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Year – 2024

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NEWSLETTER

July 2024

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V.S. DREAM COACHING

1. Study Material-Law

Criminal Law Reforms

The Parliament has passed three new criminal law bills by a majority in the winter session. The Union Home Minister Amit Shah had introduced these three bills – 'Bhartiya Nyaya Sanhita 2023, Bhartiya Nagarik Suraksha Sanhita 2023, and Bhartiya Sakshya Adhiniyam 2023' in both Houses of Parliament. After receiving the President's assent, these three bills have now become laws. With this, the country has now freed itself from the old criminal laws made during the era of British rule, or it can be said that the country has got a new criminal law by amending the old laws to suit the current time and changing circumstances.

This is an important subject overall. The conditions that existed in the country in 1860 have seen significant changes in both society and the law. When the independence movement was underway in the country, some stringent laws were enacted to suppress it. But when we adopted the Constitution, fundamental rights were granted to the people, such as freedom of expression and freedom of thought. Along with these changes, some new crimes have also emerged, such as terrorism, economic crimes, and cybercrimes. Therefore, the need was felt for new definitions and procedures in the laws. To expedite the justice process based on evidence, the need to consider electronic evidence was also felt. Furthermore, the laws of the British era were focused on controlling crime, not on providing justice. Therefore, it was necessary to keep in mind the individual's freedom and rights in the new laws.

Thus, over time, many important changes and amendments have become necessary in the laws. This is an ongoing process that needs to be constantly updated. Now, when we framed the Indian Penal Code, we used the term "sedition" instead of "treason". Because treason involved speaking against the state, but sedition did not involve speaking against the country. In this way, we made an important change. Similarly, terrorism is a new crime that we started seeing from the 1980s, but there was no provision for it in the laws of that time. Now we have included it as a new crime. Furthermore, new crimes such as mob lynching, economic offenses, child abduction, and acid attacks have also been included in the laws, as these did not exist earlier. In addition, cybercrimes and crimes occurring through new mediums like electronics have also been covered. So these important changes have been made in the laws. Moreover, now no person is considered guilty until proven so. This is an important change.

The main reason for all these changes is that society and its needs have changed over time, so it was necessary to change the laws as well. The Law Commission has often reformed laws, but what should be the principles based on which criminal laws should be reformed (principle-based criminal law reform)? The Indian Constitution was considered as the biggest source of these principles. 11 major principles were derived from the Constitution, and the first principle placed was the privacy of the individual. After the Constitution came into force, in Part 3 we gave rights to the individual. Individual rights are very important, and criminal law is a law that can violate individual rights, such as imprisoning a person. Whereas the Constitution says that individual liberty is supreme. How to strike a balance was a complex issue.

The second point is how to prioritize human rights. The third point is how to expedite justice, because the certainty of justice is very important. Earlier, the punishment could be severe but not certain. Certainty means that if it is written that this offense carries this punishment, then that punishment should be given within a definite time frame. Additionally, we saw that there were no laws for the victim. We had made laws keeping only offenders in mind. Now in the 21st century, a lot of work is being done on victimology. Victim justice is being talked about, so how to bring the victim to the centre stage? How can reforms happen in jails, and how can legal aid be provided?

If we have to give punishment, then what factors of the individual should we consider, such as mitigating factors and aggravating factors? There has been a lot of development in the social sciences and law, based on which we can better understand the offender and determine appropriate punishment for them. That is why there is also inclusion of community service in the laws. We have also talked about trial in absentia, that if a person is not available, they can still be prosecuted. How to make the police accountable, because earlier the police were only accountable to the governments, but now the issue of making the police accountable to the Constitution has come up. During the justice process, the victim has also been given rights.

In the Bhartiya Nyaya Sanhita 2023, the Honorable Home Minister has clearly stated that now we have also made a victim-centric law. For the first time in any law, victims' rights have been recognized. This is a new perspective. Although there is still a lot to be done, this is still a big step. We have also made many changes in the Evidence Act. We are also considering electronic evidence as primary evidence and can proceed based on it.

This process of reforms went on for around four years, and there was extensive discussion on it. During this time, many people expressed their views on various

aspects. If you look at the initial draft, some people felt that the definitions needed to be made more comprehensive or more specific. Later, Parliamentary Standing Committee also suggested changes to it. The most prominent example is terrorism. Earlier, terrorist activities were defined under the Unlawful Activities (Prevention) Act (UAPA), but that is a special law. Terrorism was never brought into the Indian Penal Code (IPC) before. Bringing terrorism into the IPC means that there are many crimes happening in the country where we often need to mainstream the concept of terrorism.

It has been divided into four parts:
(1) if someone creates any kind of fear against an individual,
(2) causes damage to public property,
(3) causes harm to any critical infrastructure, and
(4) endangers elected governments or creates fear of death.

This kind of definition has been taken from UAPA and incorporated into the IPC. Additionally, organized crime has been defined, it says that organized crime will be a form of continuing illegal activities such as kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, etc. If these are done by a group involving threat, violence and unlawful activities, it will be considered organized crime. Mob lynching is a recent phenomenon, but due to lack of definition, it used to be registered as routine incidents. Now Section 101 says that if any incident involves a common intention on the basis of race, community, gender or birthplace, it will be included in the Indian Penal Code and provisions have been made for punishments up to life imprisonment and death penalty. In the previous IPC code, only males were mentioned, but now it includes men, women and transgender persons. Likewise, crimes against women and children have been included in a separate section. If someone has sexual intercourse through deception, that has also been made punishable. Deaths due to negligence (such as caused by driving) have also now been included. This was not viewed in this form earlier. Chain snatching has also been clearly defined. Earlier it was considered a form of theft, but now it has been made a separate offense with punishment up to 3 years.

The Indian Penal Code (IPC) lists various forms of punishment under Section 53, which include the death penalty, life imprisonment, fines, and confiscation of property, among others. However, the concept of community sentencing has never been accepted or explicitly disclosed. In the United Kingdom, community service has been incorporated into their procedural laws, which is a form of punishment. This is part of the reformative approach, which means that instead of sending offenders to jail, they are made to perform some work for the community. As the problem of overcrowding in jails is increasing, community service could be an alternative to fines for minor offenses. For example, if a

doctor is caught engaging in some wrongdoing, they could be asked to serve in a hospital for a few months. This is a good effort towards reforming the criminal justice system.

India has two types of laws - local and special. The local laws include certain specific crimes, while the special laws cover economic offenses. However, some economic crimes such as money laundering or tax evasion already had existing laws. But it has been observed that there are also many common provisions, as the Indian Penal Code (IPC) is a general law and special laws are separate in the Indian legal system. In this context, some new provisions have been made which state that if a person is found guilty of an economic offense, their property can be confiscated. Additionally, the police have also been given certain powers to make arrests and file cases in such matters. Earlier, there were difficulties in accepting certain evidence as proof, but now evidence like smartphones and chats can also be accepted. The purpose of all these changes is to deal sternly with white-collar crimes and economic offenders, who earlier escaped due to lack of evidence.

Firstly, an FIR (First Information Report) should be registered within three days, which fall under the category of lesser offenses. And for offences that carry a punishment of three to seven years, it should be registered within 14 days. The investigation charge sheet should be completed within 90 days after the filing of the FIR. The magistrate should also take cognizance of the charge sheet within 14 days. Similarly, for first-time offenders, detenue can be released after one-third of the period. In the second case, the judgment should be delivered within 45 days of the hearing. And now existence of legally empowered Zero FIR, where a person can file an FIR at any police station, without the need to go to a specific jurisdiction. E-FIR can also be filed from home, especially for women. Many such things have happened that will bring certainty and speed to the justice process. This is a right to speedy justice, which is also given in the Constitution. It is a good step towards realizing the right to speedy justice under Article 21 of the Constitution.

In summary, the passage of these three new criminal law bills - Bhartiya Nyaya Sanhita 2023, Bhartiya Nagarik Suraksha Sanhita 2023, and Bhartiya Sakshya Adhiniyam 2023, represents a significant milestone in India's legal history. By overhauling the outdated colonial-era criminal laws, the government has sought to align the country's justice system with the changing needs of modern society. Key principles such as the primacy of individual rights, expeditious justice, victim-centric approaches, and accountability have guided these reforms. The inclusion of emerging crimes like terrorism, cybercrime, and mob lynching, as well as a focus on mitigating factors in sentencing, showcase a more holistic and progressive criminal justice framework. While there is still room for further

improvement, these reforms undoubtedly mark an important step towards a more equitable, rights-based criminal justice system in India.

B. Important Cases July 2024

Important Supreme Court Cases
July 2024

S.N.	Subject	Case Reference
1.	Non-questioning of an accused on 'incriminating circumstances' and depriving him of an opportunity to explain the incriminating circumstances under Sec. 313 Cr.P.C. would vitiate the trial if such omission results in a miscarriage of justice. Non-adherence to the provision of Sec. 313 Cr.P.C. would result in an acquittal of the accused if it prejudices the accused.	Naresh Kumar Vs. State of Delhi, decided on 08-07-2024
2.	The principle of res judicata is applicable not only between the plaintiff and the defendants but also between the co-defendants. The condition precedent to make the principle of res judicata applicable between the co-defendants is that there must be a conflict of interest between the co-defendants.	Har Narayan Tewari (D) through LRS. Vs. Cantonment Board, Ramgarh Cantonment & Ors., decided on 08-07-2024
3.	Even a death caused by a single stab can be considered as a murder if other requirements of section 300 of the Indian Penal Code, 1860, are fulfilled.	Joy Devaraj Vs. State of Kerala, decided on 08-07-2024
4.	In cases where accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting the dock identification by such a witness.	P. Sasikumar Vs. State represented by the Inspector of Police, decided on 08-07-2024
5.	A divorce petition can be presented on the ground that there has been no restitution of conjugal rights between the parties to the marriage for a period of one year and more after passing the decree for restitution of conjugal rights.	X Vs. Y, decided on 08-07-2024
6.	Plaintiff need not seek cancellation of subsequent sale deed executed with prior knowledge of agreement to sell.	Maharaj Singh & Ors. Vs. Karan Singh (D) through LRS. & Ors., decided on 09-07-

		2024
7.	Doctrine of legitimate expectation cannot be extended to the operation of a contract. Explain doctrine of legitimate expectation	Army Welfare Education Society New Delhi Vs. Sunil Kumar Sharma & Ors. Etc., decided on 09-07-2024
8.	A divorced Muslim woman is entitled to file a petition for maintenance against her ex-husband under Section 125 Cr.P.C. This right of a Muslim woman is in addition to the right under the Muslim Women (Protection of Rights on Divorce) Act, 1986.	Mohd. Abdul Samad Vs. State of Telangana & Anr., decided on 10-07-2024
9.	A registered sale deed cannot be held to be void merely because it was executed during the pendency of a suit in relation to the property. The doctrine of lis pendens under Section 52 of the Transfer of Property Act 1882 does not render the pendente lite transfer void.	Yogesh Goyanka Vs. Govind & Ors., decided on 10-07-2024
10.	Laid down the three categories of relevant factors that ought to be considered while determining the estimated value of the land to determine a fair amount of compensation in land acquisition proceedings, such as:- (i) Characteristics of the land (ii) Future potentiality of the land (iii) Factors denoting market sentiment	New Okhla Industrial Development Authority Vs. Harnand Singh (Deceased) through LRs & Ors., decided on 10-07-2024
11.	Explained the scope of Article 131 of Constitution of India	State of West Bengal Vs. Union of India, decided on 10-07-2024
12.	The suit for recovery of possession is different from the suit for arrears of rent and damages. There is no bar to file a separate suit for arrears of rent and damages after a suit for possession.	Uniworld Logistics Pvt. Ltd. Vs. Indev Logistics Pvt. Ltd., decided on 10-07-2024
13.	Order 23 Rule 3 CPC – For a valid compromise in a suit there has to be a lawful agreement or compromise in writing and signed by the parties which would then require it to be proved to the satisfaction of the Court.	Amro Devi & Ors. Vs. Julfi Ram (D) through LRS. & Ors., decided on 15-07-2024

14.	Sentencing Court not imposing life imprisonment on convict cannot impose sentence beyond 10 years	Amit Rana @ Koka & Anr. Vs. State of Haryana, decided on 22-07-2024
15.	The enrolment fee cannot exceed Rs.750 for advocates belonging to the general category and Rs.125 for advocates belonging to SC/ST categories. State Bar Councils cannot charge any amount over the above-specified amounts under the head of "miscellaneous fee", "stamp duty" or other charges. All fees charged by the bar councils, under whatever name, as a pre-condition for enrolment, would qualify as 'enrolment fee'. Therefore, money collected by Bar Councils in the name of verification fee, building fund, benevolent fund etc., which are stated to be one-time payments, at the time of enrolment, would be enrolment fee.	Gaurav Kumar Vs. Union of India, decided on 30-07-2024

IN THE SUPREME COURT OF INDIA

Naresh Kumar
Vs.
State of Delhi

[Criminal Appeal No. 1751 of 2017]

HEADNOTE – Non-questioning of an accused on 'incriminating circumstances' and depriving him of an opportunity to explain the incriminating circumstances under Sec. 313 Cr.P.C. would vitiate the trial if such omission results in a miscarriage of justice. Non-adherence to the provision of Sec. 313 Cr.P.C. would result in an acquittal of the accused if it prejudices the accused.

JUDGMENT

C.T. Ravikumar, J.

1. Births of crimes and culprits concerned, occur together. Yet, under the criminal justice delivery system only on concluding findings on commission of the crime concerned in the affirmative, the question whether the accused is its culprit would arise. Culpability can be fixed, if at all it is to be fixed, on the accused upon conclusive proof of the same established by the prosecution only after following various procedural safeguards recognizing certain rights of an accused.

Failure to comply with such mandatory procedures may even vitiate the very trial, subject to the satisfaction of conditions, therefor. Foremost among one such right is embedded in Section 313 of the Code of Criminal Procedure, 1973 (for short the 'Cr.PC'). Though questioning under clause (a) of sub-Section (1) of Section 313, Cr.PC, is discretionary, the questioning under clause (b) thereof is mandatory.

Needless to say, a fatal non-compliance in the matter of questioning under Clause (b) of sub-section (1) thereof, in case resulted in material prejudice to any convict in a criminal case the trial concerned, qua that convict should stand vitiated. This prelude becomes necessary as in the captioned appeal the main thrust of the argument advanced is founded on fatal, non-compliance in the matter of questioning under Section 313, Cr.PC, qua the appellant who is a life convict. We will dilate on this a little later.

2. The appellant, who was accused No.4 in Sessions Case No.3/97 is challenging the confirmation of his conviction under Section 302, IPC, with the aid of Section 34, IPC, under the impugned judgment in Criminal Appeal No.540/2000 dated

20.12.2016 passed by the High Court of Delhi. As per the prosecution, an argybargy over spilling of drops of water over the roof of the appellant's house while Laxmi, the sister of the deceased-Arun Kumar was cleaning the chajja (parapet) of their house resulted in the accurst incident, where the said Arun Kumar lost his life on 14.06.1995 at 08.45 pm.

The case of the prosecution is that enraged by the dropping of water over the roof, the wife of the appellant, namely, Meena, hurled filthy words at Laxmi. Then the appellant came out and he, too, started abusing. Thereupon, the deceased asked him to stop abusing his sister and then the appellant exhorted his brother Mahinder Kumar to come out and finish them.

Soon, Mahinder came out with a knife and the appellant- Naresh Kumar caught hold of Arun Kumar and Mahinder stabbed on his chest repeatedly with the knife. The necroscopic evidence in this case consists of the oral testimony of PW-17, Dr. LK Baruah and the postmortem report Ext.PW7/A, which disclosed that the deceased had sustained the following antemortem injuries:

"1. Incised wound size 1.3 cm x 0.5 cm. On the left side front of chest. There is 1-1/2 medial to the left nipple placed abliquely.

2. Incised wound size .3 cm x 0.5 cm.x? on the middle of chest situated 1.5 cm. Right to the mid line and below a line drawn between two nipples.

3. Two incised wounds size 1.3 cm. And other 1.5 cm. In the right epigeastric region.

4. Incised wounds left side lower part of chest 9 cm. Below left nipple size 1.4 cm x 2.3 cm.

5. Abrasion on the dorsom left forearm and hand.

6. Abrasion seen below left eye."

3. Taking note of the said necroscopic evidence corroborating the events unfolded through the oral testimonies of the eye-witnesses viz., Anil Kumar (PW-7), Smt. Prem Devi (PW-8), Sanjay (PW-20), who are respectively the brother, mother and one cousin of the deceased and Smt. Madhu (PW-19) and Anand Kumar (PW-22) besides the other evidences, the trial Court found that the homicidal death of Arun Kumar amounts to murder and culpability was fixed on Mahinder Kumar, the first accused. We make it clear that we are not going to make any observation in respect of Sri Mahinder Kumar in this appeal and reference about him was made solely for the purpose of disposing this appeal.

4. As noticed earlier, the conviction of the appellant under Section 302, IPC, was then made with the aid of Section 34, IPC, and upon which he was awarded imprisonment for life. The conviction of the appellant herein was confirmed under the impugned common judgment dated 20.12.2016 in Criminal Appeal No.540/2000 (filed by the appellant herein), and Criminal Appeal No.764/2000 (filed by Mahinder Kumar).

5. Heard Sh. S.D. Singh, learned counsel appearing for the appellant and Ms. Sonia Mathur, learned senior counsel appearing for the respondent State.

6. As noticed earlier, the thrust of the argument for the appellant was founded on prejudicial noncompliance of Section 313, Cr.PC, during the examination thereunder, qua the appellant. Before going into its details, we think it appropriate to consider whether the appellant is raising this contention for the first time before this Court. In this context, it is to be noted that there is nothing on record which would reveal that specific contention in this regard was raised before the High Court in the appeal. True, that in the appeal before the High Court a ground in this regard was raised as 'ground No.13' as hereunder: -

"13. That has been no proper examination of the appellant u/s. 313 Cr.P.C. which has caused material prejudice to the appellant."

7. There is nothing in the impugned judgment to reveal that this point was argued with specific details establishing prejudice, before the High Court. The innumerable grounds (grounds A to Z and AA to GG) raised in this appeal would reveal that neither directly nor indirectly, this core contention was taken in any of them. At any rate, no ground was raised to the effect that despite raising this ground, the High Court had failed to consider it.

Be that as it may, the order dated 21.07.2017 of this Court would reveal that the learned counsel for the appellant argued before this Court that while recording the statement of the appellant under Section 313, Cr.PC, no incriminating circumstances appearing in the prosecution evidence against him, were put to him and that vitiated the whole trial. Obviously, thereupon notice was issued in the Special Leave Petition from which this appeal arose. Later, only in the first application for bail, a contention on the following lines was taken and it was reiterated in the second application for bail as well:

"7. That on completion of the evidence statement of accused under Section 313 Cr. PC have been recorded on 6.6.2000 and the mere perusal of the statement would show that no incriminating evidence which had been subsequently considered for the conviction of the appellant by the Ld. Trial Court as well as

Hon'ble High Court had been put to the Appellant. Therefore, the entire trial against the Appellant is vitiated."

8. During the course of the arguments by the learned counsel for the appellant submitted that this contention is based on non-questioning on two incriminating circumstances appeared against the appellant in the prosecution evidence viz., exhortation to do away with their lives (aaj inko jaan se hi khatam karde) and the evidence that 'the appellant had caught hold of the hands of the deceased Arun Kumar to enable Mahinder Kumar to stab him repeatedly with knife' and they formed the foundation for holding that the appellant had shared common intention with the first accused and ultimately, for holding the appellant guilty with the aid of Section 34, IPC, for the offence under Section 300, IPC, punishable under Section 302, IPC.

9. In view of the aforementioned core contentions, we are of the considered view that we need to consider the other grounds taken up in the appeal on the merits only if the appellant could not succeed based on non-examination under Section 313, Cr.PC, qua the appellant. We may consider any other relevant aspect, circumstance or evidence if we find that it is required for a proper consideration and appreciation of the abovementioned core contention.

10. We have taken note of the absence of materials to show that the aforesaid core contention was appropriately raised and argued before the High Court. In the captioned appeal, it was not taken at all. In view of the circumstances the contention is resurrected, we are of the considered view that to entertain the same, it is essential to have a short survey on the authorities on the scope of maintaining such a contention at this stage in the aforementioned circumstances. Subject to its answer, we may also have to consider the question of prejudice or miscarriage of justice due to the non-compliance with mandate for questioning under Section 313, Cr.PC.

11. In the context of the issues thus involved, it is only proper to look into the very object of Section 313, Cr.PC. This aspect has been considered many a times by this Court to hold that it embodies one salutary principle of natural justice viz., audi alteram partem and empowering the Court to examine the accused thereunder is to give the accused concerned an opportunity to explain the incriminating circumstances appearing against him in the prosecution evidence.

In the decision in V.K. Sasikala v. State1, this Court held that examination of an accused under Section 313, Cr.PC, would not only provide an opportunity to him to explain the incriminating circumstances appearing in evidence against him, but also would permit him to forward his own version with regard to his alleged involvement in the crime. Furthermore, it was held that such an examination

would have a fair nexus with a defence he might choose to bring and, therefore, any failure in such examination might take the effect of curtailing his right in the event he took up a specific defence.

The general position is that if any incriminating circumstance, appearing against an accused in the prosecution evidence, is not put to him it should not be used against him and must be excluded from consideration. At the same time, we may hasten to add that it is a well-neigh settled position that non-examination or inadequate examination under Section 313, Cr.PC, on any incriminating circumstance, by itself, would not vitiate a trial qua the convict concerned unless it has resulted in material prejudice to him or in miscarriage of justice.

In the decision in Suresh Chandra Bihari v. State of Bihar2 and in Wariyam Singh & Ors. v. State of U.P.3, this Court held that mere defective/improper examination under Section 313, Cr.PC, would be no ground to set aside a conviction of the accused unless it has resulted in prejudice to the accused. In view of the said position which is being followed with alacrity we do not think it necessary to multiply the authorities on it.

12. We have already noted that 'ground No.13' raised in the appeal before the High Court was too vague, in the sense without clarity whatsoever, as to what were the incriminating circumstances that appeared in the prosecution evidence not being put to the appellant while being examined and what is the material prejudice or miscarriage of justice caused consequent to such failure.

To make matters worse, a scanning of the impugned judgment of the High Court would not disclose whether before the High Court, the said contention was pressed into service much-less whether it was argued with precision on quintessential materials to establish that the trial qua the appellant was vitiated. In the contextual situation it is relevant to refer to the decision of this Court in Amanullah v. State of U.P.4.

Normally, it has to be presumed that all the arguments actually pressed at the hearing in the High Court were noticed and appropriately dealt with and if the judgment of the High Court does not contain discussion on a point, then that point should be assumed prima facie not to have been argued at the bar unless the contrary is specifically shown, it was so, held in the said judgment.

In the case on hand though grounds A to Z and AA to GG were taken in this appeal, there is absolute absence of any contention in any one of them to the effect that despite being pressed into the said contention was not taken into consideration and appropriately dealt with by the High Court. Hence, the conclusion can only be that it was not argued.

13. This position takes us to the next question as to whether in such circumstances the contention based on non-examination/inadequate examination under Section 313, Cr.PC, causing material prejudice qua the appellant can be maintained at this stage. In this context, it is only appropriate to refer to the decision of this Court in Shobit Chamar & Anr. v. State of Bihar5.

It was held therein that where the plea as to non-compliance of the provisions of Section 313, Cr.PC, was raised for the first time before the Supreme Court, in case no prejudice had resulted to the accused was proved, the trial could not be held as vitiated. In that case, though the non-compliance was taken for the first time before the Supreme Court, the records showed that the relevant portion of the statement of witnesses were put to the accused in examination under Section 313, Cr.PC, and, thereupon, the plea was rejected. It is to be noted that was also a case of murder.

14. In the light of the aforesaid question posed for consideration, it is only appropriate to refer to the relevant provisions under Section 313 (1), (4) and (5).

"313. Power to examine the accused.-

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) ...

(3) ...

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit

filing of written statement by the accused as sufficient compliance of this section."

15. A bare perusal of the provisions under Section 313, Cr.PC, extracted above, would undoubtedly reveal the irrecusable obligation coupled with duty on Court concerned to put the incriminating circumstances appearing in the prosecution evidence against accused concerned facing the trial providing him an opportunity to explain. Sub-Section (5) of Section 313, Cr.PC, which was inserted under Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009) with effect from 31.12.2009, would lend support to this view. It reads thus: -

"Section 313. Power to examine the accused.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section."

16. In this context, the maxim "actus curiae neminem gravabit" - "the act of court shall prejudice no one", has also to be looked into. In the decision in Oil and Natural Gas Company Limited v. Modern Construction and Company6, this Court held that the court has to correct the mistake it has done, rather than to ask the affected party to seek his remedy elsewhere.

In the context of the decisions referred above, there can be no doubt that in a charge for commission of a serious offence where extreme penalty alone is imposable in case the accused is found guilty, procedural safeguards ensuring protection of right(s) of accused must be followed and at any rate, in such cases when non-compliance of the mandatory procedure capable of vitiating trial qua the convict concerned is raised and revealed from records, irrespective of the fact it was not raised appropriately, it must be considered lest the byproduct of consideration of the case would result in miscarriage of justice.

Being the Court existing for dispensation of justice, this Court is bound to consider and correct the mistake committed by the Court by looking into the question whether non-examination or inadequate examination of accused concerned caused material prejudice or miscarriage of justice. We may hasten to add here, that we shall not be understood to have held that always such a mistake has to be corrected by this Court by examining the question whether material prejudice or miscarriage of justice had been caused.

In this context, the summarization of law on the subject of consequence of omission to make questioning on incriminating circumstances appearing in the prosecution evidence and the ways of curing the same, if it is called for, by this

Court in the decision in Raj Kumar @ Suman v. State (NCT of Delhi)7, assumes relevance. Paragraph 16 of the said decision reads thus:-

"17. The law consistently laid down by this Court can be summarized as under:

(i) It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;"

(ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;

(iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;

(iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;

(v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;

(vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and

(vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.

(viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered."

17. In view of the circumstances obtained in this case, factually and legally, it is also relevant to refer to paragraph 20 of the decision in Raj Kumar's case (supra) and it reads thus:-

"21. Even assuming that the defect or irregularity was curable, the question is whether today, the appellant-accused can be called upon to explain the said circumstance. More than 27 years have passed since the date of the incident. Considering the passage of time, we are of the view that it will be unjust now at this stage to remit the case to the Trial Court for recording further statement of

the appellant under Section 313 of CrPC. In the facts of the case, the appellant cannot be called upon to answer something which has transpired 27 years back. There is one more aspect of the matter which persuaded us not to pass an order of remand. The said factor is that the appellant has already undergone incarceration for a period of 10 years and 4 months."

18. In this case, the incident in question occurred on 14.06.1995 and thus, obviously, more than 29 years have passed by. The appellant has already undergone incarceration for a period of more than 12 years. In the circumstances, we are inclined to proceed with the consideration of the contentions bearing in mind the aforesaid authorities laying down the position of law on various aspects of Section 313, Cr.PC.

19. In the case on hand, the appellant was convicted for the offence under Section 300, IPC, punishable under Section 302, IPC, with the aid of Section 34, IPC. In other words, the conviction was not under Section 302, Cr.PC, simpliciter. Upon finding guilty for commission of murder only one of two extreme penalties viz., death or imprisonment for life could be imposed on the convict.

When this be the consequence of finding an accused to have committed murder or in any other serious offence where extreme punishment of like nature alone is imposable, the failure to comply with the mandatory questioning on incriminating circumstance(s) appearing in the prosecution case, if made out, the plea of nonexamination or inadequate examination under Section 313, Cr.PC, whether resulted in material prejudice to the accused or total miscarriage of justice, shall not be ignored or declined to be taken into account by the Court.

20. We have already noted that crucial incriminating circumstances viz., (1) pertaining to the exhortation of the appellant to kill Arun Kumar and others in his family (2) he had caught hold of the deceased to enable Mahinder Kumar to stab on his chest repeatedly, were not allegedly put to the appellant while being examined under Section 313, Cr.PC.

The first among the twin incriminating circumstances not to put to the appellant was virtually the charge framed against him to the effect that in furtherance of the common intention of Mohinder Kumar and the appellant caught hold of deceased Arun Kumar and the other accused Mohinder Kumar inflicted knife blows on deceased Arun Kumar and murdered him. The former incriminating circumstance relating to exhortation by the appellant did not form part of the charge against the appellant.

There can be no doubt with respect to the position that the question whether the aforementioned twin incriminating circumstances appeared in the prosecution

evidence and whether they were put to the appellant while being examined under Section 313, Cr.PC, to enable him an opportunity to offer explanation are not matters of argument as a bare perusal of the materials on record viz., the oral testimonies of the eyewitnesses and Section 313, Cr.PC, examination of the appellant would reveal the verity or otherwise of the said contentions.

The oral testimonies of Anil Kumar (PW-7), Smt. Prem Devi (PW-8), Mrs. Madhu (PW-19) and Anand Kumar (PW-22) would reveal that they have deposed regarding the exhortation from the appellant though in slightly different manner, and also about the fact that he had caught hold of the deceased to enable Mohinder Kumar to stab on the chest of the deceased repeatedly.

The examination of the appellant under Section 313, Cr.PC, which is available on record, would reveal that both the incriminating circumstances were not directly or even indirectly put to the appellant while being examined under Section 313, Cr.PC. The learned counsel appearing for the respondent would fairly admit that the said material on record would reveal the correctness of the contentions of the appellant.

21. We have already held that whether non-questioning or inadequate questioning on incriminating circumstances to an accused by itself would not vitiate the trial qua the accused concerned and to hold the trial qua him is vitiated it is to be established further that it resulted in material prejudice to the accused.

True that the onus to establish the prejudice or miscarriage on account of non-questioning or inadequate questioning on any incriminating circumstance(s), during the examination under Section 313, Cr.PC, is on the convict concerned. We say so, because if an accused is ultimately acquitted, he could not have a case that he was prejudiced or miscarriage of justice had occurred owing to such non-questioning or inadequate questioning.

22. In the light of the above view of the matter, we are inclined to consider the further question whether the non-questioning on the aforesaid twin incriminating circumstances to the appellant during his examination under Section 313, Cr.PC, had caused material prejudice to him. The decision of this Court in State of Punjab v. Swaran Singh8, constrain us to consider one another factor while considering the question of prejudice.

In Swaran Singh's case (supra), this Court held that where the evidence of the witnesses is recorded in the presence of the accused who had the opportunity to cross examine them but did not cross examine them in respect of facts deposed, then, omission to put question to the accused regarding the evidence of such

witnesses would not cause prejudice to such an accused and, therefore, could not be held as grounds vitiating the trial qua the convict concerned.

We have already found that Anil Kumar (PW-7), Smt. Prem Devi (PW-8), Mrs. Madhu (PW-19) and Anand Kumar (PW-22) have deposed about the said circumstances. A scanning of their oral testimonies, available on record, would undoubtedly reveal that on both the points, on behalf of the appellants they were cross examined.

23. The position, as above, would take us to the last question whether material prejudice was caused to the appellant on account of non-questioning him on the aforesaid incriminating circumstances and thereby depriving him an opportunity to explain. This question can better be considered by referring to paragraph 31 of the judgment of the Trial Court, which virtually got confirmance from the High Court under the impugned judgment. It reads thus:-

"31. As far the part played by accused Naresh is concerned, this has come in the evidence of PWs that he (Naresh) is the man, who called his brother Mahinder and exhorted "Mahender came out and kill them today" and thereafter his taking part in the incident, by catching hold of deceased Arun Kumar, clearly goes to show the common' intention of the two, i.e. Naresh and Mahinder and even the Learned Defence Counsel, cannot be benefited from the above noted authorities."

24. It is evident from the afore-extracted paragraph from the judgment of the Trial Court that the said conclusion that appellant had shared the common intention to commit murder of the deceased Arun Kumar was based only on the aforesaid two incriminating circumstances which were not put to the appellant while being questioned under Section 313, Cr.PC. When the very charge framed against him, as referred as above, would reveal that there was no charge of commission of an offence under Section 300, IPC, punishable under Section 302, IPC, simplicitor against the appellant whereas the said charge thereunder with the aid of Section 34, IPC.

In such circumstances, when the finding of common intention was based on the twin incriminating circumstances and when they were not put to the appellant while he was being questioned under Section 313, Cr.PC, and when they ultimately culminated in his conviction under Section 302, IPC, with the aid of Section 34, IPC, and when he was awarded with the life imprisonment consequently, it can only be held that the appellant was materially prejudiced and it had resulted in blatant miscarriage of justice. The failure as above is not a curable defect and it is nothing but a patent illegality vitiating the trial qua the appellant.

25. Once, the upshot of the discussion is above, we do not think it proper to deal with the innumerable grounds raised by the appellant, not only because it has become unnecessary but also such consideration may adversely affect the co-accused whose appeal was also decided under the very same common judgment impugned in this appeal.

26. As noticed hereinbefore, the incident in question occurred more than 29 years ago and the appellant had already undergone incarceration more than 12 years. In such circumstances, if he is again subjected to examination under Section 313, Cr.PC, it would cause further prejudice to him in view of the patent illegality occurred qua the appellant. Hence, the conviction of the appellant could not be sustained.

27. For the aforesaid reasons, the appeal must succeed. Accordingly, the impugned judgment of the trial Court and the High Court are set aside qua the appellant. We make it clear that this judgment would not disturb the conviction of the other accused.

We also make it clear that this observation shall not be taken as confirmation of his conviction as it is a matter which may be dealt with in an appeal, if any, filed by him. The appellant herein stands acquitted of the offences alleged against him. If his detention is not required in connection with any other case, he shall be released, forthwith.

28. The appeal is allowed on the above terms.

29. Pending application(s), if any, are disposed of.

.....J. (C.T. Ravikumar)

.....J. (Sandeep Mehta)

New Delhi;

July 08, 2024

1 (2012) 9 SCC 771

2 AIR 1994 SC 2420

3 AIR 1996 SC 305

4 AIR 1973 SC 1370

5 AIR 1998 SC 1693

6 (2014) 1 SCC 648

7 2023 SCC OnLine SC 609

8 (2005) 6 SCC 101

IN THE SUPREME COURT OF INDIA

Har Narayan Tewari (D) through LRS.
Vs.
Cantonment Board, Ramgarh Cantonment & Ors.

[Civil Appeal No. 8829 of 2010]

HEADNOTE – The principle of res judicata is applicable not only between the plaintiff and the defendants but also between the co-defendants. The condition precedent to make the principle of res judicata applicable between the co-defendants is that there must be a conflict of interest between the co-defendants.

JUDGMENT

Pankaj Mithal, J.

1. Shri Manoj Goel, learned senior counsel for the appellants and Shri Manoj Swarup, learned senior counsel for the respondents were heard.

2. The Title Suit No.9/89 of the plaintiff-appellant (Har Narayan Tewari) was decreed on 16.03.2000 by the court of first instance. In an appeal by the Cantonment Board, Ramgarh, the said decree was reversed by the First Appellate Court vide judgment and order dated 28.06.2006; basically on the ground that the suit was hit by principle of res judicata in view of the decision in the earlier Title Suit No.8/64 instituted by Maharani Lalita Rajya Lakshmi1 (wife of Raja Bahadur Kamakshya Narayan Singh2) wherein the plaintiff-appellant was defendant No.32 and the Cantonment Board, Ramgarh was the main contesting defendant. The Second Appeal preferred by the plaintiff-appellant to the High Court was dismissed on 01.04.2009 simply stating that it does not raise any substantial question of law.

3. Aggrieved by the judgment and order of the High Court dated 01.04.2009 dismissing the appeal; the plaintiff-appellant has preferred this appeal and has also assailed the judgment and order dated 28.06.2006 of the First Appellate Court alleging that his suit was not barred by res judicata and that he has validly acquired title and possession over the disputed land.

4. The plaintiff-appellant had filed the above referred Title Suit No.9/89 for declaration of his title over the properties mentioned in Schedule 'A' of the plaint with structures and buildings standing thereon and for confirmation of his possession over the same. In the alternative, a prayer was made that in case the plaintiff-appellant was not found in possession of the said property, the

Cantonment Board, Ramgarh, or any person claiming through it, be evicted and he be put in possession with the further direction that they be restrained by a decree of permanent injunction from dispossessing the plaintiff-appellant from the said property in future.

5. According to Schedule 'A' of the plaint, the dispute is about two pieces of land: First, land measuring 0.12 acres out of 2.04 acres of Plot No.432; and secondly land measuring 0.18 acres out of 0.66 acres of Plot No.438 both situate in village Ramgarh, within the Cantonment Board, Ramgarh with boundaries as described in the Schedule. In short, the dispute in the suit is only regarding 0.12 acres of Plot No.432 and 0.18 acres of Plot No.438 i.e. total of 0.30 acres of the above two plots and the structures existing thereon.

6. The plaintiff-appellant is claiming title and possession over the suit land alleging that the Raja, the proprietor of the village, had settled the aforesaid land measuring 0.30 acres of the land comprising of Plot Nos.432 and 438 in his favour in the year 1942.

7. The case of the plaintiff-appellant was that village Ramgarh was the part of the Estate of Raja. It was under the management of the Court of Wards and was released in Raja's favour in the year 1937. During the period of its management by the Court of Wards, its manager acquired 5.38 acres of additional land comprised in various plots including Plot Nos.432 and 438 in proceedings bearing Case No.1/1926-27 and came in possession thereof.

8. The Raja in the year 1942 made a permanent raiyati settlement of the suit land in favour of the plaintiff-appellant and also delivered its possession to him on payment of rent and salami of Rs.2,000/-. After vesting of the Estate of Ramgarh in the State of Bihar, the name of the plaintiff-appellant was mutated upon enhancement of rent @ Rs.2/- per decimal by an order dated 04.01.1963 of the Additional Collector, Ramgarh passed in Case No.115/62-63 (Exh.13). The plaintiff-appellant had constructed certain structures on the said land which have been let out to various persons, all of whom are defendants in the suit.

9. Upon the establishment of the Cantonment Board, Ramgarh, the ex-proprietor Raja handed over 2.55 acres of land (excluding the suit land) with the dispensary building etc. to the Cantonment Board temporarily. The Cantonment Board, as such, never came in possession of more than 2.55 acres of land that too which was other than the land settled and occupied by the plaintiff-appellant.

10. In 1964, Maharani, the wife of the Raja, instituted a Title Suit No.8/64, inter alia, for declaration of her title over 5.38 acres of the land of the village including

0.30 acres land of the plaintiff-appellant. The aforesaid claim was made on the basis of the maintenance grant allegedly made by the Raja in her favour.

11. The aforesaid suit was contested by the plaintiff-appellant by filing a written statement and claiming 0.30 acres land on the basis of raiyati rights granted by the Raja in the year 1942. The Cantonment Board, Ramgarh, claimed distinct rights in different portions of the land to the extent of 2.55 acres only, comprising of dispensary building and quarters of the doctors on the basis of possessory rights granted by the Raja.

12. In the aforesaid case, Maharani entered into a compromise with several defendants including the plaintiff-appellant (who was defendant No.32 in the said suit). According to the said compromise, Maharani admitted the possession of the plaintiff-appellant over the suit land to the extent of 0.30 acres in Plot Nos.432 and 438 and it was agreed that she will have no concern with the same and that the plaintiff-appellant will remain in exclusive possession of it. The Cantonment Board, Ramgarh did not object to it or challenge the compromise.

13. In the said suit, as many as nine issues were framed including the maintainability of the suit and about the right, title and possession of Maharani. The suit of the Maharani was dismissed vide judgment and order dated 31.03.1984, primarily on the ground that it was not maintainable as the State of Bihar being a necessary party, was not made a party and that Maharani had not entered into the witness box to prove her case.

She as such, was not found to be the owner in possession of the land claimed by her. The court in dismissing the suit clearly mentioned that the parties who have entered into the compromise with Maharani will not have any right on the basis of the compromise deed as she herself has failed to prove her independent rights over the land claimed by her.

14. The second appeal filed by the plaintiff-appellant was dismissed by the High Court as it failed to raise any substantial question of law, which is mandatory for entertaining an appeal under Section 100 of the Code of Civil Procedure. Therefore, the first point which arises for consideration herein is - whether in the facts and circumstances of the case, any substantial question of law was involved in the second appeal.

15. The submission is that the plaintiff-appellant was non-suited by the First Appellate Court, on the ground that his suit was barred by res judicata. One of the essential conditions for the applicability of principle of res judicata as enshrined under Section 11 of the CPC is that the issue in the earlier suit and the subsequent suit ought to be directly and substantially the same.

In the earlier Suit No. 8/64 instituted by Maharani, her claim was that she is the lawful owner of the entire 5.38 acre of land of Village Ramgarh, on the basis of the maintenance grant made in her favour by the Raja. In the said suit, the plaintiff-appellant was defendant no. 32 and the Cantonment Board, Ramgarh was defendant No. 1. The claim set up by Maharani was not accepted and ex-facie there was no adjudication regarding the rights of the co-defendants over the suit land viz 0.30 acres of land of plot Nos. 432 and 438 as claimed by the plaintiff-appellant in the present suit.

The limited issue therein was whether the Maharani had acquired any right in the above entire property on the basis of maintenance in grant alleged to be executed by the Raja in her favour. There was no issue as to whether the suit land as claimed by the plaintiff-appellant belonged to him or was settled or not settled in his favour as claimed.

Thus, in the facts and circumstances of the case, a clear substantial question of law as to whether the present suit as filed by the plaintiff-appellant was barred under Section 11 CPC on principle of res judicata inasmuch as there was no adjudication of the rights of the co-defendants in the previous suit with regard to the suit land and the issue therein was not directly or indirectly and substantially the same as in the present suit.

16. In view of the above, we are of the opinion that the High Court manifestly erred in dismissing the second appeal in limine on the ground that there was no substantial question of law involved therein.

17. As stated earlier, the substantial question of law arising in the second appeal was - Whether the suit as setup by the plaintiff-appellant was barred by principle of res judicata in view of the decision in the earlier Suit No. 8 of 64 wherein rights of the co-defendants in respect of the suit land were never adjudicated and non-acceptance of the claim of Maharani was not sufficient so as to decide the rights of the co-defendants.

18. There are no factual disputes which may require consideration of any evidence so as to answer the above substantial question of law. Therefore, we consider it appropriate to decide the above substantial question of law ourselves instead of leaving it for the High Court to adjudicate it.

19. It is an admitted position that the suit land i.e., portions of plot Nos. 432 and 438 were part of the Estate of Raja who had acquired about 5.38 acres of additional land of village Ramgarh. Maharani had claimed title over the entire aforesaid land of village Ramgarh but her claim was not accepted by the court in her Title Suit No.8/64. It means that she was unable to establish her right, title

and interest over the said land on the basis of the alleged maintenance grant made in her favour by the Raja, but it does not mean that the suit land was not settled by the Raja in favour of the plaintiff-appellant or that the suit land had come to be settled with Cantonment Board, Ramgarh in any manner.

20. The lis in the previous suit i.e. Suit No.8/64 was regarding ownership and entitlement of Maharani over the entire 5.38 acres of land of village Ramgarh qua the Cantonment Board, Ramgarh; the plaintiff-appellant and other defendants in the said suit; whereas the controversy in the present suit is quite distinct with regard to only 0.30 acres of the suit land vis-à-vis the plaintiff-appellant and the Cantonment Board, Ramgarh.

21. The judgment and order of the previous suit which is final and conclusive, in no specific terms adjudicates upon the right, title and interest of either of the plaintiff-appellant or of the Cantonment Board, Ramgarh with regard to the suit land.

In the said suit, there was no issue with regard to the right, title and possession of either the plaintiff-appellant or of the Cantonment Board, Ramgarh and no finding in this connection was returned by the court in dismissing the said suit. In simple words, the suit, as filed by Maharani claiming right, title and interest over 5.38 acres of land of village Ramgarh was dismissed simpliciter without adjudication of any rights of the plaintiff-appellant over the suit land vis-à-vis the Cantonment Board, Ramgarh.

22. It may also be pertinent to point out that the Cantonment Board, Ramgarh throughout had claimed rights over 2.55 acres of land of village Ramgarh and not in respect of the entire 5.38 acres of land which was additionally acquired by the Raja. It is also not the case of the Cantonment Board, Ramgarh that the land which was temporarily settled in its favour by the Raja has been occupied by the plaintiff-appellant or that the plaintiff-appellant is claiming rights over the land which was settled in its favour.

In other words, the land belonged to the Raja, part of which was settled in favour of the plaintiff-appellant to the extent of 0.30 acres of plot Nos. 432 and 438, whereas, another piece of land measuring 2.55 acres with certain structures but certainly excluding the suit land was settled in favour of Cantonment Board, Ramgarh. The right of the plaintiff-appellant to claim the suit land or the right of the Cantonment Board over the 2.55 acres of land settled in its favour never came to be adjudicated in previous Title Suit No. 8 of 64.

23. The general policy behind the principle of res judicata as enshrined under Section 11 CPC is to avoid parties to litigate on the same issue which has already

been adjudicated upon and settled. This is in consonance with the public policy so as to bring to an end the conflict of interest on the same issue between the same parties. One of the basic essential ingredients for applying the principle of res judicata, as stated earlier also, is that the matter which is directly and substantially in issue in the previous litigation ought not to be permitted to be raised and adjudicated upon in the subsequent suit.

It is a settled law that the principle of res judicata is applicable not only between the plaintiff and the defendants but also between the co-defendants. In applying the principle of res judicata between the co-defendants, primarily three conditions are necessary to be fulfilled, namely, (i) there must be a conflict of interest between the co-defendants; (ii) there is necessity to decide the said conflict in order to give relief to plaintiff; and (iii) there is final decision adjudicating the said conflict. Once all these conditions are satisfied, the principle of res judicata can be applied inter se the codefendants.

24. In context with the above settled principle, though reference can be made to several decisions starting from that of Privy Council, but we consider it appropriate to refer to only one of the latest decisions on the point rendered by this Court in the case of Govindammal (Dead) by Legal Representatives and Ors. vs. Vaidiyanathan and Ors.3, wherein after considering all previous decisions regarding application of principle of res judicata between co-defendants, this Court culled out the above three conditions for applying the same.

25. In the light of the above legal position, we find that there was no conflict of interest between the co-defendants in the earlier Suit No. 8 of 64 inasmuch as the plaintiff-appellant was independently claiming rights over 0.30 acres of suit land whereas the Cantonment Board, Ramgarh was claiming rights over 2.55 acres of the land which formed part of the Estate of Raja without asserting that the land settled in its favour is the same as claimed by plaintiff-appellant or that there was any encroachment upon the land settled in its favour.

Even assuming that there was some inter se conflicts between the codefendants with regard to the suit land, the adjudication of the said conflict was not necessary for granting any relief to Maharani who was the plaintiff in the suit. Since she was claiming the entire Estate of 5.38 acres of land and her claim was defeated as she was unable to prove the grant of the said land in her favour with no specific finding by the court regarding the claims set up by the codefendants, the inter se dispute of the co-defendants as raised in the present suit never came to be adjudicated.

Thus, none of the conditions as laid down in Govindammal (supra) between co-defendants stood fulfilled for applying res judicata. In view of the aforesaid facts

and circumstances, we are of the opinion that the principle of res judicata would not be attracted as the issue in the present suit was neither directly or indirectly in issue in the previous suit and there was no conflict of interest between the co-defendants in the said previous suit which if any never came to be adjudicated upon. Accordingly, the suit as filed by the plaintiff-appellant claiming title over the suit land against the Cantonment Board, Ramgarh is not barred under Section 11 CPC.

26. Having said so, we proceed to examine the respective claims of the parties on merits, treating the suit as maintainable and not barred by res judicata.

27. The plaintiff-appellant has set up his claim over the suit land as described in Schedule 'A' to the plaint. The said schedule mentions 0.12 acres of land of plot No.432 and 0.18 acres of land of plot No.438 totaling 0.30 acres of land situate in village Ramgarh. There is no dispute that during the said period the Estate of the Raja was under the management of Court of Wards, its manager had acquired 5.38 acres of additional land including the suit land and the same was added to the Estate of the Raja. In the year 1942, the Raja had settled the aforesaid land in favour of the plaintiff-appellant on 18.10.1942. It was followed by Hukumnama dated 07.04.1943 (Exh.9) which confirmed the above settlement.

28. The above settlement was confirmed by the Additional Collector, Hazaribagh on enhancement of rent @ Rs.2/- per decimal some time in the year 1963 and had started realizing rent from the plaintiff-appellant accordingly.

29. There is no dispute by any person claiming rights under the Raja that the aforesaid land was not so settled in favour of the plaintiff-appellant. The Maharani had claimed the entire 5.38 acres of land on the basis of the maintenance grant executed by Raja in her favour but her aforesaid claim was not accepted. The Cantonment Board, Ramgarh on the other hand had staked its claim only in respect of 2.55 acres of land forming part of 5.38 acres of the land but has nowhere claimed any right, title and interest over the suit land as claimed by the plaintiff-appellant.

The Cantonment Board only on the basis of the judgment and order dated 16.03.2000 passed in Title Suit No.8/64 alleges that it has been recognized to be the owner of the entire 5.38 acres of land by adverse possession and, therefore, the plaintiff-appellant has no subsisting right in the suit land. The Cantonment Board further contends that the entire 5.38 acres of land was leased out by the Raja on 02.06.1931 for a period of 15 years to the Dublin University Mission and, therefore, no part of it could have been settled by him in favour of the plaintiff-appellant in the year 1942.

30. In respect to the second aspect as raised on behalf of the Cantonment Board, it is necessary to note that no material or evidence was adduced by the Cantonment Board to establish that the entire 5.38 acres of land was transferred by way of lease to Dublin University Mission; not even any oral evidence was adduced to prove such a transfer restricting the right of the Raja to settle the land in favour of the plaintiff-appellant. Even otherwise assuming there was such a lease, it would have expired in June 1946 on completion of 15 year period in which case the settlement of 1942 and the Hukumnama of 1943 being valid would revive and continue in favour of the plaintiff-appellant, more particularly with its confirmation by the Additional Collector and mutation in 1963.

31. In context with the first contention that in Title Suit No.8/64, possession of the Cantonment Board over the entire 5.38 acres was accepted by adverse possession, it would be pertinent to note that on perusal of the said judgment and order and decree would reveal that the court of first instance in the said suit has not given any finding with regard to the claim to the plaintiff-appellant (who was defendant No.32 in the said suit) nor with regard to the claim set up by the Cantonment Board.

It is misconceived to contend that the said judgment and order accepts the title of the Cantonment Board by adverse possession on the entire 5.38 acres of land. In the said suit, the Cantonment Board had claimed rights only in respect of the part of the aforesaid 5.38 acres of land to the extent of 2.55 acres and, therefore, any observation of the trial court regarding adverse possession of the Cantonment Board would be deemed to be in respect of the claim as set up by the Cantonment Board and would not be construed to be in connection with the entire 5.38 acres of land so as to include the land of the plaintiff-appellant.

32. The written statement of the Cantonment Board itself as filed in Title Suit No.8/64 (Exh.12) makes it abundantly clear that upon the establishment of the Cantonment Board as a temporary measure in the year 1941, the Raja on being approached permitted it on 06.11.1941 to use 2.55 acres of land consisting of the dispensary building and other structures along with adjoining land to be used by the Cantonment Board for a period of six months which was extended up to 31.12.1943.

There was no other settlement of any land in favour of the Cantonment Board and the Cantonment Board was in permissive possession of only 2.55 acres of land out of the 5.38 acres of the entire land of village Ramgarh. The land settled in favour of the plaintiff-appellant and that in favour of the Cantonment Board by the Raja were distinct and as such there was no apparent conflict between them.

33. The plaintiff-appellant by sufficient evidence has proved the settlement of the suit land by the Raja in his favour. It stands proved by the Amin report (Exh.8) dated 15.04.1942 and the Hukumnama (Exh.9) dated 07.04.1943 as well as the Rent receipt (Exh.6, 6/A and 7). The order of the Additional Collector, Hazaribagh dated 07.01.1963 (Exh.16) directing realization of rent from the plaintiff-appellant also confirms the above settlement and its subsequent approval by the State on enhancement of rent.

All these documents have not been confronted by the other side. The fact that the name of the plaintiff-appellant was also mutated in the revenue records proves it beyond doubt, in the absence of any contrary evidence that he is in possession of the suit land. It may also be worth noting that in the earlier suit, the Cantonment Board has accepted that the plaintiff-appellant has been realizing rent of the shops existing over the suit land from the tenants.

34. In view of the aforesaid overwhelming unconfronted evidence, the First Appellate Court manifestly erred in reversing the finding of the court of first instance that the plaintiff-appellant is in settled possession of the suit land and he has successfully proved his ownership rights over the same.

35. Accordingly, the judgment and order of the High Court dated 01.04.2009 and that of the First Appellate Court dated 28.06.2006 are hereby set aside and the judgment and order dated 16.03.2000 passed by the trial court is restored decreeing the title suit of the plaintiff-appellant but with no order as to costs.

36. The appeal is allowed.

.....J. (Abhay S. Oka)

.....J. (Pankaj Mithal)

New Delhi;

July 08, 2024.

1 Hereinafter referred to as "Maharani"

2 Hereinafter referred to as "Raja"

3 (2019) 17 SCC 433

IN THE SUPREME COURT OF INDIA

Joy Devaraj
Vs.
State of Kerala

[Criminal Appeal No. 32 of 2013]

HEADNOTE – Even a death caused by a single stab can be considered as a murder if other requirements of section 300 of the Indian Penal Code, 1860, are fulfilled.

JUDGMENT

Dipankar Datta J.

1. This criminal appeal, by special leave, calls in question the judgment and order dated 28th September, 2011 of the Kerala High Court1 dismissing the appellant's appeal2 under section 374(2) of the Code of Criminal Procedure. The impugned judgment upheld the conviction of the appellant by the Sessions Court, Thalassery3 under sections 143, 147, 148, and 302 of the Indian Penal Code, 1860 ("IPC", hereafter) and, inter alia, the sentence of imprisonment for life together with fine.

2. Bare reading of the impugned judgment reveals that the appellant, who was part of an unlawful assembly, murdered Bobby4 in the evening of 26th December, 1999 due to a dispute which arose on 24th December, 1999 between Sufras @ Rinku5 and Bennet Ignatius6. Since we are considering this appeal which is at the instance of the appellant, being accused no.1, the discussion in this judgment is proposed to be confined to the role of the appellant only; however, the role of the other accused may be discussed tangentially, if required.

3. The sequence of events preceding the death of the victim, according to the prosecution case, reveals that the victim and PW5 were members of an 'Anti-Liquor Movement'. They attempted to persuade the public to give up drinking alcohol. On 24th December, 1999, PW5 got into an altercation with A4 who allegedly was an illicit liquor vendor. The victim had supported PW5 in that altercation and, thus, had a run-in with A4. During the course of the argument, A4 had threatened the victim with danger to his life and this, according to the prosecution, formed the genesis for the attack on the victim in the evening of 26th December 1999.

On that day, Dikson Jerry7 was standing near the victim's house with K.T. Varghese8 and Byju9. At this time, the victim was standing on the street, at a distance of about 5 metres from PW1, talking to K.R. Rainold Suresh10 and Jerry Mariyadas11, when Renjith T.M.12 arrived on his scooter and joined the group of the victim. Around 7:40 PM, all the accused persons including the appellant armed with deadly weapons were seen approaching the victim.

Sensing danger, the victim tried to flee on PW4's scooter but the scooter was cut off immediately. The appellant, armed with a dagger, grabbed the victim, and pulled him to the ground and proceeded to stab him with the dagger on the left side of his lower chest. The other accused persons hit the victim with hockey sticks. Further, after the conclusion of the attack on the victim, the accused while retreating hurled a bomb at the door of PW1's house. PW1, PW2 and CW2 rushed the victim to the hospital, where he was pronounced dead.

4. An F.I.R.13 under sections 143, 147, 148, 324, 302 r/w 149 of IPC was registered at the behest of PW1 at around 22:45 PM at Kannur City Police Station. Investigation of the F.I.R. culminated in filing of charge-sheet against 15 (fifteen) accused persons and committal of the case to the Sessions Court where it was registered as Sessions Case No.201/2002. The accused persons stood trial whereupon the Sessions Court vide its judgment and order14 found, inter alia, the appellant guilty of murder and sentenced him to life in prison under section 302, IPC. The co-accused were found guilty of lesser crimes and suitably sentenced.

5. The appellant has disputed the prosecution case and questioned the credibility of the prosecution witnesses. Learned counsel appearing on his behalf has presented the following arguments:

I. The testimonies of the eye witnesses are wholly unreliable as they are full of material contradictions and gaps. The testimonies taken as a whole cannot lead one to conclude that the burden to prove murder was satisfied. The role of the appellant has been muddled in all three eye-witness accounts and, thus, the benefit of doubt should be given to the appellant.

II. PW1, who is also the first informant, has been inconsistent in his version about both the weapon as well as the overt act committed by the appellant. In the written complaint which was later converted into the FIR, PW1 stated that he saw the appellant along with other coaccused approach the victim with a dagger. He has further expressed that other accused persons were armed with knives and hockey sticks.

The victim upon noticing the group approaching him, tried to flee on the scooter of PW4 when the appellant together with Sanju15 pulled him to the ground from

the scooter and stabbed him on the left side of the stomach with the dagger. This version narrated in the FIR has changed when PW1 testified in court. The dagger became an axe, and there is no mention of A2 helping the appellant in pulling the victim from the scooter. Similarly, PW2 has stated that the appellant used a knife instead of a dagger or an axe as stated by PW1.

III. PW4, one of the eyewitnesses, had turned hostile during the trial and did not support the case of the prosecution. His testimony is of significance as, by the prosecution's own admission, he was present at the scene of the incident. The evidence of a witness cannot be discarded merely because he has turned hostile, and thus the testimony of PW4 raises serious questions about the chain of events which led to the death of the victim. This is a chink in the prosecution's armour which clearly demonstrates that the prosecution has not been able to prove the case against the appellant beyond reasonable doubt.

IV. Arguendo, assuming that the prosecution established through evidence that the appellant did attack the victim with a knife, it was not able to prove that the appellant attacked the victim with an intention to cause death. The act cannot be placed within the confines of section 300, IPC as the injury caused to the victim was not sufficient in the ordinary course of nature to cause death. It has been submitted that a singular stab wound on the lower chest is not a lifethreatening injury and the appellant cannot be said to have possessed the intention or the knowledge that the harm inflicted would cause the death of the victim. Thus, the conviction under section 302 of IPC is altogether unsustainable.

6. Accordingly, learned counsel urged us to reverse the impugned judgment and to set the appellant free.

7. Per contra, learned counsel for the respondent while defending the impugned judgment and referring to the evidence on record submitted that the concurrent findings and conviction recorded by both the Sessions Court and the High Court do not warrant interference.

8. Having heard learned counsel for the parties and upon scrutiny of the materials on record, we are now tasked to determine whether the conviction of the appellant under section 302, IPC warrants interference by this Court.

9. The present case is one of a premeditated attack carried out by a group of 15 (fifteen) people resulting in the victim's death. To decide the sustainability of the conviction, we have to consider two issues: first, how far the evidence of the witnesses is credible and secondly, whether the nature of offensive act comes within the purview of section 300, IPC.

10. The appellant has highlighted inconsistencies in the statements of the prosecution witnesses regarding the weapon used in the crime and the overt act that he was alleged to have committed. PW1 and PW2 both have deposed in Court that they witnessed the appellant pulling the victim down from the scooter and striking him with a sharp weapon. The discrepancy arises because PW1 stated that the appellant inflicted blow on the victim with an axe, whereas PW2 stated that the appellant stabbed the victim with a dagger. None has mentioned about any knife being used as the weapon of offence.

11. At this stage, we find it crucial to look at a couple of decisions of this Court on credibility of a witness and what the requirements are to discredit or contradict a witness.

12. This Court in Rammi v. State of M.P.16 held:

"24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally nondiscrepant. 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. But 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."

(emphasis ours)

13. The appellant has also pointed out that PW1's statement recorded in the FIR has substantial variations with his testimony in court, and this would give rise to doubts as to the veracity of his testimony. Here, we find it expedient to excerpt a passage from Tahsildar Singh v. State of U.P.17 which lays down the standard for "contradicting" a witness in the following words:

"19. 'Contradict' according to the Oxford Dictionary means to affirm to the contrary. Section 145 of the Evidence Act indicates the manner in which contradiction is brought out. The cross-examining counsel shall put the part or parts of the statement which affirms the contrary to what is stated in evidence. This indicates that there is something in writing which can be set against another statement made in evidence. If the statement before the police officer - in the sense we have indicated - and the statement in the evidence before the court are so inconsistent or irreconcilable with each other that both of them cannot coexist, it may be said that one contradicts the other."

