.e. 'Ancient Indian

Palaeography and Epigraphy', therefore, in the entire course, Palaeography is one of the core subject out of 20 core subjects.

11. In the post graduation, out of six specialised courses only one is of 'Palaeography and Epigraphy'.

12. The petitioner has not come up with a case that she is only taking classes in subject Palaeography.

13. As referred in the Writ Petition all the three experts are specialized in the field of Archaeology, which includes many topics or subjects including 'Palaeography'.

14. Court is not making any doubt so far as petitioner's expertise on subject Palaeography is concerned, but such expertise does not require that in the Selection Committee, three experts ought to be in subject of Palaeography only. In Clause 5 (IV)(iii) of notification dated 18.07.2018 for Experts it is provided that minimum of 10 years experience in the subject/field, which has a wide connotation and could not be restricted as contended by the petitioner. The outcome of Selection Process is also not on record.

15. In the Website of Banaras Hindu University, there are details of petitioner, that she is working in the Department of Ancient Indian History, Culture and Archaeology. No mention is made in respect of subject of Palaeography, therefore, argument in this respect has no ground. The three Experts were qualified to be part of Selection Committee and any objection to it is rejected.

16. The Court also takes note of Dr. Monika Bansal (Supra), Dr. Dipanwita Singha Roy (Supra) and Dr. Trilok Nath

Singh Vs. Dr. Bhagwan Din Misra & Oths. (1990) 4 SCC 510 and it would not be helpful to petitioner's case rather they are against her.

17. In the aforesaid circumstances, there is no ground to grant relief as sought in the present Writ Petition, accordingly dismissed.

(2025) 3 ILRA 881
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10-03-2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ - A No. 16327 of 2022

Saurabh Lal ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Niraj Tiwari

Counsel for the Respondents:
C.S.C., Vivek Ratan Agarwal

A. Service Law – Compassionate Appointment - The penalty imposed upon the petitioner's father cannot be invoked to decline his application for the appointment on compassionate grounds. In the instant case the major penalty stood effaced two years after its imposition, and its adverse impact did not continue subsequent to the promotion of the petitioner's father. (Para 6)

As per the impugned order the petitioner's claim for appointment on compassionate ground have been invalidated on the footing of provisions of the Scheme of appointment on compassionate ground, which provides that Committee will be authorised to decline all requests for compassionate appointment/ex-gratia payment in cases where major penalty was imposed on the ex-employee while in service, and/or where

disciplinary action which was pending at the time of death of the ex-employee would have resulted in imposition of major penalty. (Para 4)

The aforesaid disqualification will attach to an employee against whom major penalty was imposed and the remains in the record at the time of his death. (Para 5)

Impugned order dated 03.03.2021 is set aside. Writ petition allowed. (E-4)

(Delivered by Hon'ble Ajay Bhanot, J.)

Heard Sri Niraj Tiwari, learned counsel for the petitioner and Sri Vivek Ratan Agrawal, learned counsel for the respondents.

1. By the impugned order dated 03.03.2021 the claim of the petitioner for grant of appointment on compassionate ground has been declined. The impugned order speaks thus:-

"With reference to your application on the captioned subject, we have to inform you that the matter was placed before the competent authority and in terms of the Government of India guidelines and as per the Scheme, your request for compassionate appointment has not been considered favourably by the Bank considering the unsatisfactory service record of Achhale in terms of the Scheme."

2. A major penalty was imposed upon his father for a period of two years by order dated 31.05.2012. After the expiry of the aforesaid period the petitioner's father was granted promotion to the post of Manager of Union of India, Branch Collectrate, District Mau, U.P. Thereafter, he was further promoted as Deputy Branch Head at Branch Amiliya, District Rewa (U.P.).

said penalty imposed upon the petitioner's father cannot be invoked to decline his application for the appointment on compassionate grounds.

7. In the wake preceding discussion the impugned order dated 03.03.2021 passed by respondent no. 3 is liable to be set aside and is set aside.

8. The application of the petitioner for appointment on compassionate ground shall be considered afresh as per law within a period of three months from the date of production of certified copy of this order.

9. The writ petition is allowed to the extent indicated above.

(2025) 3 ILRA 882
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.03.2025

BEFORE

THE HON'BLE ASHWANI KUMAR MISHRA, J.
THE HON'BLE DONADI RAMESH, J.

Writ C No. 39442 of 2024

Arvind Kumar Singh ...Petitioner
Versus
Lok Ayukta, U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Sri Namit Srivastava, Ms. Parul Srivastava

Counsel for the Respondents:
C.S.C., Sri Manas Bhargava

A. Service Law – Appointment - Jurisdiction - The appointment of public servant or any dispute in respect of service conditions since are regulated by the statutory scheme they are supposedly kept out of the provisions of the Act of 1975.

The allegation that an appointment of a public servant has been made illegally or contrary to law would not fall within the realm of jurisdiction of the Lokayukta or Up Lokayukta. This is particularly so as Section 8(1)(b) excludes matters from the purview of jurisdiction of the Lokayukta/Up Lokayukta. Clause (d) of the Third Schedule clearly postulates that action taken in respect of appointments, removals, pay, discipline, etc., would be excluded from the scope of inquiry by the Lokayukta/Up Lokayukta, except matters relating to claims, for pension, gratuity, provident fund, etc., which arise on retirement, removal or termination of service. (Para 11)

Therefore, the complaint made by the petitioner questioning the appointment of private respondent before the Up Lokayukta itself is not maintainable. (Para 12)

Writ petition dismissed. (E-4)

(Delivered by Hon'ble Ashwani Kumar Mishra, J. & Hon'ble Donadi Ramesh, J.)

1. Heard learned counsel for the petitioner, Sri Manas Bhargava, learned counsel for the respondent no. 1 and learned Standing Counsel for the State respondents.

2. This writ petition has been filed with the prayer to issue a writ of mandamus commanding the first respondent to decide petitioner's complaint dated 29.5.2023, by passing a reasoned speaking order. The first respondent in this case is the Lokayukta, Uttar Pradesh, Lucknow. The complaint dated 29.5.2023, is in respect of appointment offered to the private respondent as Senior Assistant in the office of Deputy Labour Commissioner, Bareilly. According to petitioner the appointment has been obtained illegally.

3. While entertaining the writ petition doubts were expressed with regard

to entertainability of a claim of this kind before the Up Lokayukta and to conduct investigation in this regard. Following orders were passed in the matter on 27.2.2025:-

"Heard Sri Namit Srivastava, learned counsel for the petitioner and Sri Manas Bhargava, learned counsel for respondent no.1.

We adjourn the matter for the day in order to enable learned counsel for the petitioner to apprise the Court on the aspect relating jurisdiction of Up-Lok Ayukta to conduct investigation in a case where the appointment of a government servant is challenged.

Repeat as fresh on its turn."

4. Instructions have been obtained by Sri Manas Bhargava, who has placed statutory scheme, according to which, the complaint of the present kind wherein the appointment of a government servant is challenged would not be maintainable before the Up Lokayukta.

5. In order to appreciate the controversy, it would be worth noticing that Uttar Pradesh Lokayukta and Up Lokayukta Act, 1975, has been enacted by the State to make provision for the appointment and functions of certain authorities for the investigation of grievances and allegations against ministers, legislators and other public servants in certain cases and for matters connected therewith. Section 2 of the Act of 1975 contains the definition clause. Sub-section (b) of Section 2 as well as sub-section (d) of Section 2 defines 'allegations' and 'grievances', which are reproduced hereinafter:-

"(b) "allegation", in relation to a public servant, mean- any affirmation that such public servant? has abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person, was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motive, or is guilty of corruption, or lack of integrity in his capacity as such public servant;

(d) "grievance" means a claim by a person that he sustained injustice or undue hardship in consequence of maladministration;"

6. Section 8 provides for matters, which are not subject to investigation by the Lokayukta or Up Lokayukta. Our attention has been invited under Section 8(1)(b)(i), which is reproduced hereinafter:-

"8(1)(b) in the case of a complaint involving a grievance in respect of any action,--

(i) if such action relates to any- matter specified in the Third Schedule; or

(ii) if the complainant has or had any remedy by way of proceeding before any Tribunal or Court of law:

Provided that nothing in sub-clause (ii) shall prevent the Lokayukta or an Up- Lokayukta from conducting an investigation if he is satisfied that such person could not or cannot, for sufficient cause, have recourse to a remedy referred to in that sub-clause."

7. Pursuant to above provision, Third Schedule has been framed, in which Clause (d) relates to the appointment and is reproduced hereinafter:-

"(d) Action taken in respect of appointments, removals, pay, discipline, superannuation or other matters relating to conditions of service of public servants but not including action relating to claims, for pension, gratuity, provident fund or to any claims which arise on retirement, removal or termination of service."

8. From the statutory scheme contained in U.P. Act No. 42 of 1975, the object is abundantly clear which is to make provision for appointment and function of authorities which may investigate grievances and allegations against□□ministers, legislators and other public servants.

9. The primary object of appointing the Lokayukta and Up Lokayukta is to investigate allegations against the ministers, legislators and other public servants primarily in discharge of their official functions. This scheme is apparent, inasmuch as, the legislature while defining allegation has clearly included allegation in respect to a public servant where such allegation is with regard to abuse of his position, as such to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person; allegation that the discharge of function by the public servant was actuated by personal interest or improper or corrupt motive, or is guilty of corruption, or lack of integrity in his capacity as such public servant.

10. The grievance which can be entertained by the Lokayukta has also been specified in Section 2(d), which is to include a claim by a person that he sustained injustice or undue hardship as a consequence of maladministration; or a complaint to the effect that an authority empowered to make appointments to a public service or post in connection with the affairs of the State of Uttar Pradesh has after the commencement of the Uttar Pradesh Lokayukta and Up-Lokayuktas (Amendment) Act, 1989 made any appointment in breach of the quota of reservation for members of Scheduled Castes or Scheduled Tribes laid down by the State Government.

11. The allegation that an appointment of a public servant has been made illegally or contrary to law would apparently not fall within the realm of jurisdiction of the Lokayukta or Up Lokayukta. This is particularly so as Section 8(1)(b) excludes matters from the purview of jurisdiction of the Lokayukta/Up Lokayukta. Clause (d) of the Third Schedule clearly postulates that action taken in respect of appointments, removals, pay, discipline, etc., would be excluded from the scope of inquiry by the Lokayukta/Up Lokayukta, except matters relating to claims, for pension, gratuity, provident fund, etc., which arise on retirement, removal or termination of service.

12. The appointment of public servant or any dispute in respect of service conditions since are otherwise regulated by the statutory scheme they are supposedly kept out of the provisions of the Act of 1975. Once that be so, we find that the complaint made by the petitioner questioning the appointment of private

respondent before the Up Lokayukta itself is not maintainable. If that be so, no direction can be issued to decide petitioner's complaint.

13. The writ petition fails and is dismissed.

(2025) 3 ILRA 885
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.03.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ - A No. 13305 of 2024

R.K. Prasad & Ors.	...Petitioners
	Versus
U.O.I. & Ors.	...Respondents

Counsel for the Petitioners:

Mr. Ramesh Chandra Tiwari, Adv.

Counsel for the Respondents:

Mr. Sudarshan Singh, Central Government Counsel

A. Service Law – Determination of basic pay – Grant of notional increment – Pension - The annual increment earned by a government employee during the previous year could not be denied to him for the purpose of determining his pensionary benefits, merely because he was not in service on the day the increment actually fell due, that is, if he had retired a day before it fell due, though completing one full year of service, otherwise entitling him to increment. The increment had to be notionally granted and its benefit extended for the purpose of determining the employee's post-retiral benefits. (Para 7, 8)

B. Pendency of the application does not entitle the respondents, including an officer of the said respondents, to say that they are not in a position to carry out the

orders of this Court made following the law laid down by the Supreme Court, merely because clarification applications have been filed. Most certainly, this Court is bound by the law declared by the Supreme Court u/Article 141 of the Constitution and every officer of the respondent is bound to carry out every writ of this Court, unless it is set aside or stayed in appeal. (Para 11)

After the Supreme Court passes a judgment, there is nothing not final about it. There is no Court above the Supreme Court, and once a judgment is passed by their Lordships, it is the end of the road for both litigants.

An order cannot be disregarded by a sundry officer of the government, saying that he will disregard the law laid down by a Constitutional Court in a judgment, and more than that, a writ inter parties awaiting a policy decision of the Government. It is true that every litigant has the right to seek a clarification of an order passed by a Court, even a Constitutional Court, but **it is not open to any officer of the Government to say that the benefit of the Supreme Court's judgment or compliance of the High Court's order, if not stayed or set aside by the Supreme Court, will depend upon the policy decision of the Department of Personnel & Training, GOI.** The Government of India cannot sit in judgment on a writ of the Court, once issued. A writ stops only if it is stayed in competent proceedings, like an appeal, if allowed from the order or a review or a clarification or some such proceedings. It is all the more contumacious on the part of the Director General, RPF, Railway Board to say that he is not in a position to extend benefit of one notional increment to the petitioners who retired on the 30th June as per the judgment. (Para 10)

The petitioners and each of them would be entitled to receive notional increments for the respective years in which they superannuated on the 30th of June, but they would be paid pension on the basis of their revised emoluments with the notional increments added with effect from 1st May, 2023. (Para 14, 15, 17)

Writ petition allowed. (E-4)

Precedent followed:

1. Director (Administration & Human Resources) KPTCL & ors. Vs C.P. Mundinamani & ors., (2023) 14 SCC 411 (Para 3)
2. U.O.I. & anr. Vs M. Siddaraj, Special Leave Petition (Civil) No. 4722 of 2021 (Para 8)

(Delivered by Hon'ble J.J. Munir, J.)

This writ petition has been filed by twelve petitioners, all employees of the Railway Protection Force, who retired from service during different years, but on 30th of June. Since they were not in service on 1st of July of the year in which they retired, the annual increment they earned for the period commencing 1st July of the year preceding their retirement and 30th of June was denied to them on ground that they were not in service on 1st of July of the year that they retired, when the increment for the relative year would fall due. In substance, therefore, what the petitioners claim is that though they have earned the annual increment during the relative year of retirement, working for the entire period of one year from 1st July to 30th of June of the year they retired, it has been denied to them on the specious ground that on the day the increment actually fell due i.e. 1st July in the year of their respective retirements, they were not in service. All the petitioners pray that a *mandamus* be issued, ordering the respondents to grant one notional increment to them as on 1st July of the respective years of their retirement, which, in each case, fell on 30th of June of that year, for the limited purpose of determining their pensionary benefits. They further seek a command to the respondents to re-determine the basic pay payable to each of

the petitioners, after grant of notional increment, revise their pension benefits accordingly and pay arrears accrued along with interest.

2.The details of the twelve petitioners are set forth in tabular form below :

Petitioner No.	Petitioner's name	Post held at the time of retirement	Date of retirement	Claim
1	R.K. Prasad	Assistant Security Commissioner	30.06. 2009	Notional increment for the year 2009
2	Shiv Pujan	Inspector	30.06. 2017	Notional increment for the year 2017
3	Vindh yachal	Inspector	30.06. 2014	Notional increment for the year 2014
4	Chhedi Lal	Sub-Inspector	30.06. 2024	Notional

		or		increment for the year 2024
5	Kedar Nath	Assistant Sub-Inspector	30.06. 2017	Notional increment for the year 2017
6	Virendra Prasad Sharma	Constable	30.06. 2023	Notional increment for the year 2023
7	Moti Lal	Head Constable	30.06. 2021	Notional increment for the year 2021
8	Ram Prasad Ram	Assistant Sub-Inspector	30.06. 2011	Notional increment for the year 2011
9	Krishnanand	Assistant Sub-	30.06. 2008	Notional

	Mall	Inspect or		increment for the year 2008
10	Virend ra Prasad	Head Constab le	30.06. 2008	Notio nal incre ment for the year 2008
11	Rama Shanke r Singh	Head Constab le	30.06. 2022	Notio nal incre ment for the year 2022
12	Ram Prasad	Sub- Inspect or	30.06. 2018	Notio nal incre ment for the year 2018

3. The petitioners say that they have been denied the accrued increment on 30th June, otherwise due to them, merely because they retired a day before 1st of July, when increment would fall due. The petitioners have relied on preponderant authority of High Courts as well as the Supreme Court in **Director (Administration and Human Resources) KPTCL and others v. C.P. Mundinamani and others**², where it was

held that increment payable to a government servant retiring on 30th June was to be granted to him notionally and his post-retiral benefits calculated on the basis of basic pay determined, with notional increment added.

4. This Court issued a notice of motion vide order dated 31.08.2024, and after a reference to the settled position of law, in view of the law laid down by the Supreme Court in **C.P. Mundinamani (supra)**, required the Director General, RPF, Railway Board, New Delhi to file his own affidavit, showing cause why notional annual increment applicable in case of each of the twelve petitioners has not been awarded and their post-retiral benefits revised accordingly. In answer, Manoj Yadav, Director General, RPF, Railway Board, New Delhi has filed his own affidavit.

5. When this petition came up for admission on 20.09.2024, the aforesaid personal affidavit of the Director General was filed in Court. The Court proposed to treat the personal affidavit as counter affidavit to the writ petition, to which, Mr. Sudarshan Singh, learned Central Government Counsel did not object. Learned Counsel for the petitioner waived his right to file a rejoinder. The petition was admitted to hearing, which proceeded forthwith. Judgment was reserved.

6. Heard Mr. Ramesh Chandra Tiwari, learned Counsel for the petitioners and Mr. Sudarshan Singh, learned Central Government Counsel appearing on behalf of the respondents.

7. Now, in **C.P. Mundinamani**, their Lordships of the Supreme Court considered the opinions of various High

Courts across the country, as already said, and laid down in unmistakable terms that it would lead to arbitrariness if a government servant were denied annual increment, which he had already earned during the preceding year of his service, merely because he retired a day before the annual increment actually fell due and would have been added to his salary, if he had continued in service for a day more. This is the clear purport of the law laid down in **C.P. Mundinamani**, where their Lordships have remarked :

16. Now, so far as the submission on behalf of the appellants that as the increment has accrued on the next day on which it is earned and therefore, even in a case where an employee has earned the increment one day prior to his retirement but he is not in service the day on which the increment is accrued is concerned, while considering the aforesaid issue, the object and purpose of grant of annual increment is required to be considered.