(emphasis ours)

14. The excerpted passage crystalises the burden which is placed on a party seeking to discredit the testimony of a witness.

15. During commission of the attack leading to the crime, there were 15 (fifteen) people forming part of the unlawful assembly. We presume, it must have been a very chaotic situation leading to certain discrepancies having arisen in the statements of the witnesses. We cannot expect all the witnesses, when under attack by the accused persons seeking to terrorize those protesting against liquor trade, to possess stellar memories with an accurate recollection of the events.

The appellant was required to demonstrate that the incongruities in the statements of the several eye witnesses shook the roots of their credibility. The threshold for disbelieving a witness is not mere discrepancy or inconsistency but material discrepancy and inconsistency, which renders the account narrated by the witnesses so highly improbable that the same may safely be discarded altogether from consideration.

16. In the present case, there is evidence to the effect that the appellant was part of an unlawful assembly which gathered at the place of occurrence. The victim had in mind bringing a thriving trade in liquor to be brought to a grinding halt. There was, thus, definite motive for the accused persons including the appellant to throttle the voice of the victim. In such a scenario, the appellant was required to point out serious loopholes in the prosecution story for discrediting the witnesses. Unfortunately, our faith in the credibility and reliability of the witnesses is unshaken.

Although, there are a few inconsistencies in the testimonies of the witnesses but the same are minor and not substantial, as argued, so as to erode the credibility of such witnesses. it is clear that PW1 and PW2 have spoken in one common voice that the appellant was the one who stabbed the victim and that he succumbed to the injury caused by such stab. The medical evidence of Dr. Dinesh P.18 does support the version of PW1 and PW2 that the victim died of haemorrhage caused by an incised wound.

None of the discrepancies in the statements of PW1 and PW2, pointed out by learned counsel for the appellant, have the effect of shaking the root of their testimonies and make their version unreliable or implausible. The incident took place at around 7:40 PM. Considering that it was evening time, it is possible that one of the two eyewitnesses standing 5-7 metres from the scene of the incident misidentified the weapon.

Both eyewitnesses have, however, correctly described the appellant having stabbed the victim in the lower chest/stomach area on the left side. The medical report corroborates this ocular testimony by noting that the incised wound was found 6 cm below the nipple and 13 cm lateral to the midline of the chest.

17. Even otherwise, section 134 of the Indian Evidence Act, 1872 ordains that no particular number of witnesses is required, in any case, to prove a fact. Therefore, it is not the law that a conviction cannot be recorded unless there is oral testimony of at least two witnesses matching with each other. It is the quality of evidence and not the quantity that matters.

If the evidence of a solitary witness appeals to the court to be wholly reliable, the same can form the foundation for recording a conviction. Viewed thus, the conviction of the appellant does not call for interference based on the sole testimony of PW2, which we have found to be entirely trustworthy. Version of PW2 being sufficiently corroborated by PW1 (except the weapon) is an additional ground not to accept the argument advanced by learned counsel for the appellant to reverse the conviction.

18. PW4 who had turned hostile during the trial has deposed that he was not present at the place of occurrence. While it is settled law that a witness cannot be disbelieved on the sole ground of him turning hostile, the hostility of PW4 does not particularly dent the prosecution's case. He has, in his testimony, not stated an alternative case which would lead us to question the credibility of the other eyewitnesses. We do not find any merit in the argument that merely because PW4 resiled from his statement given to the police, the entire case presented by the prosecution is unreliable.

19. It is also quite understandable why PW4 turned hostile. It is anybody's guess that those who trade in illicit liquor people of might, who can go to any extent to keep the trade thriving. Having witnessed the fate of the victim, PW4 must have felt insecure and, thus, decided against standing by the prosecution case to save his own life.

20. We hold, without equivocation, that the prosecution has been able to establish beyond reasonable doubt that the appellant was the person who stabbed the victim during the course of the attack by the accused persons leading to his death.

21. The criminal act of the appellant as the one responsible for homicidal death of the victim being established, we need to probe now whether such act would come within the ambit of section 300, IPC. Sections 299 and 300 thereof have to be read together, as culpable homicide and murder are closely related concepts. It is often said that culpable homicide is the genus and murder is one of species in that

genus. All murders are culpable homicide but not all culpable homicides are murder.

22. Though closely related, culpable homicide and murder cover very different acts. To decide the issue, we can profitably take the aid of the decision of this Court in Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh19 wherein certain factors have been listed to glean if the aggressor had an intention to cause death:

"29. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances;

(i) nature of the weapon used;

(ii) whether the weapon was carried by the accused or was picked up from the spot;

(iii) whether the blow is aimed at a vital part of the body;

(iv) the amount of force employed in causing injury;

(v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight;

(vi) whether the incident occurs by chance or whether there was any premeditation;

(vii) whether there was any prior enmity or whether the deceased was a stranger;

(viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation;

(ix) whether it was in the heat of passion;

(x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner;

(xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special

circumstances with reference to individual cases which may throw light on the question of intention."

23. Applying the rubric provided in Pulicherla Nagaraju (supra) to the present case, we find that the weapon used for the premeditated attack was a dagger, which is considered a deadly weapon. The weapon was carried by the appellant to the scene of the incident and not picked up from the spot. The victim was stabbed in his chest, which houses multiple vital organs of the body.

There was no provocation from the side of the victim. The appellant and other co-accused had reached the place of occurrence with the premeditated intention to cause hurt to the victim, which can be seen from the fact that they formed an unlawful assembly armed with deadly weapons with the common intention to attack the victim and thereby put an end to the movement triggered by him to stop trade in illicit liquor.

24. The post mortem examination of the victim revealed the cause of death of the appellant to be haemorrhage due to an incised wound on the apex of the heart. The apex of the heart is the lowest tip of the heart located on the lower left side of the chest. In his cross examination, PW8 (who conducted the post-mortem examination) noted that such an injury can cause death within 5 (five) minutes of infliction. Needless to observe, the heart is one of several vital organs of the body, and the appellant caused such bodily injury, which in the ordinary course of nature was sufficient to cause death.

25. The appellant's submission that only one of the eight injuries sustained by the victim is grievous and the rest are simple and hence there is no intention to cause death, cannot be accepted after examining the facts of the case. In Stalin v. State20, this Court held that death caused by a single stab wound can also be considered murder if the requirements of section 300, IPC are fulfilled.

26. To summarise, the appellant participated in a premeditated attack on the victim, armed with a deadly weapon and stabbed the unarmed victim on a vital organ causing his death. The conduct of the appellant is covered by both clauses (1) and (3) of section 300, IPC. The intention to cause death can easily be discerned from the conduct of the appellant and the nature of fatal injury inflicted, which in the ordinary course of nature was sufficient to cause death. Fulfilment of any one condition of section 300, IPC is enough to convict the appellant under section 302 thereof, but in the present case not one but two conditions have clearly been shown to exist to nail the appellant for murder.

27. In conclusion, we agree with the High Court's affirmance of the conviction and find that the impugned judgment warrants no interference. The criminal appeal, accordingly, stands dismissed.

28. The order dated 13th February, 2015 granting bail to the appellant stands vacated. We direct the appellant to surrender before the concerned court immediately but not later than 3 (three) weeks from date to serve out the rest of his sentence.

.....J. (Dipankar Datta)

.....J. (Pankaj Mithal)

New Delhi;

July 08, 2024

1 High Court, hereafter

2 Criminal Appeal No. 12 of 2007

3 Sessions Court, hereafter

4 "victim", hereafter

5 "A4", hereafter

6 "PW5", hereafter

7 "PW1", hereafter

8 "PW2", hereafter

9 "CW2", hereafter

10 PW3

11PW6

12 "PW4", hereafter

13 No. 131 of 1999

14 dated 13th December 2006 in Sessions Case No. 201/2002

15 "A2", hereafter

16 (1999) 8 SCC 649

17 1959 Supp (2) SCR 875

18 "PW8", hereafter

19 (2006) 11 SCC 444

20 (2020) 9 SCC 524

IN THE SUPREME COURT OF INDIA

P. Sasikumar
Vs.
State represented by the Inspector of Police

[Criminal Appeal No. 1473 of 2024
arising out of SLP (Crl.) No. 2756 of 2019]

HEADNOTE – In cases where accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting the dock identification by such a witness

JUDGMENT

Sudhanshu Dhulia, J.

1. The appellant before us has challenged the order dated 12.01.2017 of the High Court of Madras which has upheld the conviction of the appellant under Section 302 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'IPC') as well as under Section(s) 449, 404 and 201 r/w 302 IPC. He has been, inter alia, sentenced for life imprisonment under Section 302 IPC.

2. It was a brutal murder of a 14-year-old girl committed inside her house on the night of 13.11.2014, allegedly by two accused, one of them being the present appellant before this Court. There is no direct evidence of the crime although there is both ocular as well as forensic evidence placed by the prosecution to prove the murder of the 14-year-old girl, at the hands of the present appellant and another accused, who is accused no.1 and also the main accused. The present accused is accused no.2.

3. The case of the prosecution is largely based on circumstantial evidence. FIR No.408/2014 was lodged on 13.11.2014 at police station Alagapuram by PW-1 Durairaj, who is the father of the deceased. The complainant states that he is working as a Manager at JSP Granite Company at Salem, Tamil Nadu and he has two daughters. The elder daughter had studied engineering from Mahendra Engineering College and is now working in L&T Company, Chennai. His younger daughter was studying in the 8th standard in a local school in Salem.

His wife is working as an accountant in a private company. On 13.11.2014 his wife had gone to Chennai to meet their elder daughter as she was not well. The younger daughter (deceased) was alone in the house. That day he had called his younger daughter about 2-3 times, in order to remind her to receive her tiffin but she did not answer his call. He had then made up his mind to return to his house

early. When he was climbing the stairs of his house at about 07:15 p.m., after parking his scooter, he saw a person aged about 25 years, walking down the stairs.

This man had a helmet in his hand, which he immediately wore on seeing the complainant. He found the door of his house open and his daughter was bleeding profusely from her neck. Meanwhile, neighbors had gathered on hearing his cries and they informed him that two persons had come to his house who had brutally killed his daughter. The deceased was still alive was rushed to the hospital where she was declared dead.

4. The post mortem was conducted on the body of the deceased by Dr. K. Gokularamanan (PW-14) at 10:30 a.m. next day on 14.11.2014 and the following antemortem injuries were found on the deceased -

"1. A well extended broad cut injury on the front side of neck and on both sides extending up to the upper side of Thyroid ligament bone measuring a depth of 14 x 6 up to the depth of the bone and the neck spinal bone present in the underside of injury, Adams apple, muscles and blood vessels were seen on the edges of the injury and blood outflow was seen in the surrounding areas.

2. On the right hand side of the aforesaid injury a cut injury on the lower and outer side was seen which extended up to the backside of neck measuring 12 x 4 depths in the muscles and blood outflow was seen in the surrounding areas. No other injuries were seen on the external parts of the body."

According to the postmortem report, the cause of death was shock due to the antemortem injuries on the neck and profuse bleeding and the time of death was 12-18 hours prior to the post mortem.

5. Meanwhile the FIR was registered as Case Crime No.408/2014. The two accused were apprehended by the Police on 15.11.2014, at about 10 p.m.

6. Recoveries were made during the investigation on their pointing out which is as follows:-

From the pointing out of accused No. 1:- A black colour Pulsar Vehicle without registration number, a black colour helmet, a black colour cell phone with broken glass, a knife with a maroon handle and a checkered bloodstained shirt were recovered.

From pointing out of accused No. 2 i.e. present appellant:- A dark green monkey cap, a Samsung Galaxy Pro Cell Phone, a blood-stained elephant-coloured jeans and a white/green shirt were recovered.

7. At this juncture, we must also record that although there are two accused in the case and, both were charged for the above offences and faced the trial and were convicted by the Trial Court under Section 302 read with Section 34 IPC apart from other offences such as 449, 404 and 201 r/w 302 IPC, yet there is no record, before this Court of any appeal being filed before the High Court by accused no. 1 who also stands convicted and sentenced for the same offences like the present appellant.

This is also mentioned by the High Court while deciding the appeal that they have before them only the criminal appeal of accused No. 2 i.e. the present appellant- Sasikumar, and the court is not aware of any Criminal Appeal being filed by accused no.1 - Yugadhithan. Before us, thus, is only accused no. 2. Accused no.1, who is the main accused inasmuch as it was accused no.1 against whom the prosecution additionally has a case of motive to commit this murder.

8. The prosecution case is that when Harini (PW2)-the elder sister of the deceased was a student in Mahendra Engineering College, accused no. 1 (Yugadhithan) was also studying in the same college and was totally infatuated by her. His feelings were never reciprocated by the elder sister of the deceased. It is because of this reason that he was enraged and had even started stalking the elder sister of the deceased.

He had even reached her present place of work L&T Company at Chennai, causing much anxiety to her. PW2 had also complained against accused no. 1 to the principal of Mahendra Engineering College earlier stating that he had been harassing her. The prosecution case further, is that accused no. 1 had threatened the elder sister of the deceased warning her that if she does reciprocate his feelings, he would kill her entire family.

9. But the one who is before us today and whose conviction stands confirmed by the High Court is not accused No.1 but accused no.2. The entire question before us here is of identification of accused no. 2. From all available evidences which the prosecution has placed before the Trial Court, inter alia, in the form of PW-1 and PW-5 have stated that accused No.2 i.e., the present appellant was seen by them wearing a "green colored monkey cap".

When this accused had entered the premises, when he knocked the door of the house of the deceased, when he was coming down from the stairs along with accused no.1 and at all other relevant times the witnesses who have seen and identified the accused no.2 i.e., the present appellant, had seen the appellant for the first time on 13.11.2014 while he was wearing a green colored monkey cap. None of them had seen him earlier. PW-5 who is the closest witness in this case states as under:-

"I know Duraiaj. It could be 6.30 hours in the evening on 13.11.2014. At that time I was taking good water in balcony at that time a person went wearing monkey cap. Another person went wearing a helmet. The time could be 6.35, 640 hrs in the evening. They both knocked the door of Tejashree house and went inside the house. They both were found talking inside in a sofa. They are the present accused. They were asking phone number with Tejashree for that Tejashree has told them that father has gone out and he has to come. Both the accused and Tejashree were found to be talking.

After taking water I went to my home. I informed my house by around 7.00 hrs in the evening that I am going to super market. Later I came back by 7 .25 hrs at that time Sun News was under broadcast when I parked my vehicle and climbed stairs Durairaj came behind me. When I placed the articles in home within 5 minutes I heard the sound of Durairaj. Immediately I went to Durairaj House. After tearing the cloth he was shouting from the place where his daughter was lying. I told Durairaj that 2 person came and went half an hour prior to that. I told Durairaj that they both kept Tejashree sitting and was talking with her. Immediately call was made to ambulance."

PW-5 is said to have identified the accused later when both the accused were apprehended by the police and were in the hospital. In other words, while these two accused persons were in the custody of the police this particular witness PW-5 was taken to the hospital where he had identified the two accused. This so-called identification, on which much reliance has been placed by the prosecution, was made by PW-5 in the hospital by way of a statement to the police, and it can only be read as a statement under Section 162 of the Criminal Procedure Code which can only be used for the limited purpose as provided under Section 162 of the CrPC itself.

The case of the prosecution is that both the accused were apprehended on 15.11.2014 near the Salem-Coimbatore bye pass fly over. The recovery of incriminating material such as motor bike, weapon, the monkey cap, helmet, clothes etc. were made on the same day. In other words, when the accused were in judicial custody, there is nothing on record to suggest that the investigating officer or the investigating team had taken any permission from the Magistrate for the release of the accused for these recoveries.

These recoveries therefore, have no relevance. At this juncture, we must reiterate that our observation in this case and our finding and conclusions are based only on the evidences and the material which is available against the present appellant, it should not be construed in any manner as a finding or a comment on the case of accused no. 1 who is not before us and evidently against whom the prosecution has some more material, including motive.

There is also no motive against the present appellant. In fact, the Pulsar bike which has been recovered on pointing out of accused no.1 does not belong to the appellant but was purchased by a person named 'Satish' from the showroom and this person 'Satish' has never been questioned by the police or produced as a prosecution witness during the trial.

10. The admitted position in this case is that the test identification parade (hereinafter referred to as 'TIP') was not conducted. All the prosecution witnesses who identified the accused in the Court such as PW-1 and PW-5 were not known to the present appellant i.e., accused no.2. They had not seen the present appellant prior to the said incident. He was a stranger to both of them. More importantly, both of them have seen the appellant/accused No. 2 on the date of the crime while he was wearing a "green colour monkey cap"!

11. Now, as one is familiar a monkey cap covers the entire face, chin and cheek of a person, leaving only his eyes and nose and part of forehead exposed. These two witnesses (PW-1 and PW-5), had seen the appellant wearing a monkey cap and that too from a distance. Under these circumstances, TIP had become necessary particularly when both the accused, who are alleged to have committed this murder were arrested within two days.

The incident is of about 7:00 pm on 13.11.2014 and both of them were arrested at around 10 pm on 15.11.2014. The case of the prosecution is that while they were being arrested, they received injuries as they tried to escape and consequently, they were taken to the Hospital for treatment. It was in the hospital, that PW-1 i.e. father of the deceased and the complainant and PW-5 were taken by the Investigating Officer who are said to have identified the two accused as the one who had committed the crime.

No explanation whatsoever has been given by the prosecution as to why TIP was not conducted in this case before a Magistrate as it ought to have been done. In fact, the High Court has recorded this flaw in the investigation at more than one place in its judgment. It has again observed that the Investigating Officer (PW-24) was before the Court and in spite of being questioned as to what the reasons were for not holding TIP in this case, no satisfactory reply was given by him.

12. It is well settled that TIP is only a part of Police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, or what can be called evidence is only dock identification that is identification made by witness in Court during trial. This identification has been made in Court by PW-1 and PW-5.

The High Court rightly dismisses the identification made by PW-1 for the reason that the appellant i.e., accused no.2 was a stranger to PW-1 and PW-1 had seen the appellant for the first time when he was wearing a monkey cap, and in the absence of TIP to admit the identification by PW-1 made for the first time in the Court was not proper.

However, the High Court has believed the testimony of PW-5 who has identified accused no.2 under similar circumstances! The appellant was also stranger to PW-5 and PW-5 had also seen the accused i.e., the present appellant for the first time on that fateful day i.e. on 13.11.2014 while he was wearing a green colour monkey cap. The only reason assigned for believing the testimony of PW-5 is that he is after all an independent witness and has no grudge to falsely implicate the appellant.

This is the entire reasoning. We are afraid the High Court has gone completely wrong in believing the testimony of PW-5 as to the identification of the appellant. In cases where accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting the dock identification by such a witness (See: Kunjumon v. State of Kerala (2012) 13 SCC 750).

13. After considering the peculiar facts of the present case, we are of the opinion that not conducting a TIP in this case was a fatal flaw in the police investigation and in the absence of TIP in the present case the dock identification of the present appellant will always remain doubtful. Doubt always belongs to the accused. The prosecution has not been able to prove the identity of the present appellant i.e. A-2 beyond a reasonable doubt. The relevance of a TIP, is well-settled. It depends on the fact of a case. In a given case, TIP may not be necessary.

The non conduct of a TIP may not prejudice the case of the prosecution or affect the identification of the accused. It would all depend upon the facts of the case. It is possible that the evidence of prosecution witness who has identified the accused in a court is of a sterling nature, as held by this Court in the case of Rajesh v. State of Haryana (2021) 1 SCC 118 and therefore TIP may not be necessary. It is the task of the investigation team to see the relevance of a TIP in a given case. Not conducting TIP in a given case may prove fatal for the prosecution as we are afraid it will be in the present case.

14. The relevance of TIP has been explained by this Court in a number of cases (Please see: Ravi Kapur v. State of Rajasthan (2012) 9 SCC 2841, Malkhansingh and Ors. v. State of Madhya Pradesh (2003) 5 SCC 7462).

15. In the facts of the present case, the identification of the accused before the court ought to have been corroborated by the previous TIP which has not been

done. The emphasis of TIP in a given case is of vital importance as has been shown by this Court in recent two cases of Jayan v. State of Kerala (2021) 20 SCC 38 and Amrik Singh v. State of Punjab (2022) 9 SCC 402. In Jayan (supra), this Court disbelieved the dock identification of the accused therein by a witness and while doing so, this Court discussed the aspect of TIP in the following words:

"It is well settled that TI parade is a part of investigation and it is not a substantive evidence. The question of holding TI parade arises when the accused is not known to the witness earlier. The identification by a witness of the accused in the Court who has for the first time seen the accused in the incident of offence is a weak piece of evidence especially when there is a large time gap between the date of the incident and the date of recording of his evidence. In such a case, TI parade may make the identification of the accused by the witness before the Court trustworthy." (Para 18)

16. Under these circumstances, we hold that the identity of the present appellant is in doubt. The appellant could not have been convicted on the basis of a very doubtful evidence as to the appellant's identity. The appeal is allowed and the impugned order of the High Court dated 12.01.2017 is hereby set aside.

The appellant has been in jail for about 8 years as we have been told at the Bar, he shall be released forthwith unless he is required in some other case. We make it absolutely clear that this decision of acquittal is based on the evidence, or lack thereof, which the prosecution has against accused no. 2 i.e. the present appellant. This will absolutely have no bearing on the case of accused no.1.

.....J. [Sudhanshu Dhulia]

.....J. [Prasanna B. Varale]

New Delhi

July 08, 2024

1 Para 35

2 Para 16

IN THE SUPREME COURT OF INDIA

X
Vs.
Y

[Civil Appeal No. 7210 of 2024]

HEADNOTE – A divorce petition can be presented on the ground that there has been no restitution of conjugal rights between the parties to the marriage for a period of one year and more after passing the decree for restitution of conjugal rights.

JUDGMENT

Abhay S. Oka, J.

Factual Aspects

1. This is an unfortunate case in which the appellant-husband and respondent-wife, notwithstanding continuous separation at least from 2008, have not been able to settle their matrimonial dispute. For the sake of privacy, we have masked their names.

2. The marriage between the parties was solemnised on 25th March 1999. Two children were born from the marriage. Both of them are adults. The matrimonial dispute led to multiple litigations. The matrimonial discord started in 2006, which led to the appellant filing a petition under Section 9 of the Hindu Marriage Act, 1955 (for short, 'HM Act') for restitution of conjugal rights.

The petition was filed on 17th December 2008. By the judgment and decree dated 15th May 2013, the learned Additional Civil Judge (Sr.Division), Barnala, passed a decree of restitution of conjugal rights under which the respondent was directed to join the appellant's company within three months.

According to the case of the appellant, as the respondent did not abide by the decree for restitution of conjugal rights, on 23rd August 2013, the appellant filed a petition under Section 13 of the HM Act before the Family Court at Barnala seeking a decree of divorce on the grounds of cruelty and desertion.

Being aggrieved by the decree for restitution of conjugal rights, in the year 2013 itself, the respondent preferred an appeal before the High Court of Punjab and

Haryana. The appeal was dismissed by the judgment dated 19th February 2015, and the decree for restitution of conjugal rights was confirmed.

3. On 1st August 2016, the learned Judge of the Family Court at Barnala allowed the divorce petition filed by the appellant and dissolved the marriage between the appellant and respondent. The respondent challenged the divorce decree by preferring an appeal before the Punjab and Haryana High Court. By the impugned judgment dated 4th October 2019, the High Court has set aside the divorce decree.

4. There were two other litigations between the parties. The respondent filed a petition under Section 125 of the Code of Criminal Procedure, 1973, claiming maintenance against the appellant. On 19th October 2013, the said petition was partly allowed. The Trial Court denied maintenance to the respondent on the ground that the respondent had refused to live with the appellant without any sufficient cause. However, the Trial Court directed the appellant to pay maintenance at the rate of Rs.3500/and Rs.4000/per month respectively to the children.

The respondent filed a complaint before the Court of the Judicial Magistrate alleging the commission of offences punishable under Section 406 and 498A of the Indian Penal Code against the appellant. On 16th April 2014, the learned Magistrate dismissed the complaint. The respondent preferred a revision application against the order of dismissal of the complaint. The revision application was rejected by the order dated 18th October 2016 by the learned Additional Sessions Judge.

5. During the pendency of this appeal, the dispute was referred to the Supreme Court Mediation Centre. On 2nd August 2021, the learned Mediator submitted a failure report. Orders dated 22nd March and 6th May 2024 show that even this Court attempted to bring about a settlement. But the efforts could not succeed.

Submissions

6. Shri Sukumar Pattjoshi, learned senior advocate appearing for the appellant, submitted that as the decree for restitution of conjugal rights was not abided by the respondent, a decree on the ground of desertion must follow. He submitted that consistent denial by the respondent to resume the matrimonial relationship caused mental cruelty to the appellant. Therefore, there was no reason for the High Court to disturb the decree of divorce.

7. Shri Sharma, learned counsel appearing for the respondent, submitted that after considering the evidence on record, the High Court found that the appellant failed

to prove the grounds for divorce pleaded by him. He submitted that looking at the evidence on record, the findings recorded by the High Court cannot be disturbed.

Consideration of Submissions

8. We may note here that though an effort made by this Court to bring about a settlement did not succeed, the learned senior counsel appearing for the appellant, on instructions, stated that the appellant's offer of payment of Rs. 30 lakhs as lumpsum maintenance or alimony to the respondent is still open subject to respondent agreeing for passing a decree of divorce.

9. There is no dispute that the parties have been residing separately since 2008. In IA No. 109594 of 2024, filed by the appellant, he has stated that their son and daughter are major. The application records that the daughter resides in Canada and the son is in India. There is no dispute about this factual position. 10. As noted earlier, the appellant filed a petition for the restitution of conjugal rights in December 2008. The petition was decreed on 15th May 2013. The learned Additional Civil Judge (Sr.Division), Barnala, recorded the following findings in the judgment.

"10. Thus, from the entire evidence adduced by the petitioner, it has been established on record that the respondent has left the company of the petitioner without any reason and cause and has neglected and deserted the petitioner. The petitioner has still love and affection with the respondent and is ready to keep her with him as his wife."

(emphasis added)

The High Court dismissed the appeal preferred by the respondent and confirmed the decree for restitution of conjugal rights. In paragraph 10 of the decision, the High Court held thus: "The trial court has rightly drawn the conclusion that the appellant had left the company of the respondent without any reasonable excuse and had neglected and deserted him as he was ready to keep her with him as his wife."

(emphasis added)

The appeal was dismissed on 19th February 2015.

11. Thereafter, on 1st August 2016, the divorce petition filed by the appellant was decreed in which a finding was recorded that the appellant made every effort to bring back the respondent-wife and despite the decree of restitution of conjugal rights, the respondent did not resume cohabitation. In the divorce petition filed by the appellant, he specifically relied upon the decree for restitution of conjugal

rights passed against the respondent and stated that after the decree, the respondent had not resumed cohabitation. The Trial Court accepted the grounds of cruelty and desertion, and a decree of divorce was passed.

12. In the impugned judgment, while setting aside the decree of divorce, the High Court held that the ground of desertion was not made out as the appellant has continuously neglected his duties as a husband and considering his conduct, the respondent had no choice but to leave him and stay at her parental home.

13. In our view, it is not possible to sustain the judgment of the High Court on the issue of desertion. As mentioned earlier, on 15th May 2013, the Civil Court passed a decree for restitution of conjugal rights against the respondent on a petition filed by the appellant in the year 2008. The categorical finding recorded by the Trial Court was that the respondent left the appellant's company without reasonable cause. The decree of the Trial Court was confirmed on 19th February 2015.

The Family Court decreed the divorce petition filed by the appellant on 1st August 2016. Nothing was brought on record by the respondent to show that after 19th February 2015, when the decree for restitution of conjugal rights was confirmed by the High Court, any effort was made by her to resume cohabitation. We must note that between 1st August 2016, when a decree of divorce was passed, and 4th October 2019, when the decree was set aside by the impugned decree, no efforts were made by the respondent to resume cohabitation.

She had not made out any such case. Moreover, there is no material on record to show that after the decree of restitution of conjugal rights was passed, the respondent showed even an inclination to resume cohabitation with the appellant. There is a concluded finding recorded by the Trial Court on 15th May 2013 while passing a decree of restitution of conjugal rights that it was the respondent who had deserted the appellant without sufficient cause.

14. Section 13(1) and 13(1A) of the HM Act read thus:

"13. Divorce.- Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

(i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(ii) has ceased to be a Hindu by conversion to another religion; or

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.- In this clause,

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or

(iv) ... ...

(v) has been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;

Explanation.- In this subsection, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

(1A) Either party to a marriage, whether solemnised before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties."

(emphasis added)

We may note here that under Section 13(1A)(ii), it is provided that a divorce petition can be presented on the ground that there has been no restitution of conjugal rights between the parties to the marriage for a period of one year and more after passing the decree for restitution of conjugal rights. Indeed, the period of one year was not complete when the appellant filed the divorce petition.

In the Judgment dated 15th May 2013 passed by the Trial Court, which was affirmed by the High Court, the Courts accepted the appellant's case that the continuous desertion was from December 2006. The decree was confirmed on 19th February 2015 by the High Court. Admittedly, the respondent did not resume the cohabitation after 15th May 2013 till the date of filing of the divorce petition. It is not her case that any event happened after the decree for restitution of conjugal rights was passed, which prevented her from joining the appellant's company.

Hence, the desertion of the appellant at least from 2008 till the date of filing the divorce petition in 2013 continued without any reasonable cause. Therefore, a decree for divorce on the ground of desertion under Section 13(1)(ib) ought to have been passed. Thus, in our view, the High Court ought to have confirmed the decree of divorce on the ground of desertion. This is a case of a complete breakdown of marriage for last 16 years and more.

15. The appellant has offered to pay the respondent a lump sum alimony of Rs. 30 lakhs. In the facts of the case, this amount is reasonable and can be accepted as a onetime lump sum alimony. Though we are passing a decree of divorce on the ground of desertion, we will have to clarify that the decree shall come into operation after a sum of Rs. 30 lakhs is paid to the respondent.

16. Hence, we pass the following order:

a. The appeal is partly allowed by setting aside that part of the impugned judgment by which the High Court interfered with the decree for divorce on the ground of desertion. Accordingly, the marriage between the appellant and respondent, solemnised on 25th March 1999, is hereby dissolved by a decree of divorce under Section 13(1)(ib) of the HM Act. The finding of the High Court on the ground of cruelty is not disturbed;

b. The decree passed as above shall come into force only on the appellant paying a sum of Rs. 30 lakhs to the respondent by directly transferring the amount to the respondent's account. We direct the advocate for the respondent to provide the bank account details of the respondent and a cancelled cheque of her account to the advocate for the appellant within three weeks from today. The appellant shall pay the sum of Rs. 30 lakhs to the respondent within a period of three months from today by direct transfer to the account of the respondent;

c. The appellant shall file an affidavit before this Court immediately on making payment of Rs. 30 lakhs to the respondent, along with proof of payment. If the respondent does not furnish her bank account details within three weeks from today, it will be open for the appellant to deposit the said amount with this Court within three months from today. The deposit of the said amount with the Supreme Court shall also be treated as compliance, and immediately on the compliance being made, the decree of divorce shall become effective. The respondent will be entitled to withdraw the amount deposited in this Court;

d. Registry shall immediately draw a decree of divorce after the proof of payment or deposit of the amount of Rs.30 lakhs is filed on record;

e. The payment of the sum of Rs.30 lakhs shall be in full and final settlement of the claim of the respondent for maintenance; and

f. The appeal is, accordingly, partly allowed on the above terms with no order regarding costs.

.....J. (Abhay S. Oka)

.....J. (Ujjal Bhuyan)

New Delhi;

July 08, 2024

IN THE SUPREME COURT OF INDIA

Maharaj Singh & Ors.
Vs.
Karan Singh (D) through LRS. & Ors.

[Civil Appeal No. 6782 of 2013]

HEADNOTE – Plaintiff need not seek cancellation of subsequent sale deed executed with prior knowledge of agreement to sell

JUDGMENT

Abhay S. Oka, J

1. This appeal is at the instance of the original third, second, and fourth defendants. The first and second respondents are the original plaintiffs. The third respondent is the mother of the deceased original first defendant. For convenience, we are referring to the parties according to their status in the suit.

FACTUAL ASPECT

2. Reference to a few factual aspects will be necessary. The first defendant executed a registered agreement for sale dated 7th December 1981 by which he agreed to sell his Bhumidhari land measuring 2.90 acres of Khasra no. 48 (for short, 'the suit property') at village-Jauniwala, Tehsil-Kashipur, District- Nainital in favour of the plaintiffs for the consideration of Rs. 20,300/-.

There was a recital in the registered agreement dated 7th December 1981 (for short, 'the suit agreement') that the first defendant had received a sum of Rs. 7,000/- as advance and the balance consideration was payable at the time of execution of the sale deed. The first defendant agreed to execute the sale deed within three years from the date of the suit agreement. According to the plaintiffs' case, requests were made orally and by sending notices to the first defendant to execute the sale deed. It is pleaded in the plaint that the first defendant refused to accept notices.

3. On 6th September 1983, the first defendant sold 1.60 acres out of the suit property to the second and third defendants by a registered sale deed. By another sale deed dated 12th December 1983, the first defendant sold the remaining part of the suit property to the second to fourth defendants.

We must note that the suit was filed on 17th December 1983, and the averments regarding the subsequent alienations were incorporated by the amendment made to the plaint in terms of the order dated 28th July 1984. The case made out in the plaint is that the subsequent sale deeds are collusive. The prayer in the suit was for specific performance of the suit agreement with a direction to the defendants to hand over possession of the suit property to the plaintiffs and to execute a sale deed in respect of the suit property in their favour.

4. The defendants, including the legal representative (Smt. Bhagwati Devi) of the original first defendant, filed separate written statements. In the written statement filed by the legal representative of the first defendant, it was contended that the suit agreement was fictitious. In the written statement filed by the second and third defendants, it was pleaded that the suit agreement is a forged document which was never to be acted upon. It is pointed out that the first plaintiff - Karan Singh, and the first defendant were relatives. The plaintiffs never paid any money to the first defendant.

5. The first plaintiff was examined as a witness. The second plaintiff, Murari Singh, did not support the first plaintiff. He deposed in favour of the defendants. He stated on oath that the suit agreement was made only to ensure that the first defendant did not alienate the suit land. He stated that the first defendant was his relative. He stated that the first plaintiff was related to him and was a well-known person. The first plaintiff's name was included as the purchaser in the suit agreement to deter the first defendant.

He stated that he and the first plaintiff never demanded execution of the sale deed from the first defendant. The second plaintiff proceeded to state that he had not filed the suit, and the signature shown to him on the vakalatnama was of someone else. Subsequently, the second plaintiff filed an affidavit stating that the first defendant had several bad habits and, therefore, there was an apprehension that he would sell the suit property.

FINDINGS OF THE COURTS

6. The Trial Court held that the execution of the suit agreement was proved. Relying upon Section 92 of the Indian Evidence Act, 1872 (for short, 'the Evidence Act'), the learned Trial Judge held that evidence contrary to the contents of the suit agreement could not be adduced and was not admissible in evidence. The learned Trial Judge held that in view of the provisions of the Uttar Pradesh Civil Laws (Reforms and Amendment) Act, 1976, which came into force on 31st December 1976, an agreement for sale was compulsorily registrable in the State at the relevant time.

Therefore, the learned Trial Judge held that in view of the explanation to Section 3 of the Transfer of Property Act, 1882 (for short, 'the TP Act'), the second to fourth defendants shall be deemed to have a notice of the execution of the suit agreement. The learned Judge held that it was a duty of the second to fourth defendants to take a search in the office of the Sub-Registrar to ascertain whether there was any prior transfer. Therefore, the learned Trial judge held that the second to fourth defendants could not be held to be bona fide purchasers for value received.

The finding on the issue of readiness and willingness was also recorded in favour of the plaintiffs. Therefore, the Trial Court passed a decree for the specific performance, directing all the defendants to execute the sale deed and deliver possession of the suit property to the plaintiffs. In an appeal preferred by the second to fourth defendants, the Additional District Judge, Nainital, confirmed all the findings of the Trial Court. The Additional District Judge dismissed the appeal. A second appeal was preferred by the second to fourth respondents. The second appeal has been dismissed by the impugned judgment.

ORDERS OF THIS COURT

7. On 26th October 2010, this Court issued notice. The order of this Court reads thus: "Mr. K.B. Sinha, senior advocate appearing for the petitioners submits that after coming into force of the Uttaranchal (The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950) (Adaptation and Modification Order, 2001) (Amendment) Act, 2003, the sale of the suit land in terms of the decrees of the Court would be violative of the provisions of the Act because the plaintiff is not an agriculturist. Issue notice. In the meanwhile, there shall be stay of operation of the impugned decree." On 12th August 2013, leave was granted. This Court granted a stay to the operation of the impugned decrees on 26th October 2010.

SUBMISSIONS

8. The learned senior counsel appearing for the second to fourth defendants submitted that the three Courts refused to consider the submission that the suit agreement was sham and bogus. By pointing out Sections 91 and 92 of the Evidence Act, he urged that the provisions did not prevent the defendants from leading evidence to show that the suit agreement was bogus or sham. He relied on the Privy Council's decision in the case of Tyagaraja Mudaliyar and Anr. v. Vedathanni1.

He submitted that Sections 91 and 92 of the Evidence Act do not exclude evidence on the question of whether the parties had agreed to contract on the

terms set forth in the document. He also relied upon a decision of this Court in the case of Krishnabai Bhritar Ganpatrao Deshmukh v. Appasaheb Tuljaramarao Nimbalkar & Ors.2. He submitted that it was brought on record in the depositions of the second plaintiff who was the uncle of the first defendant, and Bhagwati Devi, the mother of the first defendant, that the first defendant had many vices. Bhagwati Devi was apprehensive that the first defendant would sell the property to fund his bad lifestyle.

The second plaintiff, Murari Singh, was her brother; therefore, she approached Murari Singh to prevent the first defendant from selling the suit property. The second plaintiff, Murari Singh, brought his friend, the first plaintiff. Thereafter, the suit agreement was executed to deter the first defendant from selling the property. He submitted the specific contention that the suit agreement was a sham document which was not to be acted upon has been brushed aside by the three Courts.

9. He submitted that the first plaintiff filed the suit within a few days after the first defendant executed a sale deed on 12th December 1983 in favour of the second to fourth defendants. The learned senior counsel further submitted that the second to fourth defendants are bona-fide purchasers as the suit agreement is sham and bogus. He submitted that the defence that the plaintiffs were not ready and willing to perform their part of the suit agreement is also available to the defendants claiming to be subsequent purchasers through the vendor.

The learned senior counsel relied upon a decision of this Court in the case of B. Vijaya Bharathi v. P. Savitri & Ors.3, and submitted that the plaintiffs are disentitled to relief of specific performance as they have not prayed in the plaint for setting aside or cancelling the subsequent sale deeds. Learned senior counsel also relied upon Section 154-B of the Uttaranchal (The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950) (Adaption and Modification order, 2001) (Amendment) Ordinance, 2003 (for short, 'the Zamindari Abolition Act").

He submitted that as the 1st plaintiff is not an agriculturist within the meaning of Section 3(a) thereof, in view of Section 154-B, a sale deed cannot be executed in terms of the suit agreement. He also pointed out that the legal representatives of the first respondent (first Plaintiff) have not chosen to contest the appeal despite service of notice. Therefore, they are not interested in contesting the appeal.

QUESTIONS FOR CONSIDERATION

10. After having considered the submissions of the learned counsel appearing for the appellants, we find that the following questions arise:

a) Can the contention that the suit agreement was sham and bogus and not intended to be acted upon be allowed to be raised notwithstanding Sections 91 and 92 of the Evidence Act?

b) Was the suit agreement sham and bogus and not intended to be acted upon?

c) Were the second to fourth defendants bona fide purchasers for value without notice of the suit agreement?

d) Whether, in view of the decision of this Court in the case of B. Vijaya Bharathi3, the plaintiffs are not entitled to a decree of specific performance in the absence of any prayer for cancellation of the two subsequent sale deeds?

e) Do the provisions of the Zamindari Abolition Act create a bar on the execution of the sale deed in terms of the suit agreement?

f) Whether the plaintiffs are entitled to a decree of specific performance?

FIRST TWO QUESTIONS - (a) AND (b)

11. Now, we come to the first two questions. Right from the decision of the Privy Council in the case of Tyagaraja Mudaliyar1 the law is well settled. Section 91 of the Evidence Act excludes oral evidence of the terms of the written document by requiring those terms to be proved by the document itself. Section 92 excludes oral evidence for contradicting, varying, adding to or subtracting to such terms. These two sections do not prevent parties from adducing evidence on the issue of whether the parties to the documents had agreed to contract on the terms set forth in the document.

12. Coming to the facts of the case, firstly, we must refer to the pleadings of the legal representative of the first defendant. In paragraph 11 of her written statement, she raised the following contention:

"11. That the real facts are that plaintiff Murari Singh is the brother of answering respondent and Karan Singh is his friend. So, under fear and making the pressure on Preetam Singh, a fictitious agreement was prepared by plaintiff Murari Singh without any consideration in order to deter late Preetam Singh, so that the should not sale the land. Neither this agreement was acted upon nor was disclosed any time. The said amount for consideration, written in the agreement, is shown at very low price from the market price."

Thus, the legal representative of the first defendant did not plead that the first defendant was addicted to several vices and that to prevent him from selling the suit property for supporting his bad lifestyle, the suit agreement was executed. It

is merely stated that the second plaintiff prepared a fictitious agreement without any consideration to deter the first defendant from selling the land. It is not pleaded that as the first plaintiff was an influential person, he was brought into the picture to deter the first defendant. The second and third defendants filed a written statement. The contention raised by them in the written statement is entirely different. In paragraph 12 of the written statement, they pleaded thus:

"12. That the alleged agreement to sale dated 17.12.1981 is a forged document and was never acted upon. The plaintiff no. 1 and Sh. Pritam Singh are relative to each other. The plaintiffs are the resident of some other districts. They never paid any money. They got prepared a forged documents colluding with some persons of their party. The agreement to sale is illegal and the plaintiffs are not entitled of any relief on the basis of this forged document."

The legal representative of the first defendant did not dispute that the first defendant signed the agreement. However, the other defendants raised a contention that the suit agreement was a forged document. The second to fourth defendants did not plead anything about the object of getting the agreement for sale executed from the first defendant. The case that the first defendant was addicted to vices and that with a view to deter him from selling the suit property, the agreement for sale was executed, was pleaded for the first time by the mother of the first defendant in her evidence.

Even the allegation that the first plaintiff was joined as a purchaser to put pressure on the deceased - the first defendant was made by her for the first time in her evidence. Thus, the contention that the deceased-first defendant was addicted to vices was never raised in the written statements and the same has come by way of an afterthought in the evidence of the mother of the first defendant.

Moreover, the stand of the second to fourth defendants in their written statement is that the suit agreement was forged and was prepared by the plaintiffs and some persons of their party. Therefore, in the facts of the case, it is very difficult to accept the contention that the suit agreement was got executed from the first defendant with the object to deter him from selling the suit property to meet the demands of his bad lifestyle. Hence, the suit agreement cannot be held as bogus or sham.

ON QUESTION - (c)

13. The three Courts concurrently found that under the Uttar Pradesh Civil Laws (Reforms and Amendment) Act 1976, clause (v) of Section 17(2) of the Registration Act 1908 was amended, which made an agreement for the sale of an

immovable property, a compulsorily registerable document in the State. On this aspect, no arguments have been canvassed by the appellants. Therefore, in view of explanation 1 to Section 3 of the TP Act, the second to fourth defendants shall be deemed to have knowledge of the suit agreement, which was duly registered.

It cannot be said that the second to fourth defendants had no knowledge of the suit agreement in view of the constructive notice. It is not their case that they took a search in the office of the Sub-Registrar before getting the sale deeds in their favour. Hence, it cannot be said that they paid money in good faith to the first Defendant. Therefore, the second to fourth defendants can never be held to be bona-fide purchasers who have paid consideration in good faith without the notice of the suit agreement.

ON QUESTION (d)

14. Now, we deal with another argument that the plaintiffs ought to have prayed in the suit to cancel the subsequent sale deeds executed by the first defendant. On this aspect, the law has been laid down by a Bench of three Hon'ble Judges of this Court in the case of Lala Durga Prasad & Ors. v. Lala Deep Chand & Ors.4,. Paragraphs 40 to 42 of the said decision read thus:

"40. First, we reach the position that the title to the property has validly passed from the vendor and resides in the subsequent transferee. The sale to him is not void but only voidable at the option of the earlier "contractor". As the title no longer rests in the vendor it would be illogical from a conveyancing point of view to compel him to convey to the plaintiff unless steps are taken to revest the title in him either by cancellation of the subsequent sale or by reconveyance from the subsequent purchaser to him.

We do not know of any case in which a reconveyance to the vendor was ordered but Sulaiman, C.J. adopted the other course in Kali Charan Singh v. Janak Deo Singh [Kali Charan Singh v. Janak Deo Singh, AIR 1932 All 694 : 1932 SCC OnLine All 154]. He directed cancellation of the subsequent sale and conveyance to the plaintiff by the vendor in accordance with the contract of sale of which the plaintiff sought specific performance.

But though this sounds logical the objection to it is that it might bring in its train complications between the vendor and the subsequent purchaser. There may be covenants in the deed between them which it would be inequitable to disturb by cancellation of their deed. Accordingly, we do not think that is a desirable solution.

41. We are not enamoured of the next alternative either, namely, conveyance by the subsequent purchaser alone to the plaintiff. It is true that would have the

effect of vesting the title to the property in the plaintiff but it might be inequitable to compel the subsequent transferee to enter into terms and covenants in the vendor's agreement with the plaintiff to which he would never have agreed had he been a free agent; and if the original contract is varied by altering or omitting such terms the court will be remaking the contract, a thing it has no power to do; and in any case it will no longer be specifically enforcing the original contract but another and different one.

42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in Kafiladdin v. Samiraddin [Kafiladdin v. Samiraddin, AIR 1931 Cal 67: 1930 SCC OnLine Cal 46] and appears to be the English practice. See Fry on Specific Performance, 6th Edn., p.90, Para207;also Potter v. Sanders [Potter v. Sa nders, (1846) 6 Hare 1 : 67 ER 1057] . We direct accordingly."

(emphasis added)

15. Reliance is placed by the appellants on the decision of this Court in the case of B. Vijaya Bharathi3. In paragraph 17 of the said decision, this Court held thus:

"17. It must also be noted that though aware of two conveyances of the same property, the plaintiff did not ask for their cancellation. This again, would stand in the way of a decree of specific performance for unless the sale made by Defendant 1 to Defendant 2, and thereafter by Defendant 2 to Defendant 3 are set aside, no decree for specific performance could possibly follow. While Mr Rao may be right in stating that mere delay without more would not disentitle his client to the relief of specific performance, for the reasons stated above, we find that this is not such a case.

The High Court was clearly right in finding that the bar of Section 16(c) was squarely attracted on the facts of the present case, and that therefore, the fact that Defendants 2 and 3 may not be bona fide purchasers would not come in the way of stating that such suit must be dismissed at the threshold because of lack of readiness and willingness, which is a basic condition for the grant of specific performance."

(emphasis added)

A bench of two Hon'ble Judges has rendered this decision. Unfortunately, the attention of the Bench was not invited to binding precedent in the form of a

decision of a larger bench in the case of Lala Durga Prasad & Ors.4. Hence, the decision in the case of B. Vijaya Bharathi3 is not a binding precedent. Therefore, there was no requirement to make a prayer in the plaint for cancellation or setting aside the subsequent sale deeds.

16. Clause (a) to (c) of Section 19 of the Specific Relief Act read thus:

"19. Relief against parties and persons claiming under them by subsequent title.-

Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d).....

(e)....."

(emphasis added)

In view of clause (b) of Section 19, the defendants who are claiming under the sale deeds executed after the execution of the suit agreement can be subjected to a decree of specific performance as the suit agreement can be enforced specifically against such defendants unless they are bona-fide purchasers without the notice of the original contract.

When, in a given case, the defendants, who are subsequent purchasers, fail to prove that they entered into the sale deed in good faith and without notice of the suit agreement, in view of Section 19(b), a decree for specific performance can be passed against such defendants. Therefore, in such a case where Section 19(b) is applicable, under the decree of specific performance, the subsequent purchasers can be directed to execute the sale deed along with the original vendor. There is no necessity to pray for the cancellation of the subsequent sale deeds.

ON QUESTION - (e)

17. We have perused Section 154-B of the Zamindari Abolition Act. Sub-section (1) prohibits the sale or transfer of agricultural lands to a person who is not an agriculturalist. Clause (h) of sub-section (2) of Section 154-B permits the sale of agricultural land to a non-agriculturalist with the permission of the State Government for the purposes specified in clause (i) to (v) of clause (h). What is prohibited is the sale of agricultural land to a non-agriculturalist.

In view of Section 54 of the TP Act, an agreement for sale does not transfer the property subject matter of the agreement to the purchaser. It does not create any interest in the property subject matter of the agreement. Therefore, the embargo created by sub-section (1) of Section 154-B will apply only to the execution of the sale deed and not to the execution of the agreement for sale.

18. Now the question is whether the vendor and the persons claiming through him can be directed to apply for permission in accordance with clause (h) of sub-section (2) of Section 154- B to sell and whether a decree for execution of the sale deed can be made contingent upon the grant of permission to sell. The law on this aspect is no longer res integra. In the case of Rojasara Ramjibhai Dahyabhai v. Jani Narottamdas Lallubhai and another5, in paragraphs 12 to 14, this Court held thus:

"12. Although Rana Mohabat Singh having failed to fulfil the terms of his contract with the appellant and execute a sale deed in his favour might have rendered the contract between them incapable of performance, but with the extinction of the title of Rana Mohabat Singh and the conferral of the rights of an occupant on the appellant, the property became transferable subject, of course, to the express covenant on the part of the appellant to do all things necessary to give effect to the agreement.

Here, the suit banakhat (Ex. 25) embodies an express covenant to that effect. There is always in such contracts an implied covenant on the part of the vendor to do all things necessary to give effect to the agreement, including the obtaining of the permission for the transfer of the property. The principles on which a term of this nature may be implied in contracts are well-settled. It is enough to refer to Halsbury's Laws of England, Vol. 8, 3rd Edn., p. 121 where the principles are summarised as follows:

"In construing a contract, a term or condition not expressly stated may, under certain circumstances be implied by the court, if it is clear from the nature of the transaction or from something actually found in the document that the contracting parties must have intended such a term or condition to be a part of the agreement between them. Such an implication must in all cases be founded on the presumed intention of the parties and upon reason, and will only be made when it is

necessary in order to give the transaction that efficacy that both parties must have intended it to have, and to prevent such a failure of consideration as could not have been within the contemplation of the parties."

Chitty on Contracts Vol. 1, 23rd Edn., paras 694-95 points out that a term would be implied if it is necessary in the business sense, to give efficacy to the contract.

13. In this context, reference may be made to the decision of the Privy Council in Motilal v. Nanhelal [AIR 1930 PC 287 : (1930) 57 IA 333] . There, the facts were these. In that case, the plaintiff Mst Jankibai entered into an agreement to purchase from Rajbahadur Seth Jiwandas of Jabalpur four annas proprietary share of Mauja Raisalpur together with the sir and khudkast lands appurtenant thereto, with cultivating rights in the sir lands.

The property was subject to the provisions of the Central Provinces Tenancy Act, 1920. She filed a suit for specific performance of the said contract. The Privy Council held that the contract was for a transfer of the sir lands without reservation of the right of occupancy, and that the sanction of the Revenue Officer to the transfer was necessary under Section 50(1) of the Act, which was in these terms:

"50. (1) If a proprietor desires to transfer the proprietary rights in any portion of his sir land without reservation of the right of occupancy specified in Section 49, he may apply to a revenue-officer and, if such revenue-officer is satisfied that the transferor is not wholly or mainly an agriculturist, or that the property is self-acquired or has been acquired within the twenty years last preceding, he shall sanction the transfer."

14. It was contended before the Privy Council that a decree for specific performance of the agreement of sale could not be made, because such performance would necessitate an application by or on behalf of the vendor to the Revenue Officer for sanction to transfer the cultivating rights in the sir land, and that the court had no jurisdiction to require the vendor to make such an application. In repelling the contention, the Privy Council observed that in view of their construction of the agreement, namely, that the vendor agreed to transfer the cultivating rights in the sir land:

"There was, in Their Lordships' opinion, an implied covenant on the part of the vendor to do all things necessary to effect such transfer, which would include an application to the Revenue Officer to sanction the transfer."

It was further observed that it was not necessary for their Lordships to decide whether in that case the application for sanction to transfer must succeed, but that it was material to mention that no facts were brought to their Lordships' notice

which would go to show that there was any reason why such sanction should not be granted. After making the said observations, the Privy Council held that in those circumstances the court had jurisdiction to enforce the contract under the Specific Relief Act, 1877 and Order 21, Rule 35 of the Code of Civil Procedure, 1908 by a decree ordering the vendor to apply for sanction and to execute a conveyance on receipt of such sanction.

The decision of the Privy Council in Motilal v. Nanhelal [AIR 1930 PC 287 : (1930) 57 IA 333] therefore is an authority for the proposition that if the vendor agrees to sell the property which can be transferred only with the sanction of some government authority, the court has jurisdiction to order the vendor to apply to the authority within a specified period, and if the sanction is forthcoming to convey to the purchaser within a certain time.

See also Chandnee Widya Vati Madden v. C.L. Katial [AIR 1964 SC 978 : (1964) 2 SCR 495] and R.C. Chandiok v. Chuni Lal Sabharwal [(1970) 3 SCC 140 : AIR 1971 SC 1238 : (1971) 2 SCR 573] where this Court following the Privy Council decision in Motilal v. Nanhelal case [AIR 1930 PC 287 : (1930) 57 IA 333] reiterated the same principle."

(emphasis added)

Hence, a decree enjoining the defendants to obtain permission to sell the suit property can be passed as it is their implied obligation to do so. A decree for the specific performance can be passed contingent upon the grant of the permission.

ON QUESTION - (f)

19. Now, the question is whether the plaintiffs were entitled to a decree for specific performance. In his deposition, the first plaintiff has proved the service of notice of demand to the first defendant. The suit is filed within limitation, and the defendants did not raise a plea of delay and laches. There are concurrent findings of the three Courts on the issue of the readiness and willingness shown by the first plaintiff. There is no reason to disturb the said findings.

Now, the question is, what is the effect of the failure of the second plaintiff to support the first plaintiff and his conduct of supporting the defendants? In the facts of the case, the answer lies in the submissions made by the second to fourth defendants before the High Court. In paragraph 9 of the judgment, the High Court has recorded the following submissions made by the counsel for the second to fourth defendants:

"9. The learned senior counsel for the appellants submitted that the plaintiff no.2 Murari Singh did not file the suit nor had signed the vakalatnama and that the

said plaintiff had admitted this fact in his deposition, consequently, the suit was not maintainable. It was further submitted that the percentage of share between the plaintiffs were not defined in the agreement to sell and, consequently, under Section 45 of the Transfer of Property Act, the plaintiffs would be deemed to have equal shares, namely, 50 percent. The learned senior counsel for the appellants contended that since Murari Singh did not institute the suit, the decree for specific performance for the whole land, which was undivided could not have been decreed by the trial court and, consequently, to that extent, the decree passed by the trial court was erroneous."

(emphasis added)

20. In our view, as the second plaintiff was not interested in getting the specific performance, the decree ought to have been restricted to the undivided one-half share in the suit property in favour of only the first plaintiff.

21. Accordingly, we partly allow the appeal by passing the following order:

(a) We modify the impugned decree by directing the legal representative of the first defendant and second to fourth defendants to execute a sale deed in favour of the first plaintiff (Karan Singh) only to the extent of one half undivided share in the suit property;

(b) The defendants shall join the first plaintiff in applying to the State Government/Competent Authority for the grant of permission under clause (h) of sub-section (2) of Section 154-B of the Zamindari Abolition Act to sell the one half-undivided share in the suit land to the first plaintiff within two months from today. It shall be the obligation of the defendants to apply for the permission and to do all such things which are necessary to get the permission;

(c) If the defendants or any of them do not sign and file the application with relevant documents within the period mentioned above of two months, the executing Court shall appoint a Court Commissioner to sign and file the application on their behalf and to do all such things which are necessary to get the permission;

(d) If the application for grant of permission is rejected, it will be open to the first plaintiff to challenge the order of rejection in accordance with law. If the application for grant of permission is finally rejected, there shall be a decree for refund of the sum of Rs. 7,000/- against the legal representative of the first defendant together with interest thereon at the rate of 8 per cent per annum from the date of filing of the suit till the realisation. However, her liability shall be restricted to the extent of the estate of the first defendant inherited by her;

(e) If the State Government grants permission, the sale deed shall be executed in terms of clause (a) by all the defendants within three months from the date of grant of the permission;

(f) The suit stands dismissed as far as the second plaintiff is concerned;

(g) The impugned decree stands modified accordingly;

(h) Even if a sale deed is executed in favour of the first plaintiff in respect of the one-half undivided share in the suit property, he will not be entitled to seek possession in the execution of this decree as he will be at liberty to file a suit for general partition;

(i) Accordingly, the appeal is partly allowed with no orders as to cost.

.....J. (Abhay S. Oka)

.....J. (Sanjay Karol)

New Delhi;

July 09, 2024.

1 ILR (1936) 59 Mad 446 : 1935 SCC OnLine PC 68

2 (1979) 4 SCC 60

3 (2018) 11 SCC 761

4 (1953) 2 SCC 509

5 (1986) 3 SCC 300

IN THE SUPREME COURT OF INDIA

Army Welfare Education Society New Delhi
Vs.
Sunil Kumar Sharma & Ors. Etc.

[Civil Appeal Nos. 7256-7259 of 2024
arising out of SLP (Civil) Nos. 3138-3141 of 2021]

[Civil Appeal Nos. 7260-7264 of 2024
arising out of SLP (Civil) Nos. 3133-3137 of 2021]

HEADNOTE – Doctrine of legitimate expectation cannot be extended to the operation of a contract. Explain doctrine of legitimate expectation.

JUDGMENT

J.B. Pardiwala, J.

For the convenience of exposition, this judgment is divided into the following parts:

INDEX

A. FACTUAL MATRIX .....
B. ISSUES FOR DETERMINATION .....
C. SUBMISSIONS ON BEHALF OF THE APPELLANT .....
D. SUBMISSIONS ON BEHALF OF THE RESPONDENTS .....
E. JUDGMENT PASSED BY THE LEARNED SINGLE JUDGE .....
F. APPEAL COURT JUDGMENT .....
G. ANALYSIS .....
   i. Position of Law .....
   ii. Doctrine of Legitimate Expectation .....
H. CONCLUSION .....

1. Leave granted.

2. Since the issues raised in both the captioned appeals are the same and the challenge is also to the self-same judgment and order passed by the High Court of

Uttarakhand, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

A. FACTUAL MATRIX

3. These appeals arise from the common judgment and order passed by the High Court of Uttarakhand at Nainital dated 02.11.2018 in Special Appeal No. 523 of 2014, Special Appeal No. 524 of 2014, Special Appeal No.128 of 2015, Writ Petition No. 439 of 2015 and Writ Petition No. 776 of 2015 resply by which the High Court dismissed the appeals filed by the appellants herein and thereby affirmed the judgment and order passed by the learned single Judge of the High Court dated 05.08.2014 in Writ Petition No. 341 of 2012 filed by the respondents herein.

4. The controversy involved in the present litigation falls within a very narrow compass. We need not state the facts in detail as the order passed by a coordinate Bench of this Court dated 15.02.2021 speaks for itself and gives more than a fair idea as regards the dispute between the parties. The order dated 15.02.2021 reads thus:-

"1. Delay condoned.

2. We have heard Mr Sajan Poovayya, learned Senior Counsel appearing on behalf of the Bengal Engineering Group and Centre, the petitioner in the Special Leave Petitions arising out of SLP (C) Diary No 24505 of 2020, with Mr Abhinav Agrawal, learned counsel, Mr Naresh Kaushik, learned counsel appearing on behalf of Army Welfare Education Society1, petitioner in the Special Leave Petition arising out of SLP(C) Diary No 26155 of 2020 and Mr Gopal Sankaranarayanan, learned Senior Counsel appearing on behalf of the caveators.

3. The submission which has been urged by the learned counsel appearing on behalf of the petitioners is that the Bengal Engineering Group and Centre had entered into a lease agreement with the Institute of Brothers of St. Gabriel in respect of the land, which is a B-3 class land under the Cantonment. A School was being conducted by St Gabriel's Academy. After the term of the lease came to an end, a decision was taken to run a school under the auspices of AWES. AWES runs about 139 schools all over the country.