17. A government servant is granted the annual increment on the basis of his good conduct while rendering one-year service. Increments are given annually to officers with good conduct unless such increments are withheld as a measure of punishment or linked with efficiency. Therefore, the increment is earned for rendering service with good conduct in a year/specified period. Therefore, the moment a government servant has rendered service for a specified period with good conduct, in a timescale, he is entitled to the annual increment and it can be said that he has earned the annual increment for rendering the specified period of service with good conduct. Therefore, as such, he is entitled to the benefit of the annual increment on the eventuality of having

served for a specified period (one year) with good conduct efficiently. Merely because the government servant has retired on the very next day, how can he be denied the annual increment which he has earned and/or is entitled to for rendering the service with good conduct and efficiency in the preceding one year.

18. In *Gopal Singh [Gopal Singh v. Union of India, 2020 SCC OnLine Del 2640]* (sic *Nand Vijay Singh [Nand Vijay Singh v. Union of India, 2021 SCC OnLine All 1090]*) in paras 20, 23 and 24, the Delhi (sic Allahabad) High Court has observed and held as under : (*Nand Vijay Singh case [Nand Vijay Singh v. Union of India, 2021 SCC OnLine All 1090]* , SCC OnLine All)

“20. Payment of salary and increment to a central government servant is regulated by the provisions of F.R., CSR and Central Civil Services (Pension) Rules. Pay defined in F.R. 9(21) means the amount drawn monthly by a central government servant and includes the increment. A plain composite reading of applicable provisions leaves no ambiguity that annual increment is given to a government servant to enable him to discharge duties of the post and that pay and allowances are also attached to the post. Article 43 of the CSR defines progressive appointment to mean an appointment wherein the pay is progressive, subject to good behaviour of an officer. It connotes that pay rises, by periodical increments from a minimum to a maximum. The increment in case of progressive appointment is specified in Article 151 of the CSR to mean that increment accrues from the date following that on which it is earned. The scheme, taken cumulatively, clearly suggests that

appointment of a central government servant is a progressive appointment and periodical increment in pay from a minimum to maximum is part of the pay structure. Article 151 of CSR contemplates that increment accrues from the day following which it is earned. This increment is not a matter of course but is dependent upon good conduct of the central government servant. It is, therefore, apparent that central government employee earns increment on the basis of his good conduct for specified period i.e. a year in case of annual increment. Increment in pay is thus an integral part of progressive appointment and accrues from the day following which it is earned.

23. Annual increment though is attached to the post & becomes payable on a day following which it is earned but the day on which increment accrues or becomes payable is not conclusive or determinative. In the statutory scheme governing progressive appointment increment becomes due for the services rendered over a year by the government servant subject to his good behaviour. The pay of a central government servant rises, by periodical increments, from a minimum to the maximum in the prescribed scale. The entitlement to receive increment therefore crystallises when the government servant completes requisite length of service with good conduct and becomes payable on the succeeding day.

24. ... In isolation of the purpose it serves the fixation of day succeeding the date of entitlement has no intelligible differentia nor any object is to be achieved by it. The central government servant retiring on 30th June has already completed

a year of service and the increment has been earned provided his conduct was good. It would thus be wholly arbitrary if the increment earned by the central government employee on the basis of his good conduct for a year is denied only on the ground that he was not in employment on the succeeding day when increment became payable. In the case of a government servant retiring on 30th of June the next day on which increment falls due/becomes payable loses significance and must give way to the right of the government servant to receive increment due to satisfactory services of a year so that the scheme is not construed in a manner that it offends the spirit of reasonableness enshrined in Article 14 of the Constitution of India. The scheme for payment of increment would have to be read as whole and one part of Article 151 of CSR cannot be read in isolation so as to frustrate the other part particularly when the other part creates right in the central government servant to receive increment. This would ensure that scheme of progressive appointment remains intact and the rights earned by a government servant remains protected and are not denied due to a fortuitous circumstance.”

19. *The Allahabad High Court in Nand Vijay Singh [Nand Vijay Singh v. Union of India, 2021 SCC OnLine All 1090]* while dealing with the same issue has observed and held in para 24 as under : (SCC OnLine All)

“24. Law is settled that where entitlement to receive a benefit crystallises in law its denial would be arbitrary unless it is for a valid reason. The only reason for denying benefit of increment, culled out from the scheme is that the central government servant is not holding the post

on the day when the increment becomes payable. This cannot be a valid ground for denying increment since the day following the date on which increment is earned only serves the purpose of ensuring completion of a year's service with good conduct and no other purpose can be culled out for it. The concept of day following which the increment is earned has otherwise no purpose to achieve. In isolation of the purpose it serves the fixation of day succeeding the date of entitlement has no intelligible differentia nor any object is to be achieved by it. The central government servant retiring on 30th June has already completed a year of service and the increment has been earned provided his conduct was good. It would thus be wholly arbitrary if the increment earned by the central government employee on the basis of his good conduct for a year is denied only on the ground that he was not in employment on the succeeding day when increment became payable. In the case of a government servant retiring on 30th of June the next day on which increment falls due/becomes payable loses significance and must give way to the right of the government servant to receive increment due to satisfactory services of a year so that the scheme is not construed in a manner that it offends the spirit of reasonableness enshrined in Article 14 of the Constitution of India. The scheme for payment of increment would have to be read as whole and one part of Article 151 of CSR cannot be read in isolation so as to frustrate the other part particularly when the other part creates right in the central government servant to receive increment. This would ensure that scheme of progressive appointment remains intact and the rights earned by a government servant remain protected and are not denied due to a fortuitous circumstance.”

20. Similar view has also been expressed by different High Courts, namely, the Gujarat [*State of Gujarat v. Takhtsinh Udesinh Songara*, 2022 SCC OnLine Guj 2522] High Court, the Madhya Pradesh [*Yogendra Singh Bhadauria v. State of M.P.*, 2020 SCC OnLine MP 4654] High Court, the Orissa [*Arun Kumar Biswal v. State of Odisha*, 2021 SCC OnLine Ori 2368] High Court and the Madras [*P. Ayyamperumal v. Central Administrative Tribunal*, 2017 SCC OnLine Mad 37963] High Court. As observed hereinabove, to interpret Regulation 40(1) of the Regulations in the manner in which the appellants have understood and/or interpreted would lead to arbitrariness and denying a government servant the benefit of annual increment which he has already earned while rendering specified period of service with good conduct and efficiency in the last preceding year. It would be punishing a person for no fault of him. As observed hereinabove, the increment can be withheld only by way of punishment or he has not performed the duty efficiently. Any interpretation which would lead to arbitrariness and/or unreasonableness should be avoided. If the interpretation as suggested on behalf of the appellants and the view [Principal Accountant-General, A.P. v. C. Subba Rao, 2005 SCC OnLine AP 47] taken by the Full Bench of the Andhra Pradesh High Court is accepted, in that case it would tantamount to denying a government servant the annual increment which he has earned for the services he has rendered over a year subject to his good behaviour. The entitlement to receive increment therefore crystallises when the government servant completes requisite length of service with good conduct and becomes payable on the succeeding day.

21. In the present case the word “accrue” should be understood liberally and would mean payable on the succeeding day. Any contrary view would lead to arbitrariness and unreasonableness and denying a government servant legitimate one annual increment though he is entitled to for rendering the services over a year with good behaviour and efficiently and therefore, such a narrow interpretation should be avoided.

22. We are in complete agreement with the view taken by the Madras High Court in *P. Ayyamperumal* [*P. Ayyamperumal v. Central Administrative Tribunal*, 2017 SCC OnLine Mad 37963] ; the Delhi High Court in *Gopal Singh* [*Gopal Singh v. Union of India*, 2020 SCC OnLine Del 2640] ; the Allahabad High Court in *Nand Vijay Singh* [*Nand Vijay Singh v. Union of India*, 2021 SCC OnLine All 1090] ; the Madhya Pradesh High Court in *Yogendra Singh Bhadauria* [*Yogendra Singh Bhadauria v. State of M.P.*, 2020 SCC OnLine MP 4654] ; the Orissa High Court in *Arun Kumar Biswal* [*Arun Kumar Biswal v. State of Odisha*, 2021 SCC OnLine Ori 2368] ; and the Gujarat High Court in *Takhatsinh Udesinh Songara* [*State of Gujarat v. Takhatsinh Udesinh Songara*, 2022 SCC OnLine Guj 2522] . We do not approve the contrary view taken by the Full Bench of the Andhra Pradesh High Court in *Principal Accountant-General, A.P.* [*Principal Accountant-General, A.P. v. C. Subba Rao*, 2005 SCC OnLine AP 47] and the decisions of the Kerala High Court in *Union of India v. Pavithran K.* [*Union of India v. Pavithran K.*, 2022 SCC OnLine Ker 5922] and the Himachal Pradesh High Court in *Hari Prakash v. State of H.P.* [*Hari Prakash v. State of H.P.*, 2020 SCC OnLine HP 2362]

8. **C.P. Mundinamani** was, therefore, unequivocal in its answer. The annual increment earned by a government employee during the previous year could not be denied to him for the purpose of determining his pensionary benefits, merely because he was not in service on the day the increment actually fell due, that is, if he had retired a day before it fell due, though completing one full year of service, otherwise entitling him to increment. The increment had to be notionally granted and its benefit extended for the purpose of determining the employee's post-retiral benefits. But, it seems that after the judgment in **C.P. Mundinamani, Special Leave Petition (Civil) No. 4722 of 2021, Union of India and another v. M. Siddaraj** came up before the Court, where their Lordships opined that that issue was the same as that in **C.P. Mundinamani**. Their Lordships, therefore, after granting leave, disposed of the civil appeals in terms of the judgment in **C.P. Mundinamani**. This should have given a quietus to the issue. But, it was not to be.

9. This Court finds the stand of the Director General taken in the personal affidavit to be utterly illegal, in fact, contumacious, in one part of it. The stand, though carried in a long-winded pleading, must be set out for every word of it. It reads :

7. That, after the pronouncement of judgments in the aforesaid SLPs, the policy regarding grant of such benefits was required to be promulgated by DOP&T as the nodal Ministry for issuance of policy instructions on the subject. Such policy will be applicable to all the Ministries/Departments under the aegis of Govt. of India.

8. That, Security Directorate headed by Director General/RPF is one of the Directorates of Ministry of Railways. As per the existing provisions, the Pay Commission Directorate and Finance Directorate of Ministry of Railways are dealing with the matters of pension related issues of a retired railway employee subsequent to the judgment passed by the Hon'ble Supreme Court of India in the matter of SLP (C) no. 6185/2020 dated 11.04.2020. Further, the Security Directorate of Railway Board has not received any directions from any of these directorates (Pay Commission Directorate & Finance Directorate). Hence, Director General/RPF is not in position to extend the benefits of one notional increment to the petitioners who retired on 30th of June as per the judgment.

9. Further, keeping in view of the fact that there are no specific policy guidelines on the issue of grant of increment due on 1st of July or 1st of January, as the case may be, notionally on the date of retirement i.e. 30th June and 31st December in FR SR. It is beyond the domain of Ministry of Railways, under Govt. of India (Transaction of Business) Rules, 1961 to take any unilateral decision to extend the benefit of notional increment to all similarly placed pensioners. In order to further elucidate, it is stated that in terms of Para-4 of the aforesaid rules regarding 'Inter-Departmental Consultations sub-para-2 thereof stipulated as under;

“(2) Unless the case is fully covered by powers to sanction expenditure or to appropriate or re-appropriate funds, conferred by any general or special orders made by the Ministry of Finance, no department shall, without the previous

concurrence of the Ministry of Finance, issue any orders which may-

(a) Involve any abandonment of revenue or involve any expenditure for which no provision has been made in the appropriation act,

(b) Involve any grant of land or assignment of revenue or concession, grant, lease or license of mineral of forest rights or a right to water power or any easement or privilege in respect of such concession,

(c) Relate to the number or grade of posts, or to the strength of a service, or to the pay or allowances of Government servants or to any other Conditions of their service having financial implications; or

(d) Otherwise have a financial bearing whether involving expenditure not, Provided that no orders of the nature specified in clause (c) shall be issued in respect of the Ministry of Finance without the previous concurrence of the Department of Personnel and Training. "In this connection Govt. of India (Transaction of Business) Rules, 1961 dated 14.01.1961 is being filed herewith for kind perusal of this Hon'ble court and marked as ANNEXURE NO. PA-4 to this Affidavit.

10. That, considering the provisions contained in sub-para 2 (c) above and the huge ramifications & financial implications involved on granting the benefit of notional increment to similarly placed pensioners across all Indian Railways, the matter had been referred to the nodal department viz. DOP&T in conformity of the provisions of

"The Government of India (Transaction of Business) Rules, 1961"

11. That, pursuant to above, DOP&T vide their O.M. dated 14.06.2023 had apprised Ministry of Railways as under:

"The matter relating to grant of national increment to those Govt servants who superannuated on 30th June or 31st December is presently under examination in consultation with the Deptt. of Expenditure in light of orders pronounced by the Hon'ble Apex Court in Civil Appeal No. 2471 of 2023 arising out of SLP (C) No. 6185 of 2020 (The Director (Admn. and HR) KPTCL &Ors Vs CP. Mundinamani&Ors) and SLP (C) No. 4722/2021 Union of India &Ors Vs M. Siddaraj). Further action, as may be required will be taken on completion of the consultation process. "In this connection the letter issued by the Govt. of India Ministry of Personnel Public Grievance and Pensions DOP&T dated 14.06.2023 is being filed herewith for kind perusal of this Hon'ble court and marked as **ANNEXURE NO. PA-5** to this Affidavit.

12. That based on the above clarification of DOP&T, necessary instructions were issued to all Zonal Railways/ PUs vide Board's letter dated 20.06.2023 to file a Miscellaneous Application before the respective Courts/ Tribunals seeking further time to comply with their orders granting the benefit of notional increment. Meanwhile, Indian Railways being one of the largest organizations, wherein, around 1.5 lakhs of retired employees/ pensioners will be the beneficiaries of notional increment and among which thousands had approached various courts of law seeking the benefit of

notional increment. These cases were decided in favour of the petitioners duly granting the benefit of notional increment. In this connection Ministry of Railways has issued the letters regarding court cases of notional increment filed by the retired employees are being filed herewith collectively for kind perusal of this Hon'ble court and marked as **ANNEXURE NO. PA-6** to this Affidavit.

13. That, as per practice in vogue, when an order having huge financial implications is to be implemented, the same is referred to Board's ANA office by the concerned Zonal Railway which in turn needs Expiry of currency/approval from the nodal department i.e. DOP&T and 'is referred to DOP&T by Ministry of Railways. Considering the ramifications/implications involved; the matter is further consulted by DOP&T with the Ministry of Finance and Sr. Law Officers of the Govt. of India which indeed takes a considerable time. A copy of communication received in this regard is enclosed as **ANNEXURE NO. PA-7** to this affidavit.

14. That, on dismissal of SLP (C) No. 4722/2021 (Union of India & Ors. Vs. M. Siddaraj), a large number of cases were allowed by various judicial forums at the admission stage itself. The huge volume of cases caused practical problems in implementation of orders as each case needs to be examined and cross verified to ensure the eligibility. In certain cases, the applicants preferred contempt petitions immediately on expiry of the time period granted by the respective courts for implementation of orders.

15. That, owing to unforeseen delay in implementation of orders, in

certain cases. Contempt petitions were also filed by the petitioners on the grounds of non-compliance of orders. Accordingly, DOP&T was again requested to advise further course of action to be adopted in the matter. Pursuant to which, DOP&T vide had advised this Ministry to take an administrative decision regarding compliance of orders pronounced by various courts of law in contempt cases taking due Rognizance of the advice of Department of Legal Affairs.

16. That, in view of the above advice of the nodal department i.e. DOP&T & in order to avoid any delay in decision making process and also with due respect to the judicial orders pronounced by various courts of law and to ensure that the same are complied expeditiously in a time bound manner, it was decided to grant the benefit of notional increment instantaneously and accordingly, powers were delegated to all Zonal Railways/PUs to take immediate necessary action in such contempt cases to ensure timely compliance of orders pronounced by various courts of law in letter & spirit vide Board's letter dated 09.02.2024 and examine and refer to Railway Board if required.

17. That, during implementation of orders pronounced by various courts of law in contempt cases, certain procedural challenges were being faced by the Railways like cut-off date of implementation of orders, extant of benefit to be extended to the petitioners etc. The same was brought to the notice of DOP&T, who in turn, had advised Ministry of Railways to explore the possibility of filing a clarificatory petition before the Apex Court seeking clarifications on the issue. Accordingly, the matter was placed before

Ld. Attorney General of India who had opined to file a Misc. Application before the Hon'ble Supreme Court seeking clarification on the implementation of judgements dated 19.04.2023 in SLP (C) No. 4722/2021 (Union of *India & Ors. Vs M. Siddaraj). Accordingly, a Misc. Application has been filed before the Hon'ble Apex Court vide Dy. No. 2400/2024, seeking clarification on various important aspects and also requested the Apex Court to grant stay on the implementation of the impugned judgement till the clarification on the issues raised in the clarificatory petition is given by the Hon'ble Apex Court keeping in view the huge ramification and maintain uniformity, which pending for adjudication. In this connection a copy of the Misc. clarification application filed by the Union of India is being filed herewith for kind perusal of this Hon'ble court and marked as **ANNEXURE NO. PA-8** to this Affidavit.

18. That, subsequently, DOP&T has also filed an Intervention Application before Hon'ble Supreme Court in the aforesaid Clarificatory Petition primarily on the grounds that DOP&T being the nodal department could not place their arguments before the Hon'ble Apex Court while the issue of notional increment was decided vide orders dated 11.04.2023 & 19.05.2023 Further, they have vital stake in the outcome of the above mentioned Clarificatory Petition and hence Hon'ble Apex Court ought to hear them in the interest of justice while deciding the Clarificatory Petition. DOP&T in the said Intervention Application has requested to grant stay on the implementation of the impugned judgement till such time the petition before the Hon'ble Apex Court is decided as non grant of stay will result in pronouncing DANA 19718 of favorable

judgments by subordinate courts in a continuous manner thereby making the Intervention Application infructuous. The said Intervention Application (IA) filed by the nodal department i.e. DOP&T is still pending before Hon'ble Apex Court for adjudication. In this connection, a copy of Intervention Application before Hon'ble Supreme Court filed by the DOP&T in the aforesaid Clarificatory Petition is being filed herewith for kind perusal of this Hon'ble court and marked as **ANNEXURE NO. PA-9** to this Affidavit.

19. That, during the hearing of the aforesaid clarificatory petition on 22.07.2024, Hon'ble Supreme Court made the following observations:

"In the meantime, learned counsel for the Union of India shall examine as to whether the Union of India needs to file an application in Civil Appeal No. 2471/2023, titled "The Director (Admn. And HR) KPTCL & Ors. VC P. Mundinamani & Ors", which was disposed of vide judgment dated 11.04.2023 Respondents are permitted to file additional documents. "In this connection the order passed by the Hon'ble Supreme court on 22.07.2024 is being filed herewith for kind perusal of this Hon'ble court and marked as **ANNEXURE NO. PA-10** to this Affidavit.

20. That, vide aforesaid orders, Hon'ble Supreme Court has directed the nodal department i.e. DOP&T to file additional documents in the matter. Accordingly DOP&T has filed a Review Petition vide Dy. No. before Hon'ble Supreme Court seeking review of their 19718der dated 11.04.2023 pronounced in Civil Appeal No. 2471 of 2023 arising out of SLP (C) No. 6185 of 2020 (The Director (Admn. and HR) KPTCL & Ors Vs C. P.

Mundinamani & Ors). As such, the issue of notional increment has not yet attained finality and the judicial procedures involved in the matter to finalize the issue of grant of benefit of notional increment are still underway for final adjudication by Hon'ble Apex Court.

21. That, it is also humbly submitted that in order to ascertain the eligibility & applicability of notional increment to a retired employee/pensioner, a close examination of the credentials of the applicant with regard to eligibility of increment needs to be done in order to ensure that no undue financial benefit is extended inadvertently. This procedure takes time as all the service particulars/pay progression/career progression/ financial upgradation/ increments granted to the employees in the entire service needs to be cross-checked thoroughly which is a time consuming procedure. It is humbly submitted that in this context only it has been clarified by Railway Board to all the field units to refer such orders other than contempt cases to Railway Board.

22. That, in order to stress upon the intricacies involved in this important task, it is humbly submitted that in few cases pertaining to various Railways viz. Northern Railway tin O.A. No. 3071/2023 (Shri Naresh ARY Kumar Gupta Vs UOI & Ors.)) & North Central Railway (in C.P No 19718 28/2024 filed by Shri Suresh Narayan Vyas arising out of O.A. No.330/1085/2023 (Shri Vijay Kumar Verma & Ors. Vs. UOI & Ors.) wherein the Hon'ble Tribunals had directed to grant the benefit of notional increment to these petitioners. However, on scrutiny of their service particulars, it was found that both were not eligible for grant of benefit of notional increment owing to various

reasons and also that they had not completed 12 months of service since the date of accrual of last annual increment which happens to be the main principle/primary condition to be fulfilled for being eligible for grant of notional increment as decided by the Hon'ble Apex Court vide their judgement dated 11.04 2023. Accordingly, the concerned Railways were advised not to grant the benefit of notional increment and challenge the orders pronounced by respective Tribunals before High Court. In this connection Copies of correspondence done with Northern Railway & North Central Railway are being filed herewith collectively and marked as **ANNEXURE P.A-11** to this affidavit.

23. That, it is re-iterated that the issue of notional increment has not yet attained finality and is still sub-judice/ pending for adjudication before Hon'ble Supreme Court, as such, general policy guidelines on the issue of notional increment has not yet been promulgated by the nodal department i.e. DOP&T as & when the general policy decision in the matter is received from DOP&T consequent to adjudication of AR aforesaid Clarificatory Petition/ Intervention Application/ Review Petition, the same would be duly implemented on Indian Railways extending the benefit of notional increment to all similarly situated pensioners.

24. That, it may be observed from the submissions made in aforesaid paras that the issue of notional increment is still sub-judice before the Hon'ble Supreme Court for adjudication and has not yet attained finality. As such, it is most humbly and graciously prayed that:

(i) The aforesaid positions of Ministry of Railways may kindly be considered in compliance of order dated 31.08.2024 passed by this Hon'ble High Court of Allahabad in the instant W.P. No. 13305/2024 till the aforesaid Review Petition and Intervention Application filed by the nodal department viz. DOP&T are adjudicated by the Hon'ble Supreme Court and the issue of notional increment attains finality.

(ii) The instant W.P. No. 13305/2024 may be adjourned sine die and a final decision thereon may only be taken after the aforesaid Review Petition and Intervention Application filed by the nodal department viz. DOP&T are adjudicated by Hon'ble Supreme Court and the issue of notional increment attains finality.

(emphasis by Court)

10. It is true that every litigant has the right to seek a clarification of an order passed by a Court, even a Constitutional Court, but it is not open to any officer of the Government to say that the benefit of the Supreme Court's judgment or compliance of the High Court's order, if not stayed or set aside by the Supreme Court, will depend upon the policy decision of the Department of Personnel & Training³, Government of India. The Government of India cannot sit in judgment on a writ of the Court, once issued. A writ stops only if it is stayed in competent proceedings, like an appeal, if allowed from the order or a review or a clarification or some such proceedings. An order cannot be disregarded by a sundry officer of the government, saying that he will disregard the law laid down by a Constitutional Court in a judgment, and more than that, a writ inter partes awaiting a policy decision of

the Government. It is all the more contumacious on the part of the Director General, RPF, Railway Board to say in paragraph No. 8 of the personal affidavit that he is “not in a position to extend benefit of one notional increment to the petitioners who retired on the 30th June as per the judgment”.

11. The Director General has much harped upon the fact that the judgment of the Supreme Court in **C.P. Mundinamani and M. Siddaraj** (*supra*) have not attained finality, because an application for clarification, a review petition and an intervention application have been filed by the DOPT. After the Supreme Court passes a judgment, there is nothing not final about it. There is no Court above the Supreme Court, and once a judgment is passed by their Lordships, it is the end of the road for both litigants. Nevertheless, it is true that a litigant may apply for a review or clarification, as in this case. Invariably, for the principle of law laid down in a judgment by the Supreme Court not *inter partes*, where a clarification has been sought by one of the parties, this Court would normally await the outcome of orders passed by their Lordships on the clarification application, but, pendency of the application does not entitle the respondents, including an officer of the said respondents, to say that they are not in a position to carry out the orders of this Court made following the law laid down by the Supreme Court, merely because clarification applications have been filed. Most certainly, this Court is bound by the law declared by the Supreme Court under Article 141 of the Constitution and every officer of the respondent is bound to carry out every writ of this Court, unless it is set aside or stayed in appeal.

12. The contents of paragraph Nos. 7 and 8 of the personal affidavit filed by Manoj Yadav, Director General, Railway Protection Board, Railway Board, New Delhi are contumacious in nature. We would have issued a notice to show cause why this matter may not be directed to be laid before the Hon'ble Judge hearing contempt applications, but, in the totality of circumstances obtaining, we think that that course is not necessary. All that needs to be done is that we caution Manoj Yadav, Director General, Railway Protection Board, Railway Board, New Delhi to be careful in future while putting in his pleadings, which he must do after necessary legal advice, and not of his own commonsense, which appears to be the case here.

13. Now, so far as the merits of the case are concerned, the review petition made on behalf of the Union of India in M. Siddaraj, besides other clarification applications and intervention applications, came up before the Supreme Court on 06.09.2024, when their Lordships passed the following order :

It is stated that the Review Petition in Diary No. 36418/2024 filed by the Union of India is pending.

The issue raised in the present applications requires consideration, insofar as the date of applicability of the judgment dated 11.04.2023 in Civil Appeal No. 2471/2023, titled "Director (Admn. and HR) KPTCL and others v. C.P. Mundinamani and others", to third parties is concerned.

We are informed that a large number of fresh writ petitions have been filed.

To prevent any further litigation and confusion, by of an interim order we direct that:

(a) The judgment dated 11.04.2023 will be given effect to in case of third parties from the date of the judgment, that is, the pension by taking into account one increment will be payable on and after 01.05.2023. Enhanced pension for the period prior to 31.04.2023 will not be paid.

(b) For persons who have filed writ petitions and succeeded, the directions given in the said judgment will operate as res judicata, and accordingly, an enhanced pension by taking one increment would have to be paid.

(c) The direction in (b) will not apply, where the judgment has not attained finality, and cases where an appeal has been preferred, or if filed, is entertained by the appellate court.

(d) In case any retired employee has filed any application for intervention/impleadment in Civil Appeal No. 3933/2023 or any other writ petition and a beneficial order has been passed, the enhanced pension by including one increment will be payable from the month in which the application for intervention/impleadment was filed.

This interim order will continue till further orders of this Court. However, no person who has already received an enhanced pension including arrears, will be affected by the directions in (a), (c) and (d).

Re-list in the week commencing 04.11.2024.

14. By this interim order, the Supreme Court provided that in case of third parties, that is to say, non parties to **C.P. Mundinamani** and **M. Siddaraj**, the benefit of the judgment would be available from the date thereof. In other words, the judgment would apply prospectively. It has been clarified that one increment, by virtue of the principle in **C.P. Mundinamani**, would be payable, as directed, but the actual benefit of enhanced pension for the period prior to 31.04.2023 would not be available. The benefit would be available to third parties, like the petitioners here, with effect from 01.05.2023. This petition would be governed by the directions (b), (c) and (d) of the order dated 06.09.2024 passed in the review petition filed by the Union of India in **M. Siddaraj**, since this petition has been instituted by a third party, which has neither been decided before the interim order dated 06.09.2024 was passed, nor is one where the judgment has attained finality or an appeal pending. It is also not a case where any application for intervention has been filed by the petitioners in Civil Appeal No. 3933 of 2023 or in a writ petition, where a beneficial order has been passed in their favour.

15. The effect of the interim order would, therefore, be that the petitioners would be entitled to their notional increment for the respective years in which they superannuated on the 30th June of that year, but the revised pension in terms of the notional increment would be payable with effect from 01.05.2023. The interim order dated 06.09.2024 was directed to operate until further orders. The matter arising out of Miscellaneous Application Diary No. 2400 of 2024, that is to say, the review filed by the Union of India, besides a host of other matters, which include contempt

petitions, all made in **M. Siddaraj** came to be heard and finally decided by their Lordships of the Supreme Court by an order of 20.02.2025. It would, again, be apposite to quote the orders made by their Lordships as aforesaid for every word of it. The order reads :

Miscellaneous Application
35785/2024 and 35786/2024 Diary Nos.
2400/2024, 35783/2024

Delay condoned.

We had passed the following interim order dated 06.09.2024, the operative portion of which reads as under:

"(a) The judgment dated 11.04.2023 will be given effect to in case of third parties from the date of the judgment, that is, the pension by taking into account one increment will be payable on and after 01.05.2023. Enhanced pension for the period prior to 31.04.2023 will not be paid.

(b) For persons who have filed writ petitions and succeeded, the directions given in the said judgment will operate as *res judicata*, and accordingly, an enhanced pension by taking one increment would have to be paid.

(c) The direction in (b) will not apply, where the judgment has not attained finality, and cases where an appeal has been preferred, or if filed, is entertained by the appellate court.

(d) In case any retired employee has filed any application for intervention/impleadment in Civil Appeal No. 3933/2023 or any other writ petition and a beneficial order has been passed, the

enhanced pension by including one increment will be payable from the month in which the application for intervention/impleadment was filed."

We are inclined to dispose of the present miscellaneous applications directing that Clauses (a), (b) and (c) of the order dated 06.09.2024 will be treated as final directions. We are, however, of the opinion that clause (d) of the order dated 06.09.2024 requires modification which shall now read as under:

"(d) In case any retired employee filed an application for intervention/impleadment/writ petition/original application before the Central Administrative Tribunal/High Courts/this Court, the enhanced pension by including one increment will be payable for the period of three years prior to the month in which the application for petition/original application was filed."

Further, clause (d) will not apply to the retired government employee who filed a writ petition/original application or an application for intervention before the Central Administrative Tribunal/High Courts/this Court after the judgment in "*Union of India & Anr. v. M. Siddaraj*"⁴, as in such cases, clause (a) will apply.

Recording the aforesaid, the miscellaneous applications are disposed of.

We, further, clarify that in case any excess payment has already been made, including arrears, such amount paid will not be recovered.

It will be open to any person aggrieved by non-compliance with the directions and the clarification of this

Court, in the present order, to approach the concerned authorities in the first instance and, if required, the Administrative Tribunal or High Court, as per law.

Pending applications including all intervention/impleadment applications shall stand disposed of in terms of this order.

Contempt Petition (Civil) Diary Nos. 38437/2023, 38438/2023, 11336/2024 and 20636/2024

In view of the order passed today in the connected matters, that is, M.A. Diary No. 2400 OF 2024 and other connected applications, the present contempt petitions will be treated as disposed of with liberty to the petitioners to take recourse to appropriate remedies, if required and necessary, as indicated supra. It goes without saying that the respondents shall examine the cases of the petitioners/applicants in terms of the order passed today and comply with the same expeditiously.

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

16. Apparently, Direction (a) carried in the interim order dated 06.09.2024 passed in the review matter brought by the Union of India has been made absolute by directing that Clauses (a), (b) and (c) of the order dated 06.09.2024 would be treated as final directions. There is some modification made to Clause (d) of the interim order dated 06.09.2024, but that, as already remarked, would not apply to the petitioners' case, which is governed by Clause (a) of the directions dated 06.09.2024, as confirmed on 20.02.2025 by the Supreme Court.

17. The effect would be that the petitioners and each of them would be entitled to receive notional increments for the respective years in which they superannuated on the 30th of June, but they would be paid pension on the basis of their revised emoluments with the notional increments added with effect from 1st May, 2023. Their current pension would be revised accordingly forthwith and all arrears would be paid to them with effect from 01.05.2023 within a period of three months of the date of communication of this order to the Secretary, Ministry of Railways, Government of India, New Delhi, the Director General, RPF, Railway Board, New Delhi, the General Manager, North Eastern Railway, Gorakhpur, the Principal Chief Karmik Adhikari, North Eastern Railway, Gorakhpur and the Principal Finance Advisor/Chief Accounts Officer, North Eastern Railway, Gorakhpur. The period of three months shall be reckoned from the date the order is received by any of the aforesaid officers.

18. In the result, this petition **succeeds** and stands **allowed**. A mandamus is issued accordingly. The petitioners would be entitled to costs, which we quantify at ₹50,000, payable by the respondents.

19. Let this order be communicated to the Secretary, Ministry of Railways, Government of India, New Delhi and the Director General, RPF, Railway Board, New Delhi by the learned Registrar General of this Court through the learned Registrar General, Delhi High Court, and the General Manager, North Eastern Railway, Gorakhpur, the Principal Chief Karmik Adhikari, North Eastern Railway, Gorakhpur and the Principal Finance Advisor/Chief Accounts Officer, North

believing that he had to superannuate after a year, on the foot of his DOB being 13.06.1955. In these circumstances, **it would be a constitutionally prohibited begar, if the respondents are permitted to recover the remuneration, which the petitioner received for the period 01.07.2014 to 30.06.2015.** (Para 18)

(2025) 3 ILRA 902
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.03.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ - A No. 14895 of 2017

Jay Pal Singh ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Vijay Gautam, Vinod Kumar Mishra

Counsel for the Respondents:
C.S.C.

A. Service Law – Superannuation – Date of birth – Recovery of salary - It is a well settled principle of law that if an employer takes work from an employee in consequence of a mistake, the employee cannot be denied his remuneration or salary. If denial were permitted on ground that the continuance in office of the employee and the rendering of service by him was without authority of the law, it would amount to the taking of begar, prohibited u/Article 23 of the Constitution.

The respondents here are the St. and they certainly cannot take begar from the petitioner for the extra year that he has served them. It is not that the petitioner has rendered *pro bono* service. Immediately before 30.06.2014, the petitioner was entitled to work in the employ of the respondents and for the next one year, he was permitted to work, on account of a mistaken DOB recorded in the character roll. The petitioner is not a wayfarer or a trespasser in office. He was a duly appointed Sub-Inspector, who was permitted to continue discharging his duties with the respondents

B. In the case here, the respondents may be right about the petitioner's age, but the petitioner too has not played any fraud or acted mala fide. The incorrect entry in the character roll about the petitioner's DOB cannot be blamed on the petitioner. The respondents have to take responsibility for that entry, whether scored out and corrected or recorded free from blemish. The petitioner too had basis to believe *bona fide* that he would be entitled to continue until 30.06.2015, because his DOB recorded in the High School Certificate is 13.06.1955. Therefore, if the respondents permitted the petitioner to continue on the basis that his DOB was 13.06.1955, they may be right in correcting it to 13.06.1954, but the petitioner is also not utterly wrong in the sense the mind of the one, who was out to play a fraud, would have worked. There is nothing like that in the petitioner's case. (Para 21)

The petitioner would be entitled to the computation of his post retiral benefits and the determination and payment of his final pension regarding his date of superannuation to be 30.06.2014; not 30.06.2015. This will be done on the basis that his DOB is 13.06.1954. (Para 23)

Writ petition allowed in part. (E-4)

Precedent followed:

1. Sushil Kumar Pandey Vs St. of U.P. & ors., 2010 (7) ADJ 617 (DB) (Para 19)
2. Man Singh Vs St. of U.P., 2022 SCC OnLine SC 726 (Para 22)

(Delivered by Hon'ble J.J. Munir, J.)

1. This writ petition is directed against an order of the Superintendent of Police,

Shamli dated 08.07.2016, holding that the petitioner's date of birth was 13.06.1954 and not 13.06.1955 and that, therefore, he had served an extra year beyond his age of superannuation. The order on this premise directs recovery of a year's salary that the petitioner had drawn beyond his date of superannuation reckoned on the basis of his date of birth being 13.04.1954.

2. Apart from questioning the recovery, the petitioner also prays that a mandamus be granted, ordering the respondents to pay the petitioner his provident fund, commuted value of pension, leave encashment and further to pay his final pension instead of a provisional pension. The petitioner also claims arrears of pension due on account of regular pension together with interest.

3. The petitioner retired as a Sub-Inspector (Special Category) from the State Police upon attaining the age of superannuation on 30.06.2015. He was last posted at Police Station Jhinhana, District Shamli. He was a Group-C employee. After retirement, the petitioner was sanctioned a provisional pension, paid his gratuity and group insurance, but not the provident fund, commuted pension, leave encashment and final pension.