On 28 February 2012, a letter was addressed to the staff of the school indicating that those among the teachers who are eligible in terms of CBSE guidelines would be considered for appointment on ad hoc basis for one year and would have to appear and qualify in a written test under AWES Rules and the teachers

will be paid salary at par with the service conditions applicable to other teachers of the Army Public Schools.

This gave rise to the filing of a writ petition before the High Court of Uttarakhand. The Single Judge allowed the writ petition by issuing a mandamus to the petitioners not to vary the service conditions of the teaching and nonteaching staff to their disadvantage. During the pendency of the proceedings before the Division Bench in appeal, an order was passed by the High Court on 6 January 2016. Paragraphs 3 and 4 of the order read as follows:

"3. BEG has decided to run the institution as an Army School under the Army Welfare Education Society (AWES), which has also come up in appeal against the judgment. According to AWES, it is running 134 schools all over India. They have a complaint that, at present, for the past two years since 1st April 2012, they are collecting fees at the rates they are collecting in the other Army Public Schools and, yet, they have been compelled to pay the salary, which is being paid to the teachers earlier by St. Gabriel's, which was in fact collecting far more fees and there is a huge deficit.

According to them, they will not terminate the services of the teachers and non-teaching staff, if AWES is permitted to take over; but, they will be paid the salary in terms of the standards, which they have in respect of the other Army Public Schools. It is their case that they are prepared to allow the teachers and non-teaching staff to continue, provided some modalities are complied with, relevance of which may not present itself immediately. According to the teachers and non-teaching staff, they have a right to continue as such.

4. We would think that the interest of justice requires that the arrangement, which has been ordered by the Court in Writ Petition No. 776 of 2015 (M/S) must be modified. Accordingly, we modify the order and direct that AWES can take over the management of the school and the teaching and other nonteaching staff will be allowed to continue, however, with the modification that the pay will be such as they would be entitled to treating it as another Army Public School. This arrangement will be provisional and subject to the result of the litigation and without prejudice to the contentions of the parties.

The Committee will handover the management to the AWES upon production of a certified copy of this order. The accounts, etc., will also be handed over to the Principal of the school. We record the submission of the learned counsel appearing for St Gabriel's that they will handover the amount representing gratuity, earned leave encashment and the installment of the sixth pay commission directly to the teachers and other nonteaching staff. We make it clear

that the school can be run in terms of the Rules of AWES otherwise. The payment of salary as per AWES can commence from 1st January, 2016."

4. The Division Bench eventually dismissed the Special Appeal against the judgment of the Single Judge, which has given rise to the proceedings before this Court under Article 136 of the Constitution.

5. On behalf of the petitioners, it was submitted that the teaching and nonteaching staff were employees of St Gabriel's Academy and since the erstwhile management has ceased to conduct the school, the staff would have no claim as against AWES which is conducting the school, at present.

6. In order to resolve the dispute, a suggestion has been made by learned counsel for the petitioners to the effect that the teaching and non-teaching staff of the erstwhile school which is continuing with the present school, which is conducted by AWES, would be continued on a permanent basis. However, it has been submitted that their conditions of service will be those which are applicable to the teaching and nonteaching staff of Army Public Schools.

It has been submitted that under the judgment of the High Court the petitioners would be obligated to provide service conditions at par with the teaching and nonteaching staff which was recruited by the erstwhile management which would involve an outlay which the Army Public School will not be in a financial position to meet. That apart, it has been submitted that there cannot be two sets of service conditions in respect of the same school.

7. Responding to the above submissions, Mr Gopal Sankaranarayanan with Mr B Shravanth Shanker, learned counsel, submitted that there are two areas which would require to be resolved, namely,:

(i) Seniority of the teaching and non-teaching staff due to the past service should be taken into account; and

(ii) In computing their terminal dues, benefit of the past service should be taken into reckoning.

8. We find prima facie that the suggestions which have emerged from both the sides are fair and proper in their own way, in order to resolve the dispute amicably. If the dispute is eventually resolved amicably, it would be ensured that, on the one hand, the teaching and non-teaching staff of the erstwhile school would not be displaced and continue to get employment in the present school and, at the same time, their service conditions are at par with those which are applicable to the employees of the Army Public Schools.

9. In order to enable the Court to give the parties an opportunity to resolve the dispute finally, we are of the view that a meeting should be held between the concerned authorities of the School as well as the representatives of the employees in the presence of the learned Senior Counsel so that agreed terms for resolving the dispute finally can be presented before this Court.

10. To facilitate this, we stand over the proceedings by a period of four weeks. The proceedings shall now be listed on 22 March 2021. In the meantime, we request all the parties to ensure that a meeting is convened within a period of one week from today so that progress can effectively be made towards a satisfactory resolution of the dispute in a spirit of dialogue in which the parties have addressed the Court.

11. We direct that no further steps shall be taken in the contempt proceedings till the next date of listing.

12. The services of the teaching and non-teaching staff who are continuing in the management of the Army Public School at Roorkee, at present, shall not be disturbed in the meantime."

5. It appears that after the aforesaid order was passed, the following order dated 23.07.2021 came to be passed:-

"1. Issue notice.

2. Mr Gopal Sankaranarayanan, learned Senior Counsel, appears on behalf of the first respondent with Mr B Shravanth Shanker, learned counsel and waives service.

3. Pending further orders, we stay the operation of the judgments and orders of the High Court dated 2 November 2018 in SPA Nos 523 and 524 of 2014, Writ Petition Nos 439 of 2015 and 776 of 2015 and SPA No 128 of 2015 and dated 9 October 2020 in MCC No 1623 of 2018 and 1626 of 2018, subject to the following conditions:

(i) The respondent - employees who are presently in service shall continue to be on the rolls of Army Public School No 2 conducted by the Army Welfare Education Society1 at Roorkee; and

(ii) The employees shall be entitled to receive their emoluments and other conditions of service at par with the other employees of the corresponding grade who are engaged by the AWES in Army Public School No 2."

B. ISSUES FOR DETERMINATION

6. The following two questions of law fall for our consideration:-

a. Whether the appellant Army Welfare Education Society is a "State" within Article 12 of the Constitution of India so as to make a writ petition under Article 226 of the Constitution maintainable against it? In other words, whether a service dispute in the private realm involving a private educational institution and its employees can be adjudicated upon in a writ petition filed under Article 226 of the Constitution?

b. Even if it is assumed that the appellant Army Welfare Education Society is a body performing public duty amenable to writ jurisdiction, whether all its decisions are subject to judicial review or only those decisions which have public law element therein can be judicially reviewed under the writ jurisdiction?

C. SUBMISSIONS ON BEHALF OF THE APPELLANT

7. Mr. Naresh Kaushik, the learned senior counsel appearing for the appellant submitted that the respondents originally were employees of an unaided private minority public school by the name St. Gabriel's Academy. As St. Gabriel's Academy is no longer in existence, the teaching and non-teaching staff of St. Gabriel's Academy came to be absorbed by the appellant society. In such circumstances, according to the learned counsel, the writ petition filed by the respondents before the High Court, by itself, was not maintainable. According to him, the learned single Judge committed a serious error in entertaining such writ petition at the instance of the respondents herein. Even the appeal Court committed the same error.

8. It was further submitted that the appellant is a wholly unaided private society which was established to provide educational facility to meet the needs of the children of the army personnel including the widows and ex-servicemen. It was pointed out that the appellant society is running many schools and institutions and the entire finance for the purpose of administration is managed from the fees collected from the students of the respective school and institution.

9. It was argued that there was no privity of contract between the appellant society and the staff of St. Gabriel's Academy. It was also argued that St. Gabriel's Academy was being run and administered by an unaided private minority society and the appointment/termination of the staff was vested with the Brothers of St Gabriel's only. Further, the Provincial Superior of the Institute of Brothers of St. Gabriel's was the Chairman of School Management Committee (SMC) of St. Gabriel's Academy as well.

The Provincial Superior of the Society is the appointing authority, as well as the appellate authority for the staff, and can appoint/terminate/retire the staff, in their

schools. Further, the Provincial Superior of the Society used to be the Head of School Managing Committee vested with the power to appoint/nominate the members as per their rules and regulations. The appellant had no role to play in the affairs of the said school or its management.

10. It was also argued that the education of children is certainly a public function, but that is not the issue in the present matter. The only issue involved is the continuity of service and service conditions of employees of St. Gabriel's Academy, a private minority institution. Neither the institution nor the posts held by the teachers are governed by any statutory obligation.

Moreover, the burden of safeguarding such service conditions has been erroneously placed on the appellant. These service conditions are in clear contravention of those followed by all 137 schools run by the appellant society resulting in creating two sets of employees at the APS No. 2, Roorkee. A contract of purely personal service between the Respondents and their erstwhile employer, viz. St. Gabriels Academy cannot be executed against the appellant in a writ petition with whom there is no privity of contract.

11. It was further pointed out that the appellants are running an Army Public School under the aegis of the Army Welfare Education Society which is a self-financing school managing all expenditures from the school fees. It was submitted that if the impugned order is allowed to operate and the arrangement made in the order dated 06.01.2016 which continued so far smoothly for 8 years is disturbed, the school will suffer irreparable loss and might have to be closed down. The demands of the respondents are outrageous which can be gauged from the fact that the respondents have claimed an amount of Rs. 5.10 crore in their Counter affidavit filed in 2021.

12. In the last, it was pointed out that all the respondents are currently employed at APS No. 2, Roorkee, and their status is on par with any other APS staff member. They are availing the same perks and emoluments available to any APS No 2, Roorkee employee. The basic pay as per the AWES Rules and Regulations was maintained for the teaching staff in accordance with the recommendations of the VI Pay Commission.

Furthermore, for the members of the teaching staff, experience of more than 5 years was accounted for with additional increments at 3% of Basic Pay for every block of three years of service or part thereof, as of April 2012. Subsequently, an annual increment of 3% of Basic Pay (as on March 31 of every financial year) was provided for every completed year. Dearness Allowance (DA), House Rent Allowance (HRA), and all other applicable allowances, including free education

for the wards of staff, was considered as per the AWES Rules and Regulations, as prevailing in January 2016.

The salary of office and Class IV staff was fixed as per the prevailing rules and seniority was catered to by additional increments at 10% of the annual increment for every three years of service. No employee came to be appointed after 2012 drawing a higher salary than the respondents. These staff members have been given even ten to twelve increments, a practice usually not followed in APS 2.

13. In such circumstances referred to above, the learned counsel appearing for the appellant society submitted that there being merit in the appeals, those may be allowed by setting aside the impugned common judgment and order passed by the High Court. But at the same time, the interim order passed by this Court dated 15.02.2021 may be made absolute.

D. SUBMISSIONS ON BEHALF OF THE RESPONDENTS

14. On the other hand, these appeals have been vehemently opposed by the learned senior counsel appearing for the respondent by submitting that the no error, not to speak of any error of law, could be said to have been committed by the High Court in passing the impugned judgment and order. Accordingly to the learned counsel, the appellant society is a "State" within Article 12 of the Constitution for the following reasons:-

a) That, as per the amendments made to the Memorandum of Army Welfare Education Society, the address of the Army Welfare Education Society (AWES) is shown to be the Adjutant General's Branch in the Integrated headquarters of the Ministry of Defence [MoD] (Army).

b) Further, the Executive Committee and the Board of Governors i.e., the President, Vice President and the Secretaries are none other than the Lt. Generals, chief of the Army Staff, and General Officer commanding in-chief of the Eastern, Southern, Western and Northern commands.

c) That, as per the Financial Management clause of the said Memorandum, "the corpus and grants for establishment of Army educational institution will be provided by the executive Committee from the welfare funds of the Adjutant General Branch, Army Headquarters."

d) AWES is a government run institution i.e., by the Ministry of Defence and hence, a State under Article 12 of the Constitution of India.

15. It was further submitted that the Army Public School-2, Roorkee, is affiliated with the CBSE and is governed by its norms. In other words, the AWES and its

affiliate school - Army Public School-2, Roorkee are governed and regulated by statutory provisions. Assuming for the sake of arguments that the dispute is private in nature, the present case is still amenable to writ jurisdiction for the service conditions of the answering respondents are governed/regulated by statutory provisions.

16. It was further argued that the CBSE Affiliation Bye-Laws Norm 3 (v) categorically provides that "The school in India must pay salaries and admissible allowances to the staff not less that the corresponding categories of employees in the State Government schools or as per scales etc. prescribed by the Government of India." In fact, AWES publishes advertisement to fill up any vacancy in Army Public School as "Govt. Jobs" in Job's category. It was submitted that considering the alliance between the appellant and St. Gabriel's Academy Roorkee, the respondents were under a legitimate expectation that their conditions of service would not be changed to their disadvantage by the appellant.

17. In such circumstances referred to above, the learned counsel appearing for the respondents prayed that there being no merit in the appeals, those may be dismissed and the impugned judgment and order passed by the learned single Judge as affirmed in appeal may be given effect to.

E. JUDGMENT PASSED BY THE LEARNED SINGLE JUDGE

18. At this stage, we should also look into the judgment passed by the learned single judge of the High Court dated 05.08.2014. The relevant findings recorded by the learned single Judge is as under:-

"10. As we have seen, the school in question was earlier known as "St. Gabriel School" which was under the management of a Society, namely, respondent no.4 i.e. St. Gabriel Province of Delhi. Now the management has changed and is presently with respondent no.5/Bengal Sappers St. Gabriel's Academy, Roorkee.

11. According to the respondents, referred above, the establishment of school in an Army Unit or Regimental Center is a welfare activity which a Unit or Regimental Center undertakes for the welfare of its personnel and troops and this welfare work does not form apart of any official or statutory duty of the officers of the Army so engaged in the school activity and, therefore, the school activity including its administration is entirely a private enterprises undertaken by the officers and staff of the Indian Army for the welfare of their personnel and their dependents.

12. The said respondents (Respondent Nos. 2, 3, 5, 7) further argue that in such a welfare activity, the Government or the Indian Army does not have any control or a role to play, leave aside any deep or pervasive control on the administration or

running of the School, as is alleged by the petitioners. They also argue that the welfare activities which are undertaken are financed entirely by raising private funds, primarily from private contributions, by the officers and men of various military establishments.

The fund is known as "Regimental Fund of the Unit" and is purely private in nature and non-auditable by Central Defence Accounts. The building furniture and equipments provided to respondent nos. 3/Bengal Engineering Group Benevolent Trust and earlier to respondent no.4/ Institute of Brothers of St. Gabriel is provided from the Regimental funds which is purely private property of Bengal Engineering Group Benevolent Trust.

There is no Central Government control at all. It is further being argued that respondent nos. 1, 2 i.e. Union of India as well as the Bengal Engineering Group and Centre have been made parties in the writ petition with the sole purpose to make the matter amenable to the writ jurisdiction of this Court, under Article 226 of the Constitution of India, though respondent nos. 1 and 2 do not have any role to play in the present matter or dispute and for the remaining respondents who are presently in control of the affairs of the school a writ petition would not be maintainable.

13. It has also been argued that the Commandant of Bengal Engineering Group and Centre, Roorkee is only the Ex-officio Chairman of the Bengal Engineering Group Benevolent Trust and the welfare activity conducted by the Trust are purely honorary having absolutely no relation to official charter of the duty of army officers and army persons. Respondent no.7 i.e. Army Welfare Education Society is again a private unaided Society registered under the Registration Act, hence does not come under the writ jurisdiction it does not have any grant from the Government of India, State Government and, therefore, not a State or its instrumentalities as defined in Article 12 of the Constitution of India.

In order to substantiate this argument, learned counsel for the respondents Mr. Manoj Tiwari, Senior Advocate and Mr. Pullak Raj Mullick have relied upon a Division Bench judgment of Allahabad High Court, namely, Army School, Kunaraghat, Gorakhpur Vs. Smt. Shilpi Paul, 2004 (5) AWC 4934, where it was held that an Army school is purely a private body and not "State" under Article 12 of the Constitution of India, hence writ petition was not maintainable against it.

Since it has been held that a writ petition is not maintainable against an Army school by a Division Bench judgment of Allahabad High Court the present writ petition is not maintainable, which is also against an Army School and is exactly on the same footing as the present school i.e. respondent no. 5, which is now

known as "Army School No.2". In paragraph nos. 23, 25 and 26 of the above judgment the Division Bench of Allahabad High Court said as under:-

"23. We have carefully considered these judgments as well as the other decisions relied on by the learned counsels for the parties. We have also considered the decision of the learned single judge of this Court in Abu Zaid v. Principal Madrasa-Tul- Islah Sarai Mir, Azamgarh, Civil Misc. Writ Petition No. 14238 of 1998, decided on 28.7.1998. In the decision of Abu Zaid v. Principal Madrasa-Tul-Islah Sarai Mir, Azamgarh (supra) the learned single Judge has held that a writ petition lies even against a private educational institution since the educational institution is discharging a public duty of imparting education which has been held to be a fundamental right by the Supreme Court. We do not agree. In our opinion every school cannot be regarded as State under Article 12 of the Constitution and a writ petition will not lie against a purely private educational institution not receiving funds from the Government or a Government agency as it cannot be deemed to be an instrumentality of the State.

25. We agree with the view taken by the learned single Judge in V.K. Walia v. Chairman, Army School Mathura Cannt. (supra) and we do not agree with the view taken by the learned single Judge in Smt. Rajni Sharma v. Union of India (supra) since we are of the opinion that the Army School, Gorakhpur, is not State under Article 12 of the Constitution as it does not receive funds from the Government nor does the Government have any control much less deep and pervasive control over it.

26. A similar view was taken by a Division Bench of the Jammu and Kashmir High Court in Writ Petition No. 1415 of 1996, Mrs. Asha Khosa v. Chairman, Army Public School, decided on 17.2.1997, in which the Division Bench of that Court held that the writ petition was not maintainable as the Army Welfare Educational Society is not an instrumentality of the State under Article 12 of the Constitution. Against the judgment of the Jammu and Kashmir High Court a Special Appeal No. 6482 of 1997 was filed before the Supreme Court which was dismissed on 31.3.1997. We fully agree with the view taken by the Jammu and Kashmir High Court in the aforesaid decision."

25. During the discussions and negotiation before the transfer, the authorities with whom the management was to vest shortly have not made any definite commitment or given assurance to the teaching or the non teaching staff of the College regarding security of their tenure, or regarding status of their service. In fact the teaching and non teaching staff of the school were never taken into confidence either by the BEG & C or the St. Gabriel Society in their negotiations. When such agreement was executed and the baton was handed over to the new

employer and management, the concern and interest of those who are under the employment ought to be addressed.

These are the basic requirements when such change over takes place in a civil society, which is bound by the rule of law. The employees of the school have a legitimate expectation that their conditions of service which were applicable immediately before the change over will not be varied to their disadvantage. However, this is what the new employer intend to do, which is reflected in his letter dated 28.02.2012. The danger to their service is not a mere apprehension of the 14 petitioners. It is a "clear and present" danger. This Court consequently intends to issue its writ of mandamus to stop the respondents from doing this.

26. In the entire process of the change of management, the petitioners were never taken into confidence. Their point of view was never considered necessary. They were never given any opportunity of hearing. On the contrary BEG & C and respondent no. 7 AWES, have shown documents before this Court justifying their unilateral action. Mr. P.R. Mullick, counsel for the respondent nos. 2 & 3 has argued that the society i.e. Brothers of St. Gabriel Province of Delhi have made immense profit from the school and they have opened another school in Roorkee and if they are really concerned about the petitioners then they can adjust them in their new school.

27. This is not the correct way of dealing with the issue. What has happened is not a simple change over from one management to another, which can only be seen on the basis of "profit and loss accounts" and "balance sheets." It is not a business commercial deal we are looking at. What we are looking at is a change over of management in a school which imparts education to school going children and therefore the "public element" in this transaction has always to be kept in mind.

28. We also have to appreciate the "legitimate expectations" of the petitioners who expect equity, fair-play and justice, from a public authority which respondent nos. 2, 3 and 7 indeed are and, therefore, they must meet such standards as a public authority ought to 15 have. The new management of the School, including respondent no.2, 3 and 7 are hereby directed not to change or vary the conditions of the petitioners to their disadvantage.

29. The writ petition, consequently, succeeds. The order dated 28.02.2012, since it is only in the nature of letter, need not be quashed. All the same, a mandamus is hereby issued to the respondents not to change, vary or resent any of those conditions on which the petitioners (teaching as well as non teaching staff of the school) were appointed, to the disadvantage of the petitioners."

(Emphasis supplied)

19. Thus, the error is in para 27 when the learned single Judge says that since the school imparts education, the public element should be kept in mind. Undoubtedly, any institution imparting education discharges public duty and, therefore, public element may be involved. However, the learned single Judge overlooked the fact that the dispute between the school and the teachers and also the non-teaching staff is relating to their service conditions. In such circumstances, public element will not come into play.

F. APPEAL COURT JUDGMENT

20. We should also look into the impugned judgment and order passed by the Division Bench of the High Court affirming the above referred judgment of the learned single Judge. The relevant findings are as under:-

"16) The Parliament in its wisdom has enacted the Right of Children to Free and Compulsory Education Act, 2009, considering it as a fundamental right of children. The institution is affiliated to the Central Board of Secondary Education. The Central Government has accorded affiliation to the CBSE to impart education as per its syllabus. Thus, there is a discharge of public function of the institutions recognized and affiliated with CBSE.

Though the learned Single Judge has recorded the reasons in holding that the writ petition is maintainable against the appellant but, at the cost of repetition, we deem it necessary to deal with the issue and after having considered the provisions of Article 12 and 226 of the Constitution of India and the catena of judgments, we are of considered opinion that the writ petition against the appellant was maintainable and has rightly been held maintainable by the learned Single Judge.

17) Second issue before the learned Single Judge and this Court is - as to whether the cancellation of regular appointment of the teaching and non-teaching employees of the institution run by joint venture and giving the ad hoc appointment to the teachers is valid or not? The learned Single Judge on the pleadings of the parties and considering the fact that long back in the year 1967 created a joint venture for imparting the education and continued till 2012 and the appellant by unilateral action decided to break up the joint venture. The institute of brothers of St. Gabriel did not challenge their unilateral action, and departed quietly.

18) Admittedly, the appellant herein has unilaterally changed the service conditions of the writ petitioners by way of letter dated 28.02.2012 (copy Annexure 6 to the writ petition). A perusal of the pleadings of the rival parties

would reveal that the appellant herein as well as the respondent Bengal Engineering Group and Center were not a party before learned Single Judge. The Deputy Commandant of the Bengal Engineering Group and Center is the de facto Chairman of the Bengal Engineering Group Benevolent Trust. The Union of India was also impleaded as a party respondent.

The Commandant or the Deputy Commandant has no individual or personal capacity. Deputy Commandant has discharged his duties as de facto Chairman of the Bengal Engineering Group and Benevolent Trust (hereinafter referred to as Benevolent Trust). The Deputy Commandant has no independent power being an ex officio of the Benevolent Trust. The Deputy Commandant cannot work arbitrarily. Since the appellant and respondent Bengal Engineering Group Benevolent Trust were party and same relief was granted, the Bengal Engineering Group Benevolent Trust has not chosen to file the Special Appeal against the impugned judgment and order passed by learned Single Judge.

It is true that the appellant being a Society has preferred this Special Appeal, but it was the decision of respondent no. 51 to issue letter dated 28.02.2012 (copy Annexure 6 to the writ petition). The service conditions of the teaching staff and non-teaching staff, which were continuing before terminating the legality of Institute of Brothers of St. Gabriel and taking over the entire management of the Institution by the Bengal Engineering Group Benevolent Trust. The learned Single Judge has considered elaborately that the Benevolent Trust cannot change the service condition unilaterally and convert the regular services of the teaching and non-teaching staff and to issue ad hoc appointments to them.

The appeal has been preferred by Army Welfare Education Society, whereof the institution was a joint venture of Brother of St. Gabrial and Bengal Engineering Group Benevolent Trust. The appellant may be an apex body (society) running the Army Schools throughout the country, but it cannot escape from the noble idea of creating Bengal Engineering Group Benevolent Trust for imparting education. Service benefits and status of the employee/employees could not be reduced without assigning sound reasons by the employer and without affording opportunity of hearing to them. We are also of the view that the services of the teaching and non- teaching staff cannot be changed from regular services to ad hoc services.

19) We have noticed that the Bengal Engineering Group Benevolent Trust is the aggrieved party, but appeal has not been preferred by it. We are of the opinion that the appellants cannot be said to be aggrieved persons and appeal at their behest is not maintainable.

20) The affairs of Bengal Engineering Group and Center come within the control of the Ministry of Defence, Union of India. Deputy Commandant has no authority to engage a private lawyer without the permission of Union of India. The purpose of granting permission to engage a private lawyer is also a serious issue, but for the reasons best reason to the officer concerned a private lawyer has been appointed by the appellant herein, which is discharging a public duty, to contest the aforementioned matters. Deputy Commandant of Bengal Engineering Group and Center holding a post in the Indian Army, which comes within the control of Ministry of Defence, Union of India ought not to have engaged a private lawyer without permission of the Union of India.

21) We find no illegality, perversity or jurisdiction error in the impugned judgment passed by learned Single Judge dated 05.08.2012, allowing the writ petition, filed by the teaching and non- teaching staff of the Institution. Since the record of the writ petitions which were pending before the learned Single Judge were called by this Court considering the common question involved in the special appeals as well as in the writ petitions which were pending before the learned single judge, we are of the view that aforementioned special appeals are liable to be dismissed. The same are hereby dismissed. The writ petitions mentioned aforesaid are also disposed of accordingly as the relief sought in the writ petitions has already been adjudicated in the appeals."

G. ANALYSIS

21. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court was justified in entertaining the writ petition filed by the respondents herein under Article 226 of the Constitution against the appellant society?

22. From the materials on record, the following is discernible:-

1) In 1962, the Commandant of Bengal Engineering Group and Centre ("BEGC"), by virtue of his position as ex officio Chairman of the Bengal Engineering Group Benevolent Trust ("BEGBT") granted land to the Institute of Brothers of St Gabriel's ("IBSG"), an unaided private minority society, for running a school.

2) On 13.07.1967, the BEGBT executed a formal lease agreement with IBSG with respect to the land situated at Cantonment B-31, including the School Building, playground and Bungalow No.1, for the establishment of a Higher Secondary School under the Board of All India Higher Secondary School in

Delhi, or any other similar Government Board. The school so formed was named as the Bengal Sappers St Gabriel's Academy, Roorkee ("BSSGA").

3) On 29.04.1983, the Army Welfare Education Society was registered under the Societies Registration Act.

4) On 20.04.1997, the BEGBT and IBSG respectively renewed the lease agreement dated 13.07.1967 for a further period of 15 years i.e. up to 31.03.2012.

5) On 26.04.2010, the Chairman of BEGBT took a policy decision not to renew the lease agreement dated 20.04.1997. BEGBT, by its letter addressed to the Provincial Superior, IBSG, communicated that the lease would not be renewed beyond the stipulated period and requested IBSG to consider the letter as an advance notice and suitably apprise all the students and their parents so that they get adequate time to make alternate arrangements by 31.03.2012 i.e. when the lease was set to expire.

6) On 15.05.2010, IBSG, by its letter addressed to the Deputy Commandant, BEGC, requested to furnish information as regards the non- renewal of the lease dated 20.04.1997.

7) On 22.06.2010, BEGC, in its reply to IBSG's letter dated 15.05.2010, stated that there was a proposal under consideration to establish an Army School at the location that was leased to IBSG, and again requested IBSG to inform the Board and the parents about the said proposal.

8) In July, 2021, BEGC initiated a proposal to establish an Army Public School under the aegis of Army Welfare Education Society (appellant) at the place that was then leased to IBSG. 9) On 23.02.2012, the appellant society granted approval to establish Army Public School No.2 at Roorkee ("APS No.2"), on the land that was earlier leased to IBSG. The approval dated 23.02.2012 laid down the modalities for adjusting the existing staff at BSSGA into APS No.2, stating that-

"(g) The process of selecting Principal and teachers must be completed by March 12 and they should be in position by 01 Apr 2012. Service of the teachers and administrative staff of St Gabriel's Academy School should be terminated before the establishment of APS No 2 Roorkee. Existing competent teachers meeting the CBSE educational qualifications may be considered for appointment on ad-hoc basis for one year after a gap of minimum of seven days from the date of termination of service. The condition of holding an AWES Score Card for appointment as teachers may be relaxed their case. They should be advised to appear and qualify in All India Written Test scheduled on second Sunday of Dec

2012. The terms and conditions for their employment should accordingly be formulated."

10) On 28.02.2012, BEGC, by its letter to IBSG, communicated the conditions laid down in the approval letter dated 23.02.2012.

11) On 14.03.2012 the respondents herein filed Writ Petition No. 341 of 2012 before the High Court of Uttarakhand at Nainital seeking a direction to quash the letter dated 28.02.2012 and also to direct the appellant society to continue their services on the same terms and conditions provided to them by the IBSG.

12) It appears that the appellant society is a purely unaided private society established for the purpose of imparting education to the children of the army personnel including the widows and ex-servicemen.

i. Position of Law

23. We begin with the decision of this Court in Executive Committee of Vaish Degree College v. Lakshmi Narain, AIR 1976 SC 888. This is one of the landmark decisions of this Court as this case discussed and considered all the previous decisions and the same has been referred to and relied upon by this Court till this date. This Court held that a contract of personal service cannot ordinarily be enforced specifically. Three exceptions were set out as well recognized: (1) Where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (2) Where a worker is sought to be reinstated under the Industrial Law; (3) Where a statutory body acts in breach or violation of the mandatory-provisions of the statute.

A statutory body was defined in that case as one which was created by or under a statute and owed its existence to a statute. It was held that an institution governed by certain statutory provisions for its proper maintenance and administration would not be a statutory body. The test prescribed was whether the institution would exist in the absence of a statute.

24. In J. Tiwari v. Jawala Devi Vidya Mandir, (1979) 4 SCC 160, it was held that the rights and obligations of an employee of a private institution are governed by the terms of the contract between the parties. It was also observed that the regulations of the University or the provisions of the Educational Code framed by the State Government may be applicable to the institution and if the provisions thereof are violated, the University may be entitled to disaffiliate the institution. But that would not, however, make that the institution a public or a statutory body.

25. In Dipak Kumar Biswas v. Director of Public Instruction, 1987 (2) SCC 252, the appellant before this Court instituted a suit for declaration that he continued to be in service in Lady Keane Girls College, Shillong and for an injunction. His services were terminated by the College on the ground that the Director of Public Instruction had not approved of his appointment. The trial court dismissed the suit. The first appellate court allowed the appeal of the plaintiff and granted a decree as prayed for.

The High Court, while holding that there was no necessity for the approval by the Director of Public Instruction as the Assam College Management Rules were not adopted by the State of Meghalaya, held that reinstatement of the plaintiff in service was not possible as it could be granted only to persons belonging to the categories of (1) Government servants (2) Industrial workmen and (3) Employees of statutory bodies. Consequently, the High Court granted a decree for damages only.

The aggrieved plaintiff took the matter on appeal to this Court. Following the view token in Vaish Degree College v. Lakshmi Narain (supra), this Court held that a contract of service could not be enforced specifically. Then the question to be considered was whether the college in that case which was admittedly receiving aid from the Government and was governed by the regulations of the University was a statutory body. The Court answered in the negative and rejected the claim for reinstatement. The Court observed as follows:-

"The law enunciated in these decisions stand fully attracted to this case also. Even though the Lady Keane Girls College may be governed by the statutes of the University and the Education Code framed by the Government of Meghalaya and even though the college may be receiving financial aid from the Government it would not be a statutory body because it has not been created by any statute and its existence is not dependent upon any statutory provision. Ultimately the Supreme Court granted additional damages to the appellant."

26. In Tekraj v. Union of India, 1988 (1) SCC 236, the question was whether the Institute of Constitutional and Parliamentary studies registered under the Societies Registration Act, 1860 was a "State" within the meaning of Article 12 of the Constitution of India. After tracing the case law on the subject the Court observed as follows:-

"Democracy pre-supposes certain conditions or its successful working. It is necessary that there must be a deep sense of understanding, mutual confidence and tolerance and regard and acceptance of the views of others. In the early years of freedom, the spirit of sacrifice and a sense of obligation to the leadership that had helped the dream of freedom to materialise had been accepted. The

emergence of a new generation within less than two decades of independency gave rise to a feeling that the people's representatives in the legislatures required the acquisition of the appropriate democratic ideas and spirit. ICPS was born as a voluntary organisation to fulfil this requirement.

At the inception it was certainly not a governmental organisation and it has not been the case of the parties in their pleadings nor have we been told at the bar during the long arguments that had been advanced that the objects of ICPS are those which are a State obligation to fulfil. The Society was thus born out of a feeling that there should be a voluntary association mostly consisting of members of the two Houses of Parliament with some external support to fulfil the objects which were adopted by the Society.

The objects of the Society were not governmental business but were certainly the aspects which were expected to equip Members of Parliament and the State Legislatures with the requisite knowledge and experience for better functioning. Many of the objects adopted by the Society were not confined to the two Houses of Parliament and were intended to have an impact on society at large. The Memorandum of the Society permitted acceptance of gifts, donations and subscriptions. There is material to show that the Ford Foundation, a US based Trust, had extended support for sometime.

Undoubtedly, the annual contribution from the Government has been substantial and it would not be wrong to say that they perhaps constitute the main source of funding, yet some money has been coming from other sources. In later years, foreign funding came to be regulated and, therefore it became necessary to provide that without Government clearance, like any other institution, ICPS was not to receive foreign donation. No material has been placed before us for the stand that the Society was not entitled to receive contributions from any indigenous source without Government sanction.

Since Government moneys has been coming, the usual conditions attached to Government grants have been applied and enforced. If the Society's affairs were really intended to be carried on as part of the Lok Sabha or Parliament as such, the manner of functioning would have been different. The accounts of the Society are separately maintained and subject to audit in the same way as the affairs of societies receiving Government grants are to be audited. Government usually impose certain conditions and restrictions when grants are made.

No exception has been made in respect of the Society and the mere fact that such restrictions are made is not a determinative aspect. Considerable attempt has been made by Mr. Rao, learned Counsel for the appellant, to show that in the functioning of the Society there is deep and pervasive control of Government.

We have examined meticulously the correspondence and the instances where control was attempted to be exercised or has, as a fact, been exercised but these again are features which appear to have been explained away."

27. In spite of the above facts and circumstances, this Court held that the institute was not a "State" or State instrumentality or other authority.

28. If the Authority/Body can be treated as a "State" within the meaning of Article 12 of the Constitution of India, then in such circumstances, it goes without saying that a writ petition under Article 226 would be maintainable against such an Authority/Body for the purpose of enforcement of fundamental and other legal rights. Therefore, the definition contained in Article 12 is for the purpose of application of the provisions contained in Part III. Article 226 of the Constitution, which deals with powers of the High Courts to issue certain writs, inter alia, stipulates that every High Court has the power to issue directions, orders or writs to any person or authority, including, in appropriate cases, any Government, for the enforcement of any of the rights conferred by Part III and for any other purpose.

29. So far as Article 12 of the Constitution is concerned, the "State" includes "all local and other Authorities within the territory of India or under the control of the Government of India". The debate on the question as to which body would qualify as "other authority" & the test/principles applicable for ascertaining as to whether a particular body can be treated as "other authority" has been never ending.

If such an authority violates the fundamental right or other legal rights of any person or citizen (as the case may be), a writ petition can be filed under Article 226 of the Constitution invoking the extraordinary jurisdiction of the High Court and seeking appropriate direction, order or writ. However, under Article 226 of the Constitution, the power of the High Court is not limited to the Government or authority which qualifies to be "State" under Article 12.

Power is extended to issue directions, orders or writs "to any person or authority". Again, this power of issuing directions, orders or writs is not limited to enforcement of fundamental rights conferred by Part III, but also "for any other purpose". Thus, power of the High Court takes within its sweep more "authorities" than stipulated in Article 12 and the subject-matter which can be dealt with under this Article is also wider in scope. 30. There are three decisions of this Court we must look into and discuss.

31. The first judgment is Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust & Ors. v. V. R. Rudani

& Ors. reported in (1989) 2 SCC 691 and the other two judgments, we are talking about are K. Krishnamacharyulu & Ors. v. Sri Venkateswara Hindu College of Engineering & Anr. reported in 1997 (3) SCC 571 and Satimbla Sharma v. St. Paul's Senior Secondary School, reported in (2011) 13 SCC 760.

32. In Shri Anadi Mukta Sadguru (supra), dispute arose between the Trust which was managing and running science college and teachers of the said college. It pertained to payment of certain employment related benefits like basic pay, etc. The matter was referred to the Chancellor of Gujarat University for his decision. The Chancellor passed an award, which was accepted by the University as well as the State Government and a direction was issued to all affiliated colleges to pay their teachers in terms of the said award. However, the aforesaid Trust running the science college did not implement the award.

Teachers filed the writ petition seeking mandamus and direction to the Trust to pay them their dues of salary, allowances, provident fund and gratuity in accordance therewith. It is in this context an issue arose as to whether the writ petition under Article 226 of the Constitution was maintainable against the said Trust which was admittedly not a statutory body or authority under Article 12 of the Constitution as it was a private Trust running an educational institution. The High Court held that the writ petition was maintainable and the said view was upheld by this Court in the aforesaid judgment. The discussion which is relevant for our purposes is contained in paras 14 to 19. However, we would like to reproduce paras 14, 16 and 19, which read as under:-

"14. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellant Trust was managing the affiliated college to which public money is paid as government aid. Public money paid as government aid plays a major role in the control, maintenance and working of educational institutions.

The aided institutions like government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating university. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. [See The Evolving Indian Administrative Law by M.P. Jain (1983) p. 266.]

So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The

service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.

16. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The 'public authority' for them means everybody which is created by statute-and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all 'public authorities'. But there is no such limitation for our High Courts to issue the writ 'in the nature of mandamus'. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to 'any person or authority'. It can be issued 'for the enforcement of any of the fundamental rights and for any other purpose'.

19. The term 'authority' used in Article 226, in the context, must receive a liberal meaning like the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words 'any person or authority' used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied."

(Emphasis supplied)

33. In para 14, the Court spelled out two exceptions to the writ of mandamus viz. (i) if the rights are purely of a private character, no mandamus can issue; and (ii) if the management of the college is purely a private body "with no public duty", mandamus will not lie. The Court clarified that since the Trust in the said case was an aided institution, because of this reason, it discharges public function, like government institution, by way of imparting education to students, more particularly when rules and regulations of the affiliating university are applicable to such an institution, being an aided institution. In such a situation, the Court held that the service conditions of academic staff were not purely of a private

character as the staff had super-added protection by university's decision creating a legal right and duty relationship between the staff and the management.

Further, the Court explained in para 19 that the term "authority" used in Article 226, in the context, would receive a liberal meaning unlike the term in Article 12, inasmuch as Article 12 was relevant only for the purpose of enforcement of fundamental rights under Article 32, whereas Article 226 confers power on the High Courts to issue writs not only for enforcement of fundamental rights but also non-fundamental rights. What is relevant is the dicta of the Court that the term "authority" appearing in Article 226 of the Constitution would cover any other person or body performing public duty. The guiding factor, therefore, is the nature of duty imposed on such a body, namely, public duty to make it exigible to Article 226.

34. In K. Krishnamacharyulu (supra), this Court again emphasised that where there is an interest created by the Government in an institution to impart education, which is a fundamental right of the citizens, the teachers who impart the education get an element of public interest in performance of their duties. In such a situation, remedy provided under Article 226 would be available to the teachers.

35. However, both the decisions referred to above pertain to educational institutions and in the said cases, the function of imparting education was treated as the performance of the public duty, that too by those bodies where, the aided institutions were discharging the said functions like Government institutions and the interest was created by the Government in such institutions to impart education.

36. In Satimbla Sharma (supra), the school therein was initially established as a mission school by the respondent No. 2. The school adopted the 10+2 system in 1993 and got affiliated to the Himachal Pradesh Board of School Education. Before independence in 1947, the school was receiving grant-in-aid from the British Indian Government and thereafter from the Government of India up to 1950. Between 1951 and 1966, the school received grant-in-aid from the State Government of Punjab.

After the State of Himachal Pradesh was formed, the school received grant-in-aid from the Government of Himachal Pradesh for the period between 1967 and 1976. From the year 1977-1978, the Government of Himachal Pradesh stopped the grant-in-aid. In such circumstances, the teachers of the school were paid less than the teachers of the Government schools and the Government-aided schools in the State of Himachal Pradesh. This led to filing of a writ petition in the High Court of Himachal Pradesh seeking a direction to pay the salary and allowances

at par with the teachers of Government schools and the Government-aided schools. A

learned single Judge of the High Court allowed the writ petition and directed the respondents therein to pay to the writ petitioners therein salary and allowances at par with their counterparts working in the Government schools from the dates they were entitled to and at the rates admissible from time to time. The respondent Nos. 1 and 2 therein preferred letters patent appeal before the Division Bench of the High Court. The appeal came to be allowed and the writ petition filed by the teachers was dismissed. In such circumstances referred to above, the litigation travelled to this Court. This Court, while disposing of the appeal, held as under:-

"25. Where a statutory provision casts a duty on a private unaided school to pay the same salary and allowances to its teachers as are being paid to teachers of governmentaided schools, then a writ of mandamus to the school could be issued to enforce such statutory duty. But in the present case, there was no statutory provision requiring a private unaided school to pay to its teachers the same salary and allowances as were payable to teachers of government schools and therefore a mandamus could not be issued to pay to the teachers of private recognised unaided schools the same salary and allowances as were payable to teachers of government institutions.

26. In K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg., (1997) 3 SCC 571 : 1997 SCC (L&S) 841, relied upon by the learned counsel for the appellants, executive instructions were issued by the Government that the scales of pay of Laboratory Assistants as nonteaching staff of private colleges shall be on a par with the government employees and this Court held that even though there were no statutory rules, the Laboratory Assistants as non-teaching staff of private college were entitled to the parity of the pay scales as per the executive instructions of the Government and the writ jurisdiction of the High Court under Article 226 of the Constitution is wide enough to issue a writ for payment of pay on a par with government employees. In the present case, there are no executive instructions issued by the Government requiring private schools to pay the same salary and allowances to their teachers as are being paid to teachers of government schools or government-aided schools.

27. We cannot also issue a mandamus to Respondents 1 and 2 on the ground that the conditions of provisional affiliation of schools prescribed by the Council for the Indian School Certificate Examinations stipulate in Clause (5)(b) that the salary and allowances and other benefits of the staff of the affiliated school must be comparable to that prescribed by the State Department of Education because

such conditions for provisional affiliation are not statutory provisions or executive instructions, which are enforceable in law.

Similarly, we cannot issue a mandamus to give effect to the recommendations of the Report of Education Commission 1964-1966 that the scales of pay of school teachers belonging to the same category but working under different managements such as Government, local bodies or private managements should be the same, unless the recommendations are incorporated in an executive instruction or a statutory provision. We, therefore, affirm the impugned judgment of the Division Bench of the High Court.

28. We, however, find that the 2009 Act has provisions in Section 23 regarding the qualifications for appointment and terms and conditions of service of teachers and subsection (3) of Section 23 of the 2009 Act provides that the salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed. Section 38 of the 2009 Act empowers the appropriate Government to make rules and Section 38(2)(l) of the 2009 Act provides that the appropriate Government, in particular, may make rules prescribing the salary and allowances payable to, and the terms and conditions of service of teachers, under sub-section (3) of Section 23. Section 2(a) defines "appropriate Government" as the State Government within whose territory the school is established.

29. The State of Himachal Pradesh, Respondent 3 in this appeal, is thus empowered to make rules under subsection (3) of Section 23 read with Section 38(2)(l) of the 2009 Act prescribing the salary and allowances payable to, and the terms and conditions of service of, teachers. Article 39(d) of the Constitution provides that the State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women. Respondent 3 should therefore consider making rules under Section 23 read with Section 38(2)(l) of the 2009 Act prescribing the salary and allowances of teachers keeping in mind Article 39(d) of the Constitution as early as possible."

(Emphasis supplied)

37. Thus, the dictum as laid in Satimbla Sharma (supra) is clear. In the absence of any statutory provisions requiring a private unaided school to pay to its teachers the same salary and allowances as payable to the teachers of the Government schools, a mandamus cannot be issued to pay to the teachers of private recognised unaided schools the same salary and allowances as payable to the teachers of Government institutions. In the case at hand, the respondents are being paid the same salary and allowances as being paid to the teachers and non-teaching staff appointed by the appellant society.

38. In one of the recent pronouncements of this Court in the case of St. Mary's Education Society & Anr. v. Rajendra Prasad Bhargava & Ors. reported in (2023) 4 SCC 498, to which one of us (J.B. Pardiwala, J.) was a member, the entire law on the subject has been discussed threadbare. In the said case, this Court held that while a private unaided minority institution might be touching the spheres of public function by performing a public duty, its employees have no right of invoking the writ jurisdiction of the High Court under Article 226 of the Constitution in respect of matters relating to service where they are not governed or controlled by the statutory provision.

39. In the said case, the following two questions fell for the consideration of the Court:-

(a) Whether a writ petition under Article 226 of the Constitution of India is maintainable against a private unaided minority institution?

(b) Whether a service dispute in the private realm involving a private educational institution and its employee can be adjudicated in a writ petition filed under Article 226 of the Constitution? In other words, even if a body performing public duty is amenable to writ jurisdiction, are all its decisions subject to judicial review or only those decisions which have public element therein can be judicially reviewed under the writ jurisdiction?

40. This Court ultimately held as under:-

"29. Respondent 1 herein has laid much emphasis on the fact that at the time of his appointment in the school, the same was affiliated to the Madhya Pradesh State Board. It is his case that at the relevant point of time the school used to receive the grant-inaid from the State Government of Madhya Pradesh. Later in point of time, the school came to be affiliated to CBSE. The argument of Respondent 1 seems to be that as the school is affiliated to the Central Board i.e. CBSE, it falls within the ambit of "State" under Article 12 of the Constitution.

The school is affiliated to CBSE for the purpose of imparting elementary education under the Right of Children to Free and Compulsory Education Act, 2009 (for short "the 2009 Act"). As Appellant 1 is engaged in imparting of education, it could be said to be performing public functions. To put it in other words, Appellant 1 could be said to be performing public duty.

Even if a body performing public duty is amenable to the writ jurisdiction, all its decisions are not subject to judicial review. Only those decisions which have public element therein can be judicially reviewed under the writ jurisdiction. If the action challenged does not have the public element, a writ of mandamus

cannot be issued as the action could be said to be essentially of a private character.

30. We may at the outset state that CBSE is only a society registered under the Societies Registration Act, 1860 and the school affiliated to it is not a creature of the statute and hence not a statutory body. The distinction between a body created by the statute and a body governed in accordance with a statute has been explained by this Court in Executive Committee of Vaish Degree College v. Lakshmi Narain, (1976) 2 SCC 58, as follows:- (SCC p. 65, para 10)

"10. It is, therefore, clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body."

31. As stated above, the school is affiliated to CBSE for the sake of convenience, namely, for the purpose of recognition and syllabus or the courses of study and the provisions of the 2009 Act and the Rules framed thereunder.

32. The contention canvassed by Respondent 1 is that a writ petition is maintainable against the Committee of Management controlling the affairs of an institution (minority) run by it, if it violates any rules and bye-laws laid down by CBSE. First, as discussed above, CBSE itself is not a statutory body nor the regulations framed by it have any statutory force. Secondly, the mere fact that the Board grants recognition to the institutions on certain terms and conditions itself does not confer any enforceable right on any person as against the Committee of Management.

33. In Regina v. St. Aloysius Higher Secondary School, (1972) 4 SCC 188 : AIR 1971 SC 1920, this Court held that the mere fact that an institution is recognised by an authority, does not itself create an enforceable right to an aggrieved party against the Management by a teacher on the ground of breach or non-compliance of any of the Rules which was part of terms of the recognition. It was observed as under:-

"24. The Rules thus govern the terms on which the Government would grant recognition and aid and the Government can enforce these rules upon the

management. But the enforcement of such rules is a matter between the Government and the management, and a third party, such as teacher aggrieved by some order of the management cannot derive from the rules any enforceable right against the management on the ground of breach or noncompliance of any of the rules."

34. In Anita Verma v. D.A.V. College Management Committee, Unchahar, Rai Bareilly, (1992) 1 UPLBEC 30:-

"30. Where the services of a teacher were terminated, the Court held that the writ petition under Article 226 is not maintainable as the institution cannot be treated as the instrumentality of the State. The matter was considered in detail in Harbans Kaur v. Guru Tegh Bahadur Public School [Harbans Kaur v. Guru Tegh Bahadur Public School, 1992 SCC OnLine All 444 : 1992 Lab IC 2070], wherein the services of the petitioner were terminated by the Managing Committee of the institution recognised by CBSE. It was held that the Affiliation Bye-laws framed by CBSE have no statutory force.

The Court under Article 226 of the Constitution of India can enforce compliance of statutory provision against a committee of management as held in a Full Bench decision of this Court in Aley Ahmad Abidi v. District Inspector of Schools [Aley Ahmad Abidi v. District Inspector of Schools, 1976 SCC OnLine All 325 : AIR 1977 All 539]. The Affiliation Bye-laws of CBSE having no statutory force, the only remedy against the aggrieved person is to approach CBSE putting his grievances in relation to the violation of the Affiliation Bye-laws by the institution."

35. Thus, where a teacher or non-teaching staff challenges the action of Committee of Management that it has violated the terms of contract or the rules of the Affiliation Bye-laws, the appropriate remedy of such teacher or employee is to approach CBSE or to take such other legal remedy available under law. It is open to CBSE to take appropriate action against the Committee of Management of the institution for withdrawal of recognition in case it finds that the Committee of Management has not performed its duties in accordance with the Affiliation Byelaws.

36. It needs no elaboration to state that a school affiliated to CBSE which is unaided is not a State within Article 12 of the Constitution of India [see Satimbla Sharma v. St Paul's Senior Secondary School, (2011) 13 SCC 760 : (2012) 2 SCC (L&S) 75. Nevertheless the school discharges a public duty of imparting education which is a fundamental right of the citizen [see K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engineering, (1997) 3 SCC 571 : 1997 SCC (L&S) 841.

The school affiliated to CBSE is therefore an "authority" amenable to the jurisdiction under Article 226 of the Constitution of India [see Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657 : 2005 SCC (L&S) 881]]. However, a judicial review of the action challenged by a party can be had by resort to the writ jurisdiction only if there is a public law element and not to enforce a contract of personal service. A contract of personal service includes all matters relating to the service of the employee - confirmation, suspension, transfer, termination, etc. [see Apollo Tyres Ltd. v. C.P. Sebastian, (2009) 14 SCC 360].

37. This Court in K.K. Saksena v. International Commission on Irrigation & Drainage, (2015) 4 SCC 670, after an exhaustive review of its earlier decisions on the subject, held as follows:- (SCC pp. 692 & 696, paras 43 & 52)

"43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is "State" within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious.

A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is "State" under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.

52. It is trite that contract of personal service cannot be enforced. There are three exceptions to this rule, namely: (i) when the employee is a public servant working under the Union of India or State; (ii) when such an employee is employed by an authority/body which is a State within the meaning of Article 12 of the Constitution of India; and (iii) when such an employee is "workmen" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act. In the first two cases, the employment ceases to have private law character and "status" to such an employment is attached. In the third category of cases, it is the Industrial Disputes Act which confers jurisdiction on the Labour Court/Industrial Tribunal to grant reinstatement in case termination is found to be illegal."

38. The following decisions have been adverted to in K.K. Saksena (supra):-

1. Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691

2. G. Bassi Reddy v. International Crops Research Institute, (2003) 4 SCC 225,

3. Praga Tools Corpn. v. C.A. Imanual, (1969) 1 SCC 585,

4. Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733.

39. This Court in Janet Jeyapaul v. SRM University (2015) 16 SCC 530, held that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy, not only under the ordinary law, but also by way of a writ petition under Article 226 of the Constitution. In Binny Ltd. (supra), this Court held that Article 226 of the Constitution is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in the discharge of public function.

40. Paragraph 11 of the judgment in Binny Ltd. (supra) is reproduced below:- (SCC pp. 665-66)

"11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of a public function.

The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as public sector undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution.

At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between public functions and private functions when it is being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest."

(Emphasis supplied)

41. This Court considered various of its other decisions to examine the question of public law remedy under Article 226 of the Constitution. This Court observed in Binny Ltd. (supra) as under:- (SCC p. 673, para 29)

"29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds.

It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought.

If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies."

(Emphasis supplied)

42. In the penultimate paragraph, this Court ruled as under:- (Binny case, SCC p. 674, para 32)

"32. Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not "State" within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties."

(Emphasis supplied)

43. In the background of the above legal position, it can be safely concluded that power of judicial review under Article 226 of the Constitution of India can be

exercised by the High Court even if the body against which an action is sought is not State or an authority or an instrumentality of the State but there must be a public element in the action complained of.

44. A reading of the above extract shows that the decision sought to be corrected or enforced must be in the discharge of a public function. No doubt, the aims and objective of Appellant 1 herein are to impart education, which is a public function. However, the issue herein is with regard to the termination of service of Respondent 1, which is basically a service contract. A body is said to be performing a public function when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so.

45. In the case of Committee of Management, Delhi Public School v. M.K. Gandhi , reported in (2015) 17 SCC 353, this Court held that no writ is maintainable against a private school as it is not a "State" within the meaning of Article 12 of the Constitution of India.

46. In Trigun Chand Thakur v. State of Bihar , reported in (2019) 7 SCC 513, this Court upheld the view of a Division Bench of the Patna High Court which held that a teacher of privately managed school, even though financially aided by the State Government or the Board, cannot maintain a writ petition against an order of termination from service passed by the Management.

47. In Satimbla Sharma (supra), this Court held that the unaided private minority schools over which the Government has no administrative control because of their autonomy under Article 30(1) of the Constitution are not "State" within the meaning of Article 12 of the Constitution. As the right to equality under Article 14 of the Constitution is available against the State, it cannot be claimed against unaided private minority private schools.

48. The Full Bench of the Allahabad High Court in Roychan Abraham v. State of U.P., AIR 2019 All 96, after taking into consideration various decisions of this Court, held as under:-

"38. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have direct nexus with the discharge of public duty. It is undisputedly a public law action which confers a right upon the aggrieved to invoke 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 petition under Article 226. Wherever Courts have intervened in exercise of jurisdiction under Article 226, either the service conditions were regulated by 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."

(Emphasis supplied)

49. We may refer to and rely upon one order passed by this Court in S.K. Varshney v. Principal, Our Lady of Fatima Higher Secondary School, (2023) 4 SCC 539, in the Civil Appeal No. 8783-8784 of 2003 dated July 19, 2007, in which the dispute was one relating to the retirement age of a teacher working in an unaided institution. This Court, while dismissing the appeal preferred by the employee, held as under:-

"4. Both the petitions were dismissed by the learned Single Judge on the ground that no writ would lie against unaided private institutions and the writ petitions were not maintainable.

5. Aggrieved thereby, writ appeals have been filed before the Division Bench without any result. The Division Bench held [S.K. Varshney v. Our Lady of Fatima Higher Secondary School, 1999 SCC OnLine All 908] that the writ petitions are not maintainable against a private institute. Aggrieved thereby, these appeals have been filed.

6. The counsel for the appellant relied on a decision rendered by this Court in K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg., (1997) 3 SCC 571. He particularly relied on the observation made by this Court in para 4 of the order that when an element of public interest is created and the institution is catering to that element, the teacher, being the arm of the institution, is also entitled to avail of the remedy provided under Article 226.

7. This Court in Sushmita Basu v. Ballygunge Siksha Samity, (2006) 7 SCC 680 : 2006 SCC (L&S) 1741] in which one of us (Sema, J.) is a party, after considering the aforesaid judgment has distinguished the ratio by holding that the writ under Article 226 of the Constitution against a private educational institute would be justified only if a public law element is involved and if it is only a private law remedy no writ petition would lie. In the present cases, there is no question of public law element involved inasmuch as the grievances of the appellants are of personal nature.

8. We, accordingly, hold that writ petitions are not maintainable against the private institute. There is no infirmity in the order passed by the learned Single Judge and affirmed by the Division Bench. These appeals are devoid of merit and are, accordingly, dismissed. No costs."

(Emphasis supplied)

50. We may also refer to and rely upon the decision of this Court in Vidya Ram Misra v. Shri Jai Narain College, (1972) 1 SCC 623 : AIR 1972 SC 1450. The appellant therein filed a writ petition before the Lucknow Bench of the High Court of Allahabad challenging the validity of a resolution passed by the Managing Committee of Shri Jai Narain College, Lucknow, an associated college of Lucknow University, terminating his services and praying for issue of an appropriate writ or order quashing the resolution. A learned Single Judge of the High Court finding that in terminating the services, the Managing Committee acted in violation of the principles of natural justice, quashed the resolution and allowed the writ petition. The Managing Committee appealed against the order.

A Division Bench of the High Court found that the relationship between the college and the appellant therein was that of master and servant and that even if the service of the appellant had been terminated in breach of the audi alteram partem rule of natural justice, the remedy of the appellant was to file a suit for damages and not to apply under Article 226 of the Constitution for a writ or order in the nature of certiorari and that, in fact, no principle of natural justice was violated by terminating the services of the appellant. The writ petition was dismissed. In appeal, this Court upheld the decision of the High Court holding that the lecturer cannot have any cause of action on breach of the law but only on breach of the contract, hence he has a remedy only by way of suit for damages and not by way of writ under Article 226 of the Constitution.

51. In Vidya Ram Misra (supra), this Court observed thus:- (SCC p. 629, paras 12-13)

"12. Whereas in P.R.K. Jodh v. A.L. Pande, (1965) 2 SCR 713] , the terms and conditions of service embodies in Clause 8(vi)(a) of the "College Code" had the force of law apart from the contract and conferred rights on the appellant there, here the terms and conditions mentioned in Statute 151 have no efficacy, unless they are incorporated in a contract. Therefore, appellant cannot found a cause of action on any breach of the law but only on the breach of the contract. As already indicated, Statute 151 does not lay down any procedure for removal of a teacher to be incorporated in the contract. So, Clause 5 of the contract can, in no event, have even a statutory flavour and for its breach, the appellant's remedy lay elsewhere.

13. Besides, in order that the third exception to the general rule that no writ will lie to quash an order terminating a contract of service, albeit illegally, as stated in S.R. Tewari v. District Board, (1964) 3 SCR 55 : AIR 1964 SC 1680], might apply, it is necessary that the order must be the order of a statutory body acting in breach of a mandatory obligation imposed by a statute. The college, or the Managing Committee in question, is not a statutory body and so the argument of

Mr Setalvad that the case in hand will fall under the third exception cannot be accepted.

The contention of counsel that this Court has sub silentio sanctioned the issue of a writ under Article 226 to quash an order terminating services of a teacher passed by a college similarly situate in P.R.K. Jodh, and, therefore, the fact that the college or the Managing Committee was not a statutory body was no hindrance to the High Court issuing the writ prayed for by the appellant has no merit as this Court expressly stated in the judgment that no such contention was raised in the High Court and so it cannot be allowed to be raised in this Court."

52. In the case on hand, the facts are similar. Rule 26(1) of the Affiliation Bye-laws, framed by CBSE, provides that each school affiliated with the Board shall frame Service Rules. Sub-rule (2) of it provides that a service contract will be entered with each employee as per the provision in the Education Act of the State/Union Territory, or as given in Appendix III, if not obligatory as per the State Education Act.

These rules also provide procedures for appointments, probation, confirmation, recruitment, attendance representations, grant of leave, code of conduct, disciplinary procedure, penalties, etc. The model form of contract of service, to be executed by an employee, given in Appendix III, lays down that the service, under this agreement, will be liable to disciplinary action in accordance with the Rules and Regulations framed by the school from time to time.

Only in case where the post is abolished or an employee intends to resign, Rule 31 of the Affiliation Bye-laws of the Board will apply. It may be noted that the above Byelaws do not provide for any particular procedure for dismissal or removal of a teacher for being incorporated in the contract. Nor does the model form of contract given in Appendix III lay down any particular procedure for that purpose. On the contrary, the disciplinary action is to be taken in accordance with the Rules and Regulations framed by the school from time to time.

53. On a plain reading of these provisions, it becomes clear that the terms and conditions mentioned in the Affiliation Bye-laws may be incorporated in the contract to be entered into between the school and the employee concerned. It does not say that the terms and conditions have any legal force, until and unless they are embodied in an agreement. To put it in other words, the terms and conditions of service mentioned in Chapter VII of the Affiliation Bye-laws have no force of law. They become terms and conditions of service only by virtue of their being incorporated in the contract.

Without the contract they have no vitality and can confer no legal rights. The terms and conditions mentioned in the Affiliation Bye-laws have no efficacy, unless they are incorporated in a contract. In the absence of any statutory provisions governing the services of the employees of the school, the service of Respondent 1 was purely contractual. A contract of personal service cannot be enforced specifically. Therefore, Respondent 1 cannot find a cause of action on any breach of the law, but only on the breach of the contract. That being so, the appellant's remedy lies elsewhere and in no case the writ is maintainable.

54. Thus, the aforesaid order passed by this Court makes it very clear that in a case of retirement and in case of termination, no public law element is involved. This Court has held that a writ under Article 226 of the Constitution against a private educational institution shall be maintainable only if a public law element is involved and if there is no public law element is involved, no writ lies.

55. In T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481, an eleven-Judge Bench of this Court formulated certain points in fact to reconsider its earlier decision in Ahmedabad St. Xavier's College Society v. State of Gujarat, (1974) 1 SCC 717, and also Unni Krishnan, J.P. v. State of A.P., (1993) 4 SCC 111, regarding the "right of the minority institution including administration of the student and imparting education vis-à-vis the right of administration of the non-minority student".

56. In the said case, very important points arose as follows:- (T.M.A. Pai Foundation case, SCC pp. 709-10, para 450)

"450. Q.5. (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities? A.

So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like appointment of staff, teaching and nonteaching and administrative control over them, the management should have the freedom and there should not be any external controlling agency.

However, a rational procedure for selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. For redressing the

grievances of such employees who are subjected to punishment or termination from service, a mechanism will have to be evolved and in our opinion, appropriate tribunals could be constituted, and till then, such tribunal could be presided over by a judicial officer of the rank of District Judge. The State or other controlling authorities, however, can always prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State without interfering with overall administrative control of management over the staff, government/university representative can be associated with the Selection Committee and the guidelines for selection can be laid down. In regard to unaided minority educational institutions such regulations, which will ensure a check over unfair practices and general welfare of teachers could be framed."

57. We now proceed to look into the two decisions of this Court in Ramesh Ahluwalia (supra) and Marwari Balika Vidyalaya (supra) respectively.

58. In Ramesh Ahluwalia (supra), the appellant therein was working as an administrative officer in a privately run educational institution and by way of disciplinary proceedings, was removed from service by the Managing Committee of the said educational institution. A writ petition was filed before the learned Single Judge of the High Court challenging the order of the disciplinary authority wherein he was removed from service. The writ petition was ordered to be dismissed in limine holding that the said educational institution being an unaided and a private school managed by the society cannot be said to be an instrument of the State. The appeal before the Division Bench also came to be dismissed. The matter travelled to this Court.

59. The principal argument before this Court was in regard to the maintainability of the writ petition against a private educational institution. It was argued on the behalf of the appellant therein that although a private educational institution may not fall within the definition of "State" or "other authorities/instrumentalities" of the State under Article 12 of the Constitution, yet a writ petition would be maintainable as the said educational institution could be said to be discharging public functions by imparting education.

However, the learned counsel for the educational institution therein took a plea before this Court that while considering whether a body falling within the definition of "State", it is necessary to consider whether such body is financially, functionally and administratively dominated by or under the control of the Government. It was further argued that if the control is merely regulatory either

under a statute or otherwise, it would not ipso facto make the body "State" within Article 12 of the Constitution.

On the conspectus of the peculiar facts of the case and the submissions advanced, this Court held that a writ petition would be maintainable if a private educational institution discharges public functions, more particularly imparting education. Even by holding so, this Court declined to extend any benefits to the teacher as the case involved disputed questions of fact.

60. We take notice of the fact that in Ramesh Ahluwalia (supra) the attention of the Hon'ble Judges was not drawn to the earlier decisions of this Court in K. Krishnamacharyulu (supra), Federal Bank (supra), Sushmita Basu v. Ballygunge Siksha Samity, (2006) 7 SCC 680, and Delhi Public School v. M.K. Gandhi (supra).

61. In Marwari Balika Vidyalaya (supra), this Court followed Ramesh Ahluwalia (supra) referred to above.

62. We may say without any hesitation that respondent 1 herein cannot press into service the dictum as laid down by this Court in Marwari Balika Vidyalaya (supra) as the said case is distinguishable. The most important distinguishing feature of Marwari Balika Vidyalaya (supra) is that in the said case the removal of the teacher from service was subject to the approval of the State Government. The State Government took a specific stance before this Court that its approval was required both for the appointment as well as removal of the teacher. In the case on hand, indisputably the Government or any other agency of the Government has no role to play in the termination of Respondent 1 herein.

63. In context with Marwari Balika Vidyalaya (supra), we remind ourselves of Bye-law 49(2) which provides that no order with regard to the imposition of major penalty shall be made by the disciplinary authority except after the receipt of the approval of the Disciplinary Committee. Thus unlike Marwari Balika Vidyalaya (supra) where approval was required of the State Government, in the case on hand the approval is to be obtained from the Disciplinary Committee of the institution. This distinguishing feature seems to have been overlooked by the High Court while passing the impugned order.

64. In Marwari Balika Vidyalaya (supra), the school was receiving grant-in-aid to the extent of dearness allowance. The appointment and the removal, as noted above, is required to be approved by the District Inspector of School (Primary Education) and, if any action is taken dehors such mandatory provisions, the same would not come within the realm of private element.

65. In Trigun Chand Thakur (supra)s, the appellant therein was appointed as a Sanskrit teacher and a show-cause notice was issued upon him on the ground that he was absent on the eve of Independence day and Teachers Day which resulted into a dismissal order passed by the Managing Committee of the private school. The challenge was made by filing a writ petition before the High Court which was dismissed on the ground that the writ petition is not maintainable against an order terminating the service by the Managing Committee of the private school. This Court held that even if the private school was receiving a financial aid from the Government, it does not make the said Managing Committee of the school a "State" within the meaning of Article 12 of the Constitution of India.

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.

67. Our present judgment would remain incomplete if we fail to refer to the decision of this Court in Ramakrishna Mission v. Kago Kunya, (2019) 16 SCC 303. In the said case this Court considered all its earlier judgments on the issue. The writ petition was not found maintainable against the Mission merely for the reason that it was found running a hospital, thus discharging public functions/public duty.

This Court considered the issue in reference to the element of public function which should be akin to the work performed by the State in its sovereign capacity. This Court took the view that every public function/public duty would not make a writ petition to be maintainable against an "authority" or a "person" referred under Article 226 of the Constitution of India unless the functions are such which are akin to the functions of the State or are sovereign in nature.

68. Few relevant paragraphs of the said judgment are quoted as under for ready reference:- (Ramakrishna Mission case, SCC pp. 309-11 & 313, paras 17-22 & 25-26)

"17. The basic issue before this Court is whether the functions performed by the hospital are public functions, on the basis of which a writ of mandamus can lie under Article 226 of the Constitution.

18. The hospital is a branch of the Ramakrishna Mission and is subject to its control. The Mission was established by Swami Vivekanand, the foremost disciple of Shri Ramakrishna Paramhansa. Service to humanity is for the organisation co-equal with service to God as is reflected in the motto "Atmano Mokshartham Jagad Hitaya Cha". The main object of the Ramakrishna Mission is to impart knowledge in and promote the study of Vedanta and its principles propounded by Shri Ramakrishna Paramahansa and practically illustrated by his own life and of comparative theology in its widest form.

Its objects include, inter alia to establish, maintain, carry on and assist schools, colleges, universities, research institutions, libraries, hospitals and take up development and general welfare activities for the benefit of the underprivileged/backward/tribal people of society without any discrimination. These activities are voluntary, charitable and nonprofit making in nature. The activities undertaken by the Mission, a non-profit entity are not closely related to those performed by the State in its sovereign capacity nor do they partake of the nature of a public duty.

19. The Governing Body of the Mission is constituted by members of the Board of Trustees of Ramakrishna Math and is vested with the power and authority to manage the organisation. The properties and funds of the Mission and its management vest in the Governing Body. Any person can become a member of the Mission if elected by the Governing Body. Members on roll form the quorum of the annual general meetings.

The Managing Committee comprises of members appointed by the Governing Body for managing the affairs of the Mission. Under the Memorandum of Association and Rules and Regulations of the Mission, there is no governmental control in the functioning, administration and day-to-day management of the Mission. The conditions of service of the employees of the hospital are governed by service rules which are framed by the Mission without the intervention of any governmental body.

20. In coming to the conclusion that the appellants fell within the description of an authority under Article 226, the High Court placed a considerable degree of

reliance on the judgment of a two-Judge Bench of this Court in Andi Mukta [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691 : AIR 1989 SC 1607]. Andi Mukta [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691 : AIR 1989 SC 1607] was a case where a public trust was running a college which was affiliated to Gujarat University, a body governed by the State legislation.

The teachers of the University and all its affiliated colleges were governed, insofar as their pay scales were concerned, by the recommendations of the University Grants Commission. A dispute over pay scales raised by the association representing the teachers of the University had been the subject-matter of an award of the Chancellor, which was accepted by the Government as well as by the University.

The management of the college, in question, decided to close it down without prior approval. A writ petition was instituted before the High Court for the enforcement of the right of the teachers to receive their salaries and terminal benefits in accordance with the governing provisions. In that context, this Court dealt with the issue as to whether the management of the college was amenable to the writ jurisdiction. A number of circumstances weighed in the ultimate decision of this Court, including the following:

20.1. The trust was managing an affiliated college.

20.2. The college was in receipt of government aid.

20.3. The aid of the Government played a major role in the control, management and work of the educational institution.

20.4. Aided institutions, in a similar manner as government institutions, discharge a public function of imparting education to students.

20.5. All aided institutions are governed by the rules and regulations of the affiliating University.

20.6. Their activities are closely supervised by the University.

20.7. Employment in such institutions is hence, not devoid of a public character and is governed by the decisions taken by the University which are binding on the management.

21. It was in the above circumstances that this Court came to the conclusion that the service conditions of the academic staff do not partake of a private character,

but are governed by a rightduty relationship between the staff and the management. A breach of the duty, it was held, would be amenable to the remedy of a writ of mandamus. While the Court recognised that "the fast expanding maze of bodies affecting rights of people cannot be put into watertight compartments", it laid down two exceptions where the remedy of mandamus would not be available:- (SCC p. 698, para 15)

'15. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus.'

22. Following the decision in Andi Mukta [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691 : AIR 1989 SC 1607] , this Court has had the occasion to re-visit the underlying principles in successive decisions. This has led to the evolution of principles to determine what constitutes a "public duty" and "public function" and whether the writ of mandamus would be available to an individual who seeks to enforce her right.

25. A similar view was taken in Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331 : (2013) 3 SCC (L&S) 456 : 4 SCEC 715] , where a two-Judge Bench of this Court held that a private body can be held to be amenable to the jurisdiction of the High Court under Article 226 when it performs public functions which are normally expected to be performed by the State or its authorities.

26. In Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733] , this Court analysed the earlier judgments of this Court and provided a classification of entities against whom a writ petition may be maintainable : (SCC p. 748, para 18)

'18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.' "

69. The aforesaid decision of this Court in Ramakrishna Mission (supra) came to be considered exhaustively by a Full Bench of the High Court of Allahabad in Uttam Chand Rawat v. State of U.P. reported in (2021) 6 ALL LJ 393 (FB),

wherein the Full Bench was called upon to answer the following question:- (Uttam Chand Rawat case, SCC OnLine All para 1)

"1. (i) Whether the element of public function and public duty inherent in the enterprise that an educational institution undertakes, conditions of service of teachers, whose functions are a sine qua non to the discharge of that public function or duty, can be regarded as governed by the private law of contract and with no remedy available under Article 226 of the Constitution?"

70. The Full Bench proceeded to answer the aforesaid question as under:- ((Uttam Chand Rawat case, SCC OnLine All paras 16-20)

"16. The substance of the discussion made above is that a writ petition would be maintainable against the authority or the person which may be a private body, if it discharges public function/public duty, which is otherwise primary function of the State referred in the judgment of the Supreme Court in Ramakrishna Mission (supra) and the issue under public law is involved. The aforesaid twin test has to be satisfied for entertaining writ petition under Article 226 of the Constitution of India.

17. From the discussion aforesaid and in the light of the judgments referred above, a writ petition under Article 226 of the Constitution would be maintainable against (i) the Government; (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.

18. There is thin line between "public functions" and "private functions" discharged by a person or a private body/authority. The writ petition would be maintainable only after determining the nature of the duty to be enforced by the body or authority rather than identifying the authority against whom it is sought.

19. It is also that even if a person or authority is discharging public function or public duty, the writ petition would be maintainable under Article 226 of the Constitution, if Court is satisfied that action under challenge falls in the domain of public law, as distinguished from private law. The twin tests for maintainability of writ are as follows:

1. The person or authority is discharging public duty/public functions.

2. Their action under challenge falls in domain of public law and not under common law.

20. The writ petition would not be maintainable against an authority or a person merely for the reason that it has been created under the statute or is to be governed by regulatory provisions. It would not even in a case where aid is received unless it is substantial in nature. The control of the State is another issue to hold a writ petition to be maintainable against an authority or a person."

(Emphasis supplied)

71. We owe a duty to consider one relevant aspect of the matter. Although this aspect which we want to take notice of has not been highlighted by Respondent 1, yet we must look into the same. We have referred to the CBSE Affiliation Bye-laws in the earlier part of our judgment. Appendix IV of the Affiliation Bye-laws is with respect to the minority institutions. Clause 6 of Appendix IV is with respect to the disciplinary control over the staff in a minority educational institution. We take notice of the fact that in Clause 6, the State has the regulatory power to safeguard the interests of their employees and their service conditions including the procedure for punishment to be imposed.

72. For the sake of convenience and at the cost of repetition, we quote Clause 6 once again as under:

"6. Disciplinary control over staff in Minority Educational-Institutions.- While the managements should exercise the disciplinary control over staff, it must be ensured that they hold an inquiry and follow a fair procedure before punishment is given. With a view to preventing the possible misuse of power by the management of the Minority Educational Institutions, the State has the regulatory power to safeguard the interests of their employees and their service conditions including procedure for punishment to be imposed."

(Emphasis supplied)

73. It could be argued that as the State has regulatory power to safeguard the interests of the employees serving with the minority institutions, any action or decision taken by such institution is amenable to writ jurisdiction under Article 226 of the Constitution.

74. In the aforesaid context, we may only say that merely because the State Government has the regulatory power, the same, by itself, would not confer any such status upon the institution (school) nor put any such obligations upon it which may be enforced through issue of a writ under Article 226 of the Constitution. In this regard, we may refer to and rely upon the decision of this Court in Federal Bank (supra). While deciding whether a private bank that is regulated by the Banking Regulation Act, 1949 discharges any public function, this Court held thus:- (Ramakrishna Mission case, SCC pp. 315-16, paras 33-35)

"33. ... '33... 'in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We do not find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking.

Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. The respondent's service with the Bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank.' (Federal Bank case, SCC pp. 758-59, para 33)

34. Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. Hence, for instance, in K.K. Saksena [K.K. Saksena v. International Commission on Irrigation & Drainage, (2015) 4 SCC 670 : (2015) 2 SCC (Civ) 654 : (2015) 2 SCC (L&S) 119] this Court held that when an employee is a workman governed by the Industrial Disputes Act, 1947, it constitutes an exception to the general principle that a contract of personal service is not capable of being specifically enforced or performed.

35. It is of relevance to note that the Act was enacted to provide for the regulation and registration of clinical establishments with a view to prescribe minimum standards of facilities and services. The Act, inter alia, stipulates conditions to be satisfied by clinical establishments for registration. However, the Act does not govern contracts of service entered into by the hospital with respect to its employees. These fall within the ambit of purely private contracts, against which writ jurisdiction cannot lie. The sanctity of this distinction must be preserved."

(Emphasis in original and supplied)

41. The final conclusion drawn in the said decision is reproduced herein:- "75. We may sum up our final conclusions as under:-

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 nonteaching 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.

76. In view of the aforesaid discussion, we hold that the learned Single Judge of the High Court was justified in taking the view that the original writ application filed by Respondent 1 herein under Article 226 of the Constitution is not maintainable. The appeal court could be said to have committed an error in taking a contrary view."

42. In view of the aforesaid, nothing more is required to be discussed in the present appeals. We are of the view that the High Court committed an egregious error in entertaining the writ petition filed by the respondents herein holding that the appellant society is a "State" within Article 12 of the Constitution. Undoubtedly, the school run by the Appellant Society imparts education. Imparting education involves public duty and therefore public law element could also be said to be involved.

However, the relationship between the respondents herein and the appellant society is that of an employee and a private employer arising out of a private contract. If there is a breach of a covenant of a private contract, the same does not touch any public law element. The school cannot be said to be discharging any public duty in connection with the employment of the respondents.

ii. Doctrine of Legitimate Expectation

43. During the course of the arguments, a submission was canvassed that the respondents were under a legitimate expectation that their service conditions and salary would not be unilaterally altered by the appellant society to their disadvantage. Thus, as the respondents were neither consulted with nor taken in confidence by the appellant society before effecting the changes in their service

conditions, it amounted to a breach of their legitimate expectation, thereby making it a fit case for the exercise of writ jurisdiction by the High Court.

44. The doctrine of legitimate expectation was also referred to and relied upon by the single Judge of the High Court as one of the reasons to allow the writ petition filed by the respondents. The relevant observations made by the single Judge in the judgment and order dated 05.08.2014 are reproduced hereinbelow:-

"28. We also have to appreciate the "legitimate expectations" of the petitioners who expect equity, fairplay and justice, from a public authority which respondent nos. 2, 3 and 7 indeed are and, therefore, they must meet such standards as a public authority ought to 15 have. The new management of the School, including respondent no.2, 3 and 7 are hereby directed not to change or vary the conditions of the petitioners to their disadvantage."

45. Before parting with the matter, we deem it necessary to answer the aforesaid submission of the respondents. This Court in Union of India v. Hindustan Development Corporation reported in (1993) 3 SCC 499 enunciated that the doctrine of legitimate expectation is a creature of public law aimed at combating arbitrariness in executive action by public authorities. It held thus:-

"Time is a three-fold present: the present as we experience it, the past as a present memory and future as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences.

A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again, it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense."

46. In Ram Pravesh Singh v. State of Bihar reported in (2006) 8 SCC 381, this Court explained the doctrine of legitimate expectation in details as follows:-

"What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term "established practice" refers to a regular, consistent, predictable and certain conduct, process or activity of the

decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid.

Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by the courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established.

In short, a person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above "fairness in action" but far below "promissory estoppel".

It may only entitle an expectant: (a) to an opportunity to show cause before the expectation is dashed; or (b) to an explanation as to the cause for denial. In appropriate cases, the courts may grant a direction requiring the authority to follow the promised procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negative the "legitimate expectation".

The doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognised legal relationship with the authority. A total stranger unconnected with the authority or a person who had no previous dealings with the authority and who has not entered into any transaction or negotiations with the authority, cannot invoke the doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly."

47. In Jitender Kumar v. State of Haryana reported in (2008) 2 SCC 161, this Court, while differentiating between legitimate expectation on the one hand and anticipation, wishes and desire on the other, observed thus:-

"A legitimate expectation is not the same thing as an anticipation. It is distinct and different from a desire and hope. It is based on a right. [See Chanchal Goyal (Dr.) v. State of Rajasthan [(2003) 3 SCC 485 : 2003 SCC (L&S) 322] and Union

of India v. Hindustan Development Corpn. [(1993) 3 SCC 499] It is grounded in the rule of law as requiring regularity, predictability and certainty in the Government's dealings with the public. We have no doubt that the doctrine of legitimate expectation operates both in procedural and substantive matters."

48. A reading of the aforesaid decisions brings forth the following features regarding the doctrine of legitimate expectation:

a. First, legitimate expectation must be based on a right as opposed to a mere hope, wish or anticipation;

b. Secondly, legitimate expectation must arise either from an express or implied promise; or a consistent past practice or custom followed by an authority in its dealings;

c. Thirdly, expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be treated as a legitimate expectation;

d. Fourthly, legitimate expectation operates in relation to both substantive and procedural matters;

e. Fifthly, legitimate expectation operates in the realm of public law, that is, a plea of legitimate action can be taken only when a public authority breaches a promise or deviates from a consistent past practice, without any reasonable basis.

f. Sixthly, a plea of legitimate expectation based on past practice can only be taken by someone who has dealings, or negotiations with a public authority. It cannot be invoked by a total stranger to the authority merely on the ground that the authority has a duty to act fairly generally.

49. The aforesaid features, although not exhaustive in nature, are sufficient to help us in deciding the applicability of the doctrine of legitimate expectation to the facts of the case at hand. It is clear that legitimate expectation, jurisprudentially, was a device created in order to maintain a check on arbitrariness in state action. It does not extend to and cannot govern the operation of contracts between private parties, wherein the doctrine of promissory estoppel holds the field.

50. We have discussed in detail in preceding paragraphs that even if the function being performed by a private educational institution in imparting education may be considered as a public function, the relationship between the administration of such an institution and its employees remains a contractual one, falling within the ambit of private law.

51. Nothing has been placed on record by the respondents to show that any express or implied promise was made by the appellant regarding keeping their salary and service conditions intact. There have been no past negotiations or dealings between the respondents and the appellant society as the dispute arose as soon as the appellant took over the administration of the school.

Moreover, there is no statutory obligation on the appellant society which requires that the salaries and allowances of the respondents are to be kept at par with what is payable to teachers of Government institutions. Lastly, the appellant society, for the purposes of its relationship with its employees, cannot be regarded as a public or Government authority.

52. We are of the view that for all the aforesaid reasons, the doctrine of legitimate expectation will have no applicability to the facts of the present case. The submission of the respondents in that regard is thus answered accordingly.

H. CONCLUSION

53. In the result, the appeals succeed and are hereby allowed. The impugned judgment and order passed by the High Court is hereby set aside.

54. Although we have set aside the impugned judgment and order passed by the High Court, yet having regard to the submissions made on behalf of the appellants as recorded in paragraph 6 of the order dated 15.02.2021 (extracted in paragraph 4 herein above) as also the fact that all the respondents as on date are serving with the appellant society, they shall continue to serve on the terms and conditions as stipulated by the appellant society. The appellant society shall not discharge the respondents from service.

55. There shall be no order as to costs.

.....J. (J.B. Pardiwala)

.....J. (Manoj Misra)

New Delhi;

July 9, 2024

IN THE SUPREME COURT OF INDIA

Mohd. Abdul Samad
Vs.
State of Telangana & Anr.
[Criminal Appeal No. 2842 of 2024
arising out of SLP (Crl) No. 1614 of 2024]

HEADNOTE – A divorced Muslim woman is entitled to file a petition for maintenance against her ex-husband under Section 125 Cr.P.C. This right of a Muslim woman is in addition to the right under the Muslim Women (Protection of Rights on Divorce) Act, 1986.

JUDGMENT

Augustine George Masih, J.

1. Leave granted.

2. This appeal challenges the Order dated 13.12.2023 passed in Criminal Petition No. 12222 of 2023 moved under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC 1973"), whereby the High Court of Telangana modified the Order dated 09.06.2023 passed by the Family Court in M.C No. 171 of 2019. By virtue of disposing of the said petition, the High Court decreased the quantum of interim maintenance payable by the Appellant herein from INR 20,000/- (Rupees Twenty Thousand only) per month to INR 10,000/- (Rupees Ten Thousand only) per month.

3. As per the Appellant, the brief facts leading to the instant appeal are that the Appellant herein was the husband of the Respondent No. 02. Both the parties entered the matrimonial consortium on 15.11.2012. However, as their relationship deteriorated, Respondent No. 02 left the matrimonial home on 09.04.2016.

Subsequently, Respondent No. 02 initiated criminal proceedings against the Appellant by lodging FIR No. 578 of 2017 for offences punishable under Sections 498A and 406 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC 1860"). In response, the Appellant herein pronounced a triple talaq on 25.09.2017 and moved for divorce before the office of Quzath seeking a declaration of divorce, which was eventually granted ex parte, and the divorce certificate was issued on 28.09.2017.

4. It is further claimed that he attempted to send INR 15,000/- (Rupees Fifteen Thousand only) apropos maintenance for the iddat period, which the Respondent No. 02 is said to have refused. Instead, she moved a petition for interim maintenance under Section 125(1) of CrPC 1973 before the Family Court vide M.C. No. 171 of 2019, which was consequently allowed vide Order dated 09.06.2023. Seeking quashing of the said Order, the Appellant herein moved the High Court of Telangana, eventually leading to passing of the instant Impugned Order dated 13.12.2023.

5. The prime contention of the Appellant while moving this Court is that the provisions of Section 125 of CrPC 1973 do not prevail in light of the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (hereinafter referred to as the "1986 Act"). Furthermore, it is contended that even if a "divorced Muslim woman" seeks to move the court under the secular provision of Section 125 of CrPC 1973, it would not be maintainable, rather the correct procedure would be to file an application under Section 5 of the 1986 Act, which is not the case herein.

6. To substantiate the said contentions, the learned Senior Advocate for the Appellant herein, vehemently argued that since the 1986 Act provides a more beneficial and efficacious remedy for divorced Muslim women in contradistinction to Section 125 of CrPC 1973, thereby the recourse lies exclusively under the 1986 Act. In addition, it is submitted that the 1986 Act being a special law, prevails over the provisions of CrPC 1973.

To buttress his contentions, reliance is placed on a decision rendered by a 3-Judge Bench in M/s. Jain Ink Manufacturing Company v. Life Insurance Corporation of India and Another (1980) 4 SCC 435 wherein this Court went on to hold that a special law would supersede a general law and if such conflicting statutes are passed by the same legislature, the rule of harmonious construction is to be applied while interpreting the said statutes. Several other judgments to this effect were also brought to our notice with the similar position being reiterated as in a recent judgment of this Court in Chennupati Kranthi Kumar v. State of Andhra Pradesh and Others (2023) 8 SCC 251.

7. He further emphasised that Sections 3 and 4 of the 1986 Act, commencing with a non-obstante clause, shall have an overriding effect on any other statute operating in the same field. An acknowledgment to this effect is said to have been found in a 5-Judge Bench in Danial Latifi and Another v. Union of India (2001) 7 SCC 740 and specifically in paragraph numbers 21 to 24.

Further reliance is placed on paragraph numbers 03, 07, 08, and 09 of the judgment in Iqbal Bano v. State of Uttar Pradesh and Another (2007) 6 SCC 785.

Another limb of his submission is based upon the transitional provision of Section 7 of the 1986 Act, in an attempt to establish supersedence and clarity as to the intent of the legislature on prevalence of the 1986 Act and the procedure and rights contemplated therein.

8. To assist this Court, Mr Gaurav Agrawal, Senior Advocate, was appointed as amicus curiae vide Order dated 09.02.2024, who eventually went on to submit that the remedy under a secular statutory provision of Section 125 of CrPC 1973 is not foreclosed for a divorced Muslim woman by virtue of enactment of a personal law remedy under Section 3 of the 1986 Act to the limited extent of maintenance, as the latter does not in any manner, expressly or by necessary implication, bar the exercise of former remedy.

To buttress this submission, he went on to highlight the distinction between the very object and purpose of the aforesaid provisions. Mr Agrawal, while also extensively referring to the 5-Judge Bench decision in Danial Latifi (supra), goes on to submit that the explicit question as to whether the nonobstante clause in Section 3 of the 1986 Act takes away the rights under Section 125 of CrPC 1973, was not dealt by this Court therein.

However, it is his contention that the observations in paragraph number 33 of this judgment suggest an interpretation that a divorced Muslim woman is also entitled to all the rights of maintenance as are available to other equally situated women in the country and an interpretation otherwise would only infringe upon the fundamental rights conferred through Articles 14, 15, and 21 of the Constitution of India 1950 (hereinafter referred to as "Constitution of India").

9. Mr Agrawal also brought to our attention numerous oppugnant decisions of the High Courts, thus bringing out the conflict between the provisions while interpreting the provisions of the 1986 Act vis-à-vis CrPC 1973, as aforementioned. A reference to these decisions would be made as part of the analysis hereinafter.

10. We have heard the learned Senior Advocate for the Appellant, as well as the learned amicus curiae at length and in the light of their submissions, it is requisite to consider the historical perspective, the grey areas leading to a clarified position of law by this Court regarding the secular provision of maintenance under Section 125 of CrPC 1973, as well as the rights guaranteed under personal law to a divorced Muslim woman through Section 3 of the 1986 Act.

11. The legislature through Section 488 of the Code of Criminal Procedure, 1898, and subsequently by introducing Section 125 CrPC 1973, sought to carry on the efficacious remedy through a summary procedure in favour of a wife, including a

divorced woman, and others as applicable. To better comprehend the instant provision, the same is reproduced hereinbelow:

"125. Order for maintenance of wives, children and parents.-

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation.- For the purposes of this Chapter,-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section in living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent."

12. Numerous decisions of this Court went on to state that Section 125 of CrPC 1973 is a measure for social justice to protect the weaker sections, irrespective of applicable personal laws of the parties, as contemplated through Articles 15(3) and 38 of the Constitution of India. This Court similarly held in the decision of

Shri Bhagwan Dutt v. Smt. Kamla Devi and Another (1975) 2 SCC 386 that the nature of power and jurisdiction vested with a Magistrate by virtue of the instate provision is not punitive in nature and neither it is remedial, but it is a preventive measure. It was also observed that while any such right may or may not exist as a consequence of any of the personal laws applicable to the concerned parties, they shall continue to exist distinctively, and independently as against the secular provision.

13. The purpose of Section 125 of CrPC 1973 has been spelt out to prevent vagrancy and destitution of the person claiming rights through invoking the procedure established under the said provision. However, in Inderjit Kaur v. Union of India and Others (1990) 1 SCC 344, it was clarified qua the wife that such a right is not absolute in nature and is always subject to final determination of the rights of the parties by appropriate courts. Further emphasis has also been placed on the expression "unable to maintain herself" and that the burden of proof is on the wife to prove the existence of said circumstances leading to such inability. This is, in addition, to the requirement to establish that the husband has "sufficient means" to maintain her, and is, however, neglecting or refusing to do so.

14. In Fuzlunbi v. K. Khader Vali and Another (1980) 4 SCC 125 (SC), it was categorically observed by this Court that enactment of the said provision charges the court with a deliberate secular design to enforce maintenance or its equivalent against the humane obligation, which is derived from the State's responsibility for social welfare. The same is not confined to members of one religion or region, but the whole community of womanhood.

15. At this stage, it is pertinent to consider the concerned personal laws which allegedly stand in conflict with the secular provision of Section 125 of CrPC 1973. The 1986 Act was brought about by the legislature as an attempt to clarify the position laid down. A 5-Judge Bench in Mohd. Ahmed Khan v. Shah Bano Begum and others (1985) 2 SCC 556 extensively dealt with the issue of maintenance apropos the obligation of a Muslim husband to his divorced wife who is unable to maintain herself, either after having been given divorce or having had sought one.

The Bench unanimously went on to hold that the obligation of such a husband would not be affected by the existence of any personal law in the said regard and the independent remedy for seeking maintenance under Section 125 of CrPC 1973 is always available. It also went on to observe that, even assuming, there is any conflict between the secular and personal law provisions in regard to maintenance being sought by a divorced wife, the Explanation to second Proviso to Section 125(3) of CrPC 1973 unmistakably shows the overriding nature of the

former. While elaborating on the said observation, it explained that the wife has been conferred with the right to refuse to live with her husband who has contracted another marriage, let alone three or four other marriages.

16. After the pronouncement of the aforesaid verdict, a controversy is said to have emerged anent the true obligations of a Muslim husband to pay maintenance to his divorced wife, particularly beyond the iddat period. The Parliament, as an attempt to clarify the position, brought about the 1986 Act. Herein, it was sought to specify the entitlements of such a woman at the time of divorce. Section 3 of the 1986 Act deals with this aspect and reads as follows:

"3. Mahr or other properties of Muslim woman to be given to her at the time of divorce.-

(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to-

(a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;

(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;

(c) an amount equal to the sum of mahr or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and

(d) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

(2) Where a reasonable and fair provision and maintenance or the amount of mahr or dower due has not been made or paid or the properties referred to in clause (d) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, mahr or dower or the delivery of properties, as the case may be.

(3) Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that-

(a) her husband having sufficient means, has failed or neglected to make or pay her within the iddat period a reasonable and fair provision and maintenance for her and the children; or

(b) the amount equal to the sum of mahr or dower has not been paid or that the properties referred to in clause (d) of sub-section (1) have not been delivered to her, make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as it and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such mahr or dower or the delivery of such properties referred to in clause (d) of sub-section (1) the divorced woman:

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance or mahr or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973 (2 of 1974), and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said Code."

17. After the 1986 Act came into force, a series of writ petitions were moved before this Court challenging its constitutional validity on ground of being violative of Articles 14, 15 and 21 of the Constitution of India. Sections 3 and 4 of the 1986 Act were the principal sections under attack as part of the said writ petitions. Section 3, which opens up with a non-obstante clause seeking to override the application of all other existing laws, was carefully perused by this Court in the common verdict rendered on the constitutional validity in the decision in Danial Latifi (supra). Elaborating on the prevalence of Section 125 of CrPC 1973 as a secular protection available to women across communities, it was observed in paragraph number 33 as follows:

"33. In Shah Bano case [(1985) 2 SCC 556: 1985 SCC (Cri) 245] this Court has clearly explained as to the rationale behind Section 125 CrPC to make provision for maintenance to be paid to a divorced Muslim wife and this is clearly to avoid vagrancy or destitution on the part of a Muslim woman. The contention put forth

on behalf of the Muslim organisations who are interveners before us is that under the Act, vagrancy or destitution is sought to be avoided but not by punishing the erring husband, if at all, but by providing for maintenance through others.

If for any reason the interpretation placed by us on the language of Sections 3(1)(a) and 4 of the Act is not acceptable, we will have to examine the effect of the provisions as they stand, that is, a Muslim woman will not be entitled to maintenance from her husband after the period of iddat once the talaq is pronounced and, if at all, thereafter maintenance could only be recovered from the various persons mentioned in Section 4 or from the Wakf Board.

This Court in Olga Tellis v. Bombay Municipal Corpn. [(1985) 3 SCC 545] and Maneka Gandhi v. Union of India [(1978) 1 SCC 248] held that the concept of "right to life and personal liberty" guaranteed under Article 21 of the Constitution would include the "right to live with dignity". Before the Act, a Muslim woman who was divorced by her husband was granted a right to maintenance from her husband under the provisions of Section 125 CrPC until she may remarry and such a right, if deprived, would not be reasonable, just and fair.

Thus the provisions of the Act depriving the divorced Muslim women of such a right to maintenance from her husband and providing for her maintenance to be paid by the former husband only for the period of iddat and thereafter to make her run from pillar to post in search of her relatives one after the other and ultimately to knock at the doors of the Wakf Board does not appear to be reasonable and fair substitute of the provisions of Section 125 CrPC.

Such deprivation of the divorced Muslim women of their right to maintenance from their former husbands under the beneficial provisions of the Code of Criminal Procedure which are otherwise available to all other women in India cannot be stated to have been effected by a reasonable, right, just and fair law and, if these provisions are less beneficial than the provisions of Chapter IX of the Code of Criminal Procedure, a divorced Muslim woman has obviously been unreasonably discriminated and got out of the protection of the provisions of the general law as indicated under the Code which are available to Hindu, Buddhist, Jain, Parsi or Christian women or women belonging to any other community.

The provisions prima facie, therefore, appear to be violative of Article 14 of the Constitution mandating equality and equal protection of law to all persons otherwise similarly circumstanced and also violative of Article 15 of the Constitution which prohibits any discrimination on the ground of religion as the Act would obviously apply to Muslim divorced women only and solely on the ground of their belonging to the Muslim religion.

It is well settled that on a rule of construction, a given statute will become "ultra vires" or "unconstitutional" and, therefore, void, whereas on another construction which is permissible, the statute remains effective and operative the court will prefer the latter on the ground that the legislature does not intend to enact unconstitutional laws. We think, the latter interpretation should be accepted and, therefore, the interpretation placed by us results in upholding the validity of the Act. It is well settled that when by appropriate reading of an enactment the validity of the Act can be upheld, such interpretation is accepted by courts and not the other way round."

While the Court prima facie observed the said provisions to be violative of Articles 14 and 15 of the Constitution of India, the latter interpretation, seeking to uphold the validity, was eventually adopted and the 1986 Act was read down to not foreclose the secular rights of a divorced Muslim woman.

18. The position that the rights under Section 125 of CrPC 1973 would also be accessible to a divorced Muslim woman was substantially reiterated in Shabana Bano v. Imran Khan (2010) 1 SCC 666, whereby this Court, through a cumulative reading of the decision in Danial Latifi (supra), reached the said conclusion.

19. The same question of law again knocked on the doors of this Court in Khatoon Nisa v. State of Uttar Pradesh and Others (2014) 12 SCC 646 wherein the 5-Judge Bench also took the assistance of the observations made in the decision in Danial Latifi (supra). While acknowledging the similar parameters and considerations for the purpose of adjudicating petitions under both the laws, secular and personal, it held that a divorced Muslim woman is entitled to invoke the jurisdiction under Section 125 of CrPC 1973 to seek her right of maintenance even if she does not exercise her choice of election as stipulated under Section 5 of the 1986 Act. The relevant paragraph number 10 is reproduced herein below:

"10. Subsequent to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short "the Act") as it was considered that the jurisdiction of the Magistrate under Section 125 CrPC can be invoked only when the conditions precedent mentioned in Section 5 of the Act are complied with, in the case in hand, the Magistrate came to a finding that there has been no divorce in the eye of law and as such, the Magistrate has the jurisdiction to grant maintenance under Section 125 CrPC. This finding of the Magistrate has been upheld by the High Court.

The validity of the provisions of the Act was for consideration before the Constitution Bench in the case of Danial Latifi v. Union of India [(2001) 7 SCC 740]. In the said case by reading down the provisions of the Act, the validity of

the Act has been upheld and it has been observed that under the Act itself when parties agree, the provisions of Section 125 CrPC could be invoked as contained in Section 5 of the Act and even otherwise, the Magistrate under the Act has the power to grant maintenance in favour of a divorced woman, and the parameters and considerations are the same as those in Section 125 CrPC.

It is undoubtedly true that in the case in hand, Section 5 of the Act has not been invoked. Necessarily, therefore, the Magistrate has exercised his jurisdiction under Section 125 CrPC. But, since the Magistrate retains the power of granting maintenance in view of the Constitution Bench decision in Danial Latifi case [(2001) 7 SCC 740] under the Act and since the parameters for exercise of that power are the same as those contained in Section 125 CrPC, we see no ground to interfere with the orders of the Magistrate granting maintenance in favour of a divorced Muslim woman.

In fact, Mr Qamaruddin, learned counsel appearing for the appellants, never objected to pay maintenance as ordered by the Magistrate. But, he seriously disputes the findings of the Magistrate on the status of the parties and contends that the Magistrate was wholly in error in coming to the conclusion that there has been no divorce between the parties in the eye of law."

(Underlining is ours)

20. Subsequently, in Shamim Bano v. Asraf Khan (2014) 12 SCC 636, this Court had to consider the maintainability of a petition under Section 125 of CrPC 1973 vis-à-vis a situation where a petition under Section 3 of the 1986 Act has been subsequently moved. Holding that an election under Section 5 of the 1986 Act was not imperative, since both the petitions were moved before a Magistrate, it clarified that even for the purpose of adjudicating a petition under the personal law, specifically in regard to maintenance for a divorced Muslim woman, the parameters of Section 125 of CrPC 1973 would be applicable.

21. It is imperative to acknowledge that the enactment of the Family Courts Act, 1984 (hereinafter referred to as "FCA 1984") had excluded the jurisdiction of a Magistrate under Chapter IX of CrPC 1973, of which Section 125 is a part, wherein a Family Court had been established for the concerned area or jurisdiction. After the enactment of FCA 1984, a situation arose where a divorced Muslim woman moved a Family Court under Section 125 of CrPC 1973, and a similar circumstance was dealt in Shamima Farooqui v. Shahid Khan (2015) 5 SCC 705 in light of the question of law at hand. Herein, while relying on the earlier mentioned judgments of this Court, it observed that the concerned Family Court had rightly, and without a shadow of a doubt, held that Section 125 of

CrPC 1973 would be applicable. The relevant paragraph number 09 is reproduced below:

"9. First of all, we intend to deal with the applicability of Section 125 CrPC to a Muslim woman who has been divorced. In Shamim Bano v. Asraf Khan [(2014) 12 SCC 636 : (2014) 5 SCC (Civ) 145 : (2014) 5 SCC (Cri) 162], this Court after referring to the Constitution Bench decisions in Danial Latifi v. Union of India [(2001) 7 SCC 740 : (2007) 3 SCC (Cri) 266] and Khatoon Nisa v. State of U.P. [Khatoon Nisa v. State of U.P., (2014) 12 SCC 646 : (2014) 5 SCC (Civ) 155 : (2014) 5 SCC (Cri) 170] had opined as follows : (Shamim Bano case [(2014) 12 SCC 636 : (2014) 5 SCC (Civ) 145 : (2014) 5 SCC (Cri) 162] , SCC p. 644, paras 13- 14)

'13. The aforesaid principle clearly lays down that even after an application has been filed under the provisions of the Act, the Magistrate under the Act has the power to grant maintenance in favour of a divorced Muslim woman and the parameters and the considerations are the same as stipulated in Section 125 of the Code.

We may note that while taking note of the factual score to the effect that the plea of divorce was not accepted by the Magistrate which was upheld by the High Court, the Constitution Bench [(2001) 7 SCC 740 : (2007) 3 SCC (Cri) 266] opined that as the Magistrate could exercise power under Section 125 of the Code for grant of maintenance in favour of a divorced Muslim woman under the Act, the order did not warrant any interference. Thus, the emphasis was laid on the retention of the power by the Magistrate under Section 125 of the Code and the effect of ultimate consequence.

14. Slightly recently, in Shabana Bano v. Imran Khan [(2010) 1 SCC 666 : (2010) 1 SCC (Civ) 216 : (2010) 1 SCC (Cri) 873], a two-Judge Bench, placing reliance on Danial Latifi [(2001) 7 SCC 740 : (2007) 3 SCC (Cri) 266], has ruled that : (Shabana Bano case [(2010) 1 SCC 666 : (2010) 1 SCC (Civ) 216 : (2010) 1 SCC (Cri) 873], SCC p. 672, para 21)

'21. The appellant's petition under Section 125 CrPC would be maintainable before the Family Court as long as the appellant does not remarry. The amount of maintenance to be awarded under Section 125 CrPC cannot be restricted for the iddat period only.'

Though the aforesaid decision was rendered interpreting Section 7 of the Family Courts Act, 1984, yet the principle stated therein would be applicable, for the same is in consonance with the principle stated by the Constitution Bench in

Khatoon Nisa [Khatoon Nisa v. State of U.P., (2014) 12 SCC 646 : (2014) 5 SCC (Civ) 155 : (2014) 5 SCC (Cri) 170].'

In view of the aforesaid dictum, there can be no shadow of doubt that Section 125 CrPC has been rightly held to be applicable by the learned Family Judge."

22. Before perusing the submissions made by the Counsel, it is paramount to also consider the bare text of the concerned provisions vis-à-vis their comparative dissection. Under Section 3 of the 1986 Act, the entitlements or rights of a divorced Muslim woman, wider than the ambit of maintenance, arise as against the obligations of her former husband emanating from their divorce. Per contra, under Section 125 of CrPC 1973, a woman seeking maintenance has to establish that she is unable to maintain herself. The right to seek maintenance under Section 125 of CrPC 1973 is invokable even during the sustenance of marriage and, thereby is not contingent upon divorce.

23. Another distinction vis-à-vis the aforementioned provisions, relates to the time period within which proceedings initiated thereunder are to be decided. While a petition moved under Section 3(2) of the 1986 Act is to be decided in regard to a husband's liability under Section 3(1) of the 1986 Act within a period of one month, there is no such statutory time frame prescribed under Section 125 of CrPC 1973. However, there is an obligation to determine the interim maintenance within a period of 60 days while dealing with a petition under Section 125 of CrPC 1973.

Moreover, failure to comply with such order passed under Section 3(2) of the 1986 Act may lead to issuance of a warrant for levying the amount of maintenance as directed under the said order and may also sentence him to imprisonment till the payment is made or for a term which may extend to one year. On the other hand, equivalent noncompliance of an order passed under Section 125 of CrPC 1973 may result in imprisonment for a term of one month or until the payment is made.

24. After the advent of the decision in Danial Latifi (supra), numerous High Courts also went on to contemplate and analyse the instant question of law. A quick examination of the said judgment by various High Courts allows us to categorise the decisions rendered therein into two sets of views. The first view in certain judgments so rendered held that the remedy is to be exclusively exercised under Section 3 of the 1986 Act, impliedly holding that the rights under the secular provisions stood extinguished. Another view in certain other judgments allowed a divorced Muslim woman to seek the remedy of maintenance under Section 125 of CrPC 1973 while explicit existence of Section 3 of the 1986 Act was recognised.

25. The set of judgments, that went on to hold that the rights of a divorced Muslim woman are to be exercised through the provisions of the 1986 Act and specifically under Section 3 therein, and, not through the secular provision of Section 125 of CrPC 1973. One decision by a Single Judge of the High Court of Allahabad in Shahid Jamal Ansari v. State of Uttar Pradesh 2008 SCC OnLine All 1077 is brought to our attention by the learned amicus curiae whereby the Court opined that a divorced Muslim woman cannot claim maintenance from her former husband by virtue of secular provision of Section 125 of CrPC 1973 and the 1986 Act, being a complete code in itself on the subject matter of maintenance, prevails.

26. Deviating from the aforesaid approach, certain High Courts adopted a beneficial interpretation, that is to say, that the non-obstante clause in the 1986 Act, in no manner bars the remedy under Section 125 CrPC 1973. In this regard, a reference has been made to a decision of Single Judge of High Court of Gujarat in Mumtazben Jusabbhai Sipahi v. Mahebubkhan Usmankhan Pathan 1998 SCC OnLine Guj 279, a decision of High Court of Kerala in Kunhimohammed v. Ayishakutty 2010 SCC OnLine Ker 567, the decisions of High Court of Allahabad in Mrs. Humera Khatoon and Others v. Mohd. Yaqoob 2010 SCC OnLine All 202, Sazid v. State of Uttar Pradesh and Others 2011 SC OnLine All 1059, Jubair Ahmad v. Ishrat Bano 2019 SCC OnLine All 4065, and Shakila Khatun v. State of Uttar Pradesh and Another 2023 SCC OnLine All 75, and the decision of a Single Judge of High Court of Bombay in Khalil Abbas Fakir v. Tabbasum Khalil Fakir and Another 2024 SCC OnLine Bom 23.

27. Amongst these set of decisions, the one rendered by a Division Bench of the High Court of Kerala in Kunhimohammed (supra) has significantly occupied the field in regard to the limited question of law before us. A perusal of the instant judgment showcases the same to be in line with the ratio decidendi rendered by this Court in the decision in Danial Latifi (supra) by holding that there is no express extinguishment of the rights under Section 125 CrPC 1973 and neither the same was intended or conceived by the legislature while enacting the 1986 Act.

It was observed that the domains occupied by the two provisions are entirely different as the secular provision stipulates an inability to maintain oneself for invoking the said rights while Section 3 of the 1986 Act stands independent of one's ability or inability to maintain. Thereby, adopting a harmonious and purposive approach amidst the two alleged conflicting legislative protections.

28. In consideration of the aforesaid well-established positions of law, as well as the submissions of the learned Senior Advocate and the learned amicus curiae, it is apposite to accordingly decide the fate of the instant petition moved before us.

To begin with the contention in regard to the existence of non-obstante clause in Sections 3 and 4 of the 1986 Act, it is undoubtedly clarified by the Constitution Benches of this Court that the same cannot promptly be deemed to override any other rights so provided by the enactments of the legislature.

We are, accordingly, also bound by the Doctrine of stare decisis contemplated through Article 141 of the Constitution of India to accept the said observations. Furthermore, a bare perusal of Section 7 of the 1986 Act, reflects the same to be transitionary in nature and the interpretations in respect of Section 5 of the 1986 Act, as highlighted above through numerous decisions, reflect our inability to accept the passionate contentions of the learned Senior Advocate on behalf of the Appellant.

29. Thus, the High Court of Telangana, while modifying the Order(s) of the Family Court, was correct in upholding the maintainability of the petition filed under Section 125 of CrPC 1973 by Respondent No. 02 herein. Therefore, there is no infirmity in its Impugned Order dated 13.12.2023.

30. In addition, Mr Agrawal proceeded to put forth a question before us that whether fulfilment of a divorced Muslim woman's rights, particularly maintenance under Section 3 of the 1986 Act, Criminal Appeal No. 2842 of 2024 Page 32 of 43 accepted by her without demur, would bar her to file an application under Section 125 of CrPC 1973 in light of statutory protection ameliorating the issue of double payment by a husband under secular, and personal laws, as provided under Section 127(3)(b) of CrPC 1973.

31. Before proceeding with this additional question of law, it is apposite to refer the bare provision of Section 127(3)(b) of CrPC 1973. The same is accordingly reproduced hereinbelow:

"127. Alteration in allowance -

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from her husband, the Magistrate shall, if he is satisfied that -

(a) xxx-xxx-xxx

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order -

(i) in the case where such sum was paid before such order, from the date on which such order was made;

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;"

32. Unequivocally, the most appropriate construction of these secular provisions of CrPC 1973 in regard to the right of maintenance is that the legislature would never intend that an undue benefit is derived after the end of the marital relationship between the parties concerned. Hence, the provision of Section 127(3)(b) of CrPC 1973 would act in the nature of a proviso to the right provided under Section 125 of CrPC 1973 only in such a circumstance where sufficient means of livelihood after the divorce, and the provisions contemplating the future needs of divorced Muslim women, stands provided to the satisfaction of the court concerned. To affirm, reliance is placed on paragraph numbers 28 and 29 of the decision in Danial Latifi (supra), which are reproduced below:

"28. A careful reading of the provisions of the Act would indicate that a divorced woman is entitled to a reasonable and fair provision for maintenance. It was stated that Parliament seems to intend that the divorced woman gets sufficient means of livelihood after the divorce and, therefore, the word "provision" indicates that something is provided in advance for meeting some needs. In other words, at the time of divorce the Muslim husband is required to contemplate the future needs and make preparatory arrangements in advance for meeting those needs. Reasonable and fair provision may include provision for her residence, her food, her clothes, and other articles.

The expression "within" should be read as "during" or "for" and this cannot be done because words cannot be construed contrary to their meaning as the word "within" would mean "on or before", "not beyond" and, therefore, it was held that the Act would mean that on or before the expiration of the iddat period, the husband is bound to make and pay maintenance to the wife and if he fails to do so then the wife is entitled to recover it by filing an application before the Magistrate as provided in Section 3(3) but nowhere has Parliament provided that reasonable and fair provision and maintenance is limited only for the iddat period and not beyond it. It would extend to the whole life of the divorced wife unless she gets married for a second time

29. The important section in the Act is Section 3 which provides that a divorced woman is entitled to obtain from her former husband "maintenance", "provision" and "mahr", and to recover from his possession her wedding presents and dowry and authorizes the Magistrate to order payment or restoration of these sums or properties. The crux of the matter is that the divorced woman shall be entitled to

a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband.

The wordings of Section 3 of the Act appear to indicate that the husband has two separate and distinct obligations: (1) to make a "reasonable and fair provision" for his divorced wife; and (2) to provide "maintenance" for her. The emphasis of this section is not on the nature or duration of any such "provision" or "maintenance", but on the time by which an arrangement for payment of provision and maintenance should be concluded, namely, "within the iddat period".

If the provisions are so read, the Act would exclude from liability for postiddat period maintenance to a man who has already discharged his obligations of both "reasonable and fair provision" and "maintenance" by paying these amounts in a lump sum to his wife, in addition to having paid his wife's mahr and restored her dowry as per Sections 3(1)(c) and 3(1)(d) of the Act. Precisely, the point that arose for consideration in Shah Bano case [(1985) 2 SCC 556 : 1985 SCC (Cri) 245] was that the husband had not made a "reasonable and fair provision" for his divorced wife even if he had paid the amount agreed as mahr half a century earlier and provided iddat maintenance and he was, therefore, ordered to pay a specified sum monthly to her under Section 125 CrPC.

This position was available to Parliament on the date it enacted the law but even so, the provisions enacted under the Act are "a reasonable and fair provision and maintenance to be made and paid" as provided under Section 3(1)(a) of the Act and these expressions cover different things, firstly, by the use of two different verbs - "to be made and paid to her within the iddat period" it is clear that a fair and reasonable provision is to be Criminal Appeal No. 2842 of 2024 Page 36 of 43 made while maintenance is to be paid; secondly, Section 4 of the Act, which empowers the Magistrate to issue an order for payment of maintenance to the divorced woman against various of her relatives, contains no reference to "provision".

Obviously, the right to have "a fair and reasonable provision" in her favour is a right enforceable only against the woman's former husband, and in addition to what he is obliged to pay as "maintenance"; thirdly, the words of The Holy Quran, as translated by Yusuf Ali of "mata" as "maintenance" though may be incorrect and that other translations employed the word "provision", this Court in Shah Bano case [(1985) 2 SCC 556 : 1985 SCC (Cri) 245] dismissed this aspect by holding that it is a distinction without a difference.

Indeed, whether "mata" was rendered "maintenance" or "provision", there could be no pretence that the husband in Shah Bano case [(1985) 2 SCC 556 : 1985

SCC (Cri) 245] had provided anything at all by way of "mata" to his divorced wife. The contention put forth on behalf of the other side is that a divorced Muslim woman who is entitled to "mata" is only a single or onetime transaction which does not mean payment of maintenance continuously at all.

This contention, apart from supporting the view that the word "provision" in Section 3(1)(a) of the Act incorporates "mata" as a right of the divorced Muslim woman distinct from and in addition to mahr and maintenance for the iddat period, also enables "a reasonable and fair provision" and "a reasonable and fair provision" as provided under Section 3(3) of the Act would be with reference to the needs of the divorced woman, the means of the husband, and the standard of life the woman enjoyed during the marriage and there is no reason why such provision could not take the form of the regular payment of alimony to the divorced woman, though it may look ironical that the enactment intended to reverse the decision in Shah Bano case [(1985) 2 SCC 556 : 1985 SCC (Cri) 245], actually codifies the very rationale contained therein."

From the aforementioned paragraphs, this Court has clarified the intent of the Parliament by giving beneficial construction to the expressions contemplated under Section 3 of the 1986 Act, particularly, "within iddat period" by observing that the Parliament never sought to restrict the rights of a divorced Muslim woman to iddat period.

Rather, by virtue of the introduction of Section 3 of the 1986 Act in this socio-beneficial legislation, the idea was to confer the benefit of maintenance as well as a reasonable and fair provision for the lifetime of a divorced Muslim woman, subject to her remarriage. Adding to this well-expounded interpretation of the provisions of the 1986 Act, it is hereby pertinent to highlight that a divorced Muslim woman is not restricted from exercising her independent right of maintenance under the secular provision of Section 125 of CrPC 1973, provided she is able to prove the requisites encompassed by the said statute.

33. Having said that, it is also not to be a case where a specious amount rendered in favour of a divorced woman by virtue of requirements laid down in either the personal law or the customary law of the parties is utilised to evade the liability under Section 125 of CrPC 1973 or to seek an equivalent reduction in the amount of maintenance to be provided therein. There ought to be a reasonable substitute for the maintenance under personal or customary law equating to a rational nexus between the actual sum of maintenance paid and the potential of maintenance under the equivalent provision of secular law. Having made the said observations, a reference should again be made to the decision in Fuzlunbi (supra) in paragraph numbers 19(1) to 19(4) which declared that:

"19. We may sum up and declare the law foolproof fashion:

(1) Section 127(3)(b) has a setting, scheme and a purpose and no talaq of the purpose different from the sense is permissible in statutory construction.

(2) The payment of an amount, customary or other, contemplated by the measure must inset the intent of preventing destitution and providing a sum which is more or less the present worth of the monthly maintenance allowances the divorcee may need until death or remarriage overtake her. The policy of the law abhors neglected wives and destitute divorcees and Section 127(3)(b) takes care to avoid double payment one under custom at the time of divorce and another under Section 125.

(3) Whatever the facts of a particular case, the Code, by enacting Sections 125 to 127, charges the court with the humane obligation of enforcing maintenance or its just equivalent to ill-used wives and castaway ex-wives, only if the woman has received voluntarily a sum, at the time of divorce, sufficient to keep her going according to the circumstances of the parties.

(4) Neither personal law nor other salvationary plea will hold against the policy of public law pervading Section 127(3)(b) as much as it does in Section 125. So a farthing is no substitute for a fortune nor naive consent equivalent to intelligent acceptance."

34. It is observed that there shall arise a couple of peculiar circumstances while considering the right for seeking cancellation of an order by the husband concerned, through an application under Section 127(3)(b) of CrPC 1973. The first and settled circumstance is that, when a divorced Muslim woman initially moves a petition under Section 125 of CrPC 1973 and seeks an order for maintenance as against her former husband and only after receiving said entitlements, she chooses to exercise her substantial rights as provided under Section 3 of the 1986 Act, and therein, the husband is also able to fulfil his concerned obligations to the appropriate satisfaction of the court, ensuring her future maintenance. It is then and only then that the husband can invoke and press his claim under Section 127(3)(b) of CrPC 1973 to seek cancellation of an order, if so, passed under Section 125 of CrPC 1973, directing him to provide maintenance to his former wife.

35. In a case where a husband has fulfilled his obligations under Section 3 of the 1986 Act or as provided by customary or personal law so followed, and the divorced Muslim woman subsequently prefers to invoke Section 125 of CrPC 1973 on the ground of inability to maintain herself, in such a factual matrix, undeniably, the right to move under this provision is open in favour of a divorced

Muslim woman. When a husband opposes resort to Section 125 CrPC 1973, he has to establish that, (a) initial obligations under the customary and/or personal statutory enactments as detailed earlier stands fulfilled by him, and (b) that the wife, in the light of this, is able to maintain herself.

However, if the husband fails to sustain the said objection(s) raised during the proceedings initiated under Section 125 of CrPC 1973, and an order is accordingly passed, it would not be inherently barred or liable to be cancelled through an application under Section 127(3)(b) of CrPC 1973. Nevertheless, other appropriate remedies as provided under the CrPC 1973 or any other law to that effect, shall always be open to be exercised by such a husband to seek setting aside or appropriate modification of an order so passed under Section 125 of CrPC 1973.

36. Having said that, undoubtedly, if a "reasonable substitute" has been provided for by the husband as per their personal or customary laws at the time of their divorce, the maintenance provided for by a Magistrate or a Family Court, as the case may be, under Section 125 of CrPC 1973, can be reduced to the extent of deemed double benefit being given to a divorced wife.

37. From the aforementioned, we are inclined to conclude that equivalent rights of maintenance ascertained under both, the secular provision of Section 125 of CrPC 1973, and the personal law provision of Section 3 of the 1986 Act, parallelly exist in their distinct domains and jurisprudence. Thereby, leading to their harmonious construction and continued existence of the right to seek maintenance for a divorced Muslim woman under the provisions of CrPC 1973 despite the enactment of the 1986 Act.

38. Accordingly, the decisions, as rendered by various High Courts, one of which has been referred as aforesaid, or even otherwise, and stand in contradistinction to the observations made hereinabove, do not lay down the correct position of law, are, therefore, bad in law.

39. We note and acknowledge the able assistance rendered by the learned amicus curiae which has immensely benefitted this Court in settling the questions of law at hand.

40. The Impugned Order dated 13.12.2023 passed by the High Court of Telangana is affirmed. Accordingly, the Appeal is dismissed in the above terms.
41. Pending application(s), if any, also stand disposed of.

.....J. (B.V. Nagarathna)

.....J. (Augustine George Masih)

New Delhi;

July 10, 2024.

IN THE SUPREME COURT OF INDIA

Mohd. Abdul Samad
Vs.
State of Telangana & Anr.
[Criminal Appeal No. 2842 of 2024
arising out of SLP (Crl) No. 1614 of 2024]

JUDGMENT

Nagarathna J.

I have perused the judgment proposed by my learned brother Augustine George Masih, J. and I agree with the same. Having concurred with his opinion, I would like to record additional reasons regarding the interpretation of Section 125 of the Code of Criminal Procedure, 1973 (for short, "CrPC") and Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short, "1986 Act").

Section 125 of the CrPC reads as under:

"Section 125. Order for maintenance of wives, children and parents.-

(1) If any person having sufficient means neglects or refuses to maintain;

a) his wife, unable to maintain herself, or

b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct;

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means;

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this Sub-Section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct;

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation.- For the purposes of this Chapter,-

a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.- If a husband has contracted marriage with another women or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

2. A reading of the aforesaid provision would indicate that in respect of four categories of persons of a family unable to maintain themselves, namely, wife, minor child, father and mother, if a person neglects or refuses to maintain them despite having sufficient means then a Magistrate of the first class (now, the family court in certain States) upon proof of such neglect or refusal may order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and the person has to pay the same as directed.