4. After the petitioner's retirement, a preliminary inquiry was held into his conduct with regard to the interpolation of his date of birth in the character roll. Based on the preliminary inquiry, he was issued with a show cause notice dated 29.03.2016, saying why salary for one year that he served beyond his age of superannuation be not recovered. It is said in the show cause notice that after his retirement on 30.06.2015, upon a perusal of his service records, it was found that his date of birth

in the service record had been changed to 13.06.1955 in place of 13.06.1954. The petitioner was required to submit his explanation to the show cause within fifteen days. The petitioner submitted his reply to the show cause notice on 15.04.2016 before the Superintendent of Police, Shamli. He denied the allegations and categorically said that his date of birth was 13.06.1955. He said that there is no interpolation done by the petitioner in the character roll. It was asserted in his answer to the show cause that in his High School certificate, the petitioner's date of birth is clearly recorded as 13.06.1955, which is his correct and genuine date of birth. The petitioner enclosed a photostat copy of his High School Certificate along with his reply. He further said that he would produce the original High School Certificate issued by the U.P. Board of High School and Intermediate Education, Allahabad (for short, 'the Board') before the Superintendent of Police.

5. The petitioner's case is that he was appointed as a Constable and his appointment has been made on the basis of his High School Marksheet and Certificate earned from the Board. The petitioner's High School Certificate as well as the Marksheet clearly show his date of birth as 13.06.1955. The petitioner passed his High School examination in the year 1973 conducted by the Board with Roll No.624710.

6. The Superintendent of Police, Shamli proceeded to reject the petitioner's explanation to the show cause and, holding his date of birth to be 13.06.1954, directed recovery of salary from the petitioner for the period of one year that he had served extra on account of his incorrect date of birth, to wit, 30.06.1955, which the

Superintendent of Police says was interpolated in the service records by scoring out the earlier date of birth recorded as 13.06.1954.

7. Aggrieved, this writ petition has been instituted.

8. A notice of motion was issued on 05.05.2017 and interim stay of the operation of the impugned order granted. The petitioner has filed a supplementary whereas respondent Nos.2 to 4 have filed a counter affidavit. A short counter affidavit has been filed on behalf of respondent No.1, which is formal.

9. Learned Counsel for the petitioner waived his right to file a rejoinder.

10. The parties having exchanged affidavits, the petition was admitted to hearing, which proceeded forthwith. Judgment was reserved.

11. Heard Mr. Devesh Mishra, learned Counsel for the petitioner in support of this petition and Mr. Sharad Chandra Upadhyay, learned Standing Counsel appearing on behalf of the State.

12. Upon hearing learned Counsel for the parties, what this Court finds is that in the preliminary inquiry held by the Circle Officer, Jhijnjhana, District Shamli, it transpired that the petitioner appeared in the High School Examination as a regular candidate from the Gandhi Smarak Inter College, Doghat, District Baghpat in the year 1971 and failed the High School Examination conducted by the Board. The petitioner's High School Certificate for the examination of 1973 available on the petitioner's service record when sent for

verification to the Gandhi Smarak Inter College, Doghat, District Baghpat, led to the College Principal submitting a report that the petitioner while he sat the High School Examination of 1971 from their institution, had his date of birth recorded as 13.06.1954. The High School Examination of 1973 that the petitioner passed was done not as an institutional candidate, but as a private one. There is a scholar register and transfer certificate form, also available on the service record, where too the petitioner's date of birth recorded is 13.06.1954. In the Head Constable Cadet Form, the petitioner's date of birth recorded is 13.06.1954. In the character roll at Page 2, after the Sub-Inspector's name and address, his date of birth recorded was 13.06.1954, which was later on scored out and changed to 13.06.55. It is also noticed that at the time of recruitment, the petitioner had filled up his application form in his own hand and duly signed it, where too he has mentioned his date of birth as 13.06.1954. It is on all this evidence that the Officer, holding the preliminary inquiry, came to the conclusion that notwithstanding the recorded date of birth in the petitioner's High School Certificate, his date of birth, originally recorded as 13.06.1954, was the correct date of birth, that was scored out and got changed to 13.06.55.

13. The Superintendent of Police has apparently acted on these findings of the Officer, conducting the preliminary inquiry, to opine the petitioner's date of birth is 13.06.1954 and not 13.06.1955. It is also true, as we read the impugned order, that the Superintendent of Police has not recorded any reasons for his conclusions, which he ought have done, but the preliminary inquiry that looks into underlying evidence about the petitioner's

date of birth is consistent right up to the application form for recruitment and the Head Constable Cadet Form. The recruitment form carries the date of birth 13.06.1954 in the petitioner's own hand, which he has signed. The scholar register and transfer certificate form, which must be from the school, where the petitioner earlier read, available on record, also shows the petitioner's recorded date of birth as 13.06.1954.

14. It must be remarked here that generally speaking and invariably so, the High School Certificate has to be given precedence over any other evidence about an employee's date of birth. The evidentiary value of a High School Certificate about the employee's date of birth recorded there, is almost unignorable. We too would have followed the date of birth recorded for the petitioner in his High School Certificate, the genuineness of which has not been shown to be doubtful by the respondents, but for some special features in this case.

15. So far as the scoring out of the date in the petitioner's character roll from 13.06.1954 to 13.06.55 is concerned, there was no difficulty in accepting the corrected entry as the true one for that accords with the date of birth recorded in the High School Certificate. So far as the scoring out of the earlier entry is concerned, it is something which the respondents have to explain, because the character roll remains in their custody; not the petitioner's. The chief feature, which makes a distinction in this case is the fact that there is a consistent record of the petitioner's date of birth in his scholar register and transfer certificate available on record from some institution, where he studied and the Gandhi Smarak Inter College, Doghat, District Baghat,

where he sat his High School Examination in the year 1971 and failed. It shows the petitioner's date of birth to be 13.06.1954. Above all is the fact that in the application form that the petitioner filled in his own hand, the petitioner has written his date of birth as 13.06.1954. In his Head Constable Cadet Form-2, the date mentioned is 13.06.1954. This, therefore, is a case, where in our opinion, the respondents have not gone wrong in questioning the petitioner's date of birth, scored out and changed in the character roll from 13.06.1954 to 13.06.55, holding the former to be the correct date of birth and determining his age of superannuation accordingly.

16. The flaw in the S.P.'s order of lacking in reasons is there, but that is amply made up for by the material, on which it is based. We are not inclined to disturb it on that ground, because a remand would only be a waste of time and may lead to the same inference, very reasonably drawn with reasons furnished. In substance, it is a case where no prejudice can be said to have been occasioned to the petitioner by the absence of reasons in the order impugned. No different conclusion, on any view of the matter, can possible be reached.

17. This takes us to the next limb of the matter, which the learned Counsel for the petitioner has again argued with much vehemence. It is said that if the petitioner, for whatever reason, has worked in the establishment of the respondents up to 30.06.2015, treating his date of birth to be 13.06.1955, the respondents cannot recover salary paid to him for the period of time that he has rendered service to them. Mr. Sharad Chandra Upadhyay, learned Standing Counsel, on the other hand, urged on behalf of the State with equal

vehemence that the petitioner's continuance after 30.06.2014 is a nullity and dehors the rules as he superannuated on 30.06.2014, going by his correct date of birth. No remuneration could be paid to him for reason that he was not lawfully holding the post during that period of time. We do not agree with the learned Standing Counsel on this point.

18. It is a well settled principle of law that if an employer takes work from an employee in consequence of a mistake, the employee cannot be denied his remuneration or salary. If denial were permitted on ground that the continuance in office of the employee and the rendering of service by him was without authority of the law, it would amount to the taking of *begar*, prohibited under Article 23 of the Constitution. The respondents here are the State and they certainly cannot take *begar* from the petitioner for the extra year that he has served them. It is not that the petitioner has rendered *pro bono* service. Immediately before 30.06.2014, the petitioner was entitled to work in the employ of the respondents and for the next one year, he was permitted to work, on account of a mistaken date of birth recorded in the character roll. The petitioner is not a wayfarer or a trespasser in office. He was a duly appointed Sub-Inspector, who was permitted to continue discharging his duties with the respondents believing that he had to superannuate after a year, on the foot of his date of birth being 13.06.1955. In these circumstances, it would be a constitutionally prohibited *begar*, if the respondents are permitted to recover the remuneration, which the petitioner received for the period 01.07.2014 to 30.06.2015.

19. In the context of a compassionate appointment, that was secured by playing fraud upon the

employers, in that, that the deceased employee, whose dependent had claimed appointment, was 10 years afterwards discovered to be a temporary hand, who had been dismissed from service. While holding the compassionate appointee's dismissal from service to be valid, the employers were not held entitled to recover the entire salary for the period of ten years that the compassionate appointee had actually worked for them on the basis of his fraudulent appointment. This happened in **Sushil Kumar Pandey v. State of U.P. and others, 2010 (7) ADJ 617 (DB)**, where a Division bench of this Court observed:

“23. Therefore, upon the aforesaid discussions, we are of the view that the judgment of the learned Single Judge does not call for any interference. However, we have our reservation regarding the portion of the order by which the learned Single Judge has directed for recovery of salary that was paid to the appellant. Considering the facts and circumstances of the case, it is undeniably true that fraud has been played in obtaining the appointment by the appellant and it is also true that the said fraud would have remained undetected if the mother of the appellant had not applied for family pension. During this period more than 10 years had elapsed and the authorities continued to take work from the appellant and for the services rendered he was remunerated by salary. Now after 10 years of service as the appellant has been dismissed, in such a case, the recovery of entire salary from the person would be too severe for the acts and omission on his part but also the omission and negligence on the part of the authorities in granting appointment to the appellant, which in the facts of the case cannot be ruled out. Even

otherwise Article 23 of the Constitution of India prohibits taking of 'Begar'. The State-respondents having taken work from the appellant (Sushil Kumar Pandey) for more than 10 years before the fraud was detected, cannot be permitted to ask for refund of the entire salary paid to him as it would amount to taking of 'Begar' which the Constitution of India strictly prohibits.”

20. This Court must notice that in the Bench decision in **Sushil Kumar Pandey (supra)**, what the employers were held not entitled to recover was salary paid on the minimum pay-scale; not the allowances and other emoluments. It has to be borne in mind that **Sushil Kumar Pandey** was a case of an utter fraud in securing employment and thereafter rendering service. In cases where the employee's appointment and principal part of the service is not at all the result of a fraud, but a position validly held under the law until a particular date and the issue being about salary paid for the extra period of time that the employee was permitted to work by the employer beyond the age of superannuation, the protection from recovery cannot be limited to the minimum basic pay-scale.

21. In the case here, the respondents may be right about the petitioner's age, but the petitioner too has not played any fraud or acted *mala fide*. The incorrect entry in the character roll about the petitioner's date of birth cannot be blamed on the petitioner. The respondents have to take responsibility for that entry, whether scored out and corrected or recorded free from blemish. The petitioner too had basis to believe bona fide that he would be entitled to continue until 30.06.2015, because his date of birth recorded in the High School Certificate is

13.06.1955. Therefore, if the respondents permitted the petitioner to continue on the basis that his date of birth was 13.06.1955, they may be right in correcting it to 13.06.1954, but the petitioner is also not utterly wrong in the sense the mind of the one, who was out to play a fraud, would have worked. There is nothing like that in the petitioner's case.

22. About the right to recover, a similar question arose before the Supreme Court in **Man Singh v. State of U.P., 2022 SCC OnLine SC 726**, where the facts and the principle are expressed by their Lordships with inimitable brevity thus:

“3. The appellant was appointed as a principal in the year 1974-1975 when junior High School was upgraded as High School and was recognized by the State Government. Thus, the appellant has worked for almost 24 years before the services came to be cancelled for the reason that he is relative of the member of the Selection Committee.

4. The order dated 24.12.1998 also records that the money be recovered from the appellant which has been paid to him, as a result of his irregular appointment for the post of Principal.

5. We find that the High Court has failed to consider the fact that even if the appointment was irregular, the appellant had discharged the duties and in lieu of duties, he had to be paid. The State cannot take any work from any employee without payment of any salary.”

23. In the circumstances that we have noticed here, this Court is of opinion that no recovery from the petitioner of a sum equivalent to that paid in salary and

Superintendent of Police, Shamli by the Registrar (Compliance).

(2025) 3 ILRA 908
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.03.2025

BEFORE

**THE HON'BLE SAURABH SHYAM
SHAMSHERY, J.**

Writ A No. 18731 of 2024
alongwith other connected cases

Gaurav Kumar ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Nitish Shakya, Prabhakar Awasthi

Counsel for the Respondents:
C.S.C., Kushmondeya Shahi

A. Service Law – Appointment - U.P. Secondary Education Services Selection Board Act, 1982 - Rule 12 r/w Rules of 1998 - Even a selected candidate has no indefeasible right of appointment and there must be a timeline to conclude a process and in present case, recruitment process was initially initiated in 2013 i.e. about 12 years ago and last supplementary select list was published in 2018 i.e. 7 years ago and to continue such process after so many years could not be reasonable. (Para 16)

Writ petitions dismissed. (E-4)

Precedent followed:

Sudesh Kumar Goyal Vs St. of Har. & ors., 2023
INSC 842; (2023) 10 SCC 54 (Para 16)

(Delivered by Hon'ble Saurabh Shyam
Shamshery, J.)

1. Heard S/Sri Prabhakar Awasthi,
Abhishek Kumar Saroj, Rahul Agarwal,

24. In the result, this petition succeeds and is **allowed** in part. The impugned order dated 08.07.2016 passed by the Superintendent of Police, Shamli insofar as it directs recovery of an amount of money equivalent to one year's salary from the petitioner is hereby **quashed**. The part of the impugned order, determining the petitioner's date of birth as 13.06.1954 is **upheld**. A *mandamus* is issued to the Additional Director General of Police, Headquarters, Prayagraj/ Lucknow, the Inspector General of Police, Meerut Range, Meerut and the Superintendent of Police, Shamli to ensure amongst themselves immediate payment of the petitioner's provident fund due, if any, the value of his commuted pension, leave encashment and final pension worked out in the manner directed in this judgment. The arrears of pension, provident fund, if not already paid, the commuted value of pension and leave encashment shall all be payable to the petitioner with 6% simple interest with annual rest.

25. There shall be no order as to costs.

26. Let a copy of this order be communicated to the Additional Director General of Police, Headquarters, Prayagraj/ Lucknow, the Inspector General of Police, Meerut Range, Meerut and the

Ganesh Shanker Srivastava, Ashwani Kumar Yadav, Ashutosh Pandey and Praveen Kumar Mishra, learned advocates for petitioners, S/Sri K. Shahi, Anil Kumar Singh and Aakash Rai, learned advocates for UP Education Services Selection Commission, Sri Ashish Kumar Nagvanshi, Sri D.P. Singh and Sri Rajesh Kumar Tiwari, learned advocates appearing for State.

2. Number of petitioners in present bunch of writ petitions are in long drawn litigation and are waiting for outcome of their grievances which commenced when they have participated in a direct recruitment process initiated for appointment of numbers of Trained Graduate Teachers (T.G.T.) in different subjects in numbers of Non-Government Inter Colleges/High Schools in State of U.P. by Uttar Pradesh Secondary Education Services Selection Board (hereinafter referred to as "Board") through an Adv. No. 01/2013, in which they were declared successful.

3. Some of petitioners being aggrieved that since number of posts. so advertised, were reduced and due to that they were not allotted colleges, therefore, they filed a Writ A No. 22128 of 2018 (Sanjay Kumar and others vs. State of U.P. and others) that in terms of Rule 12 of U.P. Secondary Education Services Selection Board Act, 1982 read with Rules of 1998, the Board ought to have proposed a longer select panel (but not larger than 25%) in the said recruitment process.

4. The said writ petition was disposed of by an order dated 26.11.2018 and its relevant part is mentioned below :-

"The issue raised lies in a narrow ambit. The conduct of recruitment by the Board is regulated by the provisions of the U.P. Secondary Education Services Selection Board Act, 1982 read with Rules 1998. Rule 11 regulates determination of vacancy while Rule 12 provides for procedure for direct recruitment. Sub-Rule 8 of Rule 12 clearly provides that in the case of vacancy on the post of lecturer or teacher L.T. Grade. The select panel shall be larger (but not larger than 25%) of the number of vacancies. Rule 12(8) of the Rules 1998 is reproduced hereinafter:-

"The Board then, for each category of post, prepare panel of those found most suitable for appointment in order of merit as disclosed by the marks obtained by the after adding the marks obtained under sub-clause (4) or sub-clause (5) above, as the case may be, with the marks obtained in the interview. The panel for the post of Principal or Headmaster shall be prepared institution-wise after giving due regard to the preference given by a candidate, if any, for appointment in a particular institution whereas for the posts in the lecturers and trained graduates grade, it shall be prepared subject-wise and group-wise respectively. If two or more candidates obtain equal marks, the name of the candidate who has higher quality points shall be placed higher in the panel and if the marks obtained in the quality points are also equal, then the name of the candidate who is older in age shall be placed higher. In the panel for the post of Principal or

Headmaster, the number of names shall be three times of the number of the vacancy and for the post of teachers in the Lecturers and Trained graduate grade, it shall be larger (but not larger than twenty-five per cent) than the number of vacancies.

Practical exigencies like non-availability of notified vacancies would not justify the Board from adopting a procedure which is in derogation of what is laid down by the statutory scheme itself.

There is no discretion vested in the commission to provide a panel on the post of teachers in lecturer and L.T. Grade, which may be less than the number of vacancies. Vacancy itself has been defined under Rule 2(e) of the Rules 1998 in following words:-

"Vacancy" means a vacancy arising out as a result of death, retirement, resignation, termination, dismissal or removal of a teacher or creation of new post or appointment or promotion of the incumbent to any higher post in a substantive capacity."

Once the vacancy gets notified to the Board it would be possible for the Board not to draw a panel of candidates which is below the number of posts notified to it. The extend of discretion available to the Board is only to increase the number by making it larger than the notified vacancies up to the maximum limit of 25%. It is only to this extend that discretion can be exercised by the Board. However, the vacancy which have already been advertised cannot be reduced

by the Board so as to prepare a panel which may be less than the number of notified vacancies.

Law is otherwise settled that mere selection of a candidate does not confer indefeasible right to be appointed by virtue of law laid down by the Apex Court in *Shankarsan Dash vs Union Of India* 1991 AIR 1612.