3. Since the present case revolves around the expression "a wife who is unable to maintain herself", it is relevant to dwell further on the definition of a wife under Section 125 of the CrPC. Explanation (b) thereto defines a wife to include a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. The definition being inclusive is therefore expansive in nature. A divorced woman who has not remarried as well as a wife are placed on par for the purpose of seeking maintenance.

4. The States of Madhya Pradesh, Maharashtra, Rajasthan, Tripura, Uttar Pradesh and West Bengal have made State Amendments to Section 125 of the CrPC.

Right to maintenance in a constitutional context:

5. Section 125 of the CrPC is a measure of social justice with a view to protect women and children and is aligned to the salutary object enshrined in Article 15(1) and (3) of the Constitution read with Article 39(e) of the Constitution. For immediate reference, Article 15(1) and (3) and Article 39(e) are reproduced as under:

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.-

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

39. Certain principles of policy to be followed by the State.-

The State shall, in particular, direct its policy towards securing-

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;"

6. Article 15(3) is a fundamental right while Article 39 is a Directive Principle of State Policy that is fundamental in the governance of the country and it is the duty of the State to apply these principles while making the law. Thus, the statutory right to seek maintenance under Section 125 of the CrPC is also embedded in the text, structure and philosophy of the Constitution. Article 15(3), read with Article 39(e) manifests a constitutional commitment towards special measures to ensure a life of dignity for women at all stages of their lives.

This ought to be irrespective of the faith a woman belongs to. The remedy of maintenance is a critical source of succour for the destitute, the deserted and the deprived sections of women. There can be no manner of doubt that it is an instantiation of the constitutional philosophy of social justice that seeks to liberate the Indian wife including a divorced woman from the shackles of gender-based discrimination, disadvantage and deprivation.

7. Further, Section 125 of the CrPC is independent of and in addition to maintenance that could be awarded under the Protection of Women from Domestic Violence Act, 2005 (for short, "2005 Act") which is applicable to an 'aggrieved woman' in a 'shared household' as defined under the provisions of the aforesaid Act.

8. A reading of Section 125 of the CrPC would indicate that the intention of the said provision is to provide for a speedy remedy and prevent vagrancy by compelling the husband to support the wife. The provision is meant to achieve a social purpose. The reason being, that after marriage, it is the duty of the husband to provide shelter and maintenance to the wife in the Indian context. Particularly, if she is unable to maintain herself.

If he neglects or refuses to do so, the wife is legally entitled to enforce the said right by filing a petition under Section 125 of the CrPC irrespective of any other right created in favour of the wife under any other law. Therefore, the passing of the 1986 Act, in my view, cannot militate against or dilute the salutary nature of Section 125 of the CrPC. The object of this provision is to save a wife including a divorced woman from deprivation and destitution.

9. The salutary parliamentary intent behind Section 488 of the erstwhile CrPC was exposited by Subba Rao, J., (as the learned Chief Justice of India then was) in Jagir Kaur vs. Jaswant Singh, (1964) 2 SCR 73. It was held that "Chapter 36 of the Code of Criminal Procedure providing for maintenance of wives and children intends to serve a social purpose."

After the enactment of the CrPC, 1973, this Court in Bhagwan Dutt vs. Kamla Devi, (1975) 2 SCC 386, held that in order to subserve the object of Section 125(1) of the CrPC the Magistrate must determine the wife's requirements in such a manner that prevents vagrancy and destitution. While assuring the aggrieved woman a standard of living that is 'neither luxurious nor penurious,' this Court held that her separate income must also be accounted for while computing the amount of maintenance. Therefore, the object of maintenance proceedings is rehabilitative and not punitive as it seeks to efficaciously provide a deserted wife with food, clothing and shelter - the very basic essentials or needs of a human life.

10. The direction to provide maintenance seeks to alleviate the financial stress and vulnerability of the impecunious woman who is dependent on her husband economically. It is indeed a constitutional imperative to redress the vulnerability of a married woman which includes a divorced woman who does not have an independent source of income under Section 125 of the CrPC. It is commonplace that married women sacrifice employment opportunities to nurture the family, pursue child rearing, and undertake care work for the elderly, vide Jasbir Kaur Sehgal vs. District Judge, Dehradun, (1997) 7 SCC 7.

A neglected dependent wife, which also includes a divorced woman who has no other source of income, has to perforce take recourse to borrowings from her parents/relatives/others during the interregnum to sustain herself and the minor children, till she receives interim maintenance. This makes her obligated in so many ways which may be taken advantage of by her parental (or natal) family or others from whom she may have borrowed.

11. It is in this delicate context that the law of maintenance strikes a careful, just and fair balance between the husband's sacrosanct duty towards his wife and children and the social imperative of not imposing oppressive or punitive

financial hardship on the husband, vide Bhuwan Mohan Singh vs. Meena, (2015) 6 SCC 353; Reema Salkan vs. Sumer Singh Salkan, (2019) 12 SCC 303.

Adequacy and sufficiency of maintenance:

12. One of the critical aspects of adjudicating claims for maintenance is ensuring adequate and sufficiency of maintenance so that the wife can maintain herself with dignity. The consistent emphasis of this Court's jurisprudence upon sufficiency of maintenance amount and social protection of deserted women transcends the intricacies of our pluralist legal culture and personal laws.

13. I may also note the Kerala High Court's Division Bench judgment in Kunhi Moyin vs. Pathumma, 1976 KLT 87 ("Kunhi Moyin") authored by Khalid, J. (as his Lordship then was). While dismissing a Muslim husband's constitutional challenge to Section 125 of the CrPC, the High Court held that the salutary provision was enacted to achieve the ends of social welfare and reform. Therefore, no claim of violation of the fundamental right to practice religion under Article 25 could be sustained. Of particular relevance was the interpretation of Section 127(3)(b) of the CrPC. The High Court found that an attempt may be made to rely upon Section 127(3)(b) to 'destroy the effectiveness of Section 125' and deny its benefit to rightful claimants. For the sake of clarity, the said provision is extracted as under:

"127. Alteration in allowance.-

(1) On proof of a change in the circumstances of any person, receiving under section 125 a monthly allowance, for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that -

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order -

(i) in the case where such sum was paid before such order, from the date on which such order was made;

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance or interim maintenance, as the case may be after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance for the maintenance and interim maintenance or any of them has been ordered to be paid under Section 125, the Civil Court shall take into account that sum which has been paid to, or recovered by, such person as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of the said order."

The learned judge clarified that Section 127(3)(b) does not refer to mahr or dower or the maintenance paid during the iddat period as these are not the sums 'payable on divorce' under the personal law. What was encompassed by the terms was the amount of alimony or compensation paid upon dissolution of marriage under customary or personal law. Expositing the intent and scheme of Section 125 read with Section 127, it was held that the Parliament did not intend to take away by one hand what is given under Section 125 by the other hand.

14. Krishna Iyer, J.'s judgment in Bai Tahira vs. Ali Hussain Fidaalli Chothia, (1979) 2 SCC 316 is also instructive in this respect. This Court was confronted with the application of Section 125 of the CrPC by a Muslim woman who had been divorced through a consent decree. The husband had challenged the award of maintenance before the Sessions Judge on the ground that the Magistrate lacked jurisdiction to ascertain whether the petitioner-wife was a 'wife' within the meaning of Section 125. Since the High Court had not interfered with the view of the Sessions Judge, the Supreme Court granted leave and held that a destitute divorcee would be covered within the protection of Section 125 since she was suffering neglect. Krishna Iyer, J. emphasised the constitutional import of Section 125 in the following words:

"7. The meaning of meanings is derived from values in a given society and its legal system. Article 15(3) has compelling, compassionate relevance in the

context of Section 125 and the benefit of doubt, if any, in statutory interpretation belongs to the ill-used wife and the derelict divorcee. This social perspective granted, the resolution of all the disputes projected is easy.

Surely, Parliament, in keeping with Article 15(3) and deliberate by design, made a special provision to help women in distress cast away by divorce. Protection against moral and material abandonment manifest in Article 39 is part of social and economic justice, specificated in Article 38, fulfilment of which is fundamental to the governance of the country (Article 37). From this coign of vantage we must view the printed text of the particular Code."

(emphasis supplied)

15. The critical facet of the case was its interpretation of Section 127 of the CrPC. It was held that Section 127 did not totally exempt a husband from providing maintenance to a destitute ex-wife if the amount he paid to her under the personal law was not sufficient to support her. It was held that:

"12. The payment of illusory amounts by way of customary or personal law requirement will be considered in the reduction of maintenance rate but cannot annihilate that rate unless it is a reasonable substitute. The legal sanctity of the payment is certified by the fulfilment of the social obligation, not by a ritual exercise rooted in custom. No construction which leads to frustration of the statutory project can secure validation if the court is to pay true homage to the Constitution. The only just construction of the section is that Parliament intended divorcees should not derive a double benefit.

If the first payment by way of mehar or ordained by custom has a reasonable relation to the object and is a capitalised substitute for the order under Section 125 - not mathematically but fairly - then Section 127(3)(b) subserves the goal and relieves the obliger, not pro tanto but wholly. The purpose of the payment "under any customary or personal law" must be to obviate destitution of the divorcee and to provide her with wherewithal to maintain herself. The whole scheme of Section 127(3)(b) is manifestly to recognise the substitute maintenance arrangement by lump sum payment organised by the custom of the community or the personal law of the parties.

There must be a rational relation between the sum so paid and its potential as provision for maintenance to interpret otherwise is to stultify the project. Law is dynamic and its meaning cannot be pedantic but purposeful. The proposition, therefore, is that no husband can claim under Section 127(3)(b) absolution from his obligation under Section 125 towards a divorced wife except on proof of

payment of a sum stipulated by customary or personal law whose quantum is more or less sufficient to do duty for maintenance allowance."

16. This carefully balanced and gender-just interpretation further guided our jurisprudence in Fuzlunbi vs. K. Khader Vali, (1980) 4 SCC 125 and Mohd. Ahmed Khan vs. Shah Bano Begum, (1985) 2 SCC 556 ("Shah Bano") insofar as the application of Section 125 to persons governed by Muslim Personal Law was concerned. In Shah Bano, this Court held that Section 125 overrides personal law of Muslims and hence a divorced Muslim woman is a "wife" within the meaning of this provision.

The crux of these judgments is that an order under Section 127 ought to be a reasoned order and shall only allow an order for maintenance to be cancelled if a judge was satisfied that the divorced woman had received a sufficient amount of maintenance under any customary or personal law. In Danial Latifi vs. Union of India, (2001) 7 SCC 740 ("Danial Latifi"), this Court has recorded that there was a big uproar after the judgment in Shah Bano was pronounced and Parliament enacted the 1986 Act "perhaps, with an intention of making the decision in Shah Bano ineffective."

Interpretation of 1986 Act:

17. The Parliament rejected legislative proposals to totally exempt Muslims from Section 125 of the CrPC and after extensive discussion, the Parliament enacted the 1986 Act. The preamble of the 1986 Act reads as under:

"An Act to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto."

18. The Statement of Objects and Reasons of the 1986 Act manifests the Parliament's intent to clarify the controversy emerging from the judgment in Shah Bano regarding the obligation of the Muslim husband to pay maintenance to a divorced wife. It underlines that the Parliament was taking the opportunity to 'specify the rights' of a Muslim divorced woman so as to protect her interests. The Bill of the said Act specified rights vis à vis a Muslim divorced woman who shall be entitled to the following:

i. Reasonable and fair provision and maintenance for the woman within the period of iddat;

ii. Reasonable provisions and maintenance for the children born to her before or after her divorce extended to a period of two years from the dates of birth of the children;

iii. Mahr or dower and all the properties given to her by her relatives, friends, husband or the husband's relatives, if the above benefits are not given to her at the time of divorce.

In the eventuality that a Muslim divorced woman was unable to maintain herself after the iddat period, it was specified that she shall be entitled to:

i. Maintenance by her relatives who would be entitled to inherit her property on her death according to Muslim law in the proportions in which they would inherit her property.

ii. If any one of such relatives is unable to pay his or her share on the ground of his or her not having the means to pay, the other relatives who have sufficient means shall pay the shares of these relatives also.

iii. If a divorced woman has no relatives or if such relatives are unable to provide maintenance then the State Wakf Board shall pay maintenance ordered by the Magistrate.

19. Sections 3 and 4 of the 1986 Act which deal with the aforesaid aspects are extracted hereunder:

"3. Mahr or other properties of Muslim woman to be given to her at the time of divorce.-

(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to-

(a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;

(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;

(c) an amount equal to the sum of mahr or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and

(d) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

(2) Where a reasonable and fair provision and maintenance or the amount of mahr or dower due has not been made or paid or the properties referred to in clause (d) of subsection (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, mahr or dower or the delivery of properties, as the case may be.

(3) Where an application has been made under subsection (2) by a divorced woman, the Magistrate may, if he is satisfied that-

(a) her husband having sufficient means, has failed or neglected to make or pay her within the iddat period a reasonable and fair provision and maintenance for her and the children; or

(b) the amount equal to the sum of mahr or dower has not been paid or that the properties referred to in clause (d) of subsection (1) have not been delivered to her. make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such mahr or dower or the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman:

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance or mahr or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973 (2 of 1974), and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said Code.

4. Order for payment of maintenance.-

(1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where the Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the iddat period, he may make an order directing such of her relatives as would be

entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportions in which they would inherit her property and at such periods as he may specify in his order:

Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her:

Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him, order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.

(2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the second proviso to sub-section (1), the Magistrate may, by order direct the State Wakf Board established under section 9 of the Wakf Act, 1954 (29 of 1954), or under any other law for the time being in force in a State, functioning in the area in which the woman resides, to pay such maintenance as determined by him under sub-section (1) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order."

In Danial Latifi, this Court observed on the effect and implication of the 1986 Act on the judgment of this Court in Shah Bano as under:

"8. As held in Shah Bano case [(1985) 2 SCC 556 : 1985 SCC (Cri) 245] the true position is that if the divorced wife is able to maintain herself, the husband's liability to provide maintenance for her ceases with the expiration of the period of iddat but if she is unable to maintain herself after the period of iddat, she is entitled to have recourse to Section 125 CrPC.

Thus it is was held that there is no conflict between the provisions of Section 125 CrPC and those of the Muslim personal law on the question of the Muslim

husband's obligation to provide maintenance to his divorced wife, who is unable to maintain herself. This view is a reiteration of what is stated in two other decisions earlier rendered by this Court in Bai Tahira v. Ali Hussain Fidaalli Chothia [(1979) 2 SCC 316 : 1979 SCC (Cri) 473] and Fuzlunbi v. K. Khader Vali [(1980) 4 SCC 125 : 1980 SCC (Cri) 916].

17. This Court in Shah Bano case [(1985) 2 SCC 556 : 1985 SCC (Cri) 245] held that although Muslim personal law limits the husband's liability to provide maintenance for his divorced wife to the period of iddat, it does not contemplate a situation envisaged by Section 125 CrPC of 1973.

The Court held that it would not be incorrect or unjustified to extend the above principle of Muslim law to cases in which a divorced wife is unable to maintain herself and, therefore, the Court came to the conclusion that if the divorced wife is able to maintain herself the husband's liability ceases with the expiration of the period of iddat, but if she is unable to maintain herself after the period of iddat, she is entitled to recourse to Section 125 CrPC. This decision having imposed obligations as to the liability of the Muslim husband to pay maintenance to his divorced wife, Parliament endorsed by the Act the right of a Muslim woman to be paid maintenance at the time of divorce and to protect her rights."

20. This Court aptly summarised the position of a dependent married woman and her desperation on divorce in para 20 the judgment in Danial Latifi in the following words:

"20. In interpreting the provisions where matrimonial relationship is involved, we have to consider the social conditions prevalent in our society. In our society, whether they belong to the majority or the minority group, what is apparent is that there exists a great disparity in the matter of economic resourcefulness between a man and a woman. Our society is male dominated, both economically and socially and women are assigned, invariably, a dependent role, irrespective of the class of society to which she belongs.

A woman on her marriage very often, though highly educated, gives up her all other avocations and entirely devotes herself to the welfare of the family, in particular she shares with her husband, her emotions, sentiments, mind and body, and her investment in the marriage is her entire life - a sacramental sacrifice of her individual self and is far too enormous to be measured in terms of money. When a relationship of this nature breaks up, in what manner we could compensate her so far as emotional fracture or loss of investment is concerned, there can be no answer.

It is a small solace to say that such a woman should be compensated in terms of money towards her livelihood and such a relief which partakes basic human rights to secure gender and social justice is universally recognised by persons belonging to all religions and it is difficult to perceive that Muslim law intends to provide a different kind of responsibility by passing on the same to those unconnected with the matrimonial life such as the heirs who were likely to inherit the property from her or the Wakf Boards.

Such an approach appears to us to be a kind of distortion of the social facts. Solutions to such societal problems of universal magnitude pertaining to horizons of basic human rights, culture, dignity and decency of life and dictates of necessity in the pursuit of social justice should be invariably left to be decided on considerations other than religion or religious faith or beliefs or national, sectarian, racial or communal constraints. Bearing this aspect in mind, we have to interpret the provisions of the Act in question."

21. The provisions of the 1986 Act came to be upheld by the Constitution Bench of this Court in Danial Latifi. I may notice the clear conclusion that the Constitution Bench arrived at as under:

"36. While upholding the validity of the Act, we may sum up our conclusions:

(1) A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3(1)(a) of the Act.

(2) Liability of a Muslim husband to his divorced wife arising under Section 3(1)(a) of the Act to pay maintenance is not confined to the iddat period.

(3) A divorced Muslim woman who has not remarried and who is not able to maintain herself after the iddat period can proceed as provided under Section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law from such divorced woman including her children and parents. If any of the relatives being unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance.

(4) The provisions of the Act do not offend Articles 14, 15 and 21 of the Constitution of India."

22. This Court, while interpreting the 1986 Act, specifically repelled the contention that the 1986 Act was enacted to undo the effect of Shah Bano in the following words:

"26. A reading of the Act will indicate that it codifies and regulates the obligations due to a Muslim woman divorcee by putting them outside the scope of Section 125 CrPC as the "divorced woman" has been defined as "Muslim woman who was married according to Muslim law and has been divorced by or has obtained divorce from her husband in accordance with the Muslim law". But the Act does not apply to a Muslim woman whose marriage is solemnised either under the Indian Special Marriage Act, 1954 or a Muslim woman whose marriage was dissolved either under the Indian Divorce Act, 1869 or the Indian Special Marriage Act, 1954. The Act does not apply to the deserted and separated Muslim wives.

The maintenance under the Act is to be paid by the husband for the duration of the iddat period and this obligation does not extend beyond the period of iddat. Once the relationship with the husband has come to an end with the expiry of the iddat period, the responsibility devolves upon the relatives of the divorcee. The Act follows Muslim personal law in determining which relatives are responsible under which circumstances. If there are no relatives, or no relatives are able to support the divorcee, then the court can order the State Wakf Boards to pay the maintenance.

28. A careful reading of the provisions of the Act would indicate that a divorced woman is entitled to a reasonable and fair provision for maintenance. It was stated that Parliament seems to intend that the divorced woman gets sufficient means of livelihood after the divorce and, therefore, the word "provision" indicates that something is provided in advance for meeting some needs. In other words, at the time of divorce the Muslim husband is required to contemplate the future needs and make preparatory arrangements in advance for meeting those needs. Reasonable and fair provision may include provision for her residence, her food, her clothes, and other articles.

The expression "within" should be read as "during" or "for" and this cannot be done because words cannot be construed contrary to their meaning as the word "within" would mean "on or before", "not beyond" and, therefore, it was held that the Act would mean that on or before the expiration of the iddat period, the husband is bound to make and pay maintenance to the wife and if he fails to do so then the wife is entitled to recover it by filing an application before the Magistrate as provided in Section 3(3) but nowhere has Parliament provided that reasonable and fair provision and maintenance is limited only for the iddat period

and not beyond it. It would extend to the whole life of the divorced wife unless she gets married for a second time.

30. A comparison of these provisions with Section 125 CrPC will make it clear that requirements provided in Section 125 and the purpose, object and scope thereof being to prevent vagrancy by compelling those who can do so to support those who are unable to support themselves and who have a normal and legitimate claim to support are satisfied.

If that is so, the argument of the petitioners that a different scheme being provided under the Act which is equally or more beneficial on the interpretation placed by us from the one provided under the Code of Criminal Procedure deprive them of their right, loses its significance. The object and scope of Section 125 CrPC is to prevent vagrancy by compelling those who are under an obligation to support those who are unable to support themselves and that object being fulfilled, we find it difficult to accept the contention urged on behalf of the petitioners."

(underlining by me)

Although the provisions of the 1986 Act have been upheld by this Court, the controversy raised still remains inasmuch as the respondent herein sought recourse to Section 125 of the CrPC despite the 1986 Act being applicable and the same being objected to by the appellant herein on the premise that on the enforcement of the 1986 Act, Section 125 of the CrPC ceases to apply to a divorced Muslim woman. I shall now analyse the relevant provisions of the 1986 Act.

23. Section 3(1) begins with a non-obstante clause as, "notwithstanding anything contained in any other law for the time being in force," a divorced woman shall be entitled to reasonable and fair provision and maintenance and other benefits in the manner stated therein. The object and purpose of a non-obstante clause in a statute can be discussed at this stage. A non-obstante clause is usually appended to a Section in the beginning with a view to give the enacting part of the Section, in case of a conflict, an overriding effect over the provision or Act mentioned in the non-obstante clause.

In other words, in spite of the provision or the Act mentioned in the non-obstante clause, the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause will not be an impediment for the operation of the enactment. Thus, a non-obstante clause is a legislative device used by a Parliament or legislature sometimes to give an overriding effect to what

has been specified in the enacting part of a section in case of a conflict with what is contained in the non-obstante clause as stated above.

Further, a non-obstante clause has to be distinguished from the expression "subject to" where the latter would convey the idea of a provision yielding place to another provision or other provisions to which it is made subject to. Also, the expression "notwithstanding anything in any other law" in a Section of an Act has to be contrasted with the use of the expression "notwithstanding anything contained in this Act", which has to be construed to take away the effect of any provision of that particular Act in which the section occurs but it cannot take away the effect of any other law. [Source: Principles of Statutory Interpretation by Justice G.P. Singh, 15th Edition, Chapter 5.4, p.284]

24. Recently, a seven-judge Bench of this Court in Curative Petition (C) No.44 of 2023 in Review Petition (C) No.704 of 2021 arising out of Civil Appeal No.1599 of 2020 (In Re : Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899), (2023) SCC OnLine SC 1666, in paragraph 84 of the said judgment considered the implication of a non-obstante clause in a provision with reference to Chandavarkar Sita Ratna Rao vs. Ashalata S. Guram, (1986) 4 SCC 447, wherein it was observed as under:

"84. xxx

"67. A clause beginning with the expression "notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract" is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the act or the contract mentioned in the non obstante clause.

It is equivalent to saying that in spite of the provisions of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment."

It was further observed in reference to ICICI Bank Ltd. vs. SIDCO Leathers Ltd., (2006) 10 SCC 452, that even if a non-obstante clause has wide amplitude, the extent of its impact has to be measured in view of the legislative intention and legislative policy.

25. Further, the utility of non-obstante clause is where there is a conflict between what is stated in a provision and any other law for the time being in force, or anything else contained in the said enactment. As already noted, only in the case

of a conflict, the object is to give the enacting or operative portion of the section an overriding effect, not otherwise.

In other words, only in a case of a conflict, a provision in an enactment containing a non-obstante clause, would be given its full operation and what is stated in the non-obstante clause will not be an impediment for the operation of the particular provision in the enactment. This would mean that what is stated in the non-obstante clause would not take away the effect of any provision of the Act which follows the same.

26. In Aswini Kumar Ghosh vs. Arabinda Bose, AIR 1952 SC 369, this Court speaking through Chief Justice Patanjali Shastri observed that only when there is any inconsistency between what is contained in a provision of an enactment and a non-obstante clause would make the latter in what is to yield to what is stated in the provision following the same.

In other words, it is only when the enacting part of the statute cannot be read harmoniously with what is stated in the non-obstante clause, would the non-obstante clause result in yielding to what is stated in the enacting part. Similarly, in Municipal Corporation, Indore vs. Ratnaprabha, AIR 1977 SC 308, it was observed that there should be a clear inconsistency between a special enactment or rules and a general enactment.

27. Reference may also be made to an earlier judgment of the Full Bench of the Bombay High Court in Karim Abdul Rehman Shaikh vs. Shehnaz Karim Shaikh, 2000 SCC OnLine Bom 446. Ranjana Desai, J, (as Her Ladyship then was) held that the purpose of the 1986 Act was not to take away a pre-existing right to seek maintenance under the extant statutory regime. Its intent could not be to 'absolve Muslim husbands from their obligation to look after them after iddat period.' The upshot of the reasoning was that the 1986 Act deliberately used two distinct expressions: maintenance and provision.

These expressions allow sufficient interpretive amplitude to reconcile the Muslim personal law with the secular law of maintenance bearing in mind the constitutional objective of preserving and promoting the dignity of Muslim women. The expression 'provision' denotes a forward-looking approach. It could not be circumscribed to the period of iddat but any limit on the same had to have a nexus to the vagrancy of the wife and the sufficiency of maintenance. Therefore, Section 3(1)(a) entitles the divorced wife to an amount that would be necessary in view of her essential expenses on residence, food, clothing, medicine etc.

28. I find that the 1986 Act was upheld by this Court in Danial Latifi on the basis of a purposive interpretation that mitigated the possibility of the absurd consequence of denying access to justice to a divorced Muslim woman. The premise of such an interpretation is that the expression "divorced woman" is defined in Section 2(a) of the said Act to mean a Muslim woman who has married according to Muslim law and has been divorced by, or has obtained divorce from, her husband in accordance with Muslim Law.

A plain reading of the aforesaid expression would also indicate that the right created in favour of a Muslim divorced woman is in addition to and not in derogation of any other law for the time being in force. This would mean that Section 125 of the CrPC applies to such a Muslim woman also and the definition of wife in Section 125 of the CrPC including a divorced wife (irrespective of the faith she follows) would not detract from such a divorced Muslim wife also claiming maintenance under that provision. This is despite Section 3 creating new rights insofar as such a divorced Muslim woman is concerned.

The scope and ambit of the non-obstante clause must be given its full effect and force. In other words, the intent of the Parliament which can be gathered from the use of such a non-obstante clause is to enhance the right of a divorced Muslim woman in addition to what she would have been entitled to under Section 125 of the CrPC. If the intent of the Parliament was otherwise, i.e., to curtail the rights of a divorced Muslim woman then the nonobstante clause would not have found a place in sub-section (1) of Section 3 of the 1986 Act.

This is evident from the fact that while enacting the 1986 Act, Parliament did not simultaneously or at anytime thereafter create any bar for a divorced Muslim woman from claiming maintenance under Section 125 of the CrPC and thereby constrain her to proceed to make a claim only under the provisions of the 1986 Act. Neither is there any bar, express or implied under the 1986 Act, to the effect that a divorced Muslim woman cannot unilaterally seek maintenance under Section 125 of the CrPC.

One cannot read Section 3 of the 1986 Act containing the nonobstante clause so as to restrict or diminish the right to maintenance of a divorced Muslim woman under Section 125 of the CrPC and neither is it a substitute for the latter. Such an interpretation would be regressive, anti-divorced Muslim woman and contrary to Articles 14 and 15(1) and (3) as well as Article 39(e) of the Constitution of India. Therefore, inspite of an option of seeking maintenance under the provisions of the 1986 Act, Section 125 of the CrPC is applicable to a divorced Muslim woman.

29. Similarly, the expression "notwithstanding anything contained in the foregoing provisions of this Act or any other law for the time being in force" in sub-section (1) of Section 4, is indicative of the fact that the Magistrate can order for maintenance of a divorced Muslim woman being entitled to maintenance as per the provisions of the said Act. Further, sub-section (1) of Section 4 takes into consideration the period after the iddat period while sub-section (1) of Section 3 deals with a period which is within the iddat period. This Section is akin to Section 125 of the CrPC for a reasonable and fair provision of maintenance to be made.

30. In my view, the rights created under the provisions of the 1986 Act are in addition to and not in derogation of the right created under Section 125 of the CrPC, and the same is the basis for this Court's conclusion in Danial Latifi to save the 1986 Act from the vice of unconstitutionality. This is because nowhere in the judgment of this Court in the aforesaid case is there a reference to any bar under the provisions of the 1986 Act and neither has this Court created any such bar in the aforesaid judgment for a divorced Muslim woman to approach the Court under Section 125 of the CrPC for maintenance.

Thus, the non-obstante clause in Sub-section (1) of Section 3 cannot result in Sections 3 and 4 of the 1986 Act whittling down the application of Section 125 of the CrPC and other allied provisions of the CrPC to a divorced Muslim woman. Therefore, if a divorced Muslim woman approaches the Magistrate for enforcement of her rights under Section 125 of the CrPC, she cannot be turned away to seek relief only under Sections 3 and 4 of the 1986 Act as is sought to be contended by the appellant herein. In other words, such a divorced Muslim woman is entitled to seek recourse to either or both the provisions. The option lies with such a woman. The Court would have to ultimately balance between the amount awarded under the 1986 Act and the one to be awarded under Section 125 of the CrPC.

31. In this context, I note that the learned senior counsel for the appellant, Sri Qadri relied upon the language of Sections 5 and 7 of the 1986 Act to argue that the Parliament intended to give the 1986 Act an overriding effect over the secular law on maintenance, i.e. Sections 125 to 128 of the CrPC. Sections 5 and 7 are reproduced for immediate reference:

"5. Option to be governed by the provisions of sections 125 to 128 of Act 2 of 1974.- If, on the date of the first hearing of the application under sub-section (2) of section 3, a divorced woman and her former husband declare, by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would prefer to be governed by the provisions of sections 125 to 128 of the Code of Criminal Procedure, 1973 (2 of 1974); and file such

affidavit or declaration in the court hearing the application, the Magistrate shall dispose of such application accordingly.

Explanation.- For the purposes of this section, "date of the first hearing of the application" means the date fixed in the summons for the attendance of the respondent to the application.

7. Transitional provisions.- Every application by a divorced woman under section 125 or under section 127 of the Code of Criminal Procedure, 1973 (2 of 1974) pending before a Magistrate on the commencement of this Act, shall, notwithstanding anything contained in that Code and subject to the provisions of section 5 of this Act, be disposed of by such Magistrate in accordance with the provisions of this Act."

32. I find that Section 5 provides for a situation where a Muslim woman and her former husband decide to voluntarily elect to pursue the remedies under Sections 125 to 128 of the CrPC by way of a written application on the first date of hearing of an application under Section 3 of the 1986 Act. The provision seeks to provide an option that can be mutually exercised by the Muslim woman and her former husband. The deliberate use of the words 'option' and 'former husband' demonstrates that Section 5 does not statutorily confine the circumstances under which the claim of maintenance of a divorced Muslim woman can be governed under the secular law of maintenance.

Similarly, Section 7, being a transitional provision, only determines that every pending application under Section 125 of the CrPC for maintenance at the time of commencement of the 1986 Act would be disposed of in accordance with the provisions of 1986 Act. The purpose of a transitional provision is to mitigate uncertainty from the minds of the litigants who were faced with the peculiar situation with respect to pending maintenance applications and the possibility of fresh applications being filed under the 1986 Act as per the option of the parties.

The use of the expression in Section 7 of the 1986 Act 'notwithstanding anything contained in that Code,' with respect to the CrPC does not indicate the intent to abrogate the independent right of a Muslim woman, as a victim of neglect or destitution, to claim maintenance from her husband. Moreover, Section 7 is subject to Section 5 of the said Act. Also, a transitional provision is of a temporary nature. On the strength of a transitional provision the main Act i.e. 1986 Act cannot be interpreted in a manner so as to restrict the rights of a divorced Muslim woman to other available remedies such as under Section 125 of the CrPC.

33. This Court in Danial Latifi was alive to the hardship that would befall Muslim women if the provisions of the 1986 Act were construed in a manner that deprived them of the protection that was equal to the protection afforded to non-Muslim women under Section 125 of the CrPC. It was reasoned that to make a Muslim woman run from pillar to post in search of her relatives one after the other and ultimately to knock at the doors of the Wakf Board could not be reasonable and a fair substitute for the provisions of Section 125 of the CrPC. In this respect, the observations of this Court deserve to be quoted in full:

"33. In Shah Bano case [(1985) 2 SCC 556 : 1985 SCC (Cri) 245] this Court has clearly explained as to the rationale behind Section 125 CrPC to make provision for maintenance to be paid to a divorced Muslim wife and this is clearly to avoid vagrancy or destitution on the part of a Muslim woman. The contention put forth on behalf of the Muslim organisations who are interveners before us is that under the Act, vagrancy or destitution is sought to be avoided but not by punishing the erring husband, if at all, but by providing for maintenance through others.

If for any reason the interpretation placed by us on the language of Sections 3(1)(a) and 4 of the Act is not acceptable, we will have to examine the effect of the provisions as they stand, that is, a Muslim woman will not be entitled to maintenance from her husband after the period of iddat once the talaq is pronounced and, if at all, thereafter maintenance could only be recovered from the various persons mentioned in Section 4 or from the Wakf Board. This Court in Olga Tellis v. Bombay Municipal Corpn. [(1985) 3 SCC 545] and Maneka Gandhi v. Union of India [(1978) 1 SCC 248] held that the concept of "right to life and personal liberty" guaranteed under Article 21 of the Constitution would include the "right to live with dignity".

Before the Act, a Muslim woman who was divorced by her husband was granted a right to maintenance from her husband under the provisions of Section 125 CrPC until she may remarry and such a right, if deprived, would not be reasonable, just and fair. Thus the provisions of the Act depriving the divorced Muslim women of such a right to maintenance from her husband and providing for her maintenance to be paid by the former husband only for the period of iddat and thereafter to make her run from pillar to post in search of her relatives one after the other and ultimately to knock at the doors of the Wakf Board does not appear to be reasonable and fair substitute of the provisions of Section 125 CrPC.

Such deprivation of the divorced Muslim women of their right to maintenance from their former husbands under the beneficial provisions of the Code of Criminal Procedure which are otherwise available to all other women in India cannot be stated to have been effected by a reasonable, right, just and fair law and, if these provisions are less beneficial than the provisions of Chapter IX of

the Code of Criminal Procedure, a divorced Muslim woman has obviously been unreasonably discriminated and got out of the protection of the provisions of the general law as indicated under the Code which are available to Hindu, Buddhist, Jain, Parsi or Christian women or women belonging to any other community.

The provisions prima facie, therefore, appear to be violative of Article 14 of the Constitution mandating equality and equal protection of law to all persons otherwise similarly circumstanced and also violative of Article 15 of the Constitution which prohibits any discrimination on the ground of religion as the Act would obviously apply to Muslim divorced women only and solely on the ground of their belonging to the Muslim religion.

It is well settled that on a rule of construction, a given statute will become "ultra vires" or "unconstitutional" and, therefore, void, whereas on another construction which is permissible, the statute remains effective and operative the court will prefer the latter on the ground that the legislature does not intend to enact unconstitutional laws. We think, the latter interpretation should be accepted and, therefore, the interpretation placed by us results in upholding the validity of the Act. It is well settled that when by appropriate reading of an enactment the validity of the Act can be upheld, such interpretation is accepted by courts and not the other way round."

34. Therefore, it was held that the Muslim husband has two separate and distinct obligations, viz., (i) to make a "reasonable and fair provision" for his divorced wife and (ii) to provide "maintenance" for her. Contrary to limiting the duration of any such "provision" and "maintenance" to only the iddat period, the emphasis of Section 3(1)(a) specifically and the 1986 Act generally is to mandate the time for concluding the payment of provision and maintenance within the iddat period but not only restricted for the said period. This Court applied its judgment in Danial Latifi in Sabra Shamim vs. Maqsood Ansari, (2004) 9 SCC 616 wherein the High Court's judgment limiting the entitlement of the divorced wife to iddat period only was set aside on the ground that the liability "to pay maintenance is not confined to iddat period".

35. In other words, the constitutionality of the 1986 Act was upheld only on the basis of the expansive, purposive and progressive interpretation that harmonised the rights under secular and personal law. This is consistent with the settled norms of judicial review of legislative enactments whereby this Court reads a provision that is found to offend a constitutional guarantee to save its constitutionality, vide Binoy Viswam vs. Union of India, (2017) 7 SCC 59, Pr. 83.

Therefore, while extending the scope of 'reasonable and fair provision' in the 1986 Act to the entire lifetime of Muslim women, it was noted in paragraph 28 of Danial Latifi that 'nowhere has Parliament provided that reasonable and fair provision and maintenance is limited only for the iddat period.' Thus, it was held that an interpretative approach de hors the social facts and questions touching upon basic human rights should invariably be decided on constitutional considerations.

Therefore, the Parliament's enactment cannot be construed to intend unjust consequences according to this Court. This is because under the provision of 1986 Act if during iddat period, no provision is made for the entire life of the divorced wife or if the same is inadequate particularly with the passage of time then Section 125 of the CrPC can be resorted to. From the above, it can also be noted that if Section 3 read with Section 4 excludes the liability of the husband of a Muslim woman then there is no reason as to why his liability under Section 125 of the CrPC must also be excluded.

36. The 1986 Act thus continues to operate within the same juridical compass as the judgment in Shah Bano and the reasons for upholding the constitutionality of Danial Latifi cannot be lost sight of. The crux of the reasoning in Danial Latifi is that the 1986 Act is a social welfare legislation that seeks to provide an additional right and thereby, an additional remedy. Danial Latifi implicitly recognises the cardinal principle of non-retrogression that prohibits the State from taking measures or steps that deliberately lead to retrogression on the enjoyment of rights either under the Constitution or otherwise vide Navtej Singh Johar vs. Union of India, (2018) 10 SCC 1, Pr. 202.

I therefore reiterate that the 1986 Act does not take away rights that divorced Muslim women have either under personal law or under Section 125 of the CrPC. I do not find any inconsistency between the provisions of the 1986 Act and Section 125 of the CrPC. Thus, a Muslim divorced wife is entitled to maintenance under Section 125 CrPC irrespective of her personal law, as reiterated in Shabana Bano vs. Imran Khan, 2009 (14) SCALE 331. Such a construction would not defeat the legislative intent and diminish the scope of additional protection afforded to Muslim women under the 1986 Act.

37. I note that the fixation of the three-month time limit for disposal of applications under the 1986 Act affords speedy justice and subserves the salutary aim of women's welfare and social security. Thus, the 1986 Act expands the protection of women and ought to be applied as such.

I find that remarriage of a divorced Muslim woman does not nullify her claim to a just settlement under the 1986 Act, vide Abdul Hameed vs. Fousiya, (2004) 3

KLT 1049 wherein it was held that a husband cannot recover the settlement amount awarded under the 1986 Act merely because his ex-wife gets remarried. This finding is consistent with our legislative regime of protecting the rights of married women against matrimonial harassment, vide Juveria Abdul Majid Patni vs. Atif Iqbal Mansoori, (2014) 10 SCC 736.

Access to Justice:

38. The question of interpreting Section 3 of the 1986 Act should also be construed from the perspective of access to justice. Therefore, a technical or pedantic interpretation of the 1986 Act would stultify not merely gender justice but also the constitutional right of access to justice for the aggrieved Muslim divorced women who are in dire need of maintenance. This Court would not countenance unjust or Faustian bargains being imposed on women. The emphasis is on sufficient maintenance, not minimal amount. After all, maintenance is a facet of gender parity and enabler of equality, not charity.

It follows that a destitute Muslim woman has the right to seek maintenance under Section 125 of the CrPC despite the enactment of the 1986 Act. Thus, an application for maintenance under Section 125 of the CrPC would not prejudice another application under Section 3 of the 1986 Act insofar as the latter is additional in nature and does not pertain to the same requirements sought to be provided for by Section 125 of the CrPC. One cannot be a substitute for or supplant another; rather it is in addition to and not in derogation of the other.

39. In this context, it would be apposite to take note of this Court's pertinent observations in Rana Nahid @ Reshma @ Sana vs. Sahidul Haq Chisti, (2020) 7 SCC 657. The appeal before this Court arose out of a judgment passed by the High Court of Rajasthan, by which the order passed by the Family Court, converting the application for maintenance under Section 125 of the CrPC into Section 3 of the 1986 Act and granting maintenance, was set aside. Banumathi, J. in her judgment considered the question which fell for consideration, namely, whether the Family Court had jurisdiction to try an application filed by a Muslim divorced woman for maintenance under Section 3 of the Act.

After considering the provisions of the 1986 Act as well as the relevant provisions of the Family Courts Act, 1984, it was observed in paragraph 25 of the judgment that an application under Section 3(2) of the 1986 Act by the divorced wife has to be filed before the competent Magistrate having jurisdiction if she claims maintenance beyond the iddat period. Even if the Family Court has been established in that area, the Family Court, not having been conferred the jurisdiction under Section 7 of the Family Courts Act, 1984 to entertain an

application filed under Section 3 of the 1986 Act, the Family Court shall have no jurisdiction to entertain an application under Section 3(2) of the 1986 Act.

The Family Court, therefore, cannot convert the petition for maintenance under Section 125 of the CrPC to one under Section 3 or Section 4 of the 1986 Act. Accordingly, the High Court's view was affirmed and the appeal was dismissed. However, Indira Banerjee, J. disagreeing with the aforesaid view observed that the Family Court has the jurisdiction to convert the application for maintenance filed under Section 125 of the CrPC into an application under Section 3 of the 1986 Act and to decide the same.

In view of the difference of opinion between the two learned Judges, the matter was placed before Hon'ble the Chief Justice of India for referring the matter to a larger Bench. However, the larger Bench of three-Judges by its order dated 22.09.2022 disposed of the appeal without going into the questions referred to the said Bench. Be that as it may, what is of relevance from the aforesaid case, is Banumathi, J.'s reasoning that the 1986 Act is not contrary to the object of Chapter IX of the CrPC as it provides remedies to a divorced Muslim woman.

Therefore, the nonobstante clause, occurring in Sections 3(1), 4(1) and 7 cannot be lightly assumed to bring in the effect of supersession of Section 125 of the CrPC and cannot be allowed 'to demolish or extinguish the existing right unless the legislative intention is clear, manifest and unambiguous'. I also find force in Indira Banerjee J's reasoning that the 1986 Act manifests the Parliament's intent to protect and further the rights of Muslim women.

Placing reliance upon the right to be treated equally irrespective of religion, as it is enshrined in Article 2 of the Universal Declaration of Human Rights and Articles 14 and 26 of the International Covenant on Civil and Political Rights, the learned judge held that Muslim women cannot be afforded a lesser degree of protection than other classes of women. It was also held that:

"57. The Convention on the Elimination of All Forms of Discrimination against Women, 1979, commonly referred to as CEDAW, recognises amongst others, the right of women to equality irrespective of religion, as a basic human right. Article 2 of CEDAW exhorts State parties to ensure adoption of a woman-friendly legal system and woman-friendly policies and practices.

58. As a signatory to CEDAW, India is committed to adopt a woman-friendly legal system and woman-friendly policies and practices. The 1986 Act for Muslim Women, being a post CEDAW law, this Court is duty-bound to interpret the provisions of the said Act substantively, liberally, and purposefully, in such a manner as would benefit women of the Muslim community."

40. Therefore, the position of law with regard to harmonious interpretation of Sections 125-128 of the CrPC and the 1986 Act can be summarised as under:

i. There cannot be a disparity amongst divorced Muslim women on the basis of the law under which they were married or divorced in the matter of their maintenance post-divorce. The definition of "divorced woman" under the 1986 Act would include only a Muslim woman who has married according to Muslim law but also divorced under that law.

But if a Muslim woman has been married under the Special Marriage Act, such a Muslim woman who is divorced, cannot get the benefit of the 1986 Act. Such a Muslim woman, who is divorced, would have to proceed either under the provisions of the Special Marriage Act, 1954 and/or under Section 125 of the CrPC. Therefore, the protective provision of Section 125 ought to remain available to every divorced Muslim woman to avoid the absurd outcome of a section of Muslim women being left remediless under the 1986 Act.

As a corollary, it is held that such women who are covered under the 1986 Act are also entitled to the benefit of Section 125 of the CrPC. Further, there can be no bar under the Explanation (b) to Section 125 of the CrPC so as to exclude any Muslim woman who has been divorced or has obtained a divorce from her husband and has not remarried. This is irrespective of the 1986 Act being applicable to only such divorced Muslim woman who qualifies within the definition of divorced woman under Section 2(a) of the 1986 Act.

ii. Section 3 of the 1986 Act provides for a reasonable and fair provision of maintenance to a divorced Muslim woman only on certain terms and conditions within the iddat period by her husband. Once the iddat period expires, the personal law obligation to maintain the divorced Muslim woman by the husband ceases. Per contra, under Section 125 of the CrPC, any divorced wife who has not remarried is entitled to maintenance by her ex husband who has sufficient means but has neglected or refused to maintain her.

iii. Further, under Section 3(1)(b) of the 1986 Act, where a divorced woman maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance has to be made and paid by her former husband only for a period of two years from the respective dates of birth of such children and not beyond the said period. However, under Section 125 of the CrPC, there is no such restriction of maintenance to be provided only for a period of two years from the respective dates of birth of such children in the case of a divorced wife. The obligation is until the children attain the age of majority and in terms of the said Section.

iv. What is of further significance is the fact that by Act 50 of 2001 [by Section 2(i)(a)] w.e.f. 24.09.2001, sub-section (1) of Section 125 of the CrPC has been amended to delete the words "not exceeding 500 rupees in the whole". By way of this omission, there is no upper limit fixed for payment of maintenance under the said provision.

Therefore, Section 125 of the CrPC is a more beneficial provision as compared to the provisions of the 1986 Act vis-à-vis a Muslim divorced woman in the context of the obligations of a former husband and the rights of a divorced Muslim woman. This amendment to Section 125 of the CrPC being subsequent to the enforcement of the 1986 Act, is so significant that it virtually makes Section 3 of the 1986 Act very narrow and insignificant although the expression "provision" under Section 3(1) of the 1986 Act has been broadly interpreted by this Court in Danial Latifi.

v. I, therefore, hold that Section 125 of the CrPC cannot be excluded from its application to a divorced Muslim woman irrespective of the law under which she is divorced. There cannot be disparity in receiving maintenance on the basis of the law under which a woman is married or divorced. The same cannot be a basis for discriminating a divorced woman entitled to maintenance as per the conditions stipulated under Section 125 of the CrPC or any personal or other law such as the 1986 Act. I also note that although the provisions of the 1986 Act have been upheld by a Constitution Bench of this Court in the case of Danial Latifi, the same would not in any way restrict the application of Section 125 of the CrPC to a divorced Muslim woman.

vi. Further, under Section 5 of the 1986 Act, if, on the date of the first hearing of the application under sub-section (2) of Section 3, a divorced woman and her husband declare by an affidavit or any other declaration in writing in the form prescribed, either jointly or separately that they would prefer to be governed by the provisions of Section 125 to Section 128 of the CrPC and file such an affidavit or declaration in the Court hearing the application, the Magistrate shall dispose of such application accordingly. Therefore, the 1986 Act itself provides for the applicability of Sections 125 to 128 of the CrPC, even when an application under sub-section (2) of Section 3 is made seeking relief as per subsection (1) of Section 3.

However, the said option given to the divorced woman and her former husband mandates that there must be a declaration which is ad idem for the purpose of applying the provisions of Sections 125 to 128 of the CrPC, when an application is made under subsection (2) of Section 3 of the 1986 Act. This would imply that if there is no such declaration given then Sections 125 to 128 of the CrPC would

not apply when an application is made under sub-section (2) of Section 3 of the 1986 Act by a divorced Muslim woman.

This again puts a fetter on the applicability of Sections 125 to 128 of the CrPC to such a divorced woman inasmuch it is necessary for her former husband to concur to be governed by the provisions of Sections 125 to 128 of the CrPC. This means that an option is given to the former husband of a divorced Muslim woman to concur or not to do so.

In other words, if there is no such concurrence by the former husband then the aforesaid provisions of the CrPC would not be made applicable to a proceeding initiated under subsection (2) of Section 3. Such a fetter, in my view, is of no consequence if a Muslim divorced woman can unilaterally maintain an application under Section 125 of the CrPC before the Magistrate or the Family Court, in which event when she unilaterally files such an application, there is no necessity of seeking a declaration from the former husband as required under Section 5 of the 1986 Act.

vii. On the other hand, if a divorced Muslim woman files an application for maintenance under Section 125 of the CrPC, there is no provision for considering the same under Section 3 of the 1986 Act. The reasons for the same are not far to see: firstly, because Section 125 of the CrPC and Section 3(1) of the 1986 Act operate in two separate fields. The former is a statutory right created, inter alia, for all divorced women, irrespective of the faith they may belong to or follow. On the other hand, the 1986 Act is in the nature of a personal law which applies to only divorced Muslim women who were married under Muslim law and divorced under the said law.

viii. While under the CrPC prior to CrPC of 1973, the alteration of maintenance was considered on the basis of change in circumstances but Section 127(3)(b) of the CrPC, 1973 specifically takes into account cases where a divorced woman has had the benefit of maintenance under the customary or personal law. In a case of a Hindu divorced woman, it could also include the Hindu Marriage Act, 1955 or Hindu Adoption and Maintenance Act, 1954. In the same manner in the case of a Muslim divorced woman, the 1986 Act is in the nature of a quasipersonal law.

Section 127(3)(b), therefore, balances the obligation to pay maintenance by a former husband of a Muslim woman if he has done so under the provisions of any customary or personal law which would also include the 1986 Act applicable to the parties. In such an event, there could always be an alteration in the allowance when there is a change in the circumstances of any person receiving, under Section 125 of the CrPC, a monthly allowance towards the interim

maintenance or maintenance under the said Section payable to a divorced wife. In which event, the alteration could be made in accordance with Section 127 of the CrPC.

ix. Section 127 would apply only when there has already been an order for maintenance or interim maintenance passed under Section 125 of the CrPC and if there is a subsequent order passed under the provisions of the 1986 Act. Then, an order for alteration in the maintenance under Section 125 of the CrPC could be made by the Magistrate. Section 127(3)(b) would however not detract a divorced Muslim woman from filing an application under Section 125 of the CrPC, by exercising her option to do so even in the absence of invoking the provisions of the 1986 Act. In other words, such a vulnerable woman cannot be constrained to seek remedy only under the provisions of the 1986 Act.

The choice remains with her to be exercised in accordance with law and discretion. However, if a divorced Muslim woman already has an order passed under Section 125 of the CrPC, and thereafter also files an application under Section 3 or Section 4 of the 1986 Act and an order is made under the said Act also, in such an event, there could be an alteration in the order of payment for maintenance or interim maintenance, as the case may be, under Section 127 of the CrPC. This is in order to ensure that there is no double benefit which would be availed by a divorced Muslim woman under Section 125 of the CrPC as well as under the 1986 Act.

x. Hence, what emerges is that the 1986 Act is not a substitute for Section 125 of the CrPC and nor has it supplanted it and both can operate simultaneously at the option of a divorced Muslim woman as they operate in different fields. As I find no conflict between the provisions of the 1986 Act, which is a piece of legislation in the nature of quasipersonal law insofar as the divorced Muslim wife is concerned and Section 125 of the CrPC which is a statutory provision applicable to women belonging to all faiths therefore the latter cannot be restricted in its operation to divorced Muslim women.

I find that if Section 125 of the CrPC is excluded from its application to a divorced Muslim woman, it would be in violation of Article 15(1) of the Constitution of India which states that the State shall not discriminate against any citizen only on the ground of religion, race, caste, sex, place of birth or any of them. Further, our interpretation is consistent with the spirit of Article 15(3) of the Constitution. 2019 Act:

41. At this juncture, Section 5 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 ("2019 Act") merits consideration.

"**5. Subsistence allowance.-** Without prejudice to the generality of the provisions contained in any other law for the time being in force, a married Muslim woman upon whom talaq is pronounced shall be entitled to receive from her husband such amount of subsistence allowance, for her and dependent children, as may be determined by the Magistrate."

Section 5 extends to Muslim women upon whom talaq is pronounced. Talaq is defined in Section 2(c) as 'talaq-e-biddat' or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband which is void and illegal as per Section 3 of the said Act.' In other words, married Muslim woman can seek subsistence allowance if talaq, as defined in the 2019 Act, is pronounced on her. In case a woman has been divorced in a valid manner, she can approach the Magistrate under the 1986 Act but if she has been the victim of the mischief defined under the 2019 Act, then her right to subsistence allowance is secured through Section 5 of the 2019 Act.

The intent of the Parliament is clear: it seeks to provide adequate remedies to women from economic deprivation that may result from marital discord, irrespective of their status as a married or divorced woman. Therefore, prior to a divorce in accordance with law, a married woman has access to maintenance under the general law, i.e., Section 125 of the CrPC and under a special law, i.e., 2019 Act. When divorce is void and illegal, such a Muslim woman can also seek remedy under Section 125 of the CrPC.

Maintenance and the Institution of Marriage: A Broader Perspective.

42. Before parting with this case, I pose a question to myself. What is the position of a wife after her marriage in Indian Society? This Court, speaking through Murtaza Fazal Ali, J. in Sirajmohmedkhan Janmohamadkhan vs. Hafizunnisa Yasinkh, AIR 1981 SC 1972, had acknowledged the paradigm shift from viewing maintenance as a mere charity to a matter of parity and rights, essential for women. It is necessary to extract the pertinent observations as under:

"14. the outmoded and antiquated view that the object of s. 488 was to provide an effective and summary remedy to provide for appropriate food, clothing and lodging for a wife. This concept has now become completely out dated and absolutely archaic. After the International Year of Women when all the important countries of the world are trying to give the fair sex their rightful place in society and are working for the complete emancipation of women by breaking the old shackles and bondage in which they were involved, it is difficult to accept a contention that the salutary provisions of the Code are merely meant to provide a wife merely with food, clothing and lodging as if she is only a chattel and has to depend on the sweet will and mercy of the husband."

43. In this context, I would like to advert to the vulnerability of married women in India who do not have an independent source of income or who do not have access to monetary resources in their households particularly for their personal expenses. In Indian society, it is an established practice that once a daughter is married, she resides with her husband and/or his family unless due to exigency of career or such other reason she has to reside elsewhere. In the case of a woman who has an independent source of income, she may be financially endowed and may not be totally dependent on her husband and his family.

But what is the position of a married woman who is often referred to as a "homemaker" and who does not have an independent source of income, whatsoever, and is totally dependent for her financial resources on her husband and on his family? It is well-known that such an Indian homemaker tries to save as much money as possible from the monthly household budget, not only to augment the financial resources of the family but possibly to also save a small portion for her personal expenses. Such a practice is followed in order to avoid making a request to the husband or his family for her personal expenses.

Most married men in India do not realise this aspect of the predicament such Indian homemakers face as any request made for expenses may be bluntly turned down by the husband and/or his family. Some husbands are not conscious of the fact that the wife who has no independent source of finance is dependent on them not only emotionally but also financially. On the other hand, a wife who is referred to as a homemaker is working throughout the day for the welfare of the family without expecting anything in return except possibly love and affection, a sense of comfort and respect from her husband and his family which are towards her emotional security. This may also be lacking in certain households.

44. While the contributions of such a homemaker get judicial recognition upon her unfortunate death while computing compensation in cases under the Motor Vehicles Act, 1988 vide Kirti vs. Oriental Insurance Co. Ltd., (2021) 2 SCC 166, the services and sacrifices of homemakers for the economic wellbeing of the family, and the economy of the nation, remain uncompensated in large sections of our society.

45. Therefore, I observe that an Indian married man must become conscious of the fact that he would have to financially empower and provide for his wife, who does not have an independent source of income, by making available financial resources particularly towards her personal needs; in other words, giving access to his financial resources. Such financial empowerment would place such a vulnerable wife in a more secure position in the family. Those Indian married men who are conscious of this aspect and who make available their financial resources for their spouse towards their personal expenses, apart from household

expenditure, possibly by having a joint bank account or via an ATM card, must be acknowledged.

46. Another aspect of vulnerability of a married Indian woman is regarding her security of residence in her matrimonial home. In this context in the case of Prabha Tyagi vs. Kamlesh Devi, (2022) 8 SCC 90, this Court while considering Section 17 along with other provisions of the Domestic Violence Act, 2005 opined as under:

"60. In our view, the question raised about a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed must be interpreted in a broad and expansive way, so as to encompass not only a subsisting domestic relationship in praesenti but also a past domestic relationship. Therefore, Parliament has intentionally used the expression "domestic relationship" to mean a relationship between two persons who not only live together in the shared household but also between two persons who "have at any point of time lived together" in a shared household."

47. Thus, both 'financial security' as well as 'security of residence' of Indian women have to be protected and enhanced. That would truly empower such Indian women who are referred to as 'homemakers' and who are the strength and backbone of an Indian family which is the fundamental unit of the Indian society which has to be maintained and strengthened.

It goes without saying that a stable family which is emotionally connected and secure gives stability to the society for, it is within the family that precious values of life are learnt and built. It is these moral and ethical values which are inherited by a succeeding generation which would go a long way in building a strong Indian society which is the need of the hour.

It is needless to observe that a strong Indian family and society would ultimately lead to a stronger nation. But, for that to happen, women in the family have to be respected and empowered! In view of the aforesaid discussion, the Criminal Appeal stands dismissed.

.....J. [B.V. Nagarathna]

New Delhi;

July 10, 2024

IN THE SUPREME COURT OF INDIA

Mohd. Abdul Samad
Vs.
State of Telangana & Anr.
[Criminal Appeal No. 2842 of 2024
arising out of SLP (Crl) No. 1614 of 2024]

ORDER

What emerges from our separate but concurring judgments are the following conclusions:

a) Section 125 of the CrPC applies to all married women including Muslim married women.

b) Section 125 of the CrPC applies to all non-Muslim divorced women.

c) Insofar as divorced Muslim women are concerned, -

i) Section 125 of the CrPC applies to all such Muslim women, married and divorced under the Special Marriage Act in addition to remedies available under the Special Marriage Act.

ii) If Muslim women are married and divorced under Muslim law then Section 125 of the CrPC as well as the provisions of the 1986 Act are applicable. Option lies with the Muslim divorced women to seek remedy under either of the two laws or both laws. This is because the 1986 Act is not in derogation of Section 125 of the CrPC but in addition to the said provision.

iii) If Section 125 of the CrPC is also resorted to by a divorced Muslim woman, as per the definition under the 1986 Act, then any order passed under the provisions of 1986 Act shall be taken into consideration under Section 127(3)(b) of the CrPC.

d) The 1986 Act could be resorted to by a divorced Muslim woman, as defined under the said Act, by filing an application thereunder which could be disposed of in accordance with the said enactment.

e) In case of an illegal divorce as per the provisions of the 2019 Act then,

i) relief under Section 5 of the said Act could be availed for seeking subsistence allowance or, at the option of such a Muslim woman, remedy under Section 125 of the CrPC could also be availed.

ii) If during the pendency of a petition filed under Section 125 of the CrPC, a Muslim woman is 'divorced' then she can take recourse under Section 125 of the CrPC or file a petition under the 2019 Act.

iii) The provisions of the 2019 Act provide remedy in addition to and not in derogation of Section 125 of the CrPC.

f) The criminal appeal is dismissed.

.....J. [B.V. Nagarathna]

.....J. [Augustine George Masih]

New Delhi;

July 10, 2024

IN THE SUPREME COURT OF INDIA

Yogesh Goyanka
Vs.
Govind & Ors.

[Civil Appeal No(s). 7305 of 2024
arising out of SLP (C) No(s). 10005 of 2022]

HEADNOTE – A registered sale deed cannot be held to be void merely because it was executed during the pendency of a suit in relation to the property. The doctrine of lis pendens under Section 52 of the Transfer of Property Act 1882 does not render the pendente lite transfer void.

JUDGMENT

Satish Chandra Sharma, J.

1. Leave granted.

2. The present appeal arises out of judgment dated 21.01.2022 passed by the High Court of Judicature for Rajasthan in S.B. Civil Writ Petition No. 17887 of 2019 whereby the writ petition preferred by the Appellant herein under Article 227 of the Constitution of India was dismissed (the 'Impugned Order'). The Appellant approached the High Court on being aggrieved by the dismissal of his impleadment application under Order 1 Rule 10, Code of Civil Procedure, 1908 (the 'CPC') vide order dated 10.10.2019 passed by the Ld. Additional District Judge No. 1, Hindaun City (the 'ADJ').

Brief Facts:

3. The Appellant before us, along with the proforma Respondents herein purchased farming land being Khasra No. 5896, 5897, 5898, 5936 and 5895 admeasuring 2.38 hectare at Hinduan City, Rajasthan (the 'Subject Land') from Respondent No. 21 vide registered sale deed dated 28.09.2018 (the 'RSD') for a collective consideration of Rs. 1,51,65,360/-. Admittedly, the RSD contained an explicit declaration to the effect that there were cases pending in the Court of the Ld. SDM and in the court of Ld. ADJ, Hindaun City, relating to the Subject Land.

4. The Subject Land originally belonged to Respondent Nos. 1-17 (the 'Plaintiffs') and was released in favor of Respondent Nos. 18-20 (the 'Defendants') vide release deeds dated 11.08.2006 and 31.01.2007 (the 'Release Deeds'). Thereafter, on the strength of the Release Deeds, the Subject Land was sold to Respondent

No. 21 by the Defendants vide registered sale deed dated 26.04.2007 and the revenue records were mutated to reflect the name of Respondent No. 21. It is pertinent to note that the Plaintiffs and the Defendants are all relatives, having a common ancestor namely, one Mr. Nathua.

5. The events giving rise to the present appeal began on 03.01.2018 when the Plaintiffs filed Suit No. 1 of 2018 in the court of the ADJ, against the Defendants and Respondent No. 21 (hereinafter collectively referred to as the 'Original Defendants') seeking permanent injunction and a declaration to the effect that the Release Deeds and the sale deed dated 26.04.2007 are null and void (the 'Underlying Suit').

6. Admittedly, after the issuance of notice in the Underlying Suit, Respondent No. 21 entered appearance before the ADJ on 11.01.2018 and hence knowingly executed the RSD in favor of the Appellant pendente lite. Thereafter, on 25.01.2019, the ADJ granted a temporary injunction in favor of the Plaintiffs.

7. On becoming aware of the temporary injunction, the Appellant, along with the other pendente lite purchasers of the Subject Land filed an impleadment application on 13.02.2019 before the ADJ under Order 1 Rule 10, CPC. Vide order dated 10.10.2019, the application was dismissed by the ADJ holding that no need arises to implead the applicants therein as (i) permission of the Court was not sought prior to the sale; and (ii) more importantly, they were not bona fide purchasers as they were wholly cognizant of the Underlying Suit prior to their purchase. The ADJ placed reliance on the judgment of this Court in Bibi Zubaida Khatoon vs. Nabi Hassan Saheb & Anr (2004) 1 SCC 191.

8. Thereafter, the Appellant alone approached the High Court under Article 227 of the Constitution of India challenging the order of the ADJ. Vide the Impugned Order, the High Court held that the impleadment application was untenable as the RSD itself was a nullity by virtue of being hit by the doctrine of lis pendens as provided under Section 52 of the Transfer of Property Act, 1882 (the 'Act').

Submissions & Analysis:

9. Mr. C.A. Sundaram, Learned Senior Counsel for the Appellant forcefully contended before us that the Appellant after paying the full consideration, obtained a registered sale deed in his favor and is therefore entitled to the protection of his interests in the Subject Land. He argues that impleadment of the Appellant in the Underlying Suit is necessary as there exists a real possibility of collusion between the Plaintiffs and the Original Defendants. To substantiate his claim, Learned Counsel highlights that the Plaintiffs and the Defendants are

relatives. Further, he points to the considerable delay in the filing of the Underlying Suit, about 12 years after the execution of the Release Deeds.

10. On the legal issue, Mr. Sundaram asserts that there is no bar to the impleadment of a transferee pendente lite, even when the transferee has prior knowledge of pendency. To buttress his contention, he points to the judgment of this Court in Thomson Press vs. Nanak Builders, (2015) 5 SCC 397 wherein, after considering all the previous judgments on the question of impleadment of a transferee pendente lite, this Court permitted the impleadment of a transferee in a suit for specific performance, who not only had notice of the pendency but also had knowledge of the injunction prohibiting any transactions relating to the subject property therein.

11. Per contra Mr. V.K. Shukla, Learned Senior Counsel for the Plaintiffs contended that the Appellant is not entitled to impleadment as he is not a bona fide purchaser. He argued that despite having knowledge of the pendency, no permission was sought from the Court to execute the RSD and hence, the Appellant is not entitled to any relief. To buttress his contention, reliance is placed on Bibi Zubaida (supra) wherein this Court held that transferees pendente lite cannot, as a matter of right, seek impleadment. In that case, this Court upheld the decision of the trial court rejecting impleadment on grounds that the transferee was not bona fide and was only attempting to complicate and delay the pending suit.

12. Mr. Shukla also contends that the judgment of this Court in Thomson Press (supra) is entirely distinguishable on facts from the present matter and is hence inapplicable. To that extent, he highlights that contrary to the factual position in Thomson Press (supra), in this case, the title of the Appellant itself is in question and additionally, the Appellant is not in possession of the Subject Land.

13. Going a little further, Mr. Huzefa Ahmadi, Learned Senior Counsel for Respondent No. 21 contends that the Appellant cannot seek impleadment as he is not even a purchaser of the Subject Land. Mr. Ahmadi submits that out of the 6 cheques issued under the RSD, 2 cheques bounced on 01.10.2018 rendering the consideration unpaid. He highlights that the RSD contains an express clause to the effect that if the payment made under the 6 cheques are not completed, the purchasers will not receive any legal rights over the Subject Land through the RSD. On the question of unpaid consideration, Mr. Sundaram asserts that the entire consideration was paid by the Appellant via RTGS.

14. He further highlights that this contention was neither raised before the ADJ nor the High Court and is merely an afterthought, pointing further to the Appellant's suspicion of collusion between the parties. It is also brought to the

notice of this Court that Respondent No. 21 previously filed a suit for declaration to the effect that the RSD is null and void but the same was dismissed in default on 28.02.2020.

15. We have heard the Learned Counsel for the parties and have carefully perused the record.

16. The fulcrum of the dispute herein concerns the impleadment of a transferee pendente lite who undisputedly had notice of the pending litigation. At the outset, it appears pertinent to reiterate the settled position that the doctrine of lis pendens as provided under Section 52 of the Act does not render all transfers pendente lite to be void ab-initio, it merely renders rights arising from such transfers as subservient to the rights of the parties to the pending litigation and subject to any direction that the Court may pass thereunder.

17. Therefore, the mere fact that the RSD was executed during the pendency of the Underlying Suit does not automatically render it null and void. On this ground alone, we find the Impugned Order to be wholly erroneous as it employs Section 52 of the Act to nullify the RSD and on that basis, concludes that the impleadment application is untenable.

Contrary to this approach of the High Court, the law on impleadment of subsequent transferees, as established by this Court has evolved in a manner that liberally enables subsequent transferees to protect their interests in recognition of the possibility that the transferor pendente lite may not defend the title or may collude with the plaintiff therein [See the decision of this Court in Amit Kumar Shaw vs. Farida Khatoon, (2005) 11 SCC 403 & A. Nawab John vs. V.N. Subramaniyam, (2012) 7 SCC 738].

18. Similarly, we also find fault with the order of the ADJ and its misplaced reliance on Bibi Zubaida (supra). The only principle emerging from the judgment of this Court in Bibi Zubaida (supra) is that transferees pendente lite cannot seek impleadment as a matter of right and to that extent, we agree with the ADJ. However, Bibi Zubaida (supra) does not place a bar on impleadment of transferees who purchase property without seeking leave of the Court.

The decision of the Court in Bibi Zubaida (supra) turns on its own facts; the Court rejected the application for joinder therein noting that the underlying suit was pending since 1983 and upheld the finding of the Trial Court that the subsequent purchaser was not bona fide and attempted to complicate and delay the underlying suit. Therefore, the judgment in Bibi Zubaida (supra), being distinguishable on facts, does not assist the Respondents herein.

19. The Respondents herein assail the impleadment of the Appellant on the ground that he is not a bona fide purchaser as he had full knowledge of the pending litigation. While that is the admitted position, there exists no bar to the impleadment of transferees pendente lite with notice. Permitting the impleadment of a transferee pendente lite is, in each case, a discretionary exercise undertaken to enable a purchaser with a legally enforceable right to protect their interests especially when the transferor fails to defend the suit or where there is a possibility of collusion.

20. In the particular facts and circumstances of this case, Mr. Sundaram has been able to satisfy this Court on the possibility of collusion between the Respondents. It is a fact that the Plaintiffs and Defendants are relatives. More importantly, Plaintiffs approached the court in the Underlying Suit after a substantial delay of 11 years whereas admittedly, the revenue records were mutated to reflect the name of Respondent No. 21 since 2007. It is also curious that the claim of non-payment of consideration by the Appellant was made for the first time before this Court.

21. On the other hand, the Appellant has a registered sale deed in his favor and has therefore seemingly acquired an interest in the Subject Land. Whether or not the consideration was paid, is a disputed question of fact that shall be determined by the Trial Court.

Therefore, in the considered opinion of this Court, considering the totality of the circumstances in this case, including the fact that the trial has not progressed significantly, the Appellant herein, in the interest of justice, is entitled to impleadment in the Underlying Suit in order to protect his interests, if any, in the Subject Land.

22. In light of the aforesaid, the appeal stands allowed. The Impugned Order and the order of the ADJ dated 10.10.2019 are set aside and the Appellant is directed to be added as a partydefendant in the Underlying Suit.

23. Pending applications, if any, shall also stand disposed of.

.....J. [Vikram Nath]

.....J. [Satish Chandra Sharma]

New Delhi

July 10, 2024

IN THE SUPREME COURT OF INDIA

New Okhla Industrial Development Authority
Vs.
Harnand Singh (Deceased) through LRs & Ors.

[Civil Appeal No. 3674-3675 of 2023]
[Civil Appeal No. 3676-3688 of 2023]
[Civil Appeal No. 3869 of 2023]
[M.A. No. 2424 of 2019 in SLP (C) No. 9732 of 2014]
[M.A. No. 2663 of 2023 in SLP (C) No. 36027 of 2009]
[M.A. No. 2404 of 2023 in SLP (C) No. 28146 of 2009]
[M.A. No. 2305 of 2023 in SLP (C) No. 23068-23070 of 2010]
[M.A. No. 2402 of 2023 in SLP (C) No. 23900 of 2009]
[M.A. No. 2600 of 2023 in SLP (C) No. 29597-29639 of 2010]
[M.A. No. 2602 of 2023 in SLP (C) No. 29597-29639 of 2010]
[M.A. No. 2598 of 2023 in SLP (C) No. 29597-29639 of 2010]
[M.A. No. 2601 of 2023 in SLP (C) No. 29597-29639 of 2010]
[M.A. No. 2603 of 2023 in SLP (C) No. 29597-29639 of 2010]
[M.A. No. 2597 of 2023 in SLP (C) No. 29597-29639 of 2010]
[M.A. No. 2604 of 2023 in SLP (C) No. 29597-29639 of 2010]
[M.A. No. 2596 of 2023 in SLP (C) No. 29597-29639 of 2010]
[M.A. No. 2416 of 2019 in SLP (C) No. 25328-25360 of 2010]
[M.A. No. 2418 of 2019 in SLP (C) No. 25328-25360 of 2010]
[M.A. No. 2412 of 2019 in SLP (C) No. 30610 of 2010]
[M.A. No. 2413 of 2019 in SLP (C) No. 20397 of 2010]
[M.A. No. 2417 of 2019 in SLP (C) No. 25328-25360 of 2010]
[M.A. No. 2414 of 2019 in SLP (C) No. 25328-25360 of 2010]
[M.A. No. 2423 of 2019 in SLP (C) No. 25328-25360 of 2010]
[M.A. No. 2422 of 2019 in SLP (C) No. 25328-25360 of 2010]
[M.A. No. 2415 of 2019 in SLP (C) No. 25328-25360 of 2010]
[M.A. No. 2421 of 2019 in SLP (C) No. 25328-25360 of 2010]
[M.A. No. 2420 of 2019 in SLP (C) No. 25328-25360 of 2010]
[M.A. No. 2419 of 2019 in SLP (C) No. 25328-25360 of 2010]
[Civil Appeal No._____ of 2024 arising out of SLP (C) No. 20251 of 2023]
[M.A. No. 2606 of 2023 in SLP (C) No. 29597-29639 of 2010]
[M.A. No. 2605 of 2023 in SLP (C) No. 29597-29639 of 2010]
[M.A. No. 2411 of 2019 in SLP (C) No. 23068-23070 of 2010]
[M.A. No. 274 of 2021 in SLP (C) No. 9732 of 2014]
[M.A. No. 2607 of 2023 in SLP (C) No. 29597-29639 of 2010]
[Civil Appeal No._____ of 2024 arising out of SLP (C) No._____ of 2024 arising out of Diary No(s). 9072 of 2024]

HEADNOTE – Laid down the three categories of relevant factors that ought to be considered while determining the estimated value of the land to determine a fair amount of compensation in land acquisition proceedings, such as:-
(i) Characteristics of the land
(ii) Future potentiality of the land
(iii) Factors denoting market sentiment

JUDGMENT

Surya Kant, J.

1. Delay condoned. Leave granted.

2. These appeals and applications have been preferred by the New Okhla Industrial Development Authority (hereinafter, 'NOIDA') and landowners owning land in Village Chhalera Bangar, Tehsil Dadri, District Ghaziabad, contesting various identical impugned orders, including the judgment dated 08.02.2021 and in the review order dated 22.07.2021 passed in the lead case by the High Court of Judicature at Allahabad (hereinafter, 'High Court'), enhancing the compensation granted to the landowners for an acquisition initiated under the Land Acquisition Act, 1894 (hereinafter, '1894 Act').

In the appeals preferred by NOIDA, the High Court has enhanced the rate of compensation from the range of INR 222 and 233 per sq. yd. as granted by the Additional District Judge, Ghaziabad (hereinafter, 'Reference Court'), to INR 449 per sq. yd. Whereas, in the appeals and applications filed by the landowners, it was enhanced to INR 340 per sq. yd.

A. FACTS

3. The present controversy has a chequered history. The acquisition process was initiated by State of U.P./NOIDA on 05.01.1991 through a notification issued under Section 4(1) of the 1894 Act, for the acquisition of approximately 492 acres of land in Village Chhalera Bangar, intended for planned Industrial Development. Afterwards, on 07.01.1992, the government issued a declaration under Section 6 read in conjunction with the 'urgency clause' contained in Section 17 of the 1894 Act. Possession of the land was taken on 30.03.1992, 07.08.1995 and 18.11.1995.

4. Subsequently, on 17.08.1996, the Land Acquisition Officer (hereinafter, 'LAO') issued an award under Section 11 of the 1894 Act, affixing compensation at INR 110 per sq. yd. The LAO relied on a sale deed dated 16.12.1988, whereby

one Jyoti Prasad had sold the land to G.R. Pant at a rate of INR 125 per sq. yd. Applying a further 12% deduction, owing to the large area under acquisition, the rate of compensation was finally determined at INR 110 per sq. yd.

5. Following the award, several landowners made a reference before the Reference Court seeking enhancement of compensation under Section 18 of the 1894 Act. The record indicates two kinds of compensation rates granted by the Reference Court: first, INR 233 and second, INR 222 per square yard. In both these awards, the evidence suggested the market value of the land at the relevant time, at INR 390 per sq. yd., upon which a 40% deduction for development was applied. However, the final figure achieved after this calculation has been noted differently in both orders, where INR 222 per square yard seems to be the result of a calculation error.

6. Some landowners further preferred appeals before the High Court. One such initiative was filed by Jagdish Singh etc., who challenged the Reference Court's award in First Appeal No. 774/2001, titled Jagdish Chandra and others v. New Okhla Industrial Development Authority. The High Court through its judgement dated 14.12.2007, reversed the deductions made by the Reference Court from the assessed market value and directed the State / NOIDA authorities to recalculate the compensation at INR 297.50 per sq. yd. without deducting development charges. However, in another similar group of appeals, the High Court, vide the later judgement dated 09.05.2008, refused to enhance the compensation.

7. The landowners' review application(s) against the order dated 09.05.2008 were dismissed by the High Court observing that they could independently file appeals, if so aggrieved. However, in response to a later application seeking clarification, the High Court on 19.05.2010 clarified the operative part of its earlier judgment and enhanced the compensation to INR 340 per sq. yd. The other alike appeals filed by similarly situated landowners were also allowed in part and the compensation was enhanced to INR 340 per sq. yd.

8. Seeking further enhancement, a few landowners approached this Court, but their Special Leave Petitions (SLPs) were dismissed on 05.02.2014. However, in Civil Appeal Nos. 18620-18623 / 2017 titled Bir Singh v. State of Uttar Pradesh, this Court vide judgement dated 09.11.2017, further enhanced the compensation to INR 449 per sq. yd., relying on a sale exemplar dated 16.12.1988 for a land situated in Village Chhalera Bangar, and noting that the sale price of the said land was INR 400 per sq. yd.

The Review and Curative Petitions preferred by the State / NOIDA authorities against this order were dismissed on 06.03.2018 and 13.03.2019, respectively. Consequently, all the First Appeals pending before the High Court, pertaining to

the same acquisition came to be allowed in line with Bir Singh (supra), and compensation was accordingly enhanced to INR 449 per sq. yd.

9. It is in this backdrop that a majority of the cases before us mount a challenge to those High Court orders which were pronounced before Bir Singh (supra) and wherein the High Court had granted compensation at INR 340 per sq. yd. only. The landowners thus seek parity with Bir Singh (supra) and the resultant enhancement of their compensation to INR 449 per sq. yd. On the other hand, NOIDA has also filed multiple appeals challenging the High Court judgements that were decided on the anvil of Bir Singh (supra).

The landowners too have filed several Miscellaneous Applications against the earlier dismissal of their SLPs, seeking recall of the previous orders and to restore parity with Bir Singh (supra). Additionally, two of the SLPs included in the batch of cases before us assail an order of the High Court dismissing the landowners' Review Petitions and rejecting their enhancement claim on account of delay in filing the review before the High Court.

10. The matters pending before us, therefore, can be categorized into two groups: i. SLPs, Miscellaneous Applications and Civil Appeals preferred by landowners who had already been granted compensation at INR 340 per sq. yd. and who are now seeking parity with Bir Singh (supra) where compensation was enhanced to INR 449 per sq. yd.; and ii. Civil Appeals preferred by NOIDA as against the enhanced compensation of INR 449 per sq. yd. granted to some of the landowners.

B. CONTENTIONS ON BEHALF OF THE STATE

11. We have heard learned Senior Counsels for the parties at considerable length and have perused the record at length.

12. Mr. Ravinder Kumar, learned Senior Counsel representing NOIDA, argued that Bir Singh (supra) had based its finding on an erroneous reading of a sale exemplar, wherein this Court read a description of the extent of land being 400 sq. yds. as the value of the land instead, i.e., INR 400 per sq. yd. He submitted that the Reference Court had read the figure correctly and granted compensation at INR 110 per sq. yd. Thus, he urged that there being an ex-facie factual error while deciding Bir Singh (supra), parity could not be sought with that decision which was only binding inter partes and ought not to be treated as a precedent.

13. Learned Senior Counsel contended that the landowners could not invoke Section 28A of the 1894 Act for re-determination of the market value of their lands as the said provision was restricted to the compensation determined by the Reference Court. Reliance has been placed on the decision of this Court in

Ramsingbhai Jerambhai v. State of Gujarat.1 He also argued that the sale deeds produced before this Court by the landowners were of abadi land whereas, in the present case, agricultural or non-abadi land has been acquired.

Mr. Kumar then highlighted that the acquired land is a huge chunk of land and cannot be utilised for nonagricultural purposes unless major developmental works are carried out, in the form of roads, water supply, sewage, open spaces, schools, hospitals, parks etc., as a result of which not more than 50% of it will be left for carving out industrial or institutional plots for actual sale.

14. Mr. Kumar, Learned Senior Counsel, proffered that a uniform rate of compensation ought to be fixed for the entire acquisition rather than individual rates applicable for different parcels of land. The relevant factors while affixing compensation ought to include the fact that the authorities do not derive any income from the land.

He highlighted the aims and objects of NOIDA to impress upon the fact that the Statutory Authority is an extended hand of the State, with the responsibility of implementing development projects and several concessional allotments have been made towards marginalised sections of society, on a no profit basis. Additionally, he canvassed that the compensation cannot be fixed at the current market value considering the fact that the rates would have increased over time on account of planned development carried out in neighbouring areas postacquisition.

A pointed reference was also made to the overall development of the Township in the National Capital Region. Further, he maintained that the circle rate might not accurately reflect the correct market value of the acquired land at the relevant cut off dates, as the acquisition was made of an undeveloped large tract of agricultural land.

15. In the context of the Miscellaneous Applications seeking to rely on Bir Singh (supra), for recalling the orders dismissing the SLPs, Mr. Kumar argued that they ought not to be entertained, being not maintainable, as none of these applicants invoked the review jurisdiction of this Court within a reasonable period of time.

He pointed out significant delays of over nine years in some of the cases, and vehemently urged this Court to not enhance compensation considering that the land had already been allocated to third parties and it is now impossible to recover the enhanced compensation amount from such allottees in the absence of any binding contract to this effect. Mr. Kumar underscored that in many of these SLPs in which Miscellaneous Applications have now been filed, Review and Curative Petitions had been filed and dismissed earlier by this Court.

C. CONTENTIONS ON BEHALF OF THE LANDOWNERS

16. Per contra, Mr. Yatinder Singh and Mr. Vimlesh Kumar Shukla, Learned Senior Counsels representing the landowners, at the outset very fairly acknowledged that the decision in Bir Singh (supra) was founded on a bona fide factual error of misreading the sale exemplar relied upon therein. They however bounced back to claim compensation not less than the rate awarded in Bir Singh (supra).

In this regard, they drew our attention to evidence establishing parity for awarding compensation at the rate determined by this Court in Bir Singh (supra). They banked upon the sale exemplar dated 22.02.1989, which, according to them, is similar to the sale instance relied upon in Bir Singh (supra), wherein a plot of 470 sq. yds. was sold at INR 446 per sq. yd. The sale deed dated 22.02.1989, being for a small piece of land, it was urged, ought not to undermine its relevance.

They made a pointed reference to the Reference Court's order, which the NOIDA authorities relied upon, was also based on a sale deed of only 400 sq. yds. Learned Senior Counsels also disputed NOIDA's claim that the said sale deed was within abadi land, and drew our attention to the map indicating it was an agricultural land only.

17. It was then argued that the factors necessary for evaluating the potentiality of land are the same as those used towards fixing the circle rate. The circle rate, therefore, is a crucial and relevant piece of evidence and ought to be employed in determining the market value of the land for which the said circle rate was affixed. The acquired land was claimed to be situated amidst developed areas and near the Amity Public School, a large Golf Course, a Film City, and with developed Residential Colonies and Shopping Areas on all three sides.

The acquired land being in the heart of NOIDA, which has become one of the largest industrial and commercial cities in India, is in proximity to the DSC Shade, Okhla Barrage Highway and the MAT Public School of Business Management. Even parts of the national capital - Delhi, were shown as being no more than a few kilometres away, with important national landmarks such as Connaught Place, Nehru Place, the Supreme Court and the ITO all being within a 15-kilometre radius.

They further highlighted that the lands in nearby Sector 18, were acquired in 1976 for between INR 7,200 to INR 10,200 per bigha. Further, a plot of 575 sq. yds. was leased by the NOIDA authorities on 28.08.1988 for INR 11,576 per sq. yd. and another similar plot was leased for INR 22,125 per sq. yd. on 09.12.1988.

18. Other Learned Counsel for some of the landowners also articulated that Bir Singh (supra) could not be revisited as the Review and Curative Petitions against it had already been dismissed. Parity was once again sought with Bir Singh (supra), invoking Section 28A of the 1894 Act.

D. ISSUES

19. In our considered opinion, the following questions arise for deliberation by this Court: i. Should compensation be enhanced, and if so, to what extent? How should the quantum be calculated? ii. Are the Miscellaneous Applications maintainable? iii. Can the landowners rely upon Section 28A of the 1894 Act to seek parity with Bir Singh (supra)?

E. ANALYSIS

E.1. Quantum of Compensation

20. The primary issue in this case centres around the quantum of compensation granted to the landowners, and the inconsistency and disparity in the amounts awarded at different stages of the judicial process.

21. To begin with, we may clarify that although this Court in Bir Singh (supra) had enhanced compensation to INR 449 per sq. yd., both sides very fairly agreed during the course of hearing that the same was founded on a bona fide factual error. Bir Singh (supra) relied on a sale deed dated 16.12.1988, noting the value of the land therein as being INR 400 per sq. yd.

However, it is apparent that the figure of 400 actually denoted the area and size of the plot and not its sale value. Nevertheless, the decision was not revisited by this Court while exercising Review and Curative jurisdictions - likely on account of the practical difficulties in recovering the excess compensation amount already paid to the expropriated land owners and given the larger interest of justice.

While Bir Singh (supra) thus remains a binding precedent inter-se the parties, it would not bind us because of its sui generis factual position. Given this, it becomes necessary for us to determine the market value of the land independently.

E.1.1 Evidence used in determining the quantum of compensation

22. Firstly, it may be refreshed that for the purpose of evaluating compensation for the acquired land, Section 23(1) of the 1894 Act, acts as a lighthouse. It stipulates that:-

"23. Matters to be considered in determining compensation.-

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-

first, the market-value of the land at the date of the publication of the notification under Section 4, subsection (1);

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land."

23. While the 1894 Act does not provide a strict definition of the term 'market-value', it essentially refers to the price that the asset would likely fetch in an open market transaction. Incontrovertibly, the Legislature has consciously chosen not to define this term, as is discernible from the reports of the Select Committee, wherein they posited that "no attempt would be made to define strictly the term in the Act and that the price which a willing vendor might be expected to obtain in the market from a willing purchaser, should be left for the decision primarily of the Collector and ultimately of the Court."2 Hence, during the framing of the 1894 Act, it was understood that the 'market value' would simply be the price which a willing buyer would give to a willing seller.

24. Given the statutory intention behind term 'market value', the natural corollary is that the sale exemplars reflecting the prices paid by a willing buyer to a willing seller would be the most relevant piece of evidence for determination of such value.3

25. However, for utilizing these sale deeds as the foundation for determining compensation, it is imperative that these sale instances satisfy certain criteria of comparability. In this regard, it is necessary that the sale deeds adhere to the following factors:

i. the sale must be a genuine transaction;

ii. the sale deed must have been executed at the time proximate to the date of the notification issued under Section 4 of the 1894 Act;

iii. the land covered by the sale must be in the vicinity of the acquired land; and

iv. the nature of such land, including its size, must be similar to the acquired land.4

26. Adverting to the facts of the case in hand, it is germane to our analysis to note that the landowners have placed their reliance on only one sale deed dated 22.02.1989, which values the land at INR 446 per sq. yd. Although this sale deed pertains to the land situated within the same village, its plot size is significantly smaller-being only 470 sq. yds.-as compared to the vast area under acquisition, which spans approximately 492 acres or 23.81 lakh sq. yds. There is no gainsaying that the prices of small plots of land cannot ordinarily serve as the basis of evaluating the market value of larger tracts of land.5

However, there is no legal impediment against considering sale exemplars of smaller parcels of land, provided they are subjected to cuts or deductions.6 The reasoning behind this exercise is that smaller plots of land are typically valued at a higher price owing to their developed nature, contrasting with larger tracts that require substantial areas to be set aside towards setting up infrastructure such as roads, parks or other civic amenities.7 Therefore, adjusting these values through appropriate cuts would provide a more accurate approximation of the land's value.

27. However, in this particular instance, the acquired land exceeds the land in the cited sale exemplar by more than 5000 times. The issue in this context is not restricted to the smaller size of the land in the sale exemplar but rather the fact that there is only a solitary instance of sale brought on record. Had there been multiple such sale instances, there could have been some basis for estimation that this Court could have deduced from.

However, the sale deed dated 22.02.1989, which is the sole example relied upon, not only inadequately represents the values of the land being acquired but also introduces significant risk and imprecision, if relied upon as the sole foundation of our assessment. We are, therefore, extremely reluctant to rely on this sale deed

as a direct piece of evidence for determining the fair and just market value of the acquired land.

28. Furthermore, a closer look at the lease deeds submitted by the landowners also reveals that they pertain to properties not comparable to the land under acquisition. For instance, the lease deeds dated 01.09.1988 and 09.12.1988 pertain to well-developed commercial spaces in a Shopping Complex. No such development or construction had taken place on the acquired lands.

Commercialisation of the acquired land can only occur after it is fully developed, to attract similar lease offers that could exhibit comparable values. The lands as they stood as on the date of the Section 4 notification were not exactly analogous to the leased-out plots or commercial buildings relied upon by the landowners. These lease deeds hence cannot be mechanically relied upon either.

29. Finally, the landowners seek refuge in the circle rate of the area in which the subject lands are situated - contending that it was as much as INR 1500 per sq. yd. in the year 1991. We must note, however, at the outset that this claim is unsubstantiated by any reliable material on record.

A document enumerating the circle rates of 37 villages, based upon notification issued by the State / NOIDA authorities, dated 30.11.1989, was, of course, produced by the landowners to demonstrate that the NOIDA authority itself determined the rate for lands in village Chhalera Bangar at INR 650 per sq. yd. (for lands adjoining the road) and INR 350 per sq. yd. (for the lands away from the road); but this too cannot be the sheet anchor as the said circular was apparently issued with the primary object of levying stamp-duty on an estimated price value of the land in the year 1989.

30. Consequently, given our analysis above, it is apparent that there exists no direct piece of evidence to determine fair and just compensation in the instant cases. We must, therefore, resort to the settled principle of guesstimation.8

E.1.2. Applicability and use of the principle of guesstimation

31. Guesstimation is a heuristic device that enables the court, in the absence of direct evidence and relevant sale exemplars, to make a reasonable and informed guess or estimation of the market value of the land under acquisition, and concomitantly the compensation payable by the appropriate Government. In that sense, guesstimation hinges on the Court's ability to exercise informed judgement and expertise in assessing the market value of land, especially when the evidence does not tender a straightforward answer.

32. This principle accentuates the fundamental understanding that determining compensation for land is not a matter of exact science but involves a significant element of estimation. Indeed, this holds true for valuation of land in general, which is affected by a multitude of factors such as its location, surrounding market conditions, feasible uses etc. Accordingly, while evidence and calculations can aid in estimating the land value, they ultimately serve as tools for approximation rather than precision.

Instead, land valuation-and consequently the affixation of compensation- remains an exercise of informed estimation, requiring the integration of diverse data points and professional judgment concerning subjective, intangible and dynamic elements. Pursing a single precise valuation or compensation figure is bound to be unjust, representing a rigid approach and a procrustean endeavour at best.

33. Having said that, it is important to clarify that the process of determining compensation is not entirely subjective. While it may not be possible to arrive at a definitive figure, the exercise is still epistemologically objective in so far as it is grounded in evidence and the consideration of relevant factors.

In case the compensation is fixed agnostically to the factors affecting the valuation of the land, the resultant figure might be arbitrary and may fail to adequately compensate the landowner for the expropriated land. Hence, while some subjectivity may exist in fixing the final figure based on these factors, the sliding scale of judicial discretion cannot be extended to mere speculation.

34. Accordingly, while the Court can use the principle of guesstimation in reasonably estimating the value of land in the absence of direct evidence, the exercise ought not to be purely hypothetical. Instead, the Court must embrace a holistic view and consider all relevant factors and existing evidence, even if not directly comparable, to arrive at a fair determination of compensation. Trishala Jain v. State of Uttaranchal,9 summarizes these yardsticks as follows:

"65. It will be appropriate for us to state certain principles controlling the application of "guesstimate":

(a) Wherever the evidence produced by the parties is not sufficient to determine the compensation with exactitude, this principle can be resorted to.

(b) Discretion of the court in applying guesswork to the facts of a given case is not unfettered but has to be reasonable and should have a connection to the data on record produced by the parties by way of evidence. Further, this entire exercise has to be within the limitations specified under Sections 23 and 24 of the Act and cannot be made in detriment thereto."

35. Broadly, such relevant factors can be divided into three categories:

i. Characteristics of the land: The valuation of land is undeniably influenced by its inherent characteristics. A parcel of land endowed with advantageous features that enhance its accessibility and usability tends to command higher market price and thus, a greater valuation in comparison to lands lacking such attributes. Key factors contributing to such features include connectivity via roads and other means of transportation, the size and shape of the land, availability of essential utilities such as electricity and water, the evenness or levelling of the land's surface, width of frontage, and nature and status of the surrounding area etc.;

ii. Future potentiality of the land: In addition to its characteristics, the valuation of land is also influenced by its potentiality. Lands with the potential to be used for commercial or residential purposes; that are located in or near a developed area; or which are proximate to tourist destinations, are perceived to hold greater value in the future. Consequently, landowners may anticipate higher future prices and accordingly demand higher sale prices compared to lands lacking these attributes. Accordingly, these features also lead to an increase in valuation; and

iii. Factors denoting market sentiment: Market sentiments are powerful drivers of land valuation. Even if a particular piece of land possesses all desirable features, its valuation can still suffer if the market conditions at the time of publication of the notification under Section 4 of the 1894 Act were unfavourable. Factors such as economic recessions, political instability, speculative investments or real estate crisis can impact the perceived value of the land. Thus, these extraneous economic and political factors must also be considered when assessing land valuation.

36. In the instant case, the evidence led by parties provides several relevant factors, as enumerated above. For instance, while the sale deed produced by the landowners cannot directly be relied upon for determining the price of the land, given its relative proximity, it nonetheless establishes its potentiality in the form of possible use towards residential purposes.

37. Likewise, the lease deeds further underscore the commercial potentiality of land in the adjoining vicinity-as Sector 18 is situated only 3- 4 kilometres away from the subject land. Moreover, as in the case of Sector 18, the acquired land is well connected to major roads and has adequate supply of water and electricity. Further, as highlighted by the landowners, the land under acquisition lies near prominent amenities and landmarks such as the Amity Public School, a large Golf Course, and a prominent tourist attraction - the Film City. Apart from that, it is also in proximity to the DSC Shade, Okhla Barrage Highway and the MAT Public School of Business Management.

38. Additionally, the acquired land is enveloped by developed colonies and markets on all three sides. Towards the western periphery, it is bordered by N.T. Road which offers excellent connectivity to the Kalindikunj area near Delhi via the Yamuna Barrage. Beyond the southern side, the land is flanked by a six-lane road leading towards Delhi through Noida, alongside residential enclaves designated for Army Officers, along with the aforementioned golf course.

Eastward, there are developed sectors 43 and 45, as well as the lands belonging to village Sadarpur. Lastly, the acquired land benefits from convenient access to key landmarks in Delhi including the Supreme Court, Connaught Place and the ITO, highlighting its strategic location vis-à-vis its potentiality and future multiplicity of its market value at the time of issuance of the Section 4 notification.

39. More importantly, the land is not uneven, prone to flooding or subject to construction restrictions. Taken together, all these facts and evidence lead to the reasonable inference that the subject land had significant potential for future commercial development at the time of issuance of the notification under Section 4, akin to the developments witnessed in the lease deeds for Sector 18, NOIDA.

40. At this juncture, we may clarify that the mere absence of multiple sale exemplars also does not by itself support a conclusion that the market condition was unfavourable or that the lands had stagnant demand and low value, as sellers often hold on to lands whose prices are in the process of increasing or likely to increase in the near future, owing to urbanisation or other upcoming development projects and changes.

41. Thus, even devoid of numerous sale exemplars showing frequent transactions and considering the factors enumerated in the preceding paragraph, we are inclined to estimate that the value of the subject land was appreciating at around 15% annually. This rough estimate of ours is supported by the decision of this Court in ONGC Ltd. v. Rameshbhai Jivanbhai Patel,10 which recognised that a 15% annual growth in prices can be assumed for lands situated in urban areas.

42. Regarding the quantum of compensation and/or valuation of the acquired land, an escalation is merited even if we were to rely on the lower end of the rates fixed by NOIDA itself in 1989 in Chhalera Banger, for lands lying away from the road, being INR 350 per sq. yd. Given that these rates were released by NOIDA towards the latter half of 1989, and considering how the acquisition process began on 05.01.1991, it would be appropriate to apply a 15% escalation for one year to this price - bringing our total guesstimate to Rs. 403 per sq. yd.

43. In order to further substantiate this estimation, we place our reliance on the decision rendered in Krishan Kumar v. Union of India,11 where this Court

acknowledged that while sale exemplars may not directly establish the amount of compensation to be granted, compensation could be determined applying the principle of guesstimation, based on the circle rate after granting a marginal increase over the same.

44. In light of the above analysis, the evidence produced by both, the State and the landowners, and on employing the principle of guesstimation, it stands conclusively surmised that the landowners herein are entitled to an enhancement in the compensation awarded. Accordingly, we partly allow these present appeals and revise the rate of compensation to INR 403 per sq. yd. for the entire acquired land except such part of it which was subject matter of the decision in Bir Singh (supra).

E.2. Maintainability of the Miscellaneous Applications

45. The miscellaneous applications in the present batch of cases before us seek parity with the rate of compensation awarded in Bir Singh (supra). Learned Senior Counsel for NOIDA is not wrong in contending that this would effectively amount to recall of the previous orders and part acceptance of the appeals by way of Review based on a subsequent change of law.

46. Although, as laid down in State (NCT of Delhi) v. K.L. Rathi Steels Ltd.,12 Miscellaneous Applications based on change of law are typically not maintainable, except in certain exceptional circumstances, and in the interests of justice. These circumstances pertain to a position where the law is in a continuous state of flux and/or where not allowing the applications would have a significant detrimental effect and result in the miscarriage of justice. It seems to us that the current situation exemplifies such a scenario.

47. In our considered opinion, it would indeed be unfair to single out a few individual landowners and deny them the benefit of just compensation, owing to factors and processes outside their control. Comparing the impact of not allowing these miscellaneous applications solely on grounds of maintainability vis-à-vis allowing them marginally higher compensation in the larger interest of justice-we are persuaded to accede to the landowners' prayers. Disallowing these applications would in a way be against the spirit of Article 14 of our Constitution and will defy the right to treat those placed equally in an equal manner.

48. Consequently, invoking our powers under Article 142 of the Constitution with a view to do complete justice between the parties, we deem it fit to enhance compensation notwithstanding the dismissal of earlier Review and Curative Petitions. Moreover, it is clarified that since our analysis above is agnostic to the decision in Bir Singh (supra), we are, therefore, not applying a subsequent

change of law, but instead only correcting a judicial error and restoring uniformity in a case involving peculiar circumstances.

49. Consequently, the landowners in these miscellaneous applications are also held entitled to the new revised rate of INR 403 per sq. yd. for their acquired land.

E.3. Applicability of Section 28A of the 1894 Act

50. Section 28A of the 1894 Act serves as a legislative safeguard against discrimination in the grant of compensation. It stipulates that if an individual whose land is acquired receives enhanced compensation, all other affected persons covered by the same notification under Section 4 of the 1894 Act are entitled to seek parity with such enhancement.

51. This provision was not originally a part of the 1894 Act and was introduced through the Land Acquisition (Amendment) Act, 1984. The Statement of Objects and Reasons accompanying the aforementioned Amendment Act, clarified that Section 28A aimed to rectify disparities between landowners.

It addressed situations where more affluent landowners could avail themselves of a reference to the civil court under Section 18, while inarticulate and poor people often could not resort to a similar recourse, resulting in inequality in compensation for similar quality of land. The provision sought to remedy this by allowing all affected parties covered by the same notification to seek redetermination of compensation once the court grants higher compensation under Section 18 to any one of them.13

52. In the instant case, however, we are not delving deep into the landowners' prayer for parity based on Section 28A of the 1894 Act in consonance with the Bir Singh (supra) judgement. We do so for three reasons:

(a) that as mentioned in para 22 of this judgement, Bir Singh (supra) would not bind us given its precarious and sui generis facts;

(b) the landowners have not demonstrated compliance with the procedural technicalities of this provision, such as writing to the Collector within the prescribed limitation period; and

(c) the issue is rendered academic in light of our analysis above where we have independently revised the rate of compensation to INR 403 per sq. yd for one and all.

53. Similarly, the plea hovering around Article 14 of the Constitution to seek uniformity in the matter of award of compensation, has also become academic, as such a relief already stands granted to all the landowners, though on different grounds.

F. CONCLUSION

54. The present factual situation had three set of cases - appeals filed by the landowners, appeals filed by NOIDA, and the Miscellaneous Applications filed by the landowners. Without disturbing the ratio of Bir Singh (supra) and the compensation granted to landowners therein, and with a view to put a quietus on this long-standing dispute, the landowners' appeals are allowed in part; the appeals by NOIDA authorities against the grant of compensation are also allowed in part, such that the rate of compensation is enhanced from INR 340 per sq. yd. to INR 403 per sq. yd. and where the High Court has, following Bir Singh (supra) granted compensation at INR 449 per sq. yd., the same is reduced to INR 403 per sq. yd.

55. The enhanced compensation amount shall be deposited with the Reference Court within a period of eight weeks. It shall then be disbursed to the claimants at the earliest.

56. All the matters stand disposed of in the aforementioned terms and directions.

.....J. (Surya Kant)

.....J. (K.V. Viswanathan)

New Delhi

July 10, 2024

1 (2018) 16 SCC 445.

2 Commentary on the Land Acquisition Act, Om Prakash Aggarwal, 8th Edn. (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2008), pg. 761.

3 Administrator General of W.B. v. Collector, (1988) 2 SCC 150, para 8; Ram Kanwar v. State of Haryana, (2020) 17 SCC 232, para 11

4 Shaji Kuriakose v. Indian Oil Corpn. Ltd., (2001) 7 SCC 650, para. 3

5 ONGC Ltd. v. Rameshbhai Jivanbhai Patel, (2008) 14 SCC 745.

6 Ravinder Kumar Goel v. State of Haryana and Others, 2023 SCC OnLine SC 147

7 Atma Singh v. State of Haryana and others, (2008) 2 SCC 568.

8 Trishala Jain v. State of Uttaranchal, (2011) 6 SCC 47, para 63.

9 (2011) 6 SCC 47, para 65.

10 (2008) 14 SCC 745, para 14.

11 (2015) 15 SCC 220, para 22-25.

12 2024 SCC OnLine SC 1090, para 113.

13 Mewa Ram v. State of Haryana, (1986) 4 SCC 151, Para 4; Babua Ram v. State of U.P, (1995) 2 SCC 689, para 36

IN THE SUPREME COURT OF INDIA

State of West Bengal
Vs.
Union of India

Original Suit No. 4 of 2021

HEADNOTE – Explained the scope of Article 131 of Constitution of India

JUDGMENT

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B.R. GAVAI, J.

I. INTRODUCTION:

1. The present suit has been filed by the State of West Bengal against Union of India seeking the following reliefs:

i. "Pass a Judgment and Decree declaring that registration of cases by the Defendant after withdrawal of Notification under Section 6 of the DSPE Act by the Plaintiff is unconstitutional and non-est;

ii. Pass Judgment and Decree thereby restraining and forbearing the Defendant from registering any case and/or investigating a case in connection with offences committed within the territory of State of West Bengal after withdrawal of the consent under Section 6 of the DSPE Act by the State;

iii. Pass a Judgment and Decree declaring that the action of the Defendant in registering cases by the Defendant after withdrawal of Notification under Section 6 of the DSPE Act by the Plaintiff is violative of Constitution of India as well as violative of the basic structure of the Constitution and the principle of federalism;

iv. Pass a Judgment and Decree thereby quashing all cases registered by the Defendant after withdrawal of Notification under Section 6 of the DSPE Act by the Plaintiff and transmit those records to the Plaintiff for registration of regular cases by the police force of the Plaintiff;

v. Ad-interim order restraining the Defendant from proceeding with any investigation on an FIR and any proceeding arising therefrom, registered after November 16, 2018 when the consent under Section 6 of the DSPE Act was withdrawn by the Plaintiff, other than investigation with respect to an FIR filed/registered on an order of a competent court of law;

vi. Pass a Judgment and Decree granting such other and further reliefs that are deemed fit in the facts and circumstances of the case."

2. On filing of the suit, preliminary objections have been raised by the defendant - Union of India with regard to the maintainability of the present suit. Through this judgment, we have dealt with the contentions of the parties on the aspect of maintainability.

3. For the consideration of the present issue of maintainability, we have heard Shri Tushar Mehta, learned Solicitor General of India appearing on behalf of the defendant-Union of India and Shri Kapil Sibal, Shri Abhishek Manu Singhvi and

Shri Bishwajit Bhattacharya, learned Senior Counsel appearing on behalf of the plaintiff-State of West Bengal.

II. SUBMISSIONS OF DEFENDANT:

4. The basic objection with regard to tenability of the suit is based on Article 131 of the Constitution of India (for short, "the Constitution"). The learned Solicitor General submitted that, upon interpretation of Article 131 of the Constitution, it is clear that the provisions of Article 131 of the Constitution are subject to the other provisions of the Constitution. He therefore submitted that, since the issue involved in the present lis is also an issue arising in certain appeals pending before this Court, under Article 136 of the Constitution, a fresh suit under Article 131 of the Constitution would not be tenable.

It is submitted that the term "subject to the provisions of this Constitution" has to be interpreted as "subject to the other provisions of the Constitution including Article 136". It is therefore submitted that, since the issue with regards to the same subject matter is pending before this Court under Article 136 of the Constitution, a suit for the same purpose under Article 131 of the Constitution is barred.

5. The learned Solicitor General further submitted that, in various proceedings filed either under Article 226 before the High Court or under Article 136 of the Constitution wherein the State of West Bengal is a party, the question with regards to the jurisdiction of the Central Bureau of Investigation (for short "CBI") to investigate cases within the State of West Bengal after 16th November 2018, i.e., the date on which the consent under Section 6 of the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as "DSPE Act") was withdrawn arises for consideration.

6. While making a reference to the term "subject to the provisions of this Constitution" in Article 131 of the Constitution, the learned Solicitor General submitted that, since the subject matter of the present suit is also pending before this Court or the High Courts under Article 136 or 226 of the Constitution respectively, the present suit would not be tenable.

7. The learned Solicitor General further submitted that, perusal of the entire matter would reveal that, taking the averments in the plaint at its face value, it can be seen that no cause of action has been made out against the defendant to the suit i.e. the Union of India. Shri Mehta submitted that all the reliefs including declaration of the registration of cases being unconstitutional, restraining and forbearing the defendant from registering any case etc., are all related to the CBI.

It is submitted that the cases referred to in the plaint are registered at the instance of the CBI and the Union of India has no role to play. It is submitted that, though the reliefs are claimed against the CBI, it has not been made a party to the suit and that this has been rightly done inasmuch as if the CBI was made a party, the suit would not have been maintainable under Article 131 of the Constitution. It is submitted that, since the defendant has no role to play in the registration of cases; even if the suit is decreed, the said decree would remain unenforceable against the present defendant.

Reliance in this respect is placed on the judgments of this Court in the cases of Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and Others[1] and Ram Kumar v. State of Uttar Pradesh and Others[2]. It is therefore submitted that the present suit is liable to be dismissed on the ground of misjoinder or nonjoinder of parties.

8. The learned Solicitor General further submitted that the present suit is also liable to be dismissed on the ground of non-laying down of the factual foundation in the suit. It is submitted that, unless there is a factual basis in the suit itself, no legal arguments arising therefrom can be entertained. Reliance in this respect is placed on the judgment of this Court in the case of D.M. Deshpande and Others v. Janardhan Kashinath Kadam (Dead) By LRs and Others[3] and the judgment of the Privy Council in the case of Attorney-General of the Colony of Fiji v. J.P. Bayly Limited[4].

9. Shri Mehta further submitted that, Article 131 of the Constitution clearly provides as to who can be parties to the suit under Article 131 of the Constitution. He submitted that, even for a moment, if it is assumed that CBI is an instrumentality of the State under Article 12 of the Constitution, still the suit would not be maintainable.

It is submitted that the expanded meaning given to the term 'State' under Article 12 of the Constitution cannot be made applicable to the term 'Union' or 'State' mentioned under Article 131 of the Constitution. Reliance in this respect is placed on the Constitution Bench judgments of this Court in the cases of State of Bihar v. Union of India and Another[5], State of Rajasthan and Others v. Union of India and Others[6] and Tashi Delek Gaming Solutions Limited and Another v. State of Karnataka and Others[7].

10. The learned Solicitor General further submitted that the dispute, at the most, is between the State of West Bengal and the CBI. Reliance in this respect is placed on the judgment of this Court in the case of National Textile Corporation Limited v. Nareshkumar Badrikumar Jagad and Others[8].

11. Relying on the judgment of this Court in the case of Vineet Narain and Others v. Union of India and Another[9], the learned Solicitor General further submitted that the responsibility of superintendence over the CBI's functioning has been entrusted with the Central Vigilance Commission (for short "CVC"). It is submitted that CVC is an independent body appointed by an independent collegium. It is submitted that this Court has clearly emphasized that the CBI has to be viewed as a non-partisan agency.

It is submitted that no control is vested with the Central Government insofar as CBI is concerned. The learned Solicitor General submitted that Section 8 of the Central Vigilance Commission Act, 2003 (hereinafter referred to as "CVC Act") would make it clear that the CBI is under superintendence of the CVC and not the Union of India.

He submitted that the proviso to Section 8(1)(b) of the CVC Act makes it clear that even the CVC is not empowered to exercise powers in such a manner so as to require the Delhi Special Police Establishment (for short, "DSPE") to investigate or dispose of any case in a particular manner. It is submitted that this Court, in the case of Centre for Public Interest Litigation and Others v. Union of India and Others[10] held that the power of superintendence can neither be used by the CVC for interfering with the manner and method of investigation by the CBI nor can the CBI be directed to exercise its powers in a particular manner.

12. The learned Solicitor General further submitted that Section 4 of the DSPE Act would also clearly reveal that the administration of the CBI is with the CVC and not the Union of India.

13. Shri Mehta further submitted that the plaintiff has suppressed the material fact that most of the cases stated in the plaint have been registered on the directions of the High Court issued under Article 226 of the Constitution. He submitted that, under Order XXVI Rule 9 of the Supreme Court Rules, 2013 (hereinafter referred to as "SC Rules"), the plaintiff, when he sues upon a document in his possession, is required to deliver such document or a copy thereof with the plaint and under Order XXVI Rule 10 of the SC Rules, the plaintiff, when he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, is required to enter such documents in a list to be added or annexed to the plaint.

It is submitted that, admittedly, the requirements under Order XXVI Rules 9 and 10 of SC Rules have not been fulfilled in the present plaint. Relying on the judgment of this Court in the case of S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. and Others[11], it is submitted that when a party withholds a vital document in order to gain advantage on the other side, then such

a party would be guilty of playing fraud on the court as well as on the opposite party.

He therefore submitted that, on this short ground alone, the suit is liable to be dismissed. In addition to S.P. Chengalvaraya Naidu (Dead) by LRs. (supra), reliance is placed on the judgments of this Court in the cases of Atma Linga Reddy and Others v. Union of India and Others[12] and Kazi Lhendup Dorji v. Central Bureau of Investigation and Others[13]. It is therefore submitted that, in view of Order XXVI Rule 6 of the SC Rules, the plaint is liable to be rejected.

14. In response to the contention of the plaintiff regarding the defendant not filing an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") is concerned, it is submitted that the defendant has taken preliminary objections with regard to the maintainability of the suit itself and therefore there is no substance with regard to the said submission of the plaintiff.

III. SUBMISSIONS OF PLAINTIFF:

15. Shri Sibal, on the contrary submitted that, for considering the question as to whether the suit is maintainable or not, only the averments made in the plaint will have to be taken into consideration. It is submitted that, only the averments made in the plaint can be considered to decide as to whether the plaint discloses any cause of action or not. It is submitted that, perusal of the averments made in the plaint would clearly reveal that a cause of action has been made out against the defendant - Union of India.

It is submitted that, perusal of Section 2 of the DSPE Act would reveal that it is the Central Government that is empowered to constitute a special police force to be called the DSPE for the investigation of offences notified under Section 3 of the DSPE Act. It is submitted that, perusal of Section 3 of the DSPE Act would also reveal that it is the Central Government that is empowered to specify the offences or classes of offences which are to be investigated by the DSPE.

He submitted that, perusal of sub-section (1) of Section 4 of the DSPE Act would reveal that the superintendence of the DSPE vests with the CVC only for the investigation of offences committed under the Prevention of Corruption Act, 1988 (hereinafter referred to as "PC Act"). He submitted that sub-section (2) of Section 4 clearly reveals that, except what has been provided in sub-section (1) thereof, the superintendence of DSPE in all other matters shall vest with the Central Government.

He submitted that sub-section (3) of Section 4 would reveal that the administration of the said police establishment shall vest in an officer appointed

in this behalf by the Central Government and that such an officer, in respect of the CBI, is entitled to exercise powers exercisable by an Inspector- General of Police in respect of the police force in a State.

16. Shri Sibal further submitted that sub-section (1) of Section 5 of the DSPE Act would reveal that it is only the Central Government that is empowered to extend to any area (including Railway areas) in a State, the powers and jurisdiction of members of the CBI for the investigation of any offences or classes of offences specified in a notification under Section 3 of the DSPE Act. He submitted that under sub-section (2) of Section 5, a member of the CBI may, when by an order under sub-section (1) thereof, the powers and jurisdiction of the CBI are extended to any such area, discharge the functions of a police officer in that area.

However, this is again subject to any orders which the Central Government may make in this behalf. It is submitted that, perusal of sub-section (3) thereof would reveal that any member of CBI of or above the rank of Sub-Inspector is entitled to exercise the powers of the officer in charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.

This is again subject to the orders which the Central Government may make in that behalf. It is therefore submitted that the provisions of the DSPE Act would reveal that CBI cannot be said to be an instrumentality of a State by giving an expanded meaning to the term 'State' in Article 12 of the Constitution but is one of the organs of the Union of India through which it derives powers to investigate offences.

17. It is further submitted that the power available with the Central Government for extension of the jurisdiction of CBI to other areas is subject to the consent of such State Government under Section 6 of the DSPE Act. It is therefore submitted that if consent is given by a State and subsequently withdrawn, then the CBI will not have jurisdiction to exercise the powers in that State.

18. Shri Sibal submitted that grant of consent under Section 6 of the DSPE Act is a privilege. It is the discretion of the State as to whether such a privilege is to be granted or not. He submitted that the cause of action in the present suit is that, after withdrawal of the consent which was granted under Section 6 of the DSPE Act by the plaintiff, the Central Government has no jurisdiction to authorize investigating agency (CBI) to register cases in the State of West Bengal.

19. Shri Sibal further submitted that the interpretation sought to be given by the defendant to the words "subject to the provisions of this Constitution" as

appearing in Article 131 of the Constitution is incorrect. It is submitted that the correct interpretation would be that when there is some other provision in the Constitution prohibiting this Court from exercising its jurisdiction, then a suit under Article 131 of the Constitution would not be tenable. He refers to Articles 262 and 279A(11) of the Constitution in this regard. He submits that the words "subject to the provisions of this Constitution" would not make the present suit non-maintainable.

20. Dealing with the arguments of the learned Solicitor General on Order XXVI Rule 6 of the SC Rules, Shri Sibal submitted that the plaint can be rejected only when it either does not disclose a cause of action or where the suit appears from the statement in the plaint to be barred by any law. It is submitted that neither of the grounds is available in the present case. Insofar as the argument with regard to Order XXVI Rules 9 and 10 of the SC Rules are concerned, Shri Sibal submitted that there is sufficient compliance with regard to the said provisions.

21. With regard to the allegations regarding suppression, Shri Sibal submitted that, out of so many instances listed in the plaint, only one or two cases are registered under the directions of the High Court. It is therefore submitted that there is no material suppression as alleged. Shri Sibal therefore pressed for rejection of the preliminary objections raised by the learned Solicitor General.

IV. LEGAL FRAMEWORK:

a. Supreme Court Rules, 2013

22. For appreciating the rival submissions, it will be relevant to refer to Order XXVI Rule 6 of the SC Rules, which reads thus:

"Order XXVI

Plaints

6. The plaint shall be rejected:-

(a) where it does not disclose a cause of action;

(b) where the suit appears from the statement in the plaint to be barred by any law."

23. It can thus be seen that a plaint is liable to be rejected where it does not disclose a cause of action or where the suit appears from the statement in the plaint to be barred by any law.

24. As such, it could be seen that the provisions in Order XXVI Rule 6 (a) and (b) are analogous to the provisions in clauses (a) and (d) of Order VII Rule 11 of the CPC.

25. It is a settled position of law that, for considering objections under Order VII Rule 11 (a) and (d) of the CPC, what needs to be looked into is only the averments made in the plaint. It is well settled that if the averments made in the plaint are germane then the pleas taken by the defendant in the written statement would be wholly irrelevant at this stage. Reference in this respect could be made to the judgments of this Court in the cases of Saleem Bhai and Others v. State of Maharashtra and Others[14], Sopan Sukhdeo Sable and Others v. Assistant Charity Commissioner and Others[15], Bhau Ram v. Janak Singh and Others[16] and Chhotanben and Another v. Kirtibhai Jalkrushnabhai Thakkar and Others[17].

26. In view of the word 'shall' used in the provisions, a duty is cast on the court to examine as to whether the plaint is hit by any of the infirmities provided in the six clauses of Order VII Rule 11 of the CPC. A duty is cast on the court to reject the plaint even without the intervention of the defendant. Reference in this respect could be made to the judgment of this Court in the case of Sopan Sukhdeo Sable (supra).

27. It is further settled that the averments made in the plaint have to be read as a whole and not in isolation. Reference in this respect could be made to the judgment of this Court in the case of Kirtibhai Jalkrushnabhai Thakkar (supra).

28. As already discussed hereinabove, the provisions under Order XXVI Rule 6 of the SC Rules are analogous to Order VII Rule 11 (a) and (d) of the CPC. We will have to therefore consider the preliminary objections as raised by the defendant in the light of the aforesaid legal provisions.

29. As already observed hereinabove, the word 'shall' casts a duty upon the court to consider as to whether the plaint is hit by any of the infirmities mentioned in the provision even without the intervention of the defendant. As such, we do not find any force in the submission of the plaintiff that the objections could not be considered in the absence of an application for the rejection of plaint filed by the defendant under Order XXVI Rule 6 of the SC Rules.

b. Article 131 of the Constitution:

30. It will be apposite to refer to Article 131 of the Constitution, which reads thus:

"131. Original jurisdiction of the Supreme Court.-

Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute-

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute."

31. It is thus clear that the jurisdiction of this Court, subject to the provisions of the Constitution, is to the exclusion of any other court. The jurisdiction has to be exercised for any dispute either between the Government of India and one or more States; or between the Government of India and any State or States on one side and one or more other States on the other; or between two or more States. The jurisdiction is also limited insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of legal right depends.

V. JUDICIAL PRECEDENTS:

a. State of Bihar v. Union of India:

32. The learned Solicitor General relied on the Constitution Bench judgment of this Court in the case of State of Bihar v. Union of India and Another (supra). In the said case, the State of Bihar had filed 9 suits against the Union of India who was the first defendant in all of the said suits. Whereas in 6 suits, the second defendant was Hindustan Steel Limited and in 3 others, the second defendant was Indian Iron and Steel Company Limited.

The cause of action in all the said suits was that "due to the negligence or deliberate action of the servants of both defendants, there was a shortage in the delivery of iron and steel material ordered by the plaintiff to various sites in the State of Bihar in connection with the construction work of the Gandak Project". It will be relevant to refer to the following observations made in the said judgment:

"3. Clauses (a), (b) and (c) of the article specify the parties who can appear as disputants before this Court. Under clause (a) it is the Government of India and one or more States; under clause (b) it is the Government of India and one or more States on one side and one or more other States on the other, while under clause (c) the parties can be two or more States without the Government of India being involved in the dispute. The specification of the parties is not of an inclusive kind.

The express words of clauses (a), (b) and (c) exclude the idea of a private citizen, a firm or a corporation figuring as disputant either alone or even along with a State or with the Government of India in the category of a party to the dispute. There is no scope for suggesting that a private citizen, a firm or a corporation can be arrayed as a party by itself on one side and one or more States including the Government of India on the other.

Nor is there anything in the article which suggests a claim being made by or preferred against a private party jointly or in the alternative with a State or the Government of India. The framers of the Constitution appear not to have contemplated the case of a dispute in which a private citizen, a firm or a corporation is in any way involved as a fit subject for adjudication by this Court under its exclusive original jurisdiction conferred by Article 131.

9. So far as the proceedings of the Joint Committee on Indian Constitutional Reform and the report of the Committee on the same are concerned, they make it clear that the object of conferring exclusive original jurisdiction on the Federal Court was that the disputes of the kinds specified between the Federation and the Provinces as the constituent units of the Federation, should not be left to be decided by courts of law of a particular unit but be adjudicated upon only by the highest tribunal in the land which would be beyond the influence of any one constituent unit.