Court is also not impressed by the argument of Sri P.N. Saxena that a fresh exercise has been got conducted by the Board to ascertain the vacancy for recruitment to the post of teacher in Hindi. At this stage when the examinations have already been got conducted and only a select is to be prepared by the commission, at its own level, it would not be justified in revising the vacancy by calling upon the District Inspector of Schools to submit a fresh report. In case this is allowed to happen the process itself would be rendered unworkable, inasmuch as the recruitment itself would not be concluded for various reasons, including subsequent reports which may contradict the earlier vacancy position already notified to the Board. In the facts and circumstances noticed above, I am of the considered opinion that the Board is under an obligation to draw a select panel against the advertised vacancy, which could be larger than the total number of vacancies already advertised subject to a maximum of 25% over and above it. A mandamus accordingly is issued to the Board to draw a revised select panel in accordance with Rule 12(8), within a period of 4 weeks' from the date

of presentation of the certified copy of this order. The concern of the Board otherwise stands protected inasmuch as the appointment to selected candidates would be restricted to the actual number of posts which are available for being filled up and mere drawing of select panel would not pose any difficulty. The Board is also expected to act further in accordance with law for the purposes of filling of existing vacancies.”

5. The Board has approached a Division Bench of this Court against above referred order by way of filing a Special Appeal (D) No. 354/2019 and the Division Bench has dismissed it vide order dated 15.10.2019. For reference, relevant part of said judgment is quoted below :-

“It is not the case of the appellant that the total number of actual substantive vacancies has been reduced and those are required to be excluded from the process of selection. The only submission is that the request has been received for preparing a panel of selected incumbents in less number being the vacancies concerned occupied by ad-hoc appointees or by the persons regularized in service. Under the scheme of Rules of 1998, a process of selection is required to be made against the substantive vacancies. The determination of vacancies is required to be made by excluding factitious vacancies such as ad-hoc appointment or the appointment made contrary to the Rules.

The Board had recommendation for substantive vacancies and if those are intact, no reason is available to reduce the strength of panel. The preparation of panel of persons less than the substantive vacancies available is apparently bad. It would also be appropriate that the direction given by learned single Bench is only to the extent of preparing a panel in accordance with the provisions of sub-Rule (8) of Rule 12 of the Rules of 1998 with liberty to the appointing authority to make appointment only against the existing substantive vacancies.

The direction given by the learned single Bench as such is in consonance to the Rules of 1998 and that does not require any interference in appellate jurisdiction.”

6. In pursuance of above judgment, a select list was published in 2018 and according to all petitioners, they fell within the said select list and within declared number of posts also at the stage of advertisement issued in the year 2013.

7. According to petitioners, still they were not allotted colleges and when nothing happened in contempt petitions, they were constrained to approach this Court in the year 2024 i.e. after awaiting for about 5 years.

8. Pleadings were exchanged and present cases mainly have two issues, i.e. firstly whether explanation given by Board/State, that vacancies were not correctly identified as well as none of juniors were appointed, would be a plausible explanation for reducing

vacancies and secondly whether any timeline could to be fixed for a recruitment process since it was considered in the year 2013 and now we are in 2025?

9. Learned advocates for petitioners have stressed upon a judgment passed in earlier round of litigation that no option was left with the Board not to offer appointment to petitioners since they fell within subsequent select list and any explanation being vague is liable to be rejected.

10. Learned advocate for respondents have referred documents that number of posts were not verified and wrongly included in the list of vacancies and such error came into light later on after careful scrutiny and accordingly, appointments were made against clear, vacant and subsequent vacancy only.

11. Heard learned counsel for parties and perused the records.

12. As referred above, it is now much under dispute that number of posts were advertised, result was declared for reduced number of posts and on basis of above referred judgment of this Court, another select list was published and petitioners being despite fell within it, were not allotted schools.

13. Now the Court has to consider whether explanation given by the respondents that number of posts earlier advertised remained unverified due to various reasons assigned in detail in a long list (subject and institution wise) has substance. A brief chart being part of a communication dated 28.01.2023 (from Secretary, Secondary Education Selection

Board to Director, Education (Secondary)), being relevant is extracted hereinafter :-

क्र०सं०	विज्ञापित विषय	विज्ञापित पदों की संख्या	सत्यापित पदों की संख्या	असत्यापित पदों की संख्या
1.	हिन्दी	909	720	189
2.	संस्कृत	472	369	103
3.	सामाजिक विज्ञान	806	656	150
4.	जीव विज्ञान	239	187	52
5.	शारीरिक शिक्षा	194	170	24
6.	गृह विज्ञान	135	113	22
7.	उर्दू	35	27	08
8.	कला	267	243	24
9.	विज्ञान	929	713	216
10.	अंग्रेजी	848	676	172
11.	गणित	1036	805	231
12.	वाणिज्य	45	36	09

14. As referred above, total number of verified posts are 4715 and number of unverified posts are 1200 and specific details are also provided in subject wise list annexed with personal affidavit such as चयन बोर्ड द्वारा चयनित, सत्यापन का कारण अंकित नहीं, पद भरा हुआ, पद दो बार अधिाचित है, सत्यापित/असत्यापित सूचना अप्राप्त, स्थानान्तरण हो चुका है, सामान्य जाति का कोटा पूर्ण, दोबारा अंकित हो गया, नवीन जनशक्ति में पद समाप्त या पद कम, मृतक आश्रित कोटे से पद भरा इत्यादि. Such details being part of a personal affidavit and without any contrary material could not be considered to be false. It is true that such exercise ought to be undertaken when initially number of posts were advertised. It appears that it were advertised in haste without proper verification of clear and vacant posts.

15. There is no material to dispute reasons assigned in the chart and details referred above and once there are no vacant posts, claim of petitioners cannot be accepted.

16. The Supreme Court has reiterated in **Sudesh Kumar Goyal vs. State of Haryana and others, 2023 INSC 842 : (2023) 10 SCC 54** that even a selected candidate has no indefeasible right of appointment and there must be a timeline to conclude a process and in present case, recruitment process was initially initiated in 2013 i.e. about 12 years ago and last supplementary select list was published in 2018 i.e. 7 years ago and to continue such process after so many years could not be reasonable. Relevant paragraph of Sudesh Kumar (supra) is quoted below :-

“18. In view of the reasoning given by the respondents for appointing only 13 selected candidates leaving the appellant who was at Sl. No. 14, we are of the opinion that the respondents have justified the appointments and have not acted in an arbitrary manner. The respondents have acted fairly and logically without any malice against the appellant. Thus, on the touchstone of the decision cited on behalf of the appellant himself, we do not find any arbitrariness on the part of the respondents. Therefore, the decision of the Division Bench of the High Court is not liable to be disturbed on the above count, more particularly when the appellant has not acquired any indefeasible right to be appointed because he qualified in the selection process.

20. This apart, as may be noticed that the procedure for selection of superior/higher judicial service officers by direct recruitment from the Bar was initiated by the Punjab and Haryana High Court way back in the year 2007 and now we are in the year 2023 meaning thereby that 16 years have passed by in between. It would be a travesty of justice to keep open the selection process for such a long time and to direct at this stage to make any appointment on the basis of a selection process initiated so far back. For this additional reason also, we do not deem it proper to interfere with the impugned judgment and order [Sudesh Kumar Goyal v. State of Haryana, CWP No. 16211 of 2009 sub nom Keshav Kaushik v. State of Haryana, 2010 SCC OnLine P&H 5043] of the High Court.”

17. Accordingly, present bunch of writ petitions are **dismissed**.

(2025) 3 ILRA 913
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.03.2012

BEFORE

THE HON'BLE ASHWANI KUMAR MISHRA, J.
THE HON'BLE JAYANT BANERJI, J.

Writ C No. 15023 of 2024

M/S Anandeshwar Agro Foods Pvt. Ltd.
...Petitioner

Versus
The State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Sr Advocate, Sri Utkarsh Prasad

Counsel for the Respondents:
C.S.C.

A. Mining Law – Mining of replenished sand – Sustainable mining - U.P. Minor Mineral (Concession) Rules, 2021 - Rule 42h(1), Rules 10, 17 of Chapter II, Rule 23 of Chapter IV, Rules, 35, 36, 37, 38, 41, 42, 45 of Chapter V - If the post-monsoon replenishment study does not reflect adequate replenishment in the manner and to the extent envisaged in the EMGSM-2020, no mining can be permitted in the area pertaining to the mining lease.

Due and timely payment of installments under the terms of a mining lease is based on winning existing minerals for which the lease is granted which corresponds to the quality and quantity contemplated in the DSR and the replenishment studies, particularly, the post-monsoon replenishment study. For want of adequate replenishment of the mineral or non-availability of mineral in the requisite quantity in various other parts of the area for which lease has been granted, neither can any mining activity be permitted nor, consequently, can any claim for installments be sustained unless there is actual replenishment or availability. It is for these circumstances that preparation of proper DSR and conducting audit assumes importance. (Para 50)

B. The EMGSM-2020 guidelines recommends that it is imperative to have a study of replenishment of material during the defined period to minimize the adverse impact arising out of sand mining in a given river stretch. The EMGSM-2020 guidelines provides that the excavation will be limited to estimated replenishment estimated with consideration of other regulatory provisions. (Para 42)

Therefore, the fact that the second post-monsoon replenishment study dated 8.1.2024 reflects replenishment of 16380 cubic meters of sand available for mining purpose has to be read in light of the location where this deposit/replenishment has taken place in the given river stretch. Then, it has to be ascertained in the light of EMGSM-2020,

whether such replenishment is minable. (Para 43)

C. There appears to be an effort to extract revenue from mining operations for benefit of the State exchequer without empathy and consideration of ecology, and sustainable mining, which aspects have to be balanced with the imperatives of development and earnings for the State exchequer. (Para 47)

The respondents seem to be quite oblivious of the importance of proper replenishment, the mining plan and the DSR when they seek to raise demands and make claims without addressing the ecological concerns that are reflected in the EMGSM-2020 guidelines that also address the aspect of sustainable mining. (Para 44, 45)

D. The terms of the lease-deed cannot override the aforesaid Notification of 2016, the SSMMG-2016, EMGSM-2020 guidelines and the Act and Rules. (Para 48)

No doubt, there is a contract, the lease-deed, entered into between the respondents and the petitioner, the terms of which bind them both. However, in case no adequate replenishment takes place even after water of river recedes down, then any advance payment of installments by the petitioner would result in serious loss to it which eventuality is neither contemplated in the lease deed nor in the Rules, 2021. Therefore **the contention sought to be made that payment of installment should be made by the petitioner and eMM-11 forms be uploaded to the extent of carried forward quantity of minerals which could not have been mined in the preceding months till March 2024, is fallacious.** (Para 46)

The petitioner could not have been forced to mine the relatively meagre amount of 16380 cubic meters of replenished sand that was reflected in the last replenishment study report submitted by the petitioner without ascertaining whether the replenishment that had taken place in the stretch of land/river was such that mining of the same could be permitted in the backdrop

of sustainable mining. There is no DSR shown to have been prepared. (Para 51)

Since, steps have been taken by the State Government for fresh auction of the mining area that was granted to the petitioner, the petitioner is not liable to deposit any installment after the stoppage of mining operations for the period from 1.7.2023 onwards. If any amount has been deposited/recovered/confiscated by/against the petitioner, the same shall be refunded within a period of one month from today along with simple interest @ 9% per annum calculated from the date of such deposit/recovery/confiscation till the actual payment. (Para 54)

Writ petition allowed. (E-4)

Precedent followed:

1. Dharmendra Kumar Singh Vs St. of U. P., (2021) 1 SCC 93 (Para 6)
2. M/s Planet Steel Pvt. Ltd. Vs The St. of Har. & ors., Petition for Special Leave to Appeal (C) Nos. 19619-19620/2017 (Para 6)
3. Vipul Tyagi Vs St. of U.P. & ors., Writ-C No. 17258 of 2020 (Para 6)
4. Ranjana Singh Vs St. of U.P. & ors., Writ-C No. 32486 of 2019 (Para 6)
5. Anjani Kumar Vs St. of U.P. & ors., Original Application No. 557 of 2017 (Para 14)
6. Deepak Kumar & ors. Vs St. of Har. & ors., (2012) 4 SCC 629 (Para 24)

(Delivered by Hon'ble Jayant Banerji, J.)

1. This writ petition has been filed seeking quashing of the demand notice/ order dated 19.2.2024 and the order cancelling the mining lease dated 27.2.2024 both passed by the District Magistrate, Kanpur Dehat. Also under challenge is the order of 18.4.2024 passed by the Special Secretary, Geology and Mining, U.P. in Revision No. 33(R)/G&M/(U.P)/2024, M/s. Anandeshwar

Agro Foods Pvt. Ltd. vs. District Magistrate, Kanpur Dehat (Annexure-1 to the writ petition) filed by the petitioner whereby his revision has been rejected. A further prayer seeks direction to the respondents not to demand any monthly installments specified in the lease deed for the months of October, November and December, 2023, and, January and February, 2024.

2. An advertisement/auction notice dated 3.12.2018 was issued by the District Magistrate, Kanpur Dehat for grant of mining leases of sand/morrum under Chapter IV of the U.P. Minor Mineral (Concession) Rules, 19631 by e-tender cum e-auction for a period of five years for all vacant mining areas in Kanpur Dehat district. The bid of the petitioner, in respect of plot No.58 measuring 08.275 hectares at Village-Bilaspur Kachhar, Tehsil-Sikanda, District-Kanpur Dehat, of Rs.264 per cubic meter, being the highest bid, was approved by the District Magistrate and a Letter of Intent was issued to the petitioner on 5.2.2019. The petitioner applied for a mining plan which was sanctioned by the competent authority and thereafter the petitioner applied for obtaining an Environment Clearance Certificate, which was granted to the petitioner on 15.1.2021. Thereafter, a lease-deed was executed in favour of the petitioner on 12.3.2021 for a period of five years permitting winning of 1,10,057 cubic meters per annum of sand/morrum with the installments (excluding the security amount) for the first year totaling Rs.2,90,55,048.00 and for each successive year, the royalty payable would be increased by 10% on the royalty payable in the previous year. An amount of Rs.2,20,31,460.00 was deposited by the petitioner as security.

3. It is stated that the petitioner had carried out mining operations and paid the entire installments due upto 30.6.2023 as

per the payment schedule specified in the lease-deed. A notice dated 2.6.2023 was issued by the Additional District Magistrate (Administration), Kanpur Dehat directing the petitioner to get the pre-monsoon and post-monsoon replenishment study done of his mining area. The petitioner got the replenishment study of pre-monsoon done on 25.6.2023. It is stated that even after post-monsoon, the leased area was completely submerged and, hence, it was not possible to carry out post-monsoon survey and no mining operations were possible and, therefore, the petitioner moved an application on 5.10.2023 before the District Magistrate requesting him not to compel the petitioner to deposit the lease amount post-monsoon till the replenishment study was done. It is stated that the post-monsoon survey was done on 29.10.2023 and a combined report of pre-monsoon and post-monsoon was submitted before the District Magistrate. The Mines Officer issued a demand notice dated 25.11.2023 demanding the installment of October and November 2023. The petitioner moved an application dated 28.11.2023 stating that the entire leased area is submerged and a very small patch of surface was seen which belonged to the restricted area. Again, a request was made by the petitioner to the District Magistrate to waive off the installment for the period starting from 1.10.2023 till actual commencement of the mining operations.

4. Again, the Mines Officer issued a demand notice to the petitioner on 4.12.2023 demanding the due installments. The petitioner sent an application dated 11.12.2023 to the District Magistrate requesting him to waive off the installments for the period with a further request that the petitioner be allowed to get the leased area re-assessed by the competent agency for

proper compliance and verification of the actual mineable reserve.

5. By a letter dated 21.12.2023, the District Magistrate rejected the aforesaid applications of the petitioner on the ground that it is the responsibility of the petitioner to pay the installments stated in the lease-deed. The petitioner again on 8.1.2024 got the leased area re-inspected for post-monsoon replenishment study for assessing the quantity of available mineral. It is stated that the new replenishment study report of 08.01.2024 reflected no significant replenishment of river bed mineral and the replenished mineral on the leased land on that date was 16,380 cubic meters. The opinion in this replenishment study was that the mineral quantity may increase in future once the water recedes.

Thereafter, the petitioner moved an application dated 27.1.2024 indicating his willingness to initiate mining operations provided the installments for the disrupted period from 1.10.2021 till the actual commencement of mining operations be waived and further installments be 're-evaluated' as per the actual mineral recharge/replenished quantity as found in the post-monsoon replenishment study report. This application of the petitioner was rejected by the District Magistrate by means of a demand notice/order dated 19.2.2024. It is stated that the impugned order dated 27.2.2024 was received by the petitioner on 29.2.2024 by email canceling the mining lease of the petitioner. The petitioner then filed a revision before the State Government which was dismissed by the impugned order dated 18.4.2024.

6. It is contended by the learned counsel for the petitioner that the cancellation of the mining lease and the

rejection of the revision of the petitioner is without consideration of the evidence and against the statutory provisions. It is stated that once an area is declared by the State Government to be leased out by e-tender/e-auction/e-tender cum e-auction, the District Officer is mandated to get that declared area evaluated for the quality and quantity of mineral for fixing minimum bid or offer which is to be done by the Director, Geology and Mining, Uttar Pradesh or by an officer authorised by him; that the replenishment study is required to be conducted as per the orders of the National Green Tribunal²; that it was incumbent on the State Government to make available the quantity of mineral required for excavation on the basis of which the petitioner would pay the installments of lease amount, otherwise the petitioner would be entitled for refund or remission of the installments; that if the State Government fails to provide mineral for excavation, then no lease instalment amount is payable; and that the notice issued under Rule 59 of the U.P. Minor Mineral (Concession) Rules, 2013 is required to be issued by the District Magistrate and not by the Mines Officer. In this view of the matter, it is contended that the District Magistrate having given the last notice on 19.2.2024, and the order canceling the lease having been passed on 27.2.2024, there is violation of Rule 59 of the Rules, 2021 which mandates 30+15 days notice.

In support of his contentions, learned counsel for the petitioner has relied upon the judgment of the Supreme Court in **Dharmendra Kumar Singh vs. State of Uttar Pradesh**⁴; a judgment dated 10.4.2018 passed by the Supreme Court in the case of **M/s. Planet Steel Pvt. Ltd. vs. The State of Haryana & Ors.**⁵; a decision of a coordinate Bench of this Court dated

11.1.2021 in the case of **Vipul Tyagi vs. State of U.P. & 6 Ors.**⁶ and a decision of this Court dated 24.10.2019 in the case of **Ranjana Singh vs. State of U.P. & Ors.**⁷.