10. Although Article 131 does not defines the scope of the disputes which this Court may be called upon to determine in the same way as Section 204 of the Government of India Act, and we do not find it necessary to do so this much is certain that the legal right which is the subject of dispute must arise in the context of the constitution and the Federalism it sets up. However, there can be no doubt that so far as the parties to the dispute are concerned, the framers of the Constitution did intend that they could only be the constituent units of the Union of India and the Government of India itself arrayed on one side or the other either singly or jointly with another unit or the Government of India.

18. It was argued by counsel on behalf of the State of Bihar that so far as the Hindustan Steel Limited, is concerned it is "State" and the suits in which the

Government of India along with Hindustan Steel Limited, have been impleaded are properly filed within Article 131 of the Constitution triable by this Court in its original jurisdiction. Reference was made to the case of Rajasthan State Electricity Board v. Mohan Lal [1967 3 SCR 377].

There the question arose between certain persons who were permanent employees of the Government of the State of Rajasthan and later placed at the disposal of the State Electricity Board and one of the questions was whether the appellant Board could be held to be "State" as defined in Article 12. This Court by a majority held that the Board was "other authority" within the meaning of Article 12 and therefore was a "state" to which appropriate directions could be given under Articles 226 and 227 of the Constitution.

It will be noted that under Article 12 all local or other authorities within the territory of India or under the control of the Government of India are "States" for purposes of Part III which defines and deals with the Fundamental Rights enshrined in the Constitution. The expression "the State" has the same meaning in Part IV of the Constitution under Article 36. No reason was shown as to why the enlarged definition of "State" given in Parts III and IV of the Constitution would be attracted to Article 131 of the Constitution and in our opinion a body like the Hindustan Steel Limited cannot be considered to be "a State" for the purpose of Article 131 of the Constitution."

[emphasis supplied]

33. It could be seen that this Court held that the express words of clauses (a), (b) and (c) of Article 131 of the Constitution exclude the idea of a private citizen, a firm or a corporation figuring as a disputant either alone or even along with a State or with the Government of India in the category of a party to the dispute. It has been held that the framers of the Constitution did not contemplate a dispute in which a private citizen, a firm or a corporation is in any way involved as a fit subject for adjudication by this Court under its exclusive original jurisdiction conferred by Article 131 of the Constitution.

It further observed that the legal right which is the subject of dispute must arise in the context of the Constitution and the Federalism it sets up. It has been unequivocally held that there can be no doubt that so far as the parties to the dispute are concerned, the framers of the Constitution did intend that they could only be the constituent units of the Union of India and the Government of India itself arrayed on one side or the other, either singly or jointly with another unit or the Government of India.

The Court then observed that, under Article 12 of the Constitution, all local or other authorities within the territory of India or under the control of the Government of India are "States" for purposes of Part III of the Constitution which defines and deals with the Fundamental Rights enshrined in the Constitution. It further observed that the expression "the State" has the same meaning as in Part IV of the Constitution under Article 36. It therefore observed that a body like the Hindustan Steel Limited cannot be considered to be "a State" for the purpose of Article 131 of the Constitution. A strong reliance has been placed on these observations by the learned Solicitor General.

b. State of Rajasthan v. Union of India:

34. The learned Solicitor General strongly relies on the judgment of this Court in the case of State of Rajasthan and Others v. Union of India and Others (supra). The brief facts of the said case are as under:

"In the elections held in March, 1977, the Janata party had secured overwhelming majority in the Lok Sabha. In some of the States, the Congress was continuing in power. In view of the complete and unequivocal rejection of the Congress Party, the Union Home Minister addressed a communication on 18th April 1977 to nine States asking them to advise their respective Governors to dissolve the Assemblies and seek a fresh mandate from the people.

Some of the States had filed suits before the Supreme Court praying for a declaration that the letter of the Union Home Minister was illegal and ultra vires of the Constitution of India and not binding on the plaintiffs and prayed for an interim injunction restraining the Central Government from restoring to Article 356 of the Constitution.

Preliminary objections were raised on behalf of the defendant - Union of India against the maintainability of the suits under Article 131 of the Constitution of India. The preliminary objections were raised on two grounds. The first was that under Article 131 of the Constitution of India, the 'State' and not the 'State Government' should be a party. The second was that the present matter did not involve a legal dispute."

35. It will be apposite to refer to the following paragraphs of the said judgment of Y.V. Chandrachud, J. (as His Lordship then was):

"108. The absence of the expression "State Government" and the use in its place of the expression "State" in Article 131, is said to furnish intrinsic evidence that for a suit to fall under that article, the dispute must arise between the Government of India and a State, not between the Government of India and the Government of a State.

The intrinsic evidence, it is argued, assumes greater credibility in the context that the article does employ the expression "Government of India" when what was meant was the government, as contra distinguished from the State. The presence of the particular expressions in Article 131 does not, in my opinion, support the inference suggested on behalf of the Union of India. The use of the phrase "Government of India" in Article 131(a) and (b) does not mean that one party to the dispute has to be the Government of the day at the Centre.

"Government of India" means "Union of India" because if there be merit in the logic that Article 131 does not comprehend disputes in which the Government of a State as contrasted with the State itself is interested, it must follow that correspondingly, the "Government of India" too cannot mean the Government for the time being in power at the Centre. The true construction of Article 131(a), true in substance and true pragmatically, is that a dispute must arise between the Union of India and a State.

109. This may sound paradoxical because if the preliminary objection is unsustainable, it would be easier to say that the expression "Government of India" means "Government in office" and the expression "State" means the State as a polity and not "the Government in Office". But convenient interpretations are apt to blur the significance of issues involved for interpretations. Therefore, the effort has to be to accept what the words truly mean and to work out the constitutional scheme as it may reasonably be assumed to have been conceived.

110. The dispute between the Union of India and a State cannot but be a dispute which arises out of the differences between the Government in office at the Centre and the Government in office in the State. "In office" means "in power" but the use of the latter expression may prudently be avoided with the realisation of what goes with power. But there is a further prerequisite which narrows down the ambit of the class of disputes which fall within Article 131. That requirement is that the dispute must involve a question, whether of law or fact, on which the existence or extent of a legal right depends.

It is this qualification which affords the true guide for determining whether a particular dispute is comprehended within Article 131. Mere wrangles between governments have no place in the scheme of that article. They have to be resolved elsewhere and by means less solemn and sacrosanct than a court proceeding. The purpose of Article 131 is to afford a forum for the resolution of disputes which depend for their decision on the existence or extent of a legal right. It is only when a legal, not a mere political, issue arises touching upon the existence or extent of a legal right that Article 131 is attracted.

113. I find it difficult to accept that the State as a polity is not entitled to raise a dispute of this nature. In a federation, whether classical or quasi-classical, the States are vitally interested in the definition of the powers of the Federal Government on one hand and their own on the other. A dispute bearing upon the delineation of those powers is precisely the one in which the federating States, no less than the Federal Government itself, are interested. The States, therefore, have the locus and the interest to contest and seek an adjudication of the claim set up by the Union Government. The bond of constitutional obligation between the Government of India and the States sustains that locus.

114. The expression "legal right" which occurs in Article 131 has to be understood in its proper perspective. In a strict sense, legal rights are correlative of legal duties and are defined as interests which the law protects by imposing corresponding duties on others. But in a generic sense, the word "right" is used to mean an immunity from the legal power of another: immunity is exemption from the power of another in the same way as liberty is exemption from the right of another.

Immunity, in short, is "no-subjection". [Salmond's Jurisprudence 11th Edn. pp. 276-7] R.W.M. Dias says in his "Jurisprudence" (1976 Edn., pp. 33-4) that the word "right" has undergone successive shifts in meaning and connotes four different ideas concerning the activity, or potential activity, of one person with reference to another. One of these four jural relationships, according to the learned Author, is the "you cannot" relationship, which is the same thing as the right of immunity which "denotes freedom from the power of another" (p. 58).

Paton's book on Jurisprudence (3rd Edn. p. 256) contains a similar exposition of legal rights. The legal right of the States consists in their immunity, in the sense of freedom from the power of the Union Government. They are entitled, under Article 131, to assert that right either by contending in the absolute that the Centre has no power to dissolve the Legislative Assemblies or with the qualification that such a power cannot be exercised on the ground stated.

115. It is true that the State, like the British Monarch, never dies. A Legislative Assembly may be dissolved, a Council of Ministers may go out of power, the President's rule may be introduced or imposed, or an emergency may be declared which can conceivably affect the States' powers in matters legislative and executive. The State survives these upheavals. But it is constitutionally unsound to say that the State, as a political entity, has no legal interest in such cataclysmic events and no legal rights to assert in relation thereto.

Were it so, which then are the legal rights which the State, as distinguished from its Government, can agitate under Article 131? Whatever be the nature of the

claim, the argument can always be put forward that the Government, not the State, is interested in making that claim. Such a rigid interpretation of the scope of Article 131 will virtually reduce it to a dead-letter and destroy a precious safeguard against the use of arbitrary power. The interpretation canvassed by the learned Additional Solicitor General must, therefore, be avoided, Insofar as the language of the article permits it which in my opinion it does.

117. The judgment of this Court in State of Bihar v. Union of India [(1970) 1 SCC 67 : (1970) 2 SCR 522] affords no real assistance on the question arising before us. In that case, the Court raised three issues in the suits filed under Article 131. The first issue which related to the question whether the suits were within the scope of Article 131 was not answered by the Court because it held on the second issue that the suits were not maintainable, since a private party was impleaded thereto.

The only assistance which may be derived from the judgment in that case is that it said that the disputes under Article 131 should be "in respect of legal rights and not disputes of a political character" and that though it was unnecessary to define the scope of Article 131, "this much is certain that the legal right which is the subject of dispute must arise in the context of the Constitution and the Federalism it sets up" (p. 529). These observations do not affect the construction which I have placed on Article 131.

I have endeavoured to show that it is competent to the State Governments to bring suits of the present nature under that article and that by these suits, the State Governments are raising a legal, not a political, issue. Their assertion is that the Government of India does not possess the constitutional power claimed by it and therefore, this Court should declare that they are immune from the exercise of that power. The States assert their legal right of immunity which, as explained above, denotes freedom from the power of another."

[emphasis supplied]

36. It could thus be seen that Justice Chandrachud observed that the true construction of Article 131(a), true in substance and true pragmatically, is that a dispute must arise between the Union of India and a State. His Lordship further observed that the dispute between the Union of India and a State cannot but be a dispute which arises out of the differences between the Government in office at the Centre and the Government in office in the State. It was further held that the further requirement for a dispute to fall within the ambit of the classes of disputes under Article 131 of the Constitution is that the dispute must involve a question, whether of law or fact, on which the existence or extent of a legal right depends.

It was further observed that mere wrangles between governments have no place in the scheme of that article. His Lordship further held that the purpose of Article 131 is to afford a forum for the resolution of disputes which depend for their decision on the existence or extent of a legal right. It has been held that it is only when a legal, not a mere political issue arises touching upon the existence or extent of a legal right that Article 131 of the Constitution is attracted.

37. Justice Chandrachud specifically rejected the contention that the State as a polity was not entitled to raise a dispute of the nature raised herein. His Lordship observed that in a federation, whether classical or quasi-classical, the States are vitally interested in the definition of the powers of the Federal Government on one hand and their own on the other. A dispute bearing upon the delineation of those powers is precisely the one in which the federating States, no less than the Federal Government itself, are interested. It was also observed that the States therefore have the locus and the interest to contest and seek an adjudication of the claim set up by the Union Government.

The bond of constitutional obligation between the Government of India and the States sustains that locus. His Lordship further observed that the legal right of the States consists in their immunity, in the sense of freedom from the power of the Union Government. It has been held that the States are entitled, under Article 131, to assert that right either by contending in the absolute that the Centre has no power to dissolve the Legislative Assemblies or with the qualification that such a power cannot be exercised on the ground stated.

It has been held that it is constitutionally unsound to say that the State, as a political entity, has no legal interest in such cataclysmic events and no legal rights to assert in relation thereto. The Court specifically rejected the argument on the rigid interpretation of the scope of Article 131 and observed that if such an interpretation was to be accepted, it would virtually reduce it to a dead-letter and destroy a precious safeguard against the use of arbitrary power.

38. After referring to the judgment in the case of State of Bihar v. Union of India and Another (supra), His Lordship observed that, in the said case, the Court held that on the second issue, the suits were not maintainable since a private party was impleaded thereto. His Lordship further observed that the only assistance that could be derived from the said judgment was that the disputes under Article 131 should be "in respect of legal rights and not disputes of a political character". His Lordship further observed that the assertion of the States was that the Government of India did not possess the constitutional power claimed by it and therefore, this Court should declare that they are immune from such exercise of that power.

39. With the aforesaid observations, the Court rejected the preliminary objections with regard to maintainability of the suits therein. Justice Chandrachud, further observed thus:

"138. That takes us to the question of maintainability of the suits. There are six suits before us filed by the States of Rajasthan, Madhya Pradesh, Punjab, Bihar, Himachal Pradesh and Orissa. Each of these suits has been filed under Article 131 of the Constitution. This Article confers original jurisdiction on the Supreme Court, to the exclusion of all other courts, in respect of certain categories of suits and is in the following terms:

"131. Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute- (a) between the Government of India and or more States; or (b) between the Government of India and any State or States on one side and one or more other States on the other; or (c) between two or more States, if and insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which having been entered into or executed before the commencement of the Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute."

There are two limitations in regard to the nature of the suit which can be entertained by the Supreme Court under this Article. One is in regard to parties and the other is in regard to the subject-matter. The Article provides in so many terms in clauses (a), (b) and (c) that the dispute must be between the Government of India and one or more States, or between the Government of India and any other State or States on one side and one or more other States on the other, or between two or more States.

It does not contemplate any private party being arrayed as a disputant on one side or the other. The parties to the dispute must fall within one or the other category specified in clauses (a), (b) and (c). That was established by a decision of this Court in State of Bihar v. Union of India [(1970) 1 SCC 67 : (1970) 2 SCR 522] where this Court pointed out:

"a dispute which falls within the ambit of Article 131 can only be determined in the forum mentioned therein, namely, the Supreme Court of India, provided there has not been impleaded in any said dispute any private party, be it a citizen or a firm or a corporation along with a State either jointly or in the alternative. A

dispute in which such a private party is involved must be brought before a court, other than this court, having jurisdiction over the matter." This is the limitation as to parties.

The other limitation as to subject-matter flows from the words "if and insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends". These words clearly indicate that the dispute must be one relating to a legal right and not a dispute on the political plans not based on a legal right, for instance, to take an example given by Mr Seervai in his well known work on "Constitutional Law of India" at p. 1385:

"a claim that a State project should be included in the Five- Year Plan." The dispute must, therefore, involve assertion or vindication of a legal right of the Government of India or a State. It is not necessary that the right must be a constitutional right. All that is necessary is that it must be a legal right. It is true that in the State of Bihar v. Union of India this Court, while discussing the scope of the dispute which may be determined by the Supreme Court under Article 131, happened to make an observation that "this much is certain that the legal right which is the subject of dispute must arise in the context of the Constitution and the federalism it sets up".

But this observation, Insofar as it suggests that the "legal right" must be one which arises under the Constitution, goes much further than what the language of Article 131 warrants. The Article speaks only of "legal right" and does not qualify it by any other words. It may be noted that the provision in the corresponding Section 204 of the Government of India Act, 1935 was significantly different. It contained a proviso that the dispute must inter alia concern the interpretation of the Government of India Act, 1935 "or of an Order in Council made thereunder or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State".

This provision has been deliberately and designedly omitted in Article 131 and now any legal right can be enforced by a suit in the Supreme Court provided the parties fill the character specified in clauses (a), (b) and (c). The question which therefore requires to be considered in determining the maintainability of the suits is whether any legal right of the States is sought to be vindicated in the suits. We shall presently consider this question, but before we do so, we must point out one other error in which, with the greatest respect, the learned Judges who decided the case of State of Bihar v. Union of India seem to have fallen.

They held that in a suit under Article 131 the only order which the Supreme Court could make was a declaration adjudicating on the legal right claimed in the suit and once such a declaration was given, the function of the Supreme Court

under Article 131 was at an end. If this conclusion were correct, then obviously the present suits seeking permanent injunction restraining the Government of India from issuing a proclamation under Article 356 clause (1) could not lie and equally no interim injunction could be granted by this Court, but the learned Additional Solicitor General, with his usual candour and fairness, conceded that he was not in a position to support this view.

This view seems to be erroneous and for two very good reasons. In the first place, it overlooks the fact that whereas sub-section (2) of Section 204 of the Government of India Act, 1935 provided that the Federal Court, in exercise of its original jurisdiction, shall not pronounce any judgment, other than a declaratory judgment, no such provision limiting the power of the Supreme Court in regard to the relief to be granted is to be found in Article 131.

The power of the Supreme Court to grant relief in a suit under Article 131 is not restricted only to "declaratory judgment". Secondly, as pointed out by Mr Seervai in his book at p. 1385, "when a court is given exclusive jurisdiction in respect of a dispute between the parties, it is reasonable to hold that the Court has power to resolve the whole dispute", unless its power is limited by express words or by necessary implication. There is no such limitation in Article 131 and hence it is not correct to say that the Supreme Court can only give a declaratory judgment in a suit under Article 131. The Supreme Court would have power to give whatever reliefs are necessary for enforcement of the legal right claimed in the suit if such legal right is established."

[emphasis supplied]

40. It could thus be seen that His Lordship approved the ratio in State of Bihar v. Union of India and Another (supra) to the effect that the suit under Article 131 of the Constitution does not contemplate any private party being arrayed as a disputant on one side or the other. It held that the parties to the dispute must fall within one or the other category specified in clauses (a), (b) and (c) of Article 131 of the Constitution.

41. His Lordship disapproved the observations made in the case of State of Bihar v. Union of India and Another (supra) to the effect that "this much is certain that the legal right which is the subject of dispute must arise in the context of the Constitution and the federalism it sets up". His Lordship held that the suggestion that the legal right must be one which arises under the Constitution, goes much further than what the language of Article 131 of the Constitution warrants.

42. Justice Chandrachud further pointed out that, under the Government of India Act, 1935, Section 204 provided that the dispute must inter alia concern the

interpretation of the Government of India Act, 1935 or of an Order in Council made thereunder or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State.

It has been observed that the said provisions have been deliberately and designedly omitted in Article 131 of the Constitution and now any legal right can be enforced by a suit in this Court provided the parties fill the character specified in clauses (a), (b) and (c) of Article 131 of the Constitution. What is required to be considered is that in determining the maintainability of the suits, whether any legal right of the States is sought to be vindicated or not.

His Lordship, in paragraph 142, specifically observed that the suits for consideration before it sought to enforce a legal right of the States arising under the Constitution and the suits could not be thrown out in limine as being outside the scope and ambit of Article 131 of the Constitution. The same view has been taken by Justice P.K. Goswami in paragraph 159 with regard to parties that may be impleaded in a suit under Article 131 of the Constitution as well as with regard to the subject matter of the litigation.

43. In the light of the law laid down in the case of State of Rajasthan and Others v. Union of India and Others (supra), which is a judgment of seven Judges of this Court, we will have to examine the rival submissions.

VI. CONSIDERATION:

a. Reading of the Plaint:

44. As observed hereinabove, in a catena of judgments, it has been held that for considering the preliminary objections, only the averments made in the plaint are to be looked into to determine as to whether a cause of action has been made out or not. In that regard, it will be relevant to refer to some of the paragraphs in the plaint, which read thus:

"3. Article 246(1) empowers the Parliament with exclusive power to make laws with respect to any of the matters enumerated in List I, Seventh Schedule (known as the Union List). Entry 80, List I is relevant in this regard:

"80. Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State."

4. That the police powers come within the State's exclusive jurisdiction is also recognized in Article 246(3) of the Constitution, which provides that the State has exclusive power to make laws for such state for any of the matters enumerated in List II. Specifically, of such matters, Entry 1 and Entry 2 are relevant which are:

"1. Public order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power).

2. Police (including railway and village police) subject to the provisions of entry 2A of List I."

5. Entries 1 and 2 of List II, the Seventh Schedule to the Constitution of India thus prescribe that public order and the police are exclusive subject matters of the concerned State. Further Entry 80, List I, ensures that the Union/Center does not transgress into the jurisdiction of the State without permission of the concerned State.

6. The CBI which draws its powers under the DSPE Act has acted in violation of the aforementioned Constitutional provisions and the DSPE Act. The DSPE Act, as its preamble provides, was enacted to make provisions for the constitution of a Special 'Police Force' in Delhi for the investigation of certain offences in the Union Territory, for the superintendence and administration of the said Force and for the extension of its powers and jurisdiction in regard to the investigation of the said offences.

Section 2 of the DSPE Act provides for constitution of the force, Section 3 thereof prescribes the offence which are to be investigated by CBI; Section 5 of DSPE Act provides extension of power and jurisdiction of CBI into any area (including a railway area) in a State; Section 6 thereof expressly provides that the force/CBI is required to obtain the consent of the concerned State in case of exercise of such power in terms of Section 5 of the DSPE Act.

7. Section 6 of the DSPE Act is the statutory recognition of the principle of federalism which forms a part of the basic structure of the Constitution of India, as also protected under Entry 80, List I and Entries 1 and 2, List II, Constitution of India. In absence of Section 6 in the statute book, the piece of legislation would have attracted the vice of unconstitutionality.

8. Any act of the CBI in violation of Section 6, DSPE Act, strikes at the roots of federalism, which this Hon'ble Court in S.R. Bommai v. Union of India, 1994 SCC (3) 1, has held to be a part of the Constitution's basic structure. Therefore,

the CBI's exercise of powers by violating Section 6, DSPE Act, subverts the basic structure of the Constitution.

9. Under the Constitution, a threefold distribution of legislative power by the three Legislative Lists in the Seventh Schedule to the Constitution of India has been conceptualized (vide Article 246). List II of the Seventh Schedule to the Constitution of India is the part and parcel of a single constitutional instrument envisaging a federal scheme. It thus confers plenary power on the State to legislate on certain exclusive subject matters which includes "public order" and "police" in a State.

10. Section 6 of the DSPE Act is a component of such federalism that provides for a prior approval of the State in case Centre wishes to transgress in the territory of the State and usurping the powers of the police force of the State.

11. The provision of Section 6 therefore, assumes immense significance and therefore, cannot be ignored and violated by the Defendant. Any such attempt on the part of the Defendant would cause an inroad to the constitutionalism and therefore, this Hon'ble Court being the conscience keeper of the Constitution ought not to permit the Defendant to do so.

12. In State of West Bengal and others v. Committee for Protection of Democratic Right, West Bengal and others reported in (2010) 3 SCC 571, this Hon'ble Court held that although Section 5(1), DSPE Act empowers the Central Government to extend power and jurisdiction of members of the DSPE force to any area in a State, Section 6 imposes a restriction on such power of the Central Government requiring it to obtain the consent of the concerned State Government.

This Hon'ble Court further held that the only exception is when either the Hon'ble High Courts or this Hon'ble Court, in exercise of its jurisdiction under Article 226 or 32 of the Constitution, respectively, directs the CBI to investigate a cognizable offence allegedly to have been committed within the territory of a state without the consent of that particular state; such direction under Articles 226 or 32 of the Constitution will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power, and shall be valid in law.

13. In the instant proceeding, the Plaintiff is challenging the act of the defendant in registering suo moto cases for offences that have occurred within the territory of the plaintiff dehors any direction from any competent court or prior consent granted by the Plaintiff.

14. In this regard, Section 6 of the DSPE Act is crucial since it requires prior consent of the State Government for exercising power and jurisdiction under the DSPE Act by CBI to any area in a State not having Union Territory or Railways. Before the provision of DSPE Act are invoked to authorize the CBI to exercise its power and jurisdiction within any State, the following conditions are to be specified compulsorily.

i) A notification must be issued by the Central Government specifying the offences to be investigated by CBI (Section 3);

ii) An order must be passed by the Central Government extending power and jurisdiction of CBI to any area (including railway area) in a State not being an Union Territory in respect of offences specified under Section 3 (Section 5); and

iii) Consent of the State Government must be obtained for the exercise of power by CBI in the concerned State (Section 6).

15. Thus, from a plain reading of the law, it is evident that the CBI does not have any inherent jurisdiction in any area in a State including a railway area. The DSPE has to mandatorily meet the requirements of Section 3 and Section 5, DSPE Act, and thereafter its powers become subject to the consent of the State under Section 6, DSPE Act.

16. This Hon'ble Court has held that fulfillment of all three conditions under Sections 3,5, and 6 are required prior to the CBI exercising its powers in any State (M. Balakrishna Reddy v. CBI, (2008) 4 SCC 409).

17. On February 18, 1963, the Defendant under Section 3 (1) of the DSPE Act notified a class of offences, wherein, the power to investigate given to be vested with CBI. On February 18, 1963, by order No. 25/12/6-AVD-II, issued by Ministry of Home Affairs, Government of India Act, under Section 5, DSPE Act extended jurisdiction of members of the Delhi Special Police Establishment to various states, including the State of West Bengal.

18. On August 2, 1989, in exercise of its powers under Section 6, DSPE Act, the Plaintiff vide Notification being G.O. No. 6845-PL/PE/2A- 10/88, accorded its consent to CBI to exercise the power and jurisdiction within the territory of the State of West Bengal for certain offences, except for public servants employed in connection with the affairs of the State or any Authority controlled or aided wholly or partly by the State Government for which the specific request and with the prior concurrence of the State Government was required.

19. On November 16, 2018, the Plaintiff, in exercise of its powers under Section 6, DSPE Act, withdrew the aforesaid consent accorded vide G.O. No. 6845-

PL/PE/2A-10/88 dated August 2, 1989. Thus, the Plaintiff, during the period August 2, 1989 to November 16, 2018, had given a limited consent to the CBI to investigate certain offences pertaining to persons who were not employed in connection with the affairs of the State Government/authority controlled or aided by the State Government. However, after November 16, 2018, the CBI would have been required to obtain the prior and specific consent of the Plaintiff for exercise of any power under the DSPE Act in the State of West Bengal.

21. The cause of action for filing this suit thus does not arise from any one particular event or case but arises due to the fact that the CBI, despite the withdrawal of consent by the State under Section 6, DSPE Act, has registered cases and has been exercising its powers under the DSPE Act in an unconstitutional manner. This impacts many cases and investigation of offences that ought to be done by the State Police. The details of some of the cases registered by the CBI without obtaining consent of the Plaintiff, which gives rise to a continuing cause of action, are as follows:

Sl. No.	Date of Registration	Regular Case No.
1.	17/11/2018	RC0102018A0011
2.	19/11/2018	RC0102018A0012
3.	23/08/2019	RC0562019S0004
4.	30/09/2019	RC0562019S0005
5.	21/09/2020	RC0102020A0018
6.	21/09/2020	RC0102020A0019
7.	22/09/2020	RC0102020A0020
8.	19/10/2020	RC0102020A0021
9.	27/11/2020	RC0102020A0022
10.	07/12/2020	RC0102020A0023
11.	29/01/2021	RC0732021E0001
12.	15/06/2021	RC0102021A0003

22. All of the abovementioned FIRs concern offences under laws such as the Indian Penal Code 1860 and/or Prevention of Corruption Act, 1988, all of which the State/Kolkata Police is empowered to investigate by statute. Therefore, the CBI in exercising its powers under the DSPE Act, without the requisite State consent is not only violating Section 6, DSPE Act, but also usurping and ousting State/Kolkata Police's statutory jurisdiction over such offences.

23. Such action of the Defendant violates the Constitutional provisions, the DSPE Act, and derogates from the doctrine of federalism. By registration of these cases, the Defendant herein has rendered the provisions under Section 6 of the DSPE Act nugatory.

24. The requirement of obtaining consent of the concerned state to enable CBI to investigate in the said state under section 6 of the DSPE Act aligns with the principles of federalism as envisaged in the constitution which has vested the state with the power to exercise exclusive jurisdiction by making laws with respect to police under Entry 2 of the State List of the Seventh Schedule read with Article 246(3) of the Constitution of India.

29. In accordance with the provisions of Constitution and the law interpreted by this Hon'ble Court, the Plaintiff State will suffer grave constitutional prejudice in case the Defendant is allowed to operate its own police force within the State of West Bengal in absence of previous approval of the Plaintiff State. Thus, there exists a dispute, involving of question of law and fact, between the Plaintiff State of West Bengal and the Defendant Union of India, regarding the encroachment of jurisdiction and encroachment of legal rights as a State and as well as for the enforcement of the fundamental, statutory constitutional and other legal rights of the State of West Bengal. Hence, this Original Suit under Article 131 of the Constitution of India is being preferred.

30. The action of the Defendant is an act of constitutional overreach inasmuch as by registering cases within the State of West Bengal in absence of the consent of the Plaintiff, the Defendant has exceeded its jurisdiction and has acted contrary to the scheme of Constitution and DSPE statute.

31. Such action of the Defendant also violates the law laid down by this Hon'ble Court that no investigation can be conducted within the territory of a State in absence of consent under Section 6 of the DSPE Act (see Kazi Lehendup Dorji v. CBI, & Ors 1994 Supp (2) SCC 116 (para 4,9,17); Subramanian Swami v. CBI 2014 (8) SCC 682 (Para 67,68); State of West Bengal v. Committee for Protection of Democratic Right, West Bengal & Ors. 2013(3) SCC 571 (Para 35,37); Mayawati v. Union of India (2012) 8 SCC106 (Para 9, 30, 41, 44); A.C Sharma v. Delhi Administration, 1973 (1) SCC 726 (Para 13); M Balakrishnan v. Director, CBI Delhi 2008 (4) SCC 409 (Para 18, 19)).

32. It is well settled that when differences arise between the representative of the State and that of the Union on questions of interpretation of the Constitution and law which may affect the welfare of the whole people and particularly that of the people of the State concerned, a suit under Article 131 of the Constitution lies.

Given the aforesaid statutory obligation of the Defendant, the Plaintiff being the repository of people on the subject of law and order in State, the Defendant cannot cause investigation into the offences in the State. Since there cannot be two parallel investigations in respect of the same offence, the registration of FIRs by the Defendant precludes the State from initiating appropriate action on the

allegations of this subject. As a consequence thereof, the Plaintiff fails to adhere to the constitutional obligation.

33. Article 131 of the Constitution provides for independent adjudication in case of federal disputes and should be widely and generously interpreted to advance the intended remedy. It can be invoked whenever a State and other States or Union differ on a question of interpretation of constitution or law so that a decision of it will affect the scope and exercise of the governmental powers which are attributes of a State. The jurisdiction conferred on this Hon'ble Court under Article 131 of the Constitution should not be tested on the anvil of banal rules which are applied under the provisions of Code of Civil Procedure for determining whether a suit is maintainable.

34. The Constitution aims at maintaining a fine balance not only between the legislature, the executive and the judiciary, but also between the powers of the Union and State, as demonstrated by the Legislative Lists and the executive power of the Central Government and the State Governments in part XI of the Constitution. This is a delicate relationship particularly if different political parties are in power in the Centre and in the States. The object of the Articles 245-246 is to ensure that the Central Government and State Governments act within the respective spheres of their authority and do not transgress upon each other's constitutional functions or powers.

36. This present suit is being filed to challenge the constitutionality of the actions of the defendant. Thus, a suit under Article 131 of the Constitution of India challenging the constitutionality of the impugning the action of the Defendant at the instance of a constituent State of the Union is maintainable.

37. A proceeding under Article 131 of the Constitution stands in sharp contrast with an ordinary suit. The proceedings are adjudicatory of the limits of the constitutional power vested in the Central and the State Governments. The competition in such a proceeding is between two or more Governments either the one or the other of which possesses the constitutional power to act.

38. While mere wrangles between the Governments have no place under the scheme, when legal as distinct from a mere political issue arises touching upon the existence or extent of the legal right the article is attracted. There is a distinction between "State" and "State Government". When a right or capacity or lack of it attributed to any institution of person acting on behalf of the State, it raises a matter in which the State is involved or concerned. The State would therefore be affected by any unconstitutional exercise of power by the Central Government.

The word "right" in Article 131 of the Constitution is used in a generic sense. If the State claims to be entitled to legislative exclusivity on a particular matter on the ground that it falls within List II of Seventh Schedule and the Union of India questions this right, despite the constitutional restriction under Entry 80, List I, the dispute is one relating not to not only the right of the State in the strict sense of the term but also of the liberty of the State, and the same would directly come within the scope of Article 131 of the Constitution.

It is therefore, evident that the present suit is maintainable by the Plaintiff against the Defendant before this Hon'ble Court under Article 131 of the Constitution. The plaintiff has not filed any other similar suit claiming the same reliefs before this Hon'ble Court or any other Court. The Suit is not barred by limitation as on the date of filing of the present Suit."

45. A perusal of the plaint would reveal that it refers to Article 246(1) of the Constitution which empowers the Parliament with exclusive power to make laws with respect to any of the matters enumerated in List I. It refers to Entry 80 of List I which enables the Parliament to make laws with regard to extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State. However, the same cannot be done without the consent of the Government of the State in which such area is situated.

Then, it refers to the exclusive jurisdiction of the State Legislature as recognized in Article 246(3) of the Constitution to make laws with regard to any of the matters enumerated in List II. It refers to Entries 1 and 2 which relate to public order and police. Then, the plaint avers that the public order and police are exclusive subject matters of the concerned State. It avers that Entry 80, List I, ensures that the Union/Centre does not transgress into the jurisdiction of the State without permission of the concerned State.

It therefore avers that the CBI which draws its powers from the DSPE Act has acted in violation of the aforementioned Constitutional provisions as also the DSPE Act and then it refers to various provisions of the DSPE Act including Section 6 thereof which requires the consent of the Government of the concerned State in whose areas the jurisdiction of the CBI is being extended. Thereafter, it refers to Section 6 of the DSPE Act as a component of the concept of federalism. It avers that the provisions of Section 6 of the DSPE Act cannot be ignored or violated by the defendant.

46. In paragraph 12 of the plaint, the plaint refers to various judgments of this Court interpreting Sections 5(1) and 6 of the DSPE Act. In paragraph 13, the plaint avers that the plaintiff is challenging the act of the defendant in registering suo moto cases for offences that have occurred within the territory of the plaintiff

without any direction from the competent court or prior consent granted by the plaintiff.

Then, in paragraph 14, averments are made with regard to the approval to be made by the Central Government, a rule which is required to be followed by the Central Government in extending powers and jurisdiction of the CBI. Thereafter, it refers to the judgment of this Court which requires the fulfillment of the three conditions under Sections 3, 5 and 6 of the DSPE Act prior to the CBI exercises powers in any State, which read thus:

i) A notification must be issued by the Central Government specifying the offences to be investigated by CBI (Section 3);

ii) An order must be passed by the Central Government extending power and jurisdiction of CBI to any area (including railway area) in a State not being an Union Territory in respect of offences specified under Section 3 (Section 5); and

iii) Consent of the State Government must be obtained for the exercise of power by CBI in the concerned State (Section 6).

47. Thereafter, the plaint refers to the consent granted by the plaintiff under Section 6 of the DSPE Act on 2nd August 1989 vide notification issued by it. Then, it refers to the withdrawal of the said consent on 16th November 2018.

48. Paragraph 21 of the plaint avers regarding the powers of the CBI. It avers that despite withdrawal of the consent given by the plaintiff under Section 6 of the DSPE Act, the CBI has registered cases and has been exercising its powers under the DSPE Act in an unconstitutional manner. The plaint thereafter gives a list of the cases and states that the CBI exercised its powers under the DSPE Act without the requisite consent of the State and as such, not only violated Section 6 of the DSPE Act but also usurped and ousted the State police's statutory jurisdiction.

49. In paragraph 24 of the plaint, the averments with regard to principles of federalism are reiterated.

50. Paragraph 27 of the plaint states that the present lis involves substantial question of law as to the interpretation of Articles 245 and 246 of the Constitution and various Entries in the Seventh Schedule as well as corresponding provisions of Code of Criminal Procedure, 1973 and the DSPE Act.

51. In paragraph 29 of the plaint, it is averred that, in case the defendant is allowed to operate its own police force within the State of West Bengal in the

absence of previous approval of the plaintiff State, the plaintiff will suffer grave constitutional prejudice. It is therefore averred that there exists a dispute involving question of law and fact between the plaintiff and the defendant - Union of India regarding the encroachment of jurisdiction and legal rights. In paragraph 30 of the plaint, it is averred that the action of the defendant is an act of constitutional overreach. In paragraph 32 and subsequent paragraphs of the plaint, it delineates the scope of Article 131 of the Constitution.

b. Scheme of the DSPE Act:

52. After considering the averments in the plaint, we now propose to consider the contention of the learned Solicitor General with regard to Union of India having no superintendence or control over the CBI. For considering the same, it will be necessary to refer to certain provisions of the DSPE Act.

53. Section 2 of the DSPE Act reads thus:

"2. Constitution and powers of special police establishment.-

(1) Notwithstanding anything in the Police Act, 1861 (5 of 1861), the Central Government may constitute a special police force to be called the Delhi Special Police Establishment for the investigation in any Union Territory, of offences notified under Section 3.

(2) Subject to any orders which the Central Government may make in this behalf, members of the said police establishment shall have throughout any Union Territory, in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers of that Union Territory have in connection with the investigation of offences committed therein.

(3) Any member of the said police establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise in any Union Territory any of the powers of the officer in charge of a police station in the area in which he is for the time being and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station."

54. A perusal of sub-section (1) of Section 2 of the DSPE Act clearly shows that it is the Central Government that is entitled to constitute a special police force to be called the DSPE for investigation of cases in any Union Territory of offences notified under Section 3 of the DSPE Act. Subsection (2) thereof would show that, subject to any orders which the Central Government may make in this

behalf, members of the DSPE shall have, throughout any Union Territory, in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers of that Union Territory have in connection with the investigation of offences committed therein.

Again, under sub-section (3) thereof, any member of the DSPE of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise, in any Union Territory, any of the powers of the officer in charge of a police station in the area in which he is for the time being and when so exercising such powers, he shall, subject to any such orders as aforesaid, be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.

55. Section 3 of the DSPE Act reads thus:

"**3. Offences to be investigated by special police establishment.-** The Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment."

56. It is thus clear that the DSPE is entitled to investigate only such offences or classes of offences which are specified by the Central Government by issuing a notification in the official gazette.

57. Section 4 of the DSPE Act reads thus:

"4. Superintendence and administration of Special Police Establishment.-

(1) The superintendence of the Delhi Special Police Establishment insofar as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988), shall vest in the Commission.

(2) Save as otherwise provided in sub-section (1), the superintendence of the said police establishment in all other matters shall vest in the Central Government.

(3) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government (hereinafter referred to as the Director) who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector-General of Police in respect of the police force in a State as the Central Government may specify in this behalf."

58. A perusal of sub-section (1) of Section 4 of the DSPE Act would reveal that the superintendence of the DSPE insofar as it relates to investigation of offences

alleged to have been committed under the PC Act is concerned, shall vest with the CVC. However, sub-section (2) thereof provides that except for what has been provided in sub-section (1) thereof, the superintendence of the said police establishment in all other matters shall vest with the Central Government.

Sub-section (3) thereof provides that the administration of the DSPE shall vest in an officer appointed in this behalf by the Central Government who shall exercise, in respect of that police establishment, such of the powers exercisable by an Inspector-General of Police in respect of the police force in a State as the Central Government may specify in this behalf.

59. Section 5 of the DSPE Act reads thus:

"5. Extension of powers and jurisdiction of special police establishment to other areas.-

(1) The Central Government may by order extend to any area (including Railway areas) in a State, not being a Union Territory the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under Section 3.

(2) When by an order under sub-section (1) the powers and jurisdiction of members of the said police establishment are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of a police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.

(3) where any such order under sub-section (1) is made in relation to any area, then, without prejudice to the provisions of sub-section (2) any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer in charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station."

60. A perusal of sub-section (1) of Section 5 of the DSPE Act would reveal that the Central Government, by an order, is entitled to extend to any area including Railway areas in a State, not being a Union Territory, the powers and jurisdiction of members of the DSPE for the investigation of any offences or classes of offences specified in a notification under Section 3 of the DSPE Act.

Sub-section (2) thereof provides that when by an order under sub-section (1), the powers and jurisdiction of members of the DSPE are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.

Again, under sub-section (3) thereof, where any such order under sub-section (1) is made in relation to any area, then, without prejudice to the provisions of sub-section (2), any member of the DSPE of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer in charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.

61. Section 6 of the DSPE Act reads thus:

"6. Consent of State Government to exercise of powers and jurisdiction.-

Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union Territory or railway area, without the consent of the Government of that State."

62. A perusal of Section 6 of the DSPE Act would reveal that nothing contained in Section 5 shall be deemed to enable any member of the DSPE to exercise powers and jurisdiction in any area in a State, not being a Union Territory or railway area, without the consent of the Government of that State.

63. A perusal of the entire scheme would therefore reveal that right from the constitution of the special police force which is called DSPE, issuance of notifications specifying the offences or classes of offences which are to be investigated by the DSPE, superintendence and administration of DSPE and the extension of powers and jurisdiction of DSPE to the areas beyond the Union Territories, it is the Central Government which is vitally concerned with. Not only that, only such offences which the Central Government notifies in the official gazette, can be investigated by the DSPE. Under Section 4 of the DSPE Act, except the offences under the PC Act in which the superintendence will be with the CVC, the superintendence of the DSPE in all other matters would vest with the Central Government.

64. If the powers and jurisdiction of the members of the DSPE are to be extended to any area including railway areas, in a State not being a Union Territory, the same cannot be done unless the Central Government passes an order in that regard. The statutory scheme makes it clear that, for extending such powers under Section 5 of the DSPE Act, it cannot be done without the consent of the Government of that State under Section 6 of the DSPE Act.

65. In that view of the matter, we find that the contention of the learned Solicitor General that even if the CBI, being an independent agency, is considered to be an instrumentality of the State under Article 12 of the Constitution, it cannot be equated to the term Government of India as contemplated under Article 131 of the Constitution, in our view, holds no water.

66. We further find that the very establishment, exercise of powers, extension of jurisdiction, the superintendence of the DSPE, all vest with the Government of India. In that view of the matter, in our opinion, the reliance placed by the learned Solicitor General on the judgment of this Court in the case of State of Bihar v. Union of India and Another (supra), is not well placed. In our view, the CBI is an organ or a body which is established by and which is under the superintendence of the Government of India in view of the statutory scheme as enacted by the DSPE Act.

c. Power of superintendence of the Central Government:

67. Insofar as reliance placed by the learned Solicitor General on the judgments of this Court in the cases of Vineet Narain (supra) and State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others[18] is concerned, no doubt that the powers of superintendence of the Central Government would not relate to the superintendence of investigation of a particular case and the investigating agency (CBI) would always be entitled to investigate the offences independently. However, that would not water down the administrative control and superintendence of the DSPE that vests with the Central Government. In that view of the matter, we find that the contention in that regard needs to be rejected.

d. Interpretation of the term "subject to the provisions of this Constitution":

68. The learned Solicitor General has vehemently argued that, in view of the term "subject to the provisions of this Constitution" used in Article 131 of the Constitution, since various matters are already pending with regard to the subject matter of the present suit, be it the proceedings either under Article 136, Article 32 or Article 226 of the Constitution, the present suit would not be maintainable.

69. No doubt that Article 131 of the Constitution begins with the term "subject to the provisions of this Constitution". To understand the said term, we can gainfully refer to a few authorities.

70. In Black's Law Dictionary, 5th Edition at Page 1278, the expression "subject to" has been defined as under:

"Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for."

71. A Constitution Bench of this Court in the case of The South India Corporation (P) Limited v. The Secretary, Board of Revenue, Trivandrum and Another[19] also had an occasion to consider the said term, though it was in a case concerning Article 372 of the Constitution. It will be apposite to refer to the following part of the said judgment of the Constitution Bench:

"13. Article 372 reads:

"(i) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority.

Explanation I.- The expression "law in force" in this article shall include a law passed or made by a legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas."

The object of this article is to maintain the continuity of the pre-existing laws after the Constitution came into force till they were repealed, altered or amended by a competent authority. Without the aid of such an article there would be utter confusion in the field of law. The assumption underlying the article is that the State laws may or may not be within the legislative competence of the appropriate authority under the Constitution. The article would become ineffective and purposeless if it was held that pre-Constitution laws should be such as could be made by the appropriate authority under the Constitution.

The words "subject to the other provisions of the Constitution" should, therefore, be given a reasonable interpretation, an interpretation which would carry out the intention of the makers of the Constitution and also which is in accord with the constitutional practice in such matters. The article posits the continuation of the pre-existing laws made by a competent authority notwithstanding the repeal of

Article 395; and the expression "other" in the article can only apply to provisions other than those dealing with legislative competence.

14. The learned Advocate-General relied upon the following decisions for the said legal position : Gannon Dankerly and Co. v. Sales Tax Officer, Maatancherry [ILR (1957) Kerala 462] ; Sagar Mall v. State [ILR (1952) 1 All 862] ; Kanpur Oil Mills v. Judge (Appeals) Sales Tax, Kanpur [AIR 1955 All 99] ; Amalgamated Coalfields Ltd. v. Janapada Sabha, Chhindwara [(1962) 1 SCR 1] ; Jagdish Prasad v. Saharanpur Municipality [AIR 1961 All 583] ; Saeoshankar v. M.P. State [AIR 1951 Nag 58] ; State v. Yash Pal [AIR 1957 P&H 91] ; and Binoy Bhusan v. States of Bihar [AIR 1954 Pat 346]. It is not necessary to consider in detail the said decisions, as they either resume the said legal position or sustain it, but do not go further.

They held that a law made by a competent authority before the Constitution continues to be in force after the Constitution till it is altered or modified or repealed by the appropriate authority, even though it is beyond the legislative competence of the said authority under the Constitution. We give our full assent to the view and hold that a pre-Constitution law made by a competent authority, though it has lost its legislative competency under the Constitution, shall continue in force, provided the law does not contravene the "other provisions" of the Constitution."

72. The Constitution Bench has held that the words "subject to the other provisions of the Constitution" should be given a reasonable interpretation. It has been held that the interpretation which would carry out the intention of the makers of the Constitution and also which is in accord with the constitutional practice in such matters, should be adopted.

The Court held that Article 372 of the Constitution posits the continuation of the pre-existing laws made by a competent authority notwithstanding the repeal of Article 395 of the Constitution. It has been held that the expression "other" under Article 372 of the Constitution can only apply to the provisions other than those dealing with legislative competence. The Court therefore held that a pre-Constitution law made by a competent authority, though it has lost its legislative competency under the Constitution, shall continue in force, provided the law does not contravene the "other provisions" of the Constitution.

73. Another Constitution Bench of this Court in the case of Union of India and Another v. Tulsiram Patel[20] also had an occasion to consider the said term which is also recorded in Article 309 of the Constitution. The Court held thus:

"106. It is not possible to accept this submission. The opening words of Article 309 make that article expressly "Subject to the provisions of this Constitution". Rules made under the proviso to Article 309 or under Acts referable to that article must, therefore, be made subject to the provisions of the Constitution if they are to be valid. Article 310(1) which embodies the pleasure doctrine is a provision contained in the Constitution.

Therefore, rules made under the proviso to Article 309 or under Acts referable to that article are subject to Article 310(1). By the opening words of Article 310(1) the pleasure doctrine contained therein operates "Except as expressly provided by this Constitution". Article 311 is an express provision of the Constitution. Therefore, rules made under the proviso to Article 309 or under Acts referable to Article 309 would be subject both to Article 310(1) & Article 311."

74. This Court held that, in view of the said term "subject to the provisions of this Constitution", rules made under the proviso to Article 309 must be made subject to the provisions of this Constitution if they are to be valid. The Constitution Bench held that the rules made under the proviso to Article 309 or under Acts referable to that article are subject to Articles 310(1) and 311 of the Constitution.

75. In our opinion, Article 131 of the Constitution is a special provision which deals with the original jurisdiction of this Court in case of a dispute between the Federal Government and the State Governments. It provides for a special jurisdiction to this Court to decide any question on which the existence or extent of a legal right depends.

Any dispute either between the Government of India and one or more States; or between the Government of India and any State or States on one side and one or more other States on the other; or between two or more States which involve a question on which the existence or extent of a legal right depends are covered by this provision. A special provision has been made for deciding the question on which the existence or extent of a legal right between the special parties mentioned therein has been provided.

Therefore, the words "subject to the provisions of this Constitution" will have to be considered in that context. The jurisdiction under Article 131 of the Constitution would only be subject to any other provision in the Constitution which provides for entertaining a dispute between the parties mentioned therein. We could notice only one such other provision in the Constitution, which is Article 262, which reads thus:

"262. Adjudication of disputes relating to waters of inter-State rivers or river valleys.-

(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1)."

76. Article 262 of the Constitution deals with adjudication of disputes relating to waters of inter-State rivers or river valleys. It provides that the Parliament may by law provide for the adjudication of such disputes or complaints excluding the jurisdiction of all courts including this Court. As such, ordinarily a dispute with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley between two States could have fallen under Article 131 of the Constitution but because of the words "subject to the provisions of this Constitution" used therein and in view of Article 262, such a dispute would not be entertainable under Article 131 of the Constitution.

77. Article 32 of the Constitution provides for remedy for enforcement of rights conferred by Part-III of the Constitution whereas Article 136 provides for remedy by way of special leave to appeal before this Court. These are the general remedies available to "any party". Merely because, in any of the proceedings initiated under Article 32 or Article 136 or even Article 226 of the Constitution, one of the parties is common, in our view, the pendency of such proceedings would not come in the way of a specific party mentioned in Article 131 of the Constitution to take recourse to the remedy available therein.

As already discussed hereinabove, a remedy under Article 131 of the Constitution is a special remedy available only to the parties mentioned therein and for the purposes mentioned therein. In our view, therefore, the interpretation as placed by the defendant - Union of India would not be in consonance with the constitutional scheme and as such, is liable to be rejected.

e. Suppression of material fact:

78. The Union of India has also pressed that the present suit is liable to be dismissed on the ground of suppression of material facts. It is argued that many of the FIRs mentioned in the plaint are registered under the directions of the High Court under Article 226 of the Constitution. It is submitted that this fact is suppressed by the plaintiff and as such, the plaint is liable to be rejected on this ground.

79. No doubt that material suppression of fact would entail a plaint to be rejected. However, a very reading of the plaint including the prayer clause and specifically paragraph 13 of the plaint would reveal that the claim of the petitioner is with regard to the investigations except with respect to the FIRs registered under the order of competent court of law. In that view of the matter, we find that the contention in that respect is also liable to be rejected.

f. Cause of action of the suit:

80. The next contention is with regard to non-disclosure of cause of action against the defendant. We have hereinabove extensively reproduced the averments made in the plaint. At the cost of repetition, it is only the averments in the plaint which can be gone into for considering as to whether the cause of action against the defendant arises or not.

81. The main case of the plaintiff as could be gathered from the averments in the plaint is that, before the provisions of DSPE Act can be invoked to authorize the CBI to exercise its powers and jurisdiction within any State, the following conditions are necessary:

i) "A notification must be issued by the Central Government specifying the offences to be investigated by CBI (Section 3);

ii) An order must be passed by the Central Government extending power and jurisdiction of CBI to any area (including railway area) in a State not being an Union Territory in respect of offences specified under Section 3 (Section 5); and

iii) Consent of the State Government must be obtained for the exercise of power by CBI in the concerned State (Section 6)."

82. It is the case of the plaintiff that unless the three conditions under Sections 3, 5 and 6 of the DSPE Act are fulfilled, the CBI cannot exercise its powers in any State. It is the case of the plaintiff that after withdrawal of the consent by the plaintiff on 16th November 2018, the CBI could not have continued to register cases and exercise its powers under the DSPE Act. It is the plaintiff's case that continuation of the registration of cases and exercise of powers after withdrawal of the consent is an act of constitutional overreach.

83. As already discussed hereinabove, the averments in the plaint cannot be read in isolation but are to be read in entirety. It is the case of the plaintiff that the CBI is established by the defendant, its exercise of powers is controlled by the defendant and its functioning is also under the superintendence of the defendant. Therefore, it cannot be said that the plaintiff has not made out any cause of action against the defendant.

As has been held by Their Lordships Justice Chandrachud and Justice Bhagwati in the case of State of Rajasthan and Others v. Union of India and Others (supra), the legal right of the States could be sought to be indicated in the suits. In the said case, the Court has disapproved the observations made by five-Judges Bench in the case of State of Bihar v. Union of India and Another (supra) that the legal right which is the subject of dispute must arise in the context of the Constitution and federalism itself.

As has been held by this Court in the case of State of Rajasthan and Others v. Union of India and Others (supra), the legal right of the States consists in their immunity, in the sense of freedom from the power of the Union Government. Therefore, in light of DSPE Act and the judgments of this Court, even this contention is liable to be rejected.

VII. CONCLUSION:

84. We find that, in the present suit, the plaintiff is raising the legal issue as to whether after withdrawal of the consent under Section 6 of the DSPE Act, the CBI via the defendant - Union of India can continue to register and investigate cases in its area in violation of the provisions of Section 6 of the DSPE Act.

The same has been sought to be attacked by the defendant - Union of India by raising various contentions challenging the maintainability of the suit. In our considered opinion, the contentions raised by the defendant, do not merit acceptance and for the reasons given hereinbefore, are rejected.

The preliminary objection is, therefore, rejected. However, we clarify that the aforesaid findings are for the purposes of deciding preliminary objection and will have no bearing on merits of the suit. The suit shall proceed in accordance with law on its own merits.

85. List the suit on 13th August, 2024 for framing of issues.

.....J. [B.R. Gavai]

.....J. [Sandeep Mehta]

New Delhi;

July 10, 2024.

1 (2010) 7 SCC 417 : 2010 INSC 362

2 2022 SCC OnLine SC 1312 : 2022 INSC 1032

3 (1998) 8 SCC 315 : 1998 INSC 425

4 1949 SCC OnLine PC 76

5 (1970) 1 SCC 67 : 1969 INSC 253

6 (1977) 3 SCC 592 : 1977 INSC 143

7 (2006) 1 SCC 442 : 2005 INSC 607

8 (2011) 12 SCC 695 : 2011 INSC 651

9 (1998) 1 SCC 226 : 1997 INSC 826

10 (2012) 3 SCC 104 : 2012 INSC 68

11 (1994) 1 SCC 1 : 1993 INSC 344

12 (2008) 7 SCC 788 : 2008 INSC 805

13 1994 Supp (2) SCC 116 : 1994 INSC 129

14 (2003) 1 SCC 557 : 2002 INSC 554

15 (2004) 3 SCC 137 : 2004 INSC 56

16 (2012) 8 SCC 701 : 2012 INSC 293

17 (2018) 6 SCC 422 : 2018 INSC 319

18 (2010) 3 SCC 571 : 2010 INSC 104

19 [1964] 4 SCR 280 : 1963 INSC 163

20 (1985) 3 SCC 398 : 1985 INSC 155

IN THE SUPREME COURT OF INDIA

Uniworld Logistics Pvt. Ltd.
Vs.
Indev Logistics Pvt. Ltd.

[Civil Appeal No._____ of 2024
arising out of SLP (Civil) No._____ 2024
@Diary No. 14716 of 2017]

HEADNOTE – The suit for recovery of possession is different from the suit for arrears of rent and damages. There is no bar to file a separate suit for arrears of rent and damages after a suit for possession.

JUDGMENT

Vikram Nath, J.

1. Delay, if any, is condoned.

2. Leave granted.

3. This appeal assails the correctness of the judgment and order dated 24.11.2016 passed by the High Court of Judicature at Madras whereby, it dismissed the civil revision registered as CRP(PD) No.1872 of 2016 and also an application under Order VII Rule 11 CPC registered as Application No.3666 of 2016 in Commercial Suit No.323 of 2016. Aggrieved by the same, the defendant in both the proceedings is before this Court.

4. Brief facts giving rise to the present appeal is as follows:

A Leave and License agreement was originally entered into between the appellant and the respondent on 25.11.2008. This agreement was superseded by another agreement dated 01/12/2010 whereby the appellant became a licensee in respect of a warehouse on a monthly license fee of Rs.30 lakhs with an escalation clause. As there was default in payment of storage charges, the respondent gave a legal notice dated 27.11.2014 terminating the license, claiming dues towards storage charges, damages and directing the appellant to vacate the warehouse premises within two months.

The appellant replied to the said notice on 18.12.2014 denying the dues and also raising some objections regarding extent of the building mentioned in the notice. The respondent instituted a suit for permanent injunction and also to hand over

vacant possession in the Court of District Munsif, Sriperumbudur registered as O.S. No.101 of 2015.

The respondent in the plaint of the above suit had clearly mentioned that there were outstanding dues and arrears of storage charges of Rs.2,04,68,464/-. It was further specifically mentioned that respondent-plaintiff reserves its rights to claim against the defendant-appellant for recovery of arrears and also damages due to the illegal use and occupation of the Schedule-B property.

5. After about seven months, the appellant filed a commercial suit before the Madras High Court registered as C.S. No.914 of 2015 against the respondent and also Small Industries Promotion Corporation of Tamil Nadu for the relief of declaration that the respondent had given only 1,03,522 sq. ft. area of the factory shed and not 1,50,000 sq. ft. under the Leave and License agreement dated 25.11.2008.

6. On 24.11.2015, the respondent filed an application under Order II Rule 2(3) read with Section 151 CPC in its pending O.S. No.101 of 2015 seeking leave to sue the appellant by way of a separate suit claiming arrears of storage charges, warehouse charges and damages for illegal use and occupation beyond the period allowed in the notice dated 27.11.2014. The said application registered as IA No.2001 of 2015, was allowed by the District Munsif Court on the same day.

However, the High Court, upon revision by the appellant, set aside the said order and remanded the matter back to the Trial Court for a fresh decision after affording due opportunity of hearing to the defendant to the suit i.e. the appellant. This order was passed by the High Court on 28.01.2016. After remand, the District Munsif Court, by a detailed reasoned order dated 15.04.2016, again granted leave under Order II Rule 2(3) CPC to the respondent to file a separate suit against the appellant. Aggrieved, the appellant challenged the same before the High Court under Article 227 of the Constitution, which was registered as CRP (PD) No.1872 of 2016.

7. In the meantime, the respondent filed a Commercial Suit No.323 of 2016 before the Madras High Court against the appellant for recovery of arrears of storage charges, warehouse charges and damages for an amount of Rs.8,42,88,761/-. In the said C.S. No.323 of 2016, the appellant filed an application being IA No.3666 of 2016 under Order VII Rule 11(d) read with Order II Rule 2 of CPC for rejection of the said claim. This application was filed on 21st July, 2016.

8. The civil revision as also the application under Order VII Rule 11 CPC were heard together by the High Court and vide judgment and order dated 24.11.2016,

the High Court dismissed both the civil revision as also the application. Aggrieved by the same, the present appeal has been filed.

9. In the meantime, the appellant vacated the warehouse and handed over the keys to the respondent on 30th September, 2016. Accordingly, the respondent on 11.04.2017 withdrew its O.S. No.101 of 2015 as possession had already been delivered to it.

10. Further, the appellant filed another Commercial Suit No.160 of 2017 before the Madras High Court claiming refund of security deposit, additional deposit, penalty paid to the University Board, cost of improvements and damages amounting to Rs.5,77,03,621/- against the respondent.

11. From the above, it is noticeable that both the sides preferred two suits each, however, one of the suits i.e. Suit No.101 of 2015 has already been withdrawn by the respondent and, as such, three suits remain pending which are all commercial suits pending before the Madras High Court inter se parties.

12. It would be worthwhile to mention here before proceeding any further that the Trial Court as also the High Court had found that both the suits were filed based upon different causes of action. The High Court had further found that the respondent had taken leave for instituting the second suit against the appellant under Order II Rule 2(3) CPC. It also found that the respondent had specifically stated in the plaint of the first suit that there were claims for damages and warehouse charges to be recovered for which, it reserved its claim for recovery of the same.

At no stage had the respondent given up its claim, nor was there any omission to claim the relief of recovery. It was neither a case of relinquishment of claim or omission. The High Court has dealt with in great detail the object of Order II Rule 2(3) CPC. It has also discussed the law on the point. It had thereafter arrived at the conclusion that neither there was infirmity in the order of the Trial Court granting leave to file the second suit for recovery of arrears, nor was there any merit in the application under Order VII Rule 11 CPC filed by the appellant.

13. We have heard Sri Shyam Divan, learned Senior Counsel for the appellant and Sri Aditya Kumar Choudhary, learned counsel appearing for the respondent and have also perused the material on record.

14. The submissions advanced on behalf of the appellant by the learned Senior Counsel are summarized as under:

(i) The commercial suit bearing C.S. No.323 of 2016 was clearly barred by Order II Rule 2(2) CPC.

(ii) The Courts below failed to distinguish between relinquishment of claims and omissions of relief. The High Court wrongly relied upon the Full Bench Judgment of the Bombay High Court in the case of Shankar Lal Laxminarayan Rathi and Ors. Vs. Gangabisen Manik Lal Silchi and another1 as the said judgment had no applicability in the facts of the case.