7. A counter affidavit has been filed on behalf of the respondents stating that the lease-deed was executed on 12.3.2021 in respect of the leased area for excavation of 110057 cubic meters of sand/morrum per annum at the rate of Rs.264/-. The amount of security, the annual amount payable and the installments due and payable were specified in the lease-deed itself. It has been stated that material facts have been concealed in the instant writ petition inasmuch as Writ-C No.9186 of 2022 was filed by the petitioner before the Lucknow Bench of this Court seeking the following reliefs:-

“1. issue a writ, order or direction in the nature of certiorari quashing the Government Order dated 9.11.2022 issued by the State Government i.e. Respondent no.1, contained as Annexure No.1 to this writ petition.

2. Issue a writ, order or direction in the nature of mandamus directing the respondents to waive of the liability of deposit of the royalty amount of the month of October 2022 & November 2022 so far it relates to the mining lease of the petitioner and do not compel to the petitioner to deposit the royalty amount for the aforesaid two months as no mining activity has taken place in the aforesaid months.

3. to issue any other writ, order or direction which this Hon'ble Court may deem fit and

proper in the circumstances of the case.

4. to award cost of the petition to the petitioner.”

In response to aforesaid petition, a counter affidavit was filed by the respondents opposing the writ petition and that petition is pending before the Lucknow Bench of this Court.

8. It is stated in the counter affidavit to the present petition that the notices dated 25.11.2023 and 4.12.2023 as well as the notices dated 21.12.2023 and 19.2.2024 were issued to the petitioner; that the representations filed by the petitioner were rejected on 21.12.2023 on the ground that nine months' time was available to the petitioner for mining for excavating the annual quantity of sand and sell it as per the market rate available and accordingly upload Form eMM-11 to the extent of the carried forward quantity in the preceding month that could not have been mined; that the pre-monsoon and post-monsoon replenishment study reports are contradictory and cannot be relied upon for any purpose by this Court; that post-monsoon replenishment report reflects a quantity of 16380 cubic meters of mineral available for mining which may further increase in future; that the amount of mineral could be excavated by the petitioner but he chose not to carry out any mining operations; that a surrender application for surrendering the mining lease as per Rule 30 of the Rules 2021 could have been filed by him but no such application was filed; that the petitioner has not brought on record the inspection report dated 13.2.2023; that illegal mining was being done in violation of Rule 42h(1) of the Rules, 2021, whereafter a notice dated 21.2.2023 was given to the petitioner

imposing a penalty of Rs.5 lacs which notice has not been replied by the petitioner. In paragraph nos.18 and 19 of the counter affidavit, it is stated as follows:-

“18. That it is humbly submitted before this Hon'ble Court that in case the lease holder is unable to extract the quantity of sand in a particular month then upon payment of the royalty amount the quantity not excavated is carried forward on the portal of the department automatically. It is also submitted herein that the practice and procedure is that in case the lease holder is to extract an additional quantity of sand, that he is unable to in a particular month, he has to pay the royalty amount of the succeeding month and extract the carried forward quantity (that was not extracted) of sand to be excavated in the next month. The said amount of sand has to be excavated keeping in view the annual quantity of sand to be extracted as per the amount mentioned in the Environmental Clearance Certificate.

19. That in the facts of the present case the amount of sand that could have been extracted in a particular year by the petitioner herein is 1,10,0057 cubic meter (sic, 110057) and 12,228.55 cubic meter per month. If the amount of 12,228.55 cubic meter could not be extracted by the petitioner in a particular month then the left over amount could be carried forward by him in the next month and extracted accordingly. The petitioner herein from Jan. 2023 to June 2023 has extracted sand in

excess of 12,228.55 cubic meter and the generated EMM-11 form alongwith the production quantity bearing lease ID No. 313623 bearing Lease ID No. 313623090133 is being brought on record and is being filed herewith and marked as Annexure No.CA-9 to this Affidavit.”

9. In the enclosure mentioned in paragraph no.19 of the counter affidavit, a table showing the production month, generated eMM-11 form and the production quantity in cubic meters is reflected, which has not been denied in the rejoinder affidavit and is as follows:-

Sr. No.	Lease Holder Name	Production Month	Generated eMM 11	Production Quantity (Cubic meter)
01	Sunil Kumar Gupta Lease ID- 313623090133	January, 2023	711	14750
02		February, 2023	769	15926
03		March 2023	581	11907
04		April	826	16990
05		May, 2023	707	13864
06		June, 2023	605	12373

It is, therefore, contended that the orders passed by the District Magistrate as well as the State Government are justified.

10. In the rejoinder affidavit, the petitioner has relied upon a Government Order dated 12.11.2021 while stating that the relaxation was granted by the State Government in the payment of the lease amount proportionate to the quantity of mineral which the petitioner could not lift and the Government Order directed that the quantity which could not be lifted could be deducted from the annual quantity.

As regards the table filed alongwith the counter affidavit showing the Form eMM-11 generated by the petitioner and the amount of production of the mineral, it has been stated that the calculations were for the period from January 2023 to June 2023, when there was sufficient mineral available in the mining area and the petitioner had paid the entire lease amount upto June. It is stated that in the present case, the entire area was submerged and, therefore, there was no occasion for carrying forward the minerals to be excavated. The dispute relates to the period commencing October 2023.

ANALYSIS

11. The emphasis of the petitioner is on the loss being suffered by the petitioner despite his every attempt to bonafide work the mining lease granted to him, due to lack of proper evaluation of the mining area and want of preparation of a District Survey Report⁸ which is mandated to be prepared after a replenishment study is conducted as per the Sustainable Sand Mining Management Guidelines-2016⁹, which was supplemented with the Enforcement and Monitoring Guidelines for Sand Mining-2020¹⁰. It has also been stated that the State Level Environment Impact Assessment Authority, Uttar Pradesh, in its meeting held on 31.12.2022,

had directed the Mines Department to ensure that no mining is carried out beyond the quantity mentioned in the replenishment study report.

12. The EMGSM-2020 was formulated by the Ministry of Environment, Forest and Climate Change, Government of India. The Ministry had earlier formulated the SSMMG-2016 which focuses on the management of sand mining in the country. However, while observing in the EMGSM-2020 that apart from management and systematic mining practices, there is an urgent need to have guidelines for effective enforcement of regulatory provisions and their monitoring, the rampant and illegal mining, transportation and storage of minerals were noted with concern. The guidelines focus on the effective monitoring of sand mining from identification of sand mineral sources, its dispatch and end-use by consumers and the general public. It was felt necessary to identify the minimum requirements across all geographical regions to have a uniform protocol for monitoring and enforcement of regulatory provision prescribed for sustainable sand and gravel mining.

13. After noting various directions issued by the NGT and the Supreme Court from time to time, the EMGSM-2020 narrates the necessity of complying with the directions of the NGT. Though several requirements for monitoring and enforcement are mentioned, however, certain important requirements are extracted below:-

“ii) The mining lease auctioned by State government as per their Minor Mineral Concession Rules are granted of Letter of Intent (LoI), but it has been observed that

many of the sites are not suitable w.r.t environmental aspects. In most of the cases, the unplanned grant of mining lease leads to formation of cluster and/or contiguous cluster of small mining leases which sometimes is difficult to regulate and monitor. In order to address such issues, more emphasis is required on the preparation of District Survey Report and its format for reporting.

iii) Mining Plan is an important document to assist the mine owner to operate the mine in a scientific manner. States have their own format for preparation of mining plan and it is observed that recording of the initial level of mining lease at shorter interval say 25m X 25 m grid interval is not present.

iv) There is no practice for regular replenishment study to ascertain the rate of depositing, plan and section needs to be prepared based on the restrictions provided in letter of intent and provisions of Sustainable Sand Mining Management Guidelines 2016.

v) Environmental Clearance is a process wherein the regulatory authorities after considering the potential environment impact of mining clearance is granted with a set of specific & standard conditions to carry out mining operations, but often it is observed that letter of intent is granted for a location which has less potential for mining and not feasible for environment-friendly mining. This leads to an unnecessary financial burden on the

mine owners and litigations. Thus, Lol should be preferably granted for those locations which have the least possibility of an impact on the environment and nearby habitation.

vi) It is the responsibility of the mine owner to obtain all the statutory clearance and comply with the conditions stipulated in the clearance letter. Mining should be carried out within the mining lease area as per approved mining plan or mining plan concurred by other regulatory authorities.

.....

viii) The river reaches with sand provide the resource and thus it is necessary to ascertain the rate of replenishment of the mineral. Regular replenishment study needs to be carried out to keep a balance between deposition and extraction. This document provides the procedure to be followed for conducting replenishment study.

14. The EMGSM-2020 highlights that preparation of the DSR is a very important step and that sustainable sand mining in any part of the country would depend on the quality of DSR. The DSR is required to be prepared under the SSMMG-2016. The guidelines emphasize detailed procedure to be followed for the purpose of identification of areas of aggradation/deposition where mining can be allowed and identification of areas of erosion and proximity to infrastructural structures and installation where mining should be prohibited. Calculation of annual rate of replenishment, allowing time for replenishment after mining, identification of ways of scientific and systematic mining; identifying measures for protection of environment and ecology and

determining measures for protection of bank erosion, bench mark (BM) with respect to Mean Sea Level (MSL) should be made essential in mining channel reaches (MCR) below which no mining would be allowed. The judgment of the NGT of 8.12.2017 in the matter of **Anjani Kumar vs. State of U.P. & Ors.**¹¹ is referred in the guidelines in this regard, in which judgment/order the following observation was made:

“It states that the main object of preparation of District Survey Report is to ensure identification of areas of aggradation/deposition where mining can be allowed and identification of areas of erosion and proximity to infrastructural structures and installation where mining should be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining area. Thus, the environmental protection requires a strictly regulated mining in terms of area, quantity as well as most importantly replenishment thereof.”

Then, inter alia, the following order/direction was passed:

“The data collection and declared for preparation of DSR shall take precedence over other data and would form the foundation for providing mining lease in terms of Appendix- x to the Notification dated 15th January 2016 must be prepared by the statutory authority stated therein i.e. DEIAA prior to awarding of permits for carrying on mining activity in any part of the State of UP.”

(emphasis supplied)

15. Considering the importance of DSR, for purpose of preparation of comprehensive DSR for sand mining, certain guidelines were formulated, which are encapsulated below :-

(a) District Survey Report for sand mining shall be prepared before the auction/e-auction/grant of the mining lease/Letter of Intent (LoI) by Mining department or department dealing the mining activity in respective states.

(b) The first step is to develop the inventory of the River Bed Material and Other sand sources in the District. In order to make the inventory of River Bed Material, a detailed survey of the district needs to be carried out, to identify the source of River Bed Material and alternative source of sand (M-Sand). The source will include rivers, de-siltation of reservoir/dams, Patta lands/Khatedari Land, M-sand etc. It was proposed that for preparation of district survey report, the auditing of rivers needs to be carried out.

(c) District Survey Report is to be prepared in such a way that it not only identifies the mineral-bearing area but also define the mining and no mining zones considering various environmental and social factors.

(d) Identification of the source of Sand & M-Sand. The sources may be from Rivers, Lakes, Ponds, Dams, De-silting locations, Patta land/Khatedari lands.

(e) Defining the sources of Sand/M-Sand in the district is the next step for identification of the potential area of deposition/aggradation wherein mining lease could be granted. Detailed survey needs to be carried out for quantification of minerals. The purpose of mining in the river bed is for channelization of rivers so as to avoid the possibility of flooding and to maintain the flow of the rivers. For this, the entire river stretch needs to be surveyed and original ground level (OGL) to be recorded and area of aggradation/deposition needs to be ascertained by comparing the level difference between the outside riverbed OGL and water level.

(f) The permanent boundary pillars need to be erected after identification of an area of aggradation and deposition outside the bank of the river at a safe location for future surveying. The distance between boundary pillars on each side of the bank shall not be more than 100 meters.

(g) Identifying the mining and no mining zone shall follow with defining the area of sensitivity by ascertaining the distance of the mining area from the protected area, forest, bridges, important structures, habitation etc. and based on the sensitivity the area needs to be defined in sensitive and non-sensitive area.

(h) Demand and supply of the Riverbed Material through market survey needs to be carried out. In addition to this future demand for the next 5 years also needs to be considered.

(i) It is suggested that as far as possible the sensitive areas should be avoided for mining, unless local safety condition arises. Such deviation shall be temporary & shall not be a permanent feature.

(j) The final area selected for the mining should be then divided into mining lease as per the requirement of State Government. It is suggested the mining lease area should be so selected as to cover the entire deposition area. Dividing a large area of deposition/aggradation into smaller mining leases should be avoided as it leads to loss of mineral and indirectly promote illegal mining.

(k) Cluster situation shall be examined. A cluster is formed when one mining lease of homogenous mineral is within 500 meters of the other mining lease. In order to reduce the cluster formation mining lease size should be defined in such a way that distance between any two clusters preferably should not be less than 2.5 Km. Mining lease should be defined in such a way that the total area of the mining leases in a cluster should not be more than 10 Ha.

(l) The number of a contiguous cluster needs to be ascertained. Contiguous cluster is formed when one cluster is at a distance of 2.5 Km from the other cluster.

(m) The mining outside the riverbed on Patta land/Khatedari land be granted when there is possibility of replenishment of material. In case, there is no replenishment then mining lease

shall only be granted when there is no riverbed mining possibility within 5 KM of the Patta land/Khatedari land. For government projects, mining could be allowed on Patta land/Khatedari land but the mining should only be done by the Government agency and material should not be used for sale in the open market. Cluster situation as mentioned in para k above is also applicable for the mining in Patta land/Khatedari land.

(n) The State Government should define the transportation route from the mining lease considering the maximum production from the mines as at this stage the size of mining leases, their location, the quantity of mineral that can be mined safely etc. is available with the State Government. It is suggested that the transportation route should be selected in such a way that the movement of trucks/tippers/tractors from the villages having habitation should be avoided. The transportation route so selected should be verified by the State Government for its carrying capacity.

(o) Potential site for mining having its impact on the forest, protected area, habitation, bridges etc, shall be avoided. For this, a sub-divisional committee may be formed which after the site visit shall decide its suitability for mining.

(p) Public consultation-The comments of the various stakeholders may be sought on the list of mining lease to be auctioned.

The State Government shall give an advertisement in the local and national newspaper for seeking comments of the general public on the list of mining lease included in the DSR.

16. Para 4.2 of the EMGSM-2020 relates to grant of Letter of Intent to those mining leases which are falling in potential mining zones. It reads as under :-

“The State Government shall issue letter of intent as per procedure laid down in their Minor Mineral Concession Rules with due consideration of final district survey report. The State Government shall ensure that all the letter of intent shall have complete details of the mining lease including geo- coordinate of the corner points, the involvement of forest land, distance from the forest land, distance from the protected area, distance from other sites of archaeological importance, details of the cluster situation etc. The demarcation of the boundaries of LoI/Lease area shall be placed in public domain along with LoI/lease deed details.

The LOI should not be granted for mining area falling on both riverbed and outside riverbed. Therefore, in the same lease, both types of area should not be included.

The authority responsible for grant of lease for sand mining shall ensure that annual audit of the sand mining process, production and compliance of the imposed conditions by regulatory authority (Environmental clearance or mine

plan) shall be one of the essential condition of the lease agreement. The annual audit report shall be submitted to the district administration, which shall be put in public domain through the district website. Any deviation observed shall be appropriately and in accordance with applicable law shall be dealt by the concerned authority and corrective measures shall also be taken to restoration of ecological/environmental damage, if observed.”

17. Para 4.3 deals with preparation of mining plan which reads as follows:-

“The preparation of Mining Plan is also very important. The mining plan should include the original ground level recorded at an interval not more than 10M x 10M along & across the length of the river. In addition to this levels, outside the mining lease and bank of the river up to meters needs to be recorded. In the mining plan, there should be 3 plates for each year production & development planning (pre-monsoon, monsoon and post-monsoon). The time period of monsoon should be defined in the DSR. At the time of review of the mining plan, the details of the replenishment study conducted for all the years needs to be included in the mining plan. The Mining Plan should include the certificate from PCCF on forest land, distance from the protected area, past production details for mining leases seeking expansion.”

18. The considerations that are required to be kept in mind for sand/gravel

mining for approving mining plan have been specified, relevant provisions of which, for purpose of this case are mentioned below:-

(i) Parts of the river reach that experience deposition or aggradation shall be identified. The Leaseholder/ Environmental Clearance holder may be allowed to extract the sand and gravel deposit in these locations to manage aggradation problem.

(ii) The distance between sites for sand and gravel mining shall depend on the replenishment rate of the river. Sediment rating curve for the potential sites shall be developed and checked against the extracted volumes of sand and gravel.

(iii) Sand and gravel may be extracted across the entire active channel during the dry season.

(iv) Abandoned stream channels on the terrace and inactive floodplains be preferred rather than active channels and their deltas and flood plains. Stream should not be diverted to form inactive channel.

(v) Layers of sand and gravel which could be removed from the river bed shall depend on the width of the river and replenishment rate of the river.

(vi) The sediment sampling should include the bed material and bed material load before, during and after the extraction period. Develop a sediment rating curve at the upstream end of the potential reach using the surveyed cross-section. Using the historical or gauged flow rating curve, determine the suitable period of

high flow that can replenish the extracted volume. Calculate the extraction volume based on the sediment rating curve and high flow period after determining the allowable mining depth.

(vii) Mining depth should be restricted to 3 meters and distance from the bank should be 1/4th of river width and should not be less than 7.5 meters.

19. Para 5 of the EMGSM-2020 provides for replenishment study, which reads as follows:-

“5.0 Replenishment Study

The need for replenishment study for river bed sand is required in order to nullify the adverse impacts arising due to excessing sand extraction. Mining within or near riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, in-stream roughness of the bed, flow velocity, discharge capacity, sediment transport capacity, turbidity, temperature etc. Alteration or modification of the above attributes may cause an impact on the ecological equilibrium of the riverine regime, disturbance in channel configuration and flow-paths. This may also cause an adverse impact on in-stream biota and riparian habitats. It is assumed that the riparian habitat disturbance is minimum if the replenishment is equal to excavation for a given stretch. Therefore, to minimize the adverse impact arising out of sand

mining in a given river stretch, it is imperative to have a study of replenishment of material during the defined period.

5.1 Generic Structure of Replenishment Study

Initially replenishment study requires four surveys. The first survey needs to be carried out in the month of April for recording the level of mining lease before the monsoon. The second survey is at the time of closing of mines for monsoon season. This survey will provide the quantity of the material excavated before the offset of monsoon. The third survey needs to be carried out after the monsoon to know the quantum of material deposited/replenished in the mining lease. The fourth survey at the end of March to know the quantity of material excavated during the financial year. For the subsequent years, there will be a requirement of only three surveys. The results of year-wise surveys help the state government to establish the replenishment rate of the river. Based on the replenishment rate future auction may be planned.

The replenishment period may vary on nature of the channel and season of deposition arising due to variation in the flow. Such period and season may vary on the geographical and precipitation characteristic of the region and requires to be defined by the local agencies preferable with the help of the Central Water Commission and Indian Meteorological Department. The excavation will, therefore, be limited to estimated replenishment

estimated with consideration of other regulatory provisions.”
(emphasis supplied)

20. Paragraph 6 of the EMGSM-2020 provides for enforcement. The mining operation and post environment clearance monitoring are being below for purpose of this case :-

“6.1 Mining Operation:

The mining operations should be strictly carried out in accordance with the approved mining plan and after complying with all the conditions stipulated in Environmental & Other Statutory Clearance. Mine owner shall follow the operational procedure (for sale, dispatch, storage, reserve reconciliation and transportation) as may be defined by the concerned state government in its monitoring guidelines. Mine owner should comply with the recommendation and suggestion made by the High Power Committee as applicable.

6.2 Post Environment Clearance Monitoring:

It's the responsibility of the EC Holder to comply with the Environmental Clearance conditions and upload the six-monthly EC compliance report on the website of the Ministry. For the category, 'A' mines (>100 Ha individual & cluster) Regional Office of the MoEF&CC are entrusted to carry out EC Monitoring and for the Category 'B' Mines by SEIAA. The monitoring shall be carried out as per the procedure/schedule suggested by MoEF&CC from time to time. MOEF&CC vide its

notification S.O. 637(E) dated 28.02.2014 has delegated the power to State/Union Territory Environmental Impact Assessment Authority to issue show cause notice to project proponent in case of violation of Conditions of Environmental Clearance issued by the said authority and to issue direction for keeping the said EC in abeyance or withdrawing it. Thus, for category 'B' (0 to 100 Ha) projects SEIAAs are responsible for EC monitoring.

21. Paragraph 8, and particularly Paragraph 8.1 deal with the general approach to sustainable sand mining and prerequisite for starting sand mining operation and are as follows:-

“8.0 General Approach to Sustainable Sand Mining

8.1 Pre-requisite for starting sand mining operation

i) All district to prepare a comprehensive mining plan for the district as per the provision of District Survey Report. These reports shall be put on the website of District Administration. No mining shall be allowed in the area which has not been identified in the comprehensive mining plan of the District.

ii) Replenishment study should be conducted on regular basis.

iii) All potential rivers mining zone/area shall be identified and put for auction with proper geo-tagged details by the auctioning authority concerned.

iv) The latitude and longitude of each mining lease shall be clearly mentioned in Letter of Intent issued to the potential mine lease. Such information shall be provided on the website of the district administration.

v) The provision of these guidelines shall be considered while identifying the potential stretches /locations and boundaries of the leases for the minable area.

vi) The LoI holder shall seek Environmental Clearance as per the provision of EIA Notification, and the regulatory authority shall ensure that the provision suggested in “Sustainable Sand Mining & Management 2016” and in this documents, as applicable are part of the clearance conditions.

vii) There shall be no river bed mining operation allowed in monsoon period. The period as defined by IMD Nagpur for each state shall be adhered with. viii) The monitoring infrastructures including weighbridge and adequate fencing of the lease area, CCTV, Transport permits, etc, as suggested in this document shall be ensured in order to reduce unrecorded dispatch.

ix) Regular monitoring of mined minerals and its transportation and storage shall be ensured and all information shall be captured at centralized database so that easy tracking of illegal material can be done.

x) Annual audit of each mining lease shall be carried out wherein three independent member of repute, nominated by District

administration shall also participate.”

22. Thus, perusal of the EMGSM-2020 guidelines reflects that the Central Government has made provisions for undertaking detailed exercise by taking into account several environmental factors with regard to enforcement and monitoring of sand mining.

23. The concerns of the Central Government as reflected in the aforesaid guidelines also find echo in Rules 10, 17 of Chapter II, Rule 23 of Chapter IV, Rules 35, 36, 37, 38, 41, 42, 45 of Chapter V and other provisions of Rules, 2021. It is pertinent to mention here that the State Government also made the U.P. Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2018.

24. It is pertinent to mention here that a defining moment for environmentally sustainable and socially responsible mining of sand and gravel occurred when the Supreme Court expressed its opinion in this regard in the case of **Deepak Kumar & Ors. vs. State of Haryana & Ors.**¹² wherein a direction was issued to the State Governments to follow the guidelines issued by the Central Government by framing appropriate rules. Pursuant to the order in Deepak Kumar, after extended deliberations and study, a draft Notification¹³ was issued by the Ministry of Environment, Forest and Climate Change on 15.1.2016 bearing S.O. 141(E) under the provision of sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986. This draft Notification of 2016 was for the express purpose for making certain amendments to the Environmental Impact Assessment Notification, 2006 issued vide

number S.O. 1533(E) dated 14.9.2006 which was published under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 vide number S.O. 2588(E) dated 22.9.2015. The aforesaid Notification was also issued in compliance of certain observations made by the National Green Tribunal vide its order dated 13.1.2015 in the matter of sand mining wherein a direction was issued for making a policy on environmental clearance for mining leases in cluster for minor mineral.

25. It is important to note that in the case of Deepak Kumar (supra), a Committee was directed by the Supreme Court to examine whether there had been an attempt to flout the aforesaid Notification dated 14.9.2006 by breaking the homogeneous area into pieces of less than 5 hectares, and that whether the activities going on in that area had any adverse environmental impact.

The Supreme Court recorded a finding that it was without conducting any study on the possible environmental impact on/in the river beds and elsewhere, the auction notices had been issued. The Supreme Court was of the considered view that when faced with a situation where extraction of alluvial material within or near a river bed has an impact on the river's physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it was not an answer to say that the extraction (of sand etc.) was in blocks of less than 5 hectares, separated by 1 km., because their collective impact may be significant, hence necessity of a proper environmental assessment plan.

26. In the case of **Deepak Kumar (supra)**, the issues and recommendations

made by the Ministry were considered which provided for, inter alia, that the States and Union Territories would see that mining of minor minerals is subjected to simpler but strict regulatory regime after taking into account the various factors. For evolving model guidelines, draft Model Guidelines regarding Environmental Aspect of Quarrying and of Minor Minerals was sent by a communication from the Ministry of Mines, calling for inputs. Accordingly, directions were issued to the Central and States Governments regarding compliance to the recommendations made by the Ministry in its report of March 2010 and the Model Guidelines framed by the Ministry of Mines.

27. By the Notification of 2016, an amendment was sought to be incorporated in the Notification of 2006 regarding preparation of DSR for sand mining or river bed mining and mining of other minor minerals. An elaborate procedure prescribed for preparation of DSR for sand mining or river bed mining and mining of other minor minerals\ has been given in Appendix X thereof.

Needless to state that the Notification of 2016 issued by the Ministry is binding on the State Government.

28. In view of the aforesaid background, after a declaration has been made by the State Government under sub-rule (1) of Rule 23 of the Rules, 2021, the District Officer is mandatorily required to get the area or areas so declared evaluated for quality and quantity of minerals for fixing the minimum bid or offer by the Director, Geology and Mining, Uttar Pradesh or by an officer authorised by him before the date fixed for e-tender/e-auction/e tender-cum-e auction. Such an

evaluation is mandatory and has to be done after taking into account the various factors mentioned in Rule 10 of the Rules, 2021. The guidelines in the EMGSM-2020 for preparation of DSR are also factors for such evaluation.

29. As stated above, pre- & post-monsoon replenishment studies are mandated in the EMGSM-2020 guidelines and the same are an extension of the survey, demarcation and evaluation of the area or areas declared under Rule 23. The purpose of the survey and the evaluation that are requisites under the provisions of Chapter II and Chapter IV of the Rules, 2021 are to inform the prospective bidders at the auction/tender mining leases for minor minerals (sand and morrum in this case) so that the prospective bidders are well aware as to the quantity and quality of the minerals available in the declared area before they place their bids. The State Government cannot put the onus on the prospective bidders by stating that it is the bidders who should undertake an inspection of the area and satisfy themselves as to the quality and quantity of the minerals available at the area proposed to be leased, when the Rules, 2021 and the EMGSM-2020 guidelines require the State Government to undertake that exercise.

30. The guidelines contained in the **SSMMG-2016** and in the **EMGSM-2020** have been framed taking into account the judgments of the Supreme Court, the High Courts and the NGT. These guidelines appear to have been issued by the Central Government in purported exercise of power to issue directions under Section 20-A of the Mines and Minerals (Regulation and Development) Act, 1957. The importance of the survey/evaluation by the State authorities in the interest of the

ecology and environment in respect of the areas proposed to be leased under the Rules, 2021 cannot be over-emphasized. It is the only available and prescribed manner by which the State Government can make a realistic assessment as to the extent to which mining can be permitted in the leased area after taking into account the fragility of the ecology, the flora and fauna and the rivers, as well as the impact on the environment.

31. As mentioned above, both a pre-monsoon survey and a post-monsoon survey were got done by the petitioner as per the instructions received from the State authorities. Without getting the replenishment studies done, the petitioner could not re-commence mining operations. As a matter of fact, the petitioner had submitted a second post-monsoon replenishment study report on 8.1.2024 that reflected replenished minerals on the said lease as 16380 cubic meters. It was also stated in that replenishment study report that this mineral quantity may increase in future once water recedes down (sic). The State-respondents, in their counter affidavit, have sought to dismiss a replenishment study report by a baseless statement, in their counter affidavit, that analysis and conclusion of the replenishment study report dated 29.10.2023 that no mining activity can be done at all, is unworthy of being relied upon.

32. It is is not the case of the respondents that the replenishment studies that were got done by the petitioner were by an agency not accredited to NAPET/QCI, or that the agency was not empanelled as an Exploration Agency by the Department, or that the replenishment studies were made contrary to guidelines. It has also not been stated that the DSR/ evaluation for the leased

area was available for being accessed by the petitioner. As a matter of fact the EMGSM-2020 guidelines reflect that often it is observed that letter of intent is granted for a location which has less potential for mining and not feasible for environment-friendly mining; that this leads to unnecessary financial burden on the mine owners and litigations; that thus, letter of intent should be preferably granted for those locations which have the least possibility of an impact on the environment and nearby habitation.

33. In the counter affidavit, the respondents have also stated that the petitioner could have surrendered the lease under the provisions of Rule 30 of the Rules, 2021 which it did not do. In our opinion, such objections and defences cannot be taken by the respondents to gloss over their inability in producing any evidence before this Court that a survey and evaluation was undertaken in respect of the area granted for mining lease to the petitioner and a DSR relating to the area of mining lease to the petitioner was made by the respondents in compliance of the Notification of 2016/SSMMG-2016 / EMGSM-2020 which DSR was accessible to the petitioner prior to submitting its bid.

34. Moreover, the notice of the Officer Incharge, Mines dated 2.6.2023 that is enclosed as Annexure No. 6 to the writ petition gives a categorical direction to the petitioner to get the requisite replenishment studies done and submit the same, failing which legal proceedings would be initiated against the petitioner. It is not demonstrated by the respondents that the petitioner did not intend to work the mines under the mining lease.

35. In paragraph 39 of the writ petition, the petitioner has stated that without the replenishment study report, no

mining can be conducted in the mining area after monsoon and, moreover, the first post-monsoon replenishment study report clearly showed that the mining area was submerged.

Further, in paragraph 40 of the writ petition, it has been stated that the revisional authority as well as the District Magistrate had failed to consider that the quantity of mineral to be excavated during the period of lease is fixed by the State Government and the petitioner has no control over the quantity and, therefore, it is the State Government which fixes the quality and quantity to be excavated by the lease-holder during the period of lease.

36. In reply to the aforesaid paragraphs of the writ petitions, the respondents have referred to the statutory provisions referred elsewhere in the counter affidavit and the conditions of lease-deed as well as the obligation of the lease-holder to perform his part of the contract. It has been stated that the petitioner cannot change or alter the terms of the lease-deed according to his own convenience thereby causing loss to the State exchequer.

Moreover, this Court finds that in the reply, references have only been made to the Rule 29 of the Rules, 1963 and to Rule 30 of the Rules, 2021. Rule 29 of the Rules, 1963 deals with the execution of the lease-deed, while Section 30 of the Rules, 2021 deals with surrender of the mining lease. We fail to understand how this meets the submissions made on behalf of the petitioner. The respondents allege that the petitioner is trying to “wriggle out of a contract at his own mood swings, inasmuch as according to the own replenishment report to the petitioner at one place he says that no amount of sand is available for

mining purposes and on the other hand in the second report estimates 16380 cubic meter is available for mining purposes”. Such a statement, in our opinion, is misplaced, uncalled for and without proper understanding of the EMGSM-2020.

37. In paragraph 44 of the writ petition, it is stated as follows:-

“44. That, in the above-mentioned guidelines it was clearly stated that the object and purpose of DSR was to identify a minable area and thereby assessment of the minable quantity and quality of the minerals, which was supposed to be ascertained prior to the invitation to offer (E-auction/E-tender /Advertisement) which was not acted in compliance by the respondent authority.”

38. In reply thereto, it has been stated in the counter affidavit as follows:-

“32. That the averments made in paragraph no. 43, 44, 45, 46, 47, 48, 49 and 50 of the writ petition are legal in nature and hence need no specific reply however it is humbly submitted that the said cases as cited by the petitioner are not applicable in the facts and circumstances of the present case and shall be duly distinguished at the time of hearing of the present writ petition. The principles laid down in the writ petition are based on misappreciation of facts and the legal principles and do not provide for and shall suitably be distinguished at the time of hearing of the present writ petition.”

39. It is pertinent to mention here that it has not been stated in the counter affidavit filed by the respondents that any DSR was prepared after due survey and evaluation of the area sought to be auctioned. No DSR has been produced. Therefore, we cannot but conclude that the State Government has failed to demonstrate preparation of the DSR in due compliance of the Notification of 2016/SSMMG-2016 and EMGSM-2020 guidelines. Moreover, the respondents have openly rejected the first post-monsoon replenishment study report submitted by the petitioner without ascribing any cogent reason for such rejection.

40. The object of preparation of DSR is to ensure identification of areas of aggradation/deposition where mining can be allowed; identification of areas of erosion and proximity to infrastructural structures and installation where mining should be prohibited; and calculation of annual rate of replenishment and allowing time for replenishment after mining in the area. Thus, environmental protection requires strictly regulated mining in terms of area, quantity of mineral as well as, and very importantly, replenishment thereof.

41. The mining lease was granted in the land described in Part-I of the Schedule to the lease deed, in Village-Bilaspur Kachhar, Plot No.58 area 8.275 hectares for which the security amount was deposited. The boundaries of Plot No.58 are shown as follows:-

North - Remaining part of Plot No.58, river Yamuna

South - Border of Plot No.58 thereafter river Yamuna in village -Bichhavali

East - Remaining part of Plot No.58, thereafter agricultural land of Plot Nos.42 to 56 and Plot No.57

West - Remaining part of Plot No.58, river Yamuna

Though the map has not been enclosed alongwith the photocopy of the mining lease, it appears from the boundaries that mining area under the lease granted to the petitioner may include the river bed of the Yamuna river.

Given the EMGSM-2020 guidelines, it is not only the availability of mineral after its replenishment as would be reflected in the post monsoon replenishment study, but also the fact that at which part of the river bed/bank, has the replenishment occurred.

42. Thus, the annual audit envisaged under the aforesaid EMGSM-2020 guidelines and the replenishment study, both pre-monsoon and post-monsoon, assume great importance keeping in view the environment and ecology of the mining area. Mining within or near river-beds has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, in-stream roughness of the bed, flow velocity, discharge capacity, sediment transport capacity, turbidity, temperature etc. Alteration or modification of the above attributes may cause an impact on the ecological equilibrium of the riverine regime, disturbance in channel configuration and flow-paths. This may also cause an adverse impact on in-stream biota and riparian habitats. It is assumed that the riparian habitat disturbance is

minimum if the replenishment is equal to excavation for a given stretch. Therefore, the EMGSM-2020 guidelines recommends that it is imperative to have a study of replenishment of material during the defined period to minimize the adverse impact arising out of sand mining in a given river stretch. The EMGSM-2020 guidelines provides that the excavation will be limited to estimated replenishment estimated with consideration of other regulatory provisions.

43. Therefore, the fact that the second post-monsoon replenishment study dated 8.1.2024 reflects replenishment of 16380 cubic meters of sand available for mining purpose has to be read in light of the location where this deposit/replenishment has taken place in the given river stretch. Then, it has to be ascertained in the light of EMGSM-2020, whether such replenishment is minable.

44. The respondents seem to be quite oblivious of the importance of proper replenishment, the mining plan and the DSR when they seek to raise demands and make claims without addressing the ecological concerns that are reflected in the EMGSM-2020 guidelines that also address the aspect of sustainable mining.

45. The respondents have sought to demonstrate the excavation of 85810 cubic meters of sand between January 2023 to June 2023 made by the petitioner during mining operations in the mining lease area only to seek to contend that the petitioner is short by 24247 cubic meters of the total mining of 110057 cubic meters permissible per annum under the terms of the lease which can be made good by the petitioner once the water level of the recedes down. However, such an assertion is made on the

presumption that adequate replenishment will take place in the area, without due regard to the ecological aspects that require consideration during mining operations and thereafter as reflected in the EMGSM-2020 guidelines.

46. In case no adequate replenishment takes place even after water of river recedes down, then any advance payment of installments by the petitioner would result in serious loss to it which eventuality is neither contemplated in the lease deed nor in the Rules, 2021. Therefore the contention sought to be made that payment of installment should be made by the petitioner and eMM-11 forms be uploaded to the extent of carried forward quantity of minerals which could not have been mined in the preceding months till March 2024, is fallacious.

47. There appears to be an effort to extract revenue from mining operations for benefit of the State exchequer without empathy and consideration of ecology, and sustainable mining, which aspects have to be balanced with the imperatives of development and earnings for the State exchequer.

48. No doubt, there is a contract, the lease-deed, entered into between the respondents and the petitioner, the terms of which bind them both. However, the terms of the lease-deed cannot override the aforesaid Notification of 2016, the SSMMG-2016, EMGSM-2020 guidelines and the Act and Rules.

49. It is pertinent to mention here that in the counter affidavit, the respondents harp on the availability of 16380 cubic meter of replenished sand and that the second replenishment study report

reflects that after water recedes in the post-monsoon season, the mineral quantity may increase in future once the water recedes down.

Apart from the fact that this statement in the counter affidavit is based upon without fully appreciating the opinion expressed in the post monsoon replenishment study conducted on 8.1.2024 which also stated that no significant replenishment of RBM was found as no turbulent flooding was observed in that year, the post monsoon replenishment study on 29.10.2023 reflects that the entire leased area was submerged under active stream of river Yamuna and a very small patch of surface was seen which belonged to the replenished area. It was highly recommended that the lease holder shall await receding of water for further survey. Whereafter the leased area could be re-investigated for DGPS data in order to establish replenished sand minerals. It was, therefore, stated that mining activity was, therefore, not feasible in compliance of the recommendation of SSMMG-2016.

50. Due and timely payment of installments under the terms of a mining lease is based on winning existing minerals for which the lease is granted which corresponds to the quality and quantity contemplated in the DSR and the replenishment studies, particularly, the post-monsoon replenishment study. If the post-monsoon replenishment study does not reflect adequate replenishment in the manner and to the extent envisaged in the EMGSM-2020, no mining can be permitted in the area pertaining to the mining lease. As a corollary, for want of adequate replenishment of the mineral or non-availability of mineral in the requisite quantity in various other parts of the area

for which lease has been granted, neither can any mining activity be permitted nor, consequently, can any claim for installments be sustained unless there is actual replenishment or availability. It is for these circumstances that preparation of proper DSR and conducting audit assumes importance.

51. In the aforesaid background, we find that the case of the petitioner has merit. The petitioner could not have been forced to mine the relatively meagre amount of 16380 cubic meters of replenished sand that was reflected in the last replenishment study report submitted by the petitioner without ascertaining whether the replenishment that had taken place in the stretch of land/river was such that mining of the same could be permitted in the backdrop of sustainable mining. There is no DSR shown to have been prepared.

52. As far as filing of Writ-C No.9186 of 2022 by the petitioner before the Lucknow Bench of this Court is concerned, the same is for a different cause of action. However, the petitioner's choosing both the Lucknow Bench of this Court as well as at Allahabad to file different petitions, is not proper. Be that as it may.

53. For the reasons aforesaid, the impugned orders dated 18.4.2024, 27.2.2024 and 19.2.2024 cannot be sustained and are hereby quashed.

54. However, since, by means of an affidavit filed alongwith a stay application on 9.12.2024, we are informed that steps have been taken by the State Government for fresh auction of the mining area that was granted to the petitioner, we

direct that the petitioner is not liable to deposit any installment after the stoppage of mining operations for the period from 1.7.2023 onwards. If any amount has been deposited/recovered/confiscated by/against the petitioner, the same shall be refunded within a period of one month from today alongwith simple interest @ 9% per annum calculated from the date of such deposit/recovery/confiscation till the actual payment.

55. Subject to the aforesaid observations, this writ petition is **allowed**.

56. However, before parting, we deem it fit to direct the respondents to ensure preparation of DSR in respect of every area sought to be auctioned for mining of sand/gravel/morrum in compliance of the Notification of 2006, as amended by the Notification of 2016, the SSMMG-2016 and EMGSM-2020.

(2025) 3 ILRA 935
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.03.2025

BEFORE

THE HON'BLE MANOJ KUMAR GUPTA, J.
THE HON'BLE ANISH KUMAR GUPTA, J.

Writ C No. 27598 of 2020

Kanyawati	...Petitioner
Versus	
State of U.P. & Ors.	...Respondents

Counsel for the Petitioner:
 Rajendra Prasad Tiwari, Vimlesh KUMar

Counsel for the Respondents:
 C.S.C.

A. Land Law – Compensation - Right to Property though, is not a Fundamental Right but a Constitutional Right, which has been recognized at par with the human rights, which are inalienable. Thus, no person can be deprived of his property except in accordance with law and in case where the land of a citizen has been acquired by the St. Authorities without proper acquisition, the same amounts to an action without Authority of law. Thus, a person whose property has been utilized without authority of law, is entitled for due compensation in accordance with the provisions of law applicable on the date of such utilization of the property by the St.. (Para 17)

B. Delay and latches cannot be raised by a continuing cause of action or if the circumstances shocks the judicial conscious of the court. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice. (Para 18)

In the instant case it is apparent that the land of the petitioner to the extent of 0.033 hectares had been utilized by the St. Authorities without authority of law and without there being any acquisition of the land in accordance with law. Thus, the petitioner is entitled for the compensation, which is required to be determined in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. (Para 19)

Since the land of the petitioner been utilized without any proper acquisition, therefore, Special Land Acquisition Officer cannot be directed to quantify the compensation or recommend its payment. In view thereof, matter is remitted back to the District Level Committee to determine the compensation. (Para 20)

Writ petition allowed. (E-4)

Precedent followed:

1. Hindustan Petroleum Corpn. Ltd. Vs Darius Shapur Chennai, (2005) 7 SCC 627 (Para 10)

2. N. Padmamma Vs S. Ramakrishna Reddy, (2008) 15 SCC 517 (Para 11)

3. Delhi Airtch Services (P) Ltd. Vs St. of U.P., (2011) 9 SCC 354 (Para 12)

4. Jilubhai Nanbhai Khachar Vs St. of Guj., 1995 Supp (1) SCC 596 (Para 13)

5. Vidya Devi Vs St. of H.P., (2020) 2 SCC 569 (Para 14)

6. St. of Har. Vs Mukesh Kumar, (2011) 10 SCC 404 (Para 15)

7. Sukh Dutt Ratra Vs St. of H.P., (2022) 7 SCC 508 (Para 16)

(Delivered by Hon'ble Anish Kumar Gupta, J.)

1. Heard Sri Vimlesh Kumar and Sri Shiv Raj Singh, learned counsel for the petitioner and Sri Rajiv Gupta, learned Additional Chief Standing Counsel for the respondents.

2. The instant petition has been filed by the petitioner being aggrieved by an order dated 24.02.2020 passed by the District Level Committee constituted under a Government Order dated 12.05.2016, pursuant to the directions issued by this Court vide order dated 19.09.2019 passed in Writ Petition (C) No. 29915 of 2019 (Smt. Kanyavati vs. State of U.P.).

3. The case of the petitioner is that she is the owner of the land situated at Khasra No. 53 area 0.0690 hectare situated at Village- Akha, Pargana- Ballia, Tehsil- Anwala, District- Bareilly, which she had purchased by way of sale deed from Fate Singh (However, from the perusal of the sale deed dated 02.12.2009 annexed as Annexure RA-1 to the rejoinder, it is apparent that the petitioner had purchased the land from Smt. Urmila Devi). On the

basis of the aforesaid sale deed, her name was mutated in the revenue records as bhumidhar with transferable rights. On the south of the aforesaid plot, was a chak road. The case of the petitioner is that as per the revenue records the width of the said road was two and a half metre (8.25 feet) and the road was already constructed thereon. Subsequent thereto, the widening of the road was done in which according to the petitioner her land, to the extent of 0.033 hectare, has been utilized by the PWD without payment of any compensation.

4. An RTI application was filed before Public Information Officer/Executive Officer, PWD Division- Bareilly seeking information with regard to any acquisition proceedings for widening of the road. In reply thereto, it was informed to the petitioner that there is no record available with regard to acquisition of the land as this Division was constituted 7-8 years ago. Thereupon, she kept on sending the representations claiming therein that in the revenue record the width of the chak road was 8.25 feet whereas the road was constructed on the width of 3 metre. Subsequently, the road has been further widened without acquiring the land or payment of compensation to the land owners and she claimed compensation for her land used for widening of the road. When she did not receive any response from the Authority, she filed a Writ Petition (C) No. 29915 of 2019, which was disposed of with a direction to the District Magistrate- Bareilly to refer the matter to the District Level Committee in terms of the Government Order dated 12.05.2016, for determination of entitlement of compensation of the petitioner herein. In compliance of the aforesaid directions, the matter was referred to the District Level

Committee. Vide order dated 24.02.2020, the District Level Committee has rejected the claim of the petitioner, holding that the road was initially a chak marg on which a 3 metre wide pakka road was constructed about 25-30 years back and on both sides 2.50 metre patri was available. In the year 2012-15, the said road was widened on both sides utilizing 1.25 metre available patri without affecting land of any tenureholder. Since, no land of the petitioner was acquired for purpose of widening of the road, therefore, she is not entitled for any compensation.

5. The claim of the petitioner is that as per revenue record width of chak marg was only 2.5 metre. Therefore, the additional land which has been utilized for construction of the road and widening of the road is bhumidhari land, therefore, the petitioner is entitled for compensation. The State Authorities cannot utilize the land of the petitioner without payment of compensation.

6. Per Contra learned Standing Counsel submits that since three metre wide road was constructed 25-30 years back without any objection from any side, in view thereof the petitioner, who has subsequently purchased the land in question in the year, 2019 cannot claim any compensation. It is further alleged that in the sale deed of the petitioner itself the link road has been shown on the south of the said plot prior to the land purchased by the petitioner. The widening of the road has been done by the PWD on the available patri on both sides of the road, without acquiring any land. Therefore, the petitioner is not entitled for any compensation. Learned Standing Counsel has further relied upon the site plan given

in the sale deed of the petitioner wherein existence of road is categorically stated.

7. Having regard to the submissions of the parties, we have carefully gone through the record of the case. From the perusal of the records it is apparent that initially on the chak road, the pakka road was constructed by Sugar Industry and Cane Development Department around 20 years back, prior to the land purchased by the petitioner herein to the extent of three metres, without acquisition of any land. Subsequent thereto, the said road has been further widened sometimes between 2011 and 2014 by the PWD and it is apparent from the report of Tahsildar dated 05.02.2020, that due to such widening of the road by PWD, sometimes in 2014 the land of the petitioner, to the extent of 0.033 hectares, is affected from the Gata No. 54. Therefore, it is apparent that the aforesaid affected land of the petitioner had been utilized by the PWD without there being any acquisition and without payment of compensation to the petitioner herein or it is further admitted that the petitioner or her predecessors in interest had never consented for utilization of the road.

8. The findings of the report dated 05.02.2020 by Tahsildar- Anwala are as follows:

"तहसीलदार आंवला द्वारा उपलब्ध करायी गयी आख्या दिनांक 05.02.2020 में अंकित किया गया है कि "ग्राम अखा, परगना बल्लिया तहसील आंवला जिला बरेली में स्थित भूमि गाटा संख्या 53 रकबा 0.069 वर्तमान अभिलेख खतौनी खाता संख्या 54 पर कन्यावती पत्नी महीपाल के नाम बतौर संक्रमणीय भूमिधर अंकित है। गाटा सं 53 वर्तमान में चल रही सड़क अखा गैनी मार्ग पर स्थित है। उक्त गाटा

सं के सम्बन्ध में चाही गयी आख्या बिन्दुवार निम्नवत् है-

1. जोत चकबन्दी आकार पत्र 45 व 41 के खाता संख्या पर पटे सिंह पुत्र गुपाल सिंह निवासी ग्राम वारिद हाल निवासी खुदसारी जिला एटा का नाम श्रेणी-1 का भूमिधर अंकित है। प्रार्थिनी कन्यावती पत्नी महीपाल सिंह का नाम आधार वर्ष खतौनी आकार पत्र-45 में अंकित नहीं है। साक्ष्य हेतु सी.एच.-45 का उद्धरण संलग्न है।

2. प्रार्थिनी का नाम आकार पत्र 45 में अंकित नहीं है।

3. कन्यावती पत्नी महीपाल सिंह का नाम अभिलेख खतौनी में सन् फसली 1416 द्वारा बैनामा अंकित है।

4. अखा गैनी मार्ग गन्ना विभाग द्वारा लगभग 20 वर्ष पूर्व बनवायी गयी है।

5. पी०डब्ल्यू०डी० द्वारा उक्त मार्ग का 2014 के आसपास चौडीकरण किया जाना बताया गया है।

6. प्रार्थिनी कन्यावती पत्नी महीपाल के उक्त गाटा संख्या में $3.70 \times 90 = 0.033$ हे० रकबा सड़क में (समाहित) प्रभावित है।"

9. The Right to Property is protected under Article 300A of the Constitution of India. Thus, no person can be deprived of his property without due procedure of law. The land of a person cannot be acquired without payment of due compensation in accordance with law. There is no concept of implied consent for utilizing the land of a citizen without following the due procedure and without payment of compensation. The property of a citizen can be acquired for public purpose on payment of reasonable compensation in accordance with law.

10. In *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai*: (2005) 7 SCC 627, the following observations were made by the Apex Court:

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

11. In *N. Padmamma vs. S. Ramakrishna Reddy* : (2008) 15 SCC 517, the following observations were made by the Apex Court:

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

12. In *Delhi Airtech Services (P) Ltd. v. State of U.P. [Delhi Airtech Services (P) Ltd. v. State of U.P., (2011) 9 SCC 354*, the Apex Court has observed as under:

"30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. "Property must be

secured, else liberty cannot subsist” was the opinion of John Adams. Indeed the view that property itself is the seed-bed which must be conserved if other constitutional values are to flourish, is the consensus among political thinkers and jurists.”

13. In **Jilubhai Nanbhai Khachar v. State of Gujarat : 1995 Supp (1) SCC 596**, the Apex Court has observed as under:

“48. ... In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation.”

14. In **Vidya Devi v. State of H.P.: (2020) 2 SCC 569**, the Apex Court did not accept the concept of oral consent of persons for depriving him/her of his/her valuable rights over the property and it is observed that such utilization of land without payment of lawful consideration is not sanctioned by the constitutional mechanism:

“12.8. The contention of the State that the appellant or her predecessors had “orally” consented to the acquisition is completely baseless. We find complete lack of authority and legal sanction in compulsorily divesting

the appellant of her property by the State.

12.9. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in **Tukaram Kana Joshi v. MIDC [Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491]** wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.”

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

16. In **Sukh Dutt Ratra v. State of H.P., (2022) 7 SCC 508**, the Apex Court has held that in case the land of the citizens have been acquired without following the procedure of law, then it would be deemed acquisition. Thus, the State Authorities are liable to pay compensation to the citizens,

whose land has been utilized without acquisition as the same would have been acquired under the relevant provisions of the applicable law. The following observation of the Apex Court would be relevant to be noted:

"26. In view of the above discussion, in view of this Court's extraordinary jurisdiction under Articles 136 and 142 of the Constitution, the State is hereby directed to treat the subject lands as a deemed acquisition and appropriately disburse compensation to the appellants in the same terms as the order of the Reference Court dated 4-10-2005 in Land Ref. Petition No. 10-LAC/4 of 2004 (and consolidated matters). The respondent State is directed, consequently to ensure that the appropriate Land Acquisition Collector computes the compensation, and disburses it to the appellants, within four months from today. The appellants would also be entitled to consequential benefits of solatium, and interest on all sums payable under law w.e.f. 16-10-2001 (i.e. date of issuance of notification under Section 4 of the Act), till the date of the impugned judgment [Sukh Dutt Ratra v. State of H.P., 2013 SCC OnLine HP 3773] i.e. 12-9-2013."

17. Thus, from the aforesaid judgements it is apparent that Right to Property though, is not a Fundamental Right but a Constitutional Right, which has been recognized at par with the human rights, which are inalienable. Thus, no person can be deprived of his property except in accordance with law and in case

where the land of a citizen has been acquired by the State Authorities without proper acquisition, the same amounts to an action without Authority of law. Thus, a person whose property has been utilized without authority of law, is entitled for due compensation in accordance with the provisions of law applicable on the date of such utilization of the property by the State.

18. It is also been contented by the State that there are delay and laches on the part of the petitioner while approaching the Court, seeking compensation for her land utilized by the State. The Apex court in **Vidya Devi (supra)**, has held that delay and laches cannot be raised by a continuing cause of action or if the circumstances shocks the judicial conscience of the court. It has further been observed that there is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice. The following observation of the Apex Court in Vidya Devi (supra) are relevant which reads as under:

"12.12. The contention advanced by the State of delay and laches of the appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of

limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice."

19. Thus, from the facts of the instant case it is apparent that the land of the petitioner to the extent of 0.033 hectares had been utilized by the State Authorities without authority of law and without there being any acquisition of the land in accordance with law. Undisputedly, the petitioner was the owner of the property in question as she had purchased the land in the year, 2009. From the records it is apparent that the petitioner was running from pillar to post to know the procedure how she has been deprived of the property in question. She has moved the RTI applications and it was informed that she has been deprived of the property without there being any proper acquisition in accordance with law. She has approached this Court by filing the Writ Petition (C) No. 29915 of 2019, which was disposed of on 19.09.2019 with a direction that her case be determined by the District Level Committee in accordance with the Government Order dated 12.05.2016. Vide impugned order though, it is admitted by the State Authorities that her land to the extent of 0.033 hectares is affected by widening of the road, done by PWD in the year, 2014, for which neither the land was acquired nor any compensation has been paid. Thus, in the considered opinion of this Court the petitioner is entitled for the compensation, which is required to be determined in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

20. Thus, since the land of the petitioner been utilized without any proper acquisition, therefore, we cannot direct the Special Land Acquisition Officer to quantify the compensation or recommend its payment. In view thereof, we remit back the matter to the District Level Committee to determine the compensation with regard to the land of the petitioner to the extent of 0.033 hectares, which was utilized without acquisition while widening the road in accordance with the provisions of the Act, 2013. The compensation so determined shall be paid to the petitioner by respondent no.4 within a period of four weeks alongwith interest as provided in the said Act.

21. While disapproving the action of the State Authorities of utilizing the land of the petitioner without Authority of Law, we are refraining ourselves from awarding the penalty against the State Authorities who have utilized the land without sanction of law. The State Authorities are required to be cautious that they should not utilize the land of the citizens without due authority of law or without following the proper procedure of acquisition, else the authorities, who may be found responsible for such utilization of land without due procedure of law shall be held responsible personally and the court will have to impose heavy penalty for such actions on the part of the Authorities, which shall be recovered from their personal account.

22. With the aforesaid observations, the instant writ petition is ***allowed.***