15. On the other hand, Shri Choudhary, learned counsel for the respondent submitted that the judgment and order of the High Court does not suffer from any infirmity warranting any interference by this Court. Further, strong reliance was placed upon a judgment of this Court in the case of Bharat Petrolium Corporation Ltd. And another Vs. ATM Constructions Pvt. Ltd2 ., wherein under similar facts, this Court held that a second suit for arrears of rent and damages would not be barred under Order II Rule 2 CPC. 16. Para 18 of the above said judgment is reproduced hereunder:

"18. In view of the enunciation of law, as referred to above, suit for possession and suit for claiming damages for use and occupation of the property are two different causes of action. There being different consideration for adjudication in our opinion, second suit filed by the respondent claiming damages for use and occupation of the premises was maintainable. The application filed by the appellants for rejection of the plaint was rightly dismissed by the Courts below. However, the appellants are well within their right to raise the issue, if any part of the claim in the suit is time-barred but the entire claim cannot be said to be so."

17. The case in hand stands on a better footing, inasmuch as, the plaintiff-respondent had specifically reserved its rights in the first suit regarding claim against warehousing charges, damages for illegal use and occupation etc. and further had applied for leave before the Trial Court for filing a separate suit, which leave had been granted.

There was neither any relinquishment at any stage, nor omission to claim relief. Both the causes of action being separate, the second suit was clearly maintainable. The appellant, who is facing recovery of more than Rs.8 crores, is unnecessarily trying to delay the progress in the suit, which is pending since 2016.

18. In view of the above discussion, we are of the firm view that the impugned order does not suffer from any infirmity. The judgment in the case of Bharat Petroleum Corporation Ltd. (supra) relied upon by the respondent squarely applies in the facts of the present case and we do not find any reason to take a different view.

19. The appeal lacks merit and is, accordingly, dismissed.

20. Pending applications, if any, are disposed of.

.....J. (Vikram Nath)

.....J. (Prasanna Bhalachandra Varale)

New Delhi

July 10, 2024

1 AIR 1972 Bom.326 (FB)

2 2023 SCC Online SC 1614

IN THE SUPREME COURT OF INDIA

Amro Devi & Ors.
Vs.
Julfi Ram (D) through LRS. & Ors.

Civil Appeal No._____ of 2024
arising out of SLP (C) No. 14690 of 2015]

HEADNOTE – Order 23 Rule 3 CPC – For a valid compromise in a suit there has to be a lawful agreement or compromise in writing and signed by the parties which would then require it to be proved to the satisfaction of the Court.

JUDGMENT

Vikram Nath, J.

1. Leave granted.

2. The present appeal is filed by defendants against the order of Himachal Pradesh High Court dated 15.12.2014. The Respondents are original plaintiffs who had filed the suit for declaration and specific performance. The Trial Court dismissed the suit. However, the first Appellate Court reversed the finding of Trial Court and decreed the suit. The High Court, by the impugned order, dismissed the second appeal.

3. Following are the facts leading to the Civil Suit in question:

On 27.12.1979, Mansha Ram, Dev Raj, Khazana Ram, Ramji Das and Bihari Lal (hereinafter referred as "Mansha Ram and others") filed a suit (Civil Suit No. 43 of 1983) for declaration and permanent injunction against Julfi Ram, Tihru Ram, Bakshi Ram- all three are sons of Khajana, Prem Chand-son of Julfi Ram, Kartar Chand-son of Bakshi Ram and Dharam Singh son of Nighu. Plaintiffs were the landowners and defendants were the co-tenants of the land.

The Plaintiffs sought a declaration that they are owners in possession of suit land measuring 7 kanals 9 marlas. They also sought permanent injunction restraining defendants from interfering in the land in suit. The defendants contested the suit and stated that they are in cultivatory possession as tenants on payment. Thus, they claimed to be owners by virtue of tenancy.

4. Trial Court by order dated 11.04.1983, decreed the suit in favor of plaintiffs-Mansha Ram & others granting them both the reliefs of declaration and permanent injunction by holding that they are owners in possession. Aggrieved,

all six defendants preferred an appeal before the District Judge. As one of the plaintiffs -Dev Raj had died during the pendency, his widow Asha Devi and his son Suresh Kumar were arrayed as Respondents in the First Appeal.

5. During the pendency of appeal, on 22.08.1983 Mansha Ram and others executed a sale deed in favour of Kartar Chand, Sansar Chand and Rajinder Kumar- three sons of Bakshi Ram for consideration of Rs. 12,500/-. The first Appellate Court, by order dated 20.08.1984, allowed the appeal, setting aside the decree of Trial Court in light of statements made by plaintiffs before the court. It noted that 'the plaintiffs have compromised the case and stated that they do not want to pursue with the suit and it to be dismissed.'

Before the first Appellate Court, Julfi Ram, Tihru Ram, Bakshi Ram, Prem Chand and Kartar Singh made a joint statement on 20.06.1984 that they have reached a settlement with Respondents. They have also paid money to Mansha Ram and others and they shall be the owners and hold possession of the land in dispute. Thus, Suit filed by Plaintiffs be dismissed. Dharam Singhson of Nighu recorded a separate statement to the same effect.

On the other hand, Bihari Lal, Suresh Kumar (son of Devraj and holder of General power of attorney of Asha Devi), Ramji Das and Dhyan Chand made a statement that they have reached a settlement and have received money. Thus, possession and ownership of the land shall be with appellants/defendants. Mansha Ram and Khazana Ram also recorded their statements on 20.06.1984, that they have reached a settlement and the suit may be dismissed. These four statements are on record of the High Court and of this Court.

6. Appellants submit that Bakshi Ram's three son got exclusive possession and mutation in revenue records by virtue of the sale deed dated 22.08.1983. However, the Respondents submit that by virtue of dismissal of suit by first Appellate Court, all four brothers- Julfi, Tihru, Bakshi and Nighu became owners and the sale deed executed in favour of the three sons of Bakshi Ram shall be subject to compromise decree passed by first Appellate Court.

7. On 23.02.1988, the present suit (Civil Suit No. 41 of 1988) was instituted by Respondents/Plaintiffs- Julfi Ram, Prem Chand, Dharam Singh, Premi Devi, Atmi Devi, Asha Devi, Subhash Chand and Gian Chandtwo sons of Nighu represented by their mother Premi Devi (hereinafter referred as "Julfi Ram and others") against appellants/Defendants- Bakshi Ram(since deceased), Tihru Ram, Amro Devi (wife of Bakshi Ram), Sansar Chand, Kartar Chand, Rajinder Kumar (minor son of Bakshi Ram), Mansha Ram, Khazana Ram, Ramji Das, Bihari Lal and Asha Devi- widow of Suresh Kumar (hereinafter referred as "Bakshi Ram and others").

Thus, the erstwhile owners Mansha Ram and others were also impleaded as defendants. The suit was filed for declaration and permanent prohibitory injunction claiming that plaintiffs are owners in possession of half share i.e. 3 kanals 15 marlas in the suit land as per the compromise between parties in Civil Appeal decided by District Court on 20.08.1984.

Plaintiffs also stated that they continued to be in possession and they were cultivating the land. However, in June 1987 the defendants started interfering with the land in suit stating that they have purchased the land and plaintiff cannot continue to cultivate. Only at this stage plaintiffs claim to have received knowledge about mutation entries where only the names of defendants have been recorded.

8. On the other hand, defendants (Bakshi Ram and others) submitted a written statement on 28.01.1992, contending that there was no compromise in earlier proceedings since no compromise deed was executed and placed on record before the Court in appeal. They also claimed that they have spent Rs. 9,000/- on improvement of suit land after the purchase.

9. The Trial Court, by order dated 19.12.1992, dismissed the suit. It held that for proceeding under Order XXIII Rule 3 of Code of Civil Procedure, 19081 the existence and production of written compromise between the parties duly signed by them is most important. It relied upon the ruling of this Court in Gurpreet Singh vs Chaturbhuj Gopal2.

Since the said compromise was not presented in written form duly signed by the parties, the mandate under Order XXIII Rule 3 CPC is not fulfilled and thus it lacks legal force. The Trial Court also held that statements before the District Court cannot be treated as agreement or compromise. On the fact of possession, the Trial Court noted that plaintiffs could not prove that they were in possession and in cultivation of the land in suit as pleaded.

10. As the Trial Court dismissed the suit, Julfi Ram and others preferred Civil Appeal No.17/1993 before the District Judge, Hamirpur. By order dated 21.12.2001, the District Judge, allowed the appeal thereby decreeing the suit. It held that the Trial Court had no occasion to comment upon the legality of compromise because neither parties challenged the compromise decree by filing an appeal under Order 43 Rule 1-A of CPC.

Thus, it operated as res judicata and could not have been re-opened in a subsequent suit. The said compromise would be binding on parties. On merits, it observed that the sale was clandestinely executed by the vendors (Mansha Ram and others) in favour of sons of Bakshi Ram. It further stated that even if the sale

deed is considered to be valid, the same cannot be allowed to be acted upon as it has been executed during the pendency of Civil Appeal No. 64 of 1993 between the parties.

11. The Appellants/defendants preferred a Regular Second Appeal No. 55 of 2002 before the High Court. The High Court, by the impugned order, dismissed the same and confirmed the decree passed by the first Appellate Court dated 21.12.2001. The High Court held that execution of sale deed does not either abrogate, detract or dilute the effect of a previous conclusive determination comprised in the decree of 1984. Thus, the rights of plaintiffs remained intact to the extent of one-half share in the suit land. The sale deed is thus hit by the doctrine of lis pendens.

12. We have heard learned counsel for the parties and perused the material on record. The question to be determined in the present case is as to what is the status of the so called compromise order dated 20th August 1984 in the first round of litigation. The plaintiffs in the second round of litigation were the defendants whereas the Mansha Ram and others were plaintiffs in the first round of litigation. The first suit was for declaration and for permanent injunction on account of interference by the defendants therein.

The plaintiffs were already recorded in the revenue records. Their suit was decreed by the Trial Court on 11.04.1983. At the time of execution of sale deed, on 22.08.1983, in favour of present appellants (defendants in second suit, Mansha Ram and others) were fully competent to execute the sale deed. It is true that when the said sale deed was executed, the first appeal was pending before the first Appellate Court.

13. Before the first Appellate Court, the plaintiff-respondent therein Bihari Lal gave a short statement to the effect that they had reached a settlement, received money and that possession and ownership of the land would be with the appellants. Mansha Ram and Khazana Ram stated that they had reached a settlement with the appellants, they agreed to the statement of the appellant that suit may be dismissed. At the same time appellants Julfi Ram and others stated that they have reached a settlement with the respondents, they had paid money to Mansha Ram and others, that they shall be owners in possession of the land in dispute and that the suit be dismissed.

14. Based on these statements, the District Judge, Hamirpur by order dated 20.08.1984 accepted the appeal, set aside the judgement and decree of Trial Court and dismissed the suit. It further directed that decree sheet be prepared and file be consigned to the record. The effect of this decree would be that the suit of the plaintiffs was dismissed. No declaration was granted to the defendants in the

said suit. There was no written compromise deed between the parties, there was no verification as such of any written document.

15. At best, under the alleged compromise order of dismissal of suit the defendants therein could have claimed to be in possession of the land in suit and no further. The ownership could not have been transferred because of the dismissal of the suit. Even assuming for the sake of argument that ownership rights were also transferred under the alleged compromise deed, the sale deed executed prior to the said compromise will not be affected in any manner as the plaintiffs were not only recorded as land owners but also had a decree of declaration and permanent injunction in their favour at the time when sale deed was executed.

16. The defendants, in the first round of litigation, were admittedly tenants. They could have become owners of the land in suit either by way of a registered sale deed in their favour or by way of a declaration by the Competent Civil Court whether on merits or by way of a compromise decree granting such declaration. Neither of the two happened. Merely because some statement of the parties is recorded by the first Appellate Court that they have settled the dispute and that the suit may be dismissed, would not make the defendants therein from tenants to owners. Dismissal of the suit would only mean that their status as tenants would continue.

17. The first Appellate Court and the High Court failed to consider that there was no challenge to the sale deed dated 22.08.1983. The doctrine of lis pendens or the restriction imposed under section 52 of the Transfer of Property Act, 18823 may not be relevant or applicable in present case considering the fact that one of the parties- plaintiffs in the proceedings and respondents in pending appeal having executed the sale deed during the pendency of appeal, by their subsequent conduct of giving a statement that their suit be dismissed, acted in dishonest and unfair manner.

They were fully aware of having executed the sale deed, their subsequent statement would only be termed as collusive and dishonest. The order in the appeal court was not a decree on merits declaring any rights of the defendants to the suit (appellants in the appeal). In such circumstances, the sale deed dated 22.08.1983 could not be said to be hit by doctrine of lis pendens.

18. At this juncture, it would be appropriate to note the judicial decision which has been relied upon by the appellants to substantiate their claim that the sale deed is not hit by Section 52 of the TP Act. In Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd.4 it was held that transfer of suit property pendente lite is not void ab initio, as it remains subservient to the pending

litigation. The purchaser of any such property takes the bargain subject to the rights of the plaintiff in pending suit. Therefore, in the present case the sale deed dated 22.08.1983 is not hit by section 52 of the TP Act.

19. Referring to the second submission of the respondents regarding the compromise decree being valid in law, at the outset, Order XXIII Rule 3 CPC is reproduced:

"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 1 [in writing and signed by the parties] or where the defendant satisfied the plaintiff in respect to 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 2 [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:]

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

[Explanation.- An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not he deemed to be lawful within the meaning of this rule.]"

20. A plain reading of the above provision clearly provides that for a valid compromise in a suit there has to be a lawful agreement or compromise in writing and signed by the parties which would then require it to be proved to the satisfaction of the Court.

In the present case there is no document in writing containing the terms of the agreement or compromise. In the absence of any document in writing, the question of the parties signing it does not arise. Even the question of proving such document to the satisfaction of the Court to be lawful, also did not arise. Thus, it cannot be said that the order dated 20.08.1984 was an order under Order XXIII Rule 3 CPC.

21. Once it is held that the order dated 20.08.1984 was not an order of compromise of suit under Order XXIII Rule 3 CPC the argument relating to applicability and bar under Order XXIII Rule 3A CPC would have no relevance at all.

22. Additionally, we must also note the case of Som Dev v. Rati Ram5 as presented by the appellants to clarify the rigors of Order XXIII Rule 3 of CPC. In this case, it was clarified by this Court that after the amendment of Code of Civil Procedure in 1977, a compromise decree can be passed only on compliance with the requirements of Rule 3 of Order XXIII, otherwise it may not be possible to recognize the same as compromise decree. When a compromise is to be recorded and a decree is to be passed, Rule 3 of Order XXIII of the Code requires that the terms of compromise should be reduced to writing and signed by the parties.

23. In the present case, neither the compromise deed has been reduced to writing, nor it is recorded by the court. Mere statements of the parties before court about such said compromise, cannot satisfy the requirements of Order XXIII Rule 3 of the CPC. Therefore, the compromise decree is not valid.

24. In view of the above analysis, the present Civil Appeal is allowed, the orders passed by the High Court and first Appellate Court are set aside. The judgment and decree of Trial Court dated 19.12.1992 dismissing the suit is confirmed.

25. Pending application(s), if any, is/are disposed of.

.....J. (Vikram Nath)

.....J. (Prashant Kumar Mishra)

New Delhi

July 15, 2024

1 CPC

2 AIR 1988 SC 400.

3 The TP Act.

4 (2013) 5 SCC 397.

5 (2006) 10 SCC 788

IN THE SUPREME COURT OF INDIA

Amit Rana @ Koka & Anr.
Vs.
State of Haryana

[Criminal Appeal No._____ of 2024
arising out of SLP (Crl.) No. 14705 of 2023]

HEADNOTE – Sentencing Court not imposing life imprisonment on convict cannot impose sentence beyond 10 years

JUDGMENT

C.T. Ravikumar, J.

Leave granted.

1. The captioned appeal is filed to challenge the concurrent conviction of the appellants under Section 307 read with Section 34 of the Indian Penal Code, 1860 (for short the 'IPC') and the consequently, imposed sentence on them to undergo rigorous imprisonment for 14 years each and to pay a fine of Rs.1,50,000/- (Rupees one lakh fifty thousand only) each and in default to undergo simple imprisonment for six months.

2. On 21.11.2023, after hearing the learned counsel for the appellants and looking into the overwhelming conclusive evidence supporting the conviction of the appellants under Section 307, IPC, with the aid of Section 34, IPC, this Court declined to entertain the Special Leave Petition to the extent it seeks to challenge the conviction, and issued limited notice confining to the challenge against the award of 14 years of rigorous imprisonment for the conviction thereof.

The challenge is to the effect that in terms of the provisions under Section 307, IPC a term imprisonment beyond the period of ten years is impermissible though in case of hurt during attempt to murder would make the convict liable for imprisonment for life. Hence, the scope of this appeal is confined only to the question on sentence.

3. Heard learned counsel for the appellants and learned counsel appearing for the respondent-State. The rival contention raises a question of seminal importance as mentioned, viz., 'whether a convict under Section 307, IPC, can be sentenced to undergo imprisonment, of either description, beyond the period of ten years. It is

worthwhile to extract Section 307, IPC for a proper consideration of the aforesaid question. It reads thus:-

"307. Attempt to murder.- Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life], or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts.- [When any person offending under this section is under sentence of [imprisonment for life], he may, if hurt is caused, be punished with death.]"

4. A perusal of Section 307, IPC, would make it clear that it really imbibes the true spirit of the maxim 'culpae poena per esto' - means 'let the punishment be proportionate to the offence; let the punishment fit the crime.' It itself prescribes three types of sentences imposable on a convict thereunder. If it is an attempt to murder simpliciter, the offence is punishable maximum with by a term of imprisonment of either description upto ten years and fine. The last part of Section 307 prescribes death sentence as the only punishment when the offender during the commission of the crime is under the sentence of imprisonment for life and hurt is caused to the victim.

5. We are concerned with the second part of Section 307, where victim suffers hurt. There can be no doubt with respect to the position that the convict under this part can be sentenced to undergo imprisonment for life. The parties are at issue only on the expression in the second part 'or to such punishment as is hereinbefore mentioned'. The learned counsel for the appellants would contend that the said expression limits the maximum sentence imposable, when imprisonment for life is found not to be imposed, to what is mentioned in the first part viz., imprisonment of either description up to ten years and fine.

A feeble attempt was made by the learned counsel for the state to justify the imposition of sentence of imprisonment for 14 years contending that the nature of the bodily injury sustained by the victim and its aftermath were taken into consideration by the trial Court and the High Court found that imprisonment for life would be disproportionate and the proportionate punishment to the gravity of the offence invites imposition of imprisonment short of imprisonment for life. It is further submitted that when imprisonment for life is imposable for attempt to murder where the victim suffered hurt imposition of sentence lesser than imprisonment for life cannot be said to be beyond the penal power of the Court.

6. Section 307, IPC, makes it clear that to attract the said offence the victim need not suffer any kind of bodily injury. The offence to commit murder punishable under Section 307, IPC is constituted by the concurrence of mens rea followed by actus reus, to commit an attempt to murder though its accomplishment or sufferance of any kind of bodily injury to the victim is not a 'sine qua non'.

In other words, if a man commits an act with such intention or knowledge and under such circumstances that if death had been caused, the offence would have amounted to murder or the act itself is of such a nature as would have caused death in the usual course of an event, but something beyond his control prevented that result, his act would constitute the offence punishable as an attempt to murder under Section 307, IPC.

7. Now we will refer to the incident in question which led to the conviction of the appellants under Section 307, IPC. In view of the fact that we are not considering the question of conviction, it is unnecessary to deal with the occurrence in detail. PW-5 Dr. Sahil, the then medical officer attached to PGIMS, Rohtak, deposed that the complainant (victim) was admitted in the hospital from 09.06.2016 to 02.07.2016 with history of gunshot injury. He would further depose that he along with Dr. Shubham removed the foreign body from the spine of the victim-Mangtu Ram.

The indisputable fact is that the victim became paralysed due to the said spinal injury. Thus, it can be seen that the attempt to murder the complainant caused the injury and resultantly he became paralysed. When that be the consequence of the attempt to murder, the case would definitely be fallen under the second part of Section 307, IPC. On scanning the provisions under Section 307, IPC, we have already found that in case the victim suffered hurt in terms of the second part of Section 307, IPC, the convict can be sentenced to undergo imprisonment for life.

In the event the court did not consider that imprisonment for life is not to be imposed the other option, going by the provision, is only to impose such punishment as is mentioned in the first part of Section 307, IPC. The first part, as noticed hereinbefore, prescribes punishment with imprisonment of either description for a term which may extend to 10 years and also to pay fine. A bare perusal of the second part of Section 307, IPC, would undoubtedly show that it did not prescribe for imposition of punishment more than what is prescribed under the first part thereof.

We have already noted that the maximum imprisonment permissible under the first part of Section 307, IPC, is "imprisonment of either description for a term which may not extent to 10 years and also fine". When in unambiguous terms the legislature prescribed the maximum corporeal sentence imposable for the

conviction under Section 307, IPC, under the first part and when the court concerned upon convicting the accused concerned thought it fit not to impose imprisonment for life, the punishment to be handed down to the convict concerned in any circumstance cannot exceed the punishment prescribed under the first part of Section 307, IPC.

When this be the mandate under Section 307, IPC, the trial Court in view of its decision not to award the punishment of imprisonment for life could not have granted punishment to a term exceeding 10 years. It is to be noted that the respondent-State has not filed any appeal contending that the punishment imposed on the appellants is liable to be enhanced to imprisonment for life thus, we do not deem it necessary to go into the question whether the punishment is to be enhanced. Thus, the question is whether the sentence of rigorous imprisonment for 14 years is permissible in law and if not, what should be the comeuppance.

The discussion as above with reference to Section 307, IPC, would thus go to show that imposition of rigorous imprisonment for a term of 14 years for a conviction under Section 307, IPC, is impermissible in law and it is liable to be interfered with. Since the High Court had not gone into the question as to how imprisonment for a term of 14 years or the conviction under Section 307, IPC would be maintained and in view of our conclusion as above, the judgment of the High Court confirming the judgment of the trial Court awarding rigorous imprisonment for 14 years calls for interference.

8. Since the conviction of the appellants under Section 307, IPC, is declined to be interfered with by us, necessarily the punishment for the said offence taking note of the gravity of the crime has to be imposed. Since we are not proposing to enhance the sentence to imprisonment for life and the only option is to bring down the term of imprisonment from 14 years, there is absolutely no reason to hear the appellants in-person.

9. We have taken note of the fact that as a consequence of the attempt to do away with the life of the complainant, he had suffered spine injury and became paralysed in terms of the second part of the Section 307, IPC, the appellants are to be given the maximum corporeal sentence imposable under the first part of Section 307, IPC.

Accordingly, the imposition of rigorous imprisonment for 14 years each to the appellants is converted to rigorous imprisonment for a period of 10 years. The order of sentence with respect to fine is kept intact. The appeal is thus allowed in part and the impugned judgment of the High Court and the judgment of the trial Court in S.T. No.281/2016 qua the appellants stands modified as above.

10. Pending applications, if any, stands disposed of.

.....J. (C.T. Ravikumar)

.....J. (Rajesh Bindal)

New Delhi;

July 22, 2024

IN THE SUPREME COURT OF INDIA

Gaurav Kumar
Vs.
Union of India

[Writ Petition (C) No. 352 of 2023]

[T.C. (C) No. 28 of 2023]
[T.C. (C) No. 29 of 2023]
[T.C. (C) No. 30 of 2023]
[T.P. (C) No. 2526 of 2023]
[T.P. (C) No. 1982 of 2023]
[T.P. (C) Nos. 2088-2089 of 2023]
[T.P. (C) No. 2171 of 2023]
[T.P. (C) No. 2123 of 2023]
[T.P. (C) No. 2734 of 2023]

HEADNOTE – The enrolment fee cannot exceed Rs.750 for advocates belonging to the general category and Rs.125 for advocates belonging to SC/ST categories. State Bar Councils cannot charge any amount over the above-specified amounts under the head of "miscellaneous fee", "stamp duty" or other charges. All fees charged by the bar councils, under whatever name, as a pre-condition for enrolment, would qualify as 'enrolment fee'. Therefore, money collected by Bar Councils in the name of verification fee, building fund, benevolent fund etc., which are stated to be one-time payments, at the time of enrolment, would be enrolment fee.

JUDGMENT

Dr. Dhananjaya Y. Chandrachud, CJI

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1. The proceedings under Article 32 of the Constitution address a challenge to the validity of the enrolment fees charged by State Bar Councils.[1] The grievance is that the fees charged by the SBCs at the time of admission of persons on State rolls are more than the enrolment fee prescribed under Section 24(1)(f) of the Advocates Act 1961.[2]

A. Background

2. The Advocates Act was enacted to amend and consolidate the law relating to legal practitioners and constitute a common Bar for the whole country. The enactment establishes the SBCs[3] and the Bar Council of India.[4] Section 6 of the Advocates Act entrusts myriad functions to the SBCs.

These functions comprehend entry into and conduct of legal professionals, including admission of advocates to their rolls, preparation and maintenance of rolls, determination of cases of misconduct against advocates on the rolls and safeguarding the rights, privileges and interests of advocates. The statute empowers the SBCs to organize legal aid for the poor, promote and support law reform, conduct academic discourses, and publish journals and papers on matters of legal interest.

3. The functions of the BCI have been enumerated under Section 7. These include laying down standards of professional conduct and etiquette for advocates, enunciating the procedure to be followed by its disciplinary committee and the disciplinary committee of the SBCs, safeguarding the rights, privileges,

and interests of advocates, and promoting law reform. BCI is empowered to exercise general supervision and control over the SBCs. BCI is also empowered to impart legal education and lay down standards for legal education in consultation with the universities whose degrees in law would be a qualification for enrolment as an advocate and, for that purpose, visit and inspect universities.

4. Chapter III of the Advocates Act pertains to the admission and enrolment of advocates. Section 17 mandates the SBCs to prepare and maintain a roll of advocates. An application for admission as an advocate on a State roll is made to the SBCs.[5] The SBCs are required to issue a certificate of enrolment to every person whose name is enrolled in the roll of advocates.[6] Section 24 prescribes the qualifications and conditions for a person to be admitted as an advocate.[7]

5. To qualify to be admitted as an advocate on a State roll, a person must: (a) be a citizen of India; (b) complete the age of twenty-one years; (c) obtain a degree in law; (d) fulfil such other conditions as may be specified in the rules made by the SBCs under Chapter III; and (e) pay an enrolment fee of Rupees six hundred payable to the SBC and Rupees one hundred to the BCI along with any stamp duty, if chargeable. In the case of a person belonging to the Scheduled Castes or Scheduled Tribes, the enrolment fee of Rupees one hundred is payable to the SBC and Rupees twenty-five to the BCI.

6. The SBCs charge enrolment fees stipulated under Section 24(1)(f) of the Advocates Act to admit law graduates on their State roll. At the time of enrolment, the SBCs also charge various "fees" and "charges" in addition to the enrolment fees in the form of library fund contributions, administration fees, identity card fees, welfare funds, training fees, processing fees, certificate fees, etc. The amount of fees charged by the SBCs differ significantly. This results in a situation where a law graduate has to pay somewhere between Rupees fifteen thousand to Rupees forty-two thousand (depending upon the SBC) as cumulative fees at the time of enrolment.

7. The petitioner instituted proceedings under Article 32 of the Constitution seeking a declaration that the fees charged by the SBCs at the time of enrolment violate Section 24(1)(f) of the Advocates Act. In its order dated 10 April 2023, this Court issued notice while observing that the petitioner has raised a significant issue about the enrolment fees charged by the SBCs. By an order dated 17 July 2023, this Court transferred to itself the petitions dealing with similar issues from the High Court of Kerala,[8] the High Court of Judicature at Madras at Madurai,[9] and the High Court of Judicature at Bombay.[10] Given this background, we now deal with the challenge to the validity of enrolment fees charged by the SBCs.

B. Issues

8. The petitions give rise to the following issues:

a. Whether the enrolment fees charged by the SBCs are in contravention of Section 24(1)(f) of the Advocates Act; and

b. Whether payment of other miscellaneous fees can be made a pre-condition for enrolment.

C. Submissions

9. Mr Gaurav Kumar, the petitioner-in-person, made the following submissions:

a. Section 24(1)(f) expressly prescribes the enrolment fee chargeable by the SBCs and the BCI for persons to be admitted as an advocate. SBCs are charging exorbitant enrolment fees, often under different heads, in derogation of Section 24(1)(f);

b. Once there is a specific provision prescribing enrolment fees, the SBCs or the BCI through their delegated rule-making power cannot charge fees beyond the substantive provision. Therefore, the BCI and the SBCs cannot invoke their powers to frame rules under Section 49(1) and Section 28(1) of the Advocates Act respectively to prescribe enrolment fees that are at variance with Section 24(1)(f);

c. The term 'subject to the provisions of this Act' at the beginning of Section 24 has been misconstrued to permit charging enrolment fees beyond the statutory prescription. It only means that other provisions of the Act must be considered while deciding the 'eligibility' of law graduates to be admitted as advocates on the state rolls;

d. Section 6(3) of the Advocates Act prescribes how the SBCs may constitute 'funds' to fulfil their functions under Section 6(2). It does not allow imposing additional charges under different heads along with the enrolment fees or charging exorbitant fees as a mandatory condition for persons to get enrolled;

e. The exorbitant enrolment fees prevent law graduates belonging to economically weaker sections of society from getting admitted to the rolls of the SBCs. Such an indirect bar on law graduates enrolling as advocates offends Article 19(1)(g) of the Constitution. It also makes the process of enrolment coercive, improper, unjust and unfair, violating Article 14 of the Constitution; and

f. The Advocates' Welfare Fund Act 2001 enacted by Parliament allows for the collection of funds through various sources for the welfare of advocates. This amount does not need to be collected by levying exorbitant enrolment fees.

10. Mr Manan Kumar Mishra, senior counsel made the following submissions on behalf of the BCI:

a. Bar Councils require adequate operational funds to effectively discharge their functions. They require funds for day-to-day functioning including administrative expenses, staff salaries, infrastructure maintenance and technological advancements. Inadequate funding will hinder the ability of SBCs to comply with their statutory obligations under the Advocates Act;

b. The enrollment fee prescribed under Section 24(1)(f) was fixed by the legislature in 1993 and has not been modified since. It fails to account for inflation and is not adequate to meet current financial demands. Unlike other professional bodies that levy an annual subscription fee on members, SBCs rely on the one-time enrolment fee;

c. The fees charged by SBCs at the time of enrollment include additional expenses incurred in the enrolment process along with the enrolment fee prescribed by the Act, such as online data processing fee, identity card fee and verification process fee. Therefore, the fees charged do not violate Section 24(1)(f) and are linked to the services being rendered by the SBCs;

d. Section 6(2) lays down the functions of the SBCs and places enrolment of advocates exclusively within their domain. An entity on whom statutory powers or duties have been conferred impliedly possesses incidental powers necessary for its effective exercise;

e. Section 15 of the Act provides SBCs with the power to make rules to carry out the purposes of Chapter II of the Act (including Section 6). This general power to frame Rules includes the power to levy charges for services rendered under the Act;

f. Merely because a charge is levied at the time of 'enrollment' does not make it an enrollment fee. The 'enrollment fee' charged by most SBCs under Section 24(1)(f) continues to be six hundred rupees and the remaining amount is usually attributable to additional charges for other services. SBCs may be directed to comply with Section 24(1)(f) while charging an 'enrollment fee'. But this must be distinguished from other charges levied at the time of enrolment. Such charges are permissible provided they pass the test of quid pro quo in terms of services rendered in return for the charges levied; and

g. The BCI has the power to frame rules to charge reasonable fees under Section 49(1) (ah) and Section 49(h). The term 'any matter' used in Section 49(h) also includes matters relating to the enrolment of an advocate. In exercise of this power and to ensure uniformity, the BCI has placed on record before this Court, the draft Uniform Rules (For Enrolment and Other Fees To Be Charged By The State Bar Councils) 2023[11] laying down a uniform fee to be charged by all SBCs at the time of enrollment.

11. In view of the above submissions, the BCI has submitted that this Court exercise its extraordinary powers under Article 142 to implement a uniform enrolment fee structure that adequately caters to the financial requirements of the SBCs until legislative amendments are made to the Advocates Act. Additionally, it has urged this Court to direct the Union Government to revise the enrolment fee prescribed in Section 24(1)(f).

12. The SBCs have filed counter affidavits justifying the imposition of the fees charged by them at the time of enrollment. In essence, they contend that (i) the statutorily prescribed enrolment fee in Section 24(1)(f) fails to account for the current economic situation; (ii) the SBCs are charging fees in addition to the statutorily prescribed enrolment fee in return for services such as library fee and ID card fee under their rule-making powers under Section 15 and Section 28; and (iii) the additional charges are essential to enable the SBCs to fulfil their statutory functions. In order to fulfil these statutory functions, the SBCs inter alia run various welfare programs, insurance schemes, seminars and training programmes, which require adequate funding.

13. Mr Raghenth Basant, senior counsel appearing for the petitioners before the Kerala High Court assailed the levy of enrollment fees by the Bar Council of Kerala in excess of the fee prescribed in Section 24(1)(f). Mr Basant made the following submissions:

a. Rules prescribed by the SBCs under general provisions such as Section 24(1)(e) cannot be with respect to the enrolment fee which has been specifically dealt with in Section 24(1)(f);

b. Rule-making powers cannot be used to frame rules contrary to the Advocates Act, especially in the absence of any provision stipulating that the BCI or the SBCs are entitled to increase the statutory enrolment fee as they deem fit;

c. The 1993 amendment which increased the statutory enrolment fee to its present form indicates that Parliament has been conscious of the need to increase the enrolment fee as and when required and is the only competent authority to carry out such changes; and

d. Other fees charged by the Bar Council of Kerala, such as the sums charged under Rule 40 of Section IVA under Chapter II of Part VI of the Bar Council of India Rules[12] cannot be made a condition precedent for enrolment. Rule 40 of the BCI Rules prescribes that the payment be made by an advocate on the rolls of the SBC and thus, it cannot be a pre-requisite for enrolment.

D. Legal background

i. All India Bar Committee

14. The establishment of the High Courts by Letters Patent in the Presidencies of Calcutta, Bombay, and Madras brought all courts in the territories of British India under a unified system. The Letters Patent also allowed the High Courts to enroll advocates, vakils, and attorneys. The Legal Practitioners Act 1879 empowered the High Courts not established by royal charters to make rules for the qualifications and admission of persons seeking to be advocates of the Court.[13]

Initially, barristers and solicitors predominated the Original Side practice in the High Courts.[14] Gradually, both advocates and vakils (who were Indian non-barristers) could act and plead before all High Courts, except for the Calcutta High Court which excluded vakils from the Original Side.[15] This distinction between advocates and vakils led to the demand for the creation of an all-India Bar.

15. To give effect to this demand, the colonial legislature enacted the Indian Bar Councils Act 1926[16] "to provide for the constitution and incorporation of Bar Councils and to confer powers and impose duties on such Bar Councils." Section 3 prescribed the constitution of a Bar Council for every High Court. Section 8 pertained to the admission and enrolment of Advocates.

It authorized the High Courts to prepare and maintain a roll of advocates. Section 9 empowered the Bar Councils to make rules regulating the admission of persons to be advocates of the High Court including the charging of fees payable to the Bar Councils in respect of enrolment. Thus, the 1926 Act empowered the Bar Councils to prescribe fees in respect of enrolment. However, the 1926 Act did not substantially fulfil the demands of the Indian legal practitioners for an all-India Bar. In 1951, the Government set up the All- India Bar Committee to inquire into this issue and provide a feasible legal solution.

16. The Committee recommended setting up of the SBCs and an All-India Bar Council, uniform minimum qualification for admission to the roll of Advocates, a common roll of Advocates maintained by the respective SBCs, and permitting the enrolled advocates to practice in any court in India, including the Supreme Court.

The Committee's observations on the finances of the BCI and the SBCs are relevant:

"It is obvious that in order to carry on its duties the All-India Bar Council and the State Bar Councils shall require funds. At present the Advocates, at the time of their enrolment, pay a certain amount ranging from Rs. 25/- to Rs. 100/- which goes to the Bar Council besides Rs. 250/- to Rs. 1,125/- which goes to the State. Entrants to the professions other than the legal profession are not required to pay any amount to the State as and by way of admission fee.

Persons exercising any profession, calling or vocation including Advocates in several places have to pay a licence fee, but there is no reason why there should be a taxation by the State at the time of enrolment of Advocates only. The Committee suggests that an Advocate at the time of his admission shall pay a sum of Rs. 500/- to the State Bar Council to which he makes his application and nothing should be payable to the State. This amount may be paid in a lump sum or an Advocate may elect to pay annual amounts of Rs. 50/- with an option to pay Rs. 500/- at any time, amounts already paid not being deducted.

Those Vakils and Pleaders who according to the recommendations of the Committee become eligible to be enrolled as Advocates may pay Rs. 500/- in lump sum or an annual amount of Rs. 50/- with the option mentioned above. Each State Bar Council shall for the first five years contribute 40% of the enrolment fees received by it to the All-India Bar Council. At the end of the first 5 years the proportion of the contribution may be reconsidered."[17]

(emphasis added)

17. The Committee was aware of the fact that the SBCs will require funds to carry out their functions and duties. Consequently, the Committee recommended that an advocate should pay an enrolment fee of Rupees five hundred to the SBCs "at the time of his admission". The Committee suggested that this amount could either be paid as a lump sum or on a yearly instalment basis. In 1958, the Law Commission of India observed that the amount of Rupees five hundred proposed by the All-India Bar Committee was excessive. It instead suggested an enrolment fee of Rupees one hundred twenty-five.[18]

18. In 1959, the Legal Practitioners Bill 1959 was introduced in Parliament. The Bill was referred to a Joint Committee of Parliament which submitted its recommendations in 1960. The Joint Committee recommended renaming the proposed enactment as the Advocates Act because there would only be one class of legal practitioners in India, that is, advocates. Importantly, the Joint Committee recommended reducing the proposed enrolment fee from Rupees five

hundred to Rupees two-hundred and fifty. The aim behind reducing the enrollment fee was "to bring in as many eligible lawyers within its [the legislation's] fold as possible."[1]

19. The recommendation of the Joint Committee was accepted by Parliament and incorporated under Section 24(1)(f). During the Parliamentary debates preceding the passage of the Advocates Act, many members suggested that the enrolment fee of Rupees two-hundred fifty was exorbitant.[20] It was suggested that the enrolment fee should be further reduced or abolished altogether.[21] The then Minister of Law (Mr A K Sen) justified the rationale for prescribing Rupees two hundred fifty as enrolment fee thus:

"So far the Bar Council is concerned, a fee of Rs. 250 is not very unreasonable especially having regard to the fact that when we are setting up an autonomous body, we must give it enough funds to make it effective and useful. If it is to discharge all the functions given to it under this statute, then it requires funds and therefore Rs. 250 per entrant is not too much of a fee to pay when the Bar Council is going to function in so many different ways."[22]

(emphasis added)

The statement of the Law Minister indicates that the enrolment fee was meant to allow the SBCs to effectively discharge "all functions" under the Advocates Act.

20. In 1973, the enrolment fee payable by the members of the Scheduled Castes and Scheduled Tribes was reduced to Rupees one hundred twenty-five. Subsequently, Section 24(1)(f) was amended in 1993 to revise the fees payable by general candidates from Rupees two hundred fifty to Rupees seven hundred fifty, without increasing the fees payable by candidates belonging to the SC and ST category. The enrolment fees were increased given the representations made by the Bar Councils.[23] This indicates that Parliament is aware and responsive to the financial problems faced by the Bar Councils.[24]

ii. Advocates Act: A Complete Code

21. In O N Mohindroo v. Bar Council of Delhi,25 a Constitution Bench held that the Advocates Act was enacted by Parliament under the legislative field of Entries 77[26] and 78[27] of List I. It was observed that the object of the Advocates Act is to constitute one common Bar for the whole of the country and to provide machinery for its regulated functioning. It was further observed that the expression "persons entitled to practice" under Entries 77 and 78 of List I includes within its scope the determination or prescription of qualifications and conditions entitling a person to practice as an advocate before the Supreme Court or the High Courts.[28]

22. In Bar Council of U P v. State of U P,[29] the issue before a three-Judge Bench was whether the State legislature could impose stamp duty on the certificate of enrolment issued by the SBCs. It was held that the enrolment fee payable under Section 24(1)(f) is covered by Entry 96 in List I. Concerning the imposition of stamp duty, it was held that stamp duty payable on the certificate of enrolment cannot be regarded as a condition prescribed for enrolment because it pertains to the domain of taxation.[30] It was held that the State Legislature was competent to levy stamp duty under Entry 44 of List III of the Seventh Schedule.

23. The Advocates Act was enacted to implement the recommendations of the All-India Bar Committee. According to the Statement of Objects and Reasons, the main features of the enactment are:

(i) establishment of an All-India Bar Council and a common roll of advocates, and advocates on the common roll having a right to practice in any part of the country and any Court, including the Supreme Court;

(ii) integration of the bar into a single class of legal practitioners known as advocates;

(iii) prescription of a uniform qualification for the admission of persons to be advocates;

(iv) division of advocates into senior advocates and other advocates based on merit; and

(v) creation of autonomous Bar Councils, one for the whole of India and one for each State.

24. The 1926 Act did not prescribe any qualifications to be possessed by persons applying for admission as advocates. Under the 1926 Act, the Bar Councils prescribed qualifications, but the enrollment was carried out by the High Courts. Under the Advocates Act, the enrolment process is completely undertaken by the SBCs.

The SBCs are mandated to maintain and prepare a State roll and admit persons as advocates on the roll if they fulfil the statutory prescriptions, along with any other qualifications laid down by the SBCs. Section 24(1) of the Advocates Act statutorily engrafts the minimum qualifications to be possessed by advocates seeking enrolment. The provision specifies the qualifications to be possessed by persons to be admitted as an advocate on a State roll. Additionally, the SBCs can also specify other conditions by rules.

25. Section 24A provides that no person shall be admitted on a State roll if he is: (i) convicted of an offence involving moral turpitude; (ii) convicted of an offence under the provisions of the Untouchability (Offences) Act 1955; and (iii) dismissed or removed from employment or office under State on any charge involving moral turpitude.

Section 25 provides that an application for admission as an advocate shall be made to the SBC within whose jurisdiction the applicant proposes to practice. Section 26 mandates the SBCs to refer every application for admission to their enrolment committee for decision. The SBCs are also empowered to remove the names of advocates from the State roll.[31] Section 28 empowers the SBCs to make rules for the admission and enrolment of advocates.

26. The provisions of the Advocates Act indicate that it provides a complete machinery[32] to deal with the admission and enrolment of advocates. The SBCs are vested with sufficient powers to ensure effectual and complete implementation of the enactment. In Dr Haniraj L Chulani v. Bar Council of Maharashtra and Goa, this Court held that the Advocates Act provides a complete code for regulating the legal education and professional qualifications of an aspirant seeking entry into the legal profession.[33]

iii. Delegated legislation

27. The basic principle underlying the concept of delegated legislation is that the legislature cannot directly exert its will in every detail.[34] It lays down the legislative policy and delegates the subsidiary or ancillary powers to the delegated or subordinate authorities to carry out the legislative policy.[35] It is now a settled legal principle that the legislature cannot abdicate essential legislative functions to the delegated authority.[36]

The legislature can entrust subsidiary or ancillary legislation to the delegate. Before such delegation, the legislature should enunciate the policy and the principles for the guidance of the delegated authority.[37] As a corollary, the delegated authority must carry out its rule-making functions within the framework of the law. The delegated legislation must be consistent with the law under which it is made and cannot go beyond the limits of policy and standards laid down in the law.[38]

28. Although delegated legislation enjoys the presumption of constitutionality, it does not enjoy the same immunity as the parent legislation. It is now wellestablished[39] that delegated legislation can be challenged on the following grounds:

(i) lack of legislative competence to make delegated legislation;

(ii) violation of fundamental rights guaranteed under the Constitution;

(iii) violation of any provision of the Constitution;

(iv) failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act;

(v) repugnance to any other enactment; and

(vi) manifest arbitrariness.

29. Modern legislation often contains provisions enabling the delegate of the legislature to frame subordinate legislation. The statutory provision for delegation is often couched in general terms empowering the delegate the power to frame rules "to carry out the purposes of this Act" or a particular segment of the statute contained in a Chapter. The general provision is then followed by a provision enumerating specific matters on which the delegate may frame rules.

A similar legislative scheme is reflected in Sections 15 and 28 of the Advocates Act. Where a rule-making power is conferred upon the delegate in general terms, a subsequent enumeration of matters on which the delegate may frame rules is illustrative and does not limit the scope of the general power.[40] The enumerated matters in such a situation provide guidelines for the delegated authority while framing rules in exercise of the general power.[41]

iv. Power to levy fees

30. Article 265 of the Constitution stipulates that no tax shall be levied or collected except by the authority of law. Article 366(28) defines taxation or tax to include the imposition of a tax or impost, whether general, local or special.

31. In CIT v. McDowell and Co. Ltd.,[42] a three-Judge Bench of this Court enunciated the principles for interpreting Article 265 read with Article 366(28):

"21. "Tax", "duty", "cess" or "fee" constituting a class denotes various kinds of imposts by State in its sovereign power of taxation to raise revenue for the State. Within the expression of each specie each expression denotes different kinds of impost depending on the purpose for which they are levied. This power can be exercised in any of its manifestations only under any law authorising levy and collection of tax as envisaged under Article 265 which uses only the expression that no "tax" shall be levied and collected except authorised by law. It in its elementary meaning conveys that to support a tax legislative action is essential, it cannot be levied and collected in the absence of any legislative sanction by

exercise of executive power of State under Article 73 by the Union or Article 162 by the State.

22. Under Article 366(28) "Taxation" has been defined to include the imposition of any tax or impost whether general or local or special and tax shall be construed accordingly. "Impost" means compulsory levy. The well-known and well-settled characteristic of "tax" in its wider sense includes all imposts. Imposts in the context have following characteristics:

(i) The power to tax is an incident of sovereignty.

(ii) "Law" in the context of Article 265 means an Act of legislature and cannot comprise an executive order or rule without express statutory authority.

(iii) The term "tax" under Article 265 read with Article 366(28) includes imposts of every kind viz. tax, duty, cess or fees.

(iv) As an incident of sovereignty and in the nature of compulsory exaction, a liability founded on principle of contract cannot be a "tax" in its technical sense as an impost, general, local or special."

32. The Seventh Schedule to the Constitution differentiates between taxing entries and general entries. Subjects pertaining to the levy of taxes must be traced to specific taxing entries enumerated in either List I or List II.[43] In addition, Parliament has the residuary power under Article 248 read with Entry 97 of List I to legislate on matters not enumerated in List II or List III, including on matters of taxation. The power of the legislature to levy fees is dealt with under separate heads:

(i) Entry 96 of List I empowers Parliament to levy fees in respect of any matters in List I;

(ii) Entry 66 of List II empowers the State legislatures to levy fees in respect of any matters in List II; and

(iii) Entry 47 of List III empowers both Parliament and the State legislatures (subject to Article 254) to levy fees for any matter enumerated in List III. Parliament has prescribed an enrolment fee under Section 24(1)(f) of the Advocates Act under Entry 96 of List I.

33. The legislature can delegate its power to levy fees.[44] Since a fee is an impost and a compulsory exaction of money, the power of a delegate to levy fees must flow from the express authority of law. In Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla[45] this Court observed:

"7. In our view, such power of imposition of tax and/or fee by delegated authority must be very specific and there is no scope for implied authority for imposition of such tax or fee. It appears to us that the delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of fiscal power."

34. The principles that flow from the above discussion are: (i) a fee is an impost in terms of Article 366(28); (ii) the expression "tax" occurring in Article 265 means all imposts, including fees and therefore any fee must be levied by the authority of a valid law; (iii) fees being a compulsory exaction of money, the power to levy fees cannot be implied; (iv) delegation of the power to levy fees to a delegate of the legislature should be specifically provided for under the parent legislation; and (v) the delegate must strictly act within the parameters of the legislative policy laid down by the parent legislation when levying fees and taxes.

v. Regulatory fees

35. Article 110 of the Constitution, though in a different context, recognizes that that fees imposed under the authority of law may include (i) fees for licences; and (ii) fees for service.[46] In Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt,[47] a Constitution Bench explained the concept of licence fees thus:

"47. In the first class of cases, the Government simply grants a permission or privilege to a person to do something, which otherwise that person would not be competent to do and extracts fees either heavy or moderate from that person in return for the privilege that is conferred. A most common illustration of this type of cases is furnished by the licence fees for motor vehicles.

Here the costs incurred by the Government in maintaining an office or bureau for the granting of licences may be very small and the amount of imposition that is levied is based really not upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases, according to all the writers on public finance, the tax element is predominant, and if the money paid by the licence-holders goes for the upkeep of roads and other matters of general public utility, the licence fee cannot but be regarded as a tax"

In Shirur Mutt (supra), it was held that a fee is money taken by the Government "as the return for the work done or services rendered."[48] Therefore, a fee was characterised by an element of quid pro quo between the payer and the public authority.

36. In a series of subsequent decisions, this Court held that a levy can be regarded as a fee if it has a "reasonable relationship" with services rendered by the public authority.[49] The traditional view that there must be an actual quid pro quo for a fee has not been applied in the strict sense in subsequent decisions of this Court. It has been held that the relationship between the levy of a fee and services rendered is one of general character and not of mathematical exactitude.[50]

37. In Corporation of Calcutta v. Liberty Cinema,[51] a Constitution Bench observed that licence fees are not necessarily charged in return for services rendered. This Court referred to a Privy Council decision[52] which inter alia held that licence fees could be charged to defray the costs of administering the local regulations. In Secunderabad Hyderabad Hotel Owners' Association v. Hyderabad Municipal Corporation,[53] this Court observed that licence fees could broadly be classified as either regulatory or compensatory.

It was observed that licence fees are regulatory when the activities for which a licence is given are required to be regulated or controlled. It was further held that the fees charged for regulation of activities could be validly classified as fees although no service is rendered. A regulatory fee such as a licence fee enables authorities to supervise, regulate, and monitor the activity related to which the licence has been issued and to secure proper enforcement of the legal provisions.[54]

38. The principle which follows from the above discussion is that the State grants a licence to regulate a particular trade, business, or profession.[55] These regulatory activities entail a duty on behalf of the State or its instrumentalities to supervise, regulate, and monitor that particular trade, business, or profession. Because such activities require the State to expend public resources, the State can charge licence fees to defray the administrative costs. The enrolment fee stipulated by Section 24(1)(f) of Advocates Act meets the characteristic of a regulatory fee.

39. Having encapsulated the broad gist of the historical and legal context, we now deal with the issues arising in these petitions.

E. Fees charged by the SBCs

40. Presently, the SBCs charge different fees from advocates at the time of enrolment. Most SBCs charge an enrolment fee in addition to other miscellaneous fees. For instance, the Bar Council of Maharashtra and Goa is charging library fees, certificate fees, administration fees, identity card fees, training fees, and welfare fund contributions. Resultantly, the enrolment fee and the other fees charged by the SBC amounts to Rupees fifteen thousand for

general candidates and Rupees fourteen thousand five hundred for candidates from SC and ST category.

41. The Bar Council of Odisha is charging Rupees forty-two thousand one hundred from advocates at the time of enrolment. In their counter affidavit, the SBC concedes the fact that Section 24(1)(f) only mandates the SBCs to charge Rupees seven hundred fifty in total at the time of enrolment. However, the SBC sought to justify charging the enhanced enrolment fee and other fees from the advocates "having regard to the functions of the Odisha Bar Council" under the Advocates Act. The SBC further claims that in line with its functions under Section 6, it has created various welfare funds for the benefit of advocates on its roll and utilizes the contributions received from the fees towards this end.

Resultantly, the SBC is charging Rupees twenty-six thousand nine hundred as a one-time deposit to enable an advocate to avail of a lifetime benefit of various welfare schemes. This amount is in addition to the enrolment fee of Rupees six thousand, processing/ development fees of Rupees seven thousand, and other miscellaneous charges. The SBC justified charging Rupees six thousand as the enrolment fee on the basis of a BCI resolution dated 26 June 2013. The BCI resolution reads thus:

"The council is of the unanimous view that the enrolment fee fixed earlier is too less amount and it has never been revised after the year of 1961. The council resolves that the enrolment fee per candidate will be Rs 6000 and for SC/ST Candidates, it should be Rs 3000. This provision is applicable throughout the country and out of this as per the provisions of the Act, 20% amount is to be sent to the Bar Council of India by all the State Bar Councils.

These rules will come into effect the day it is published in the Gazette of India. Soon after the publication the office is directed to communicate this resolution to all the State Bar Councils and all the Bar Associations of the country. It is made clear that this resolution is confined to the enrolment fee only and the other charges fixed or prescribed by the different State Bar Councils would be applicable as of their own suitability."[56]

In view of the above resolution, the BCI directed all the SBCs to charge the revised enrolment fee.[57]

42. All the SBCs justify charging the miscellaneous fees for the following reasons: (i) the miscellaneous fees are one-time fees paid by the advocates to the Bar Councils; (ii) the fees are charged as a one-time lump sum because advocates do not pay the fees periodically after their enrolment; (iii) the SBCs do not get any financial assistance from the Government and have to sustain their

operations, including payment of salaries to their employees, from the amount collected by way of enrolment fee and miscellaneous fees; and (iv) the lump sum fees are intended to defray the expenditure incurred by each SBC while discharging myriad statutory functions including continuing legal education and welfare schemes for advocates.

43. The Bar Council of Manipur has stated that it meets all its expenses including the staff salary and office maintenance from the enrolment fees. The SBC charges Rupees sixteen thousand six hundred fifty as enrolment fees from general candidates. Out of this, nine thousand five hundred is allowed to be used for office expenses while the balance is deposited into other accounts and used for specified purposes. According to the SBC, the average annual enrolment in Manipur is of a hundred advocates. Therefore, the total enrolment fee collected by the SBC is Rupees nine lakh fifty thousand against the overall annual expense of Rupees nine lakh.

44. The legal profession is a serious occupation and requires advocates to maintain exemplary conduct both inside and outside the court.[58] The SBCs and the BCI perform the important function of regulating and maintaining the standards of conduct required from advocates. The Bar Councils conduct activities related to providing advocates knowledge about the substantive and procedural aspects of law. Many SBCs have published books and manuals and assisted members of the legal profession in acquiring the practical skills required for the successful pursuit of a career as an advocate.

The Bar Councils conduct welfare schemes for advocates. During the period of the Covid pandemic and even at other times, the Bar Councils have stepped in to provide relief to advocates and their families. In doing so many Bar Councils have provided significant aid to advocates. The enrolment fee and other miscellaneous fees are the only source of income available to the SBCs to perform their functions under the Advocates Act and implement welfare schemes for advocates. However, the imposition of the enrolment fee and other miscellaneous fees by the SBCs must be consistent with the Constitution and the scheme of the Advocates Act.

F. SBCs cannot charge enrolment fees beyond the mandate of Section 24(1)(f)

i. Legislative Scheme

45. Parliament has enacted the Advocates Act under Article 246 read with Entries 77 and 78 of List I to deal with legal practitioners and their qualifications, enrolment, right to practice, and discipline. The Advocates Act establishes the

SBCs and the BCI to create a common all-India bar. The SBCs have been entrusted with the function of admitting persons as advocates on the State roll. Persons who are admitted on the roll are entitled to the right to practice in all courts, tribunals, or authority throughout the territory of India.[59]

46. Sections 15 and 28 of the Advocates Act vests a rule-making power in the SBCs. The rule-making power under Section 15 is available to both the SBCs and the BCI. Section 15(1) specifies that a Bar Council "may make rules to carry out the purposes of this Chapter."

A Bar Council can make rules providing for the election of members, Chairman and Vice-Chairman, filing of casual vacancies, constitution of one or more funds to give financial assistance or legal aid or advice, organization of legal aid, etc. Section 15(3) provides that no rule made by the SBCs shall have effect unless it is approved by the BCI. Thus, the scope of the rule-making powers of the SBCs and the BCI under Section 15 pertains to the subjects in Chapter II. Other than Section 15, Chapter II comprises of Sections 3 to 14:

(a) Section 3 provides for establishment of the SBCs;

(b) Section 4 establishes the BCI;

(c) Section 5 provides that every Bar Council should be a body corporate;

(d) Section 6 lays down the functions of the SBCs;

(e) Section 7 lays down the functions of the BCI;

(f) Section 7A pertains to membership in international bodies;

(g) Section 8 specifies terms of office of the members of the SBCs;

(h) Section 8A talks about constitution of a special committee in the absence of an election;

(i) Section 9 deals with disciplinary committees;

(j) Section 9A talks about constitution of legal aid committees;

(k) Section 10 provides for constitution of committees other than disciplinary committees;

(l) Section 10A pertains to transaction of business by Bar Councils and committees;

(m) Section 11 allows Bar Councils to appoint staff;

(n) Section 12 mandates Bar Councils to maintain books of account for audit;

(o) Section 13 provides that vacancies in Bar Councils cannot be a ground to challenge the validity of acts done by a Bar Council; and

(p) Section 14 pertains to challenges to elections to Bar Councils.

47. Chapter II establishes Bar Councils and delineates their functions and responsibilities. The provisions of the Chapter II also empower Bar Councils to constitute disciplinary and other committees and appoint qualified staff. The rule-making powers granted to Bar Councils under Section 15 are regulatory powers and must be construed widely[60] because they support the objective of regulation of the legal profession.

48. In Pratap Chandra Mehta v. State Bar Council of MP,[61] a two-Judge Bench of this Court observed that the power of Bar Councils to frame rules must be interpreted broadly:

"51. The power to frame rules has to be given wider scope, rather than a restrictive approach so as to render the legislative object achievable. The functions to be performed by the Bar Councils and the manner in which these functions are to be performed suggest that democratic standards both in the election process and in performance of all its functions and standards of professional conduct need to be adhered to. In other words, the interpretation furthering the object and purposes of the Act has to be preferred in comparison to an interpretation which would frustrate the same and endanger the democratic principles guiding the governance and conduct of the State Bar Councils."

49. The SBCs have broad powers under Section 15 to give effect to the provisions of Chapter II. Although the rule-making power under Section 15 is broad, it is confined to the subject matters of Chapter II. In Bar Council of Delhi v. Surjeet Singh,[62] the issue before a three-Judge Bench was whether the Bar Council of Delhi could frame election rules prescribing qualifications and conditions entitling an advocate to vote at Bar Council elections.

It was held that the SBCs cannot use the rule-making power under Section 15 to override the specific provisions of the Advocates Act. This Court observed that Sections 3(4) and 49(1)(a) empowered the BCI to prescribe qualifications or conditions subject to which an advocate may be entitled to vote at an election to the SBCs. Resultantly, it was held that Section 15(1) cannot be interpreted to confer rule-making powers on the SBCs which are expressly provided to the BCI.[63]

50. In Surjeet Singh (supra), it was argued that the election rules of the Bar Council of Delhi were valid because they were approved by the BCI according to Section 15(3). It was further argued that the approval provided by the BCI had the effect of making it a rule made by the BCI itself. Speaking for the three-Judge Bench, Justice N L Untwalia held that there is a difference between making a rule and granting approval to a rule:

"8. Any rule made by the State Bar Council cannot have effect unless it is approved by the Bar Council of India. But the approval of the Bar Council of India can make the rule made by the State Bar Council valid and effective only if the rule made is within the competence of the State Bar Council, otherwise not. Mere approval by the Bar Council of India to a rule ultra vires the State Bar Council cannot make the rule valid. Nor has it the effect of a rule made by the Bar Council of India. Making a rule by the Bar Council of India and giving approval to a rule made by the State Bar Council are two distinct and different things. One cannot take the place of the other."

51. We can derive the following principles concerning the rule-making power of the SBCs under Section 15: (i) the SBCs can exercise rule-making powers only for the subject matters specified under Chapter II; (ii) although the SBCs have a broad rule-making power, it must be exercised to further the object and purpose of the Advocates Act; (iii) the SBCs cannot use their rule-making power under Section 15 with respect to subject matters on which the BCI has been granted exclusive power to make rules under the Advocates Act; and (iv) approval by the BCI to an invalid rule made by the SBCs cannot be deemed to validate the invalid rule.

52. The scope of the rule-making power of Bar Councils under Section 15 pertains to carrying "out the purposes of" Chapter II. As mentioned above, the purposes of Chapter II can be determined from Sections 3 to 14. Therefore, the scope of the rule-making power of Bar Councils under Section 15 extends to give effect to the provisions of Chapter II, namely, Sections 3 to 14.

53. Chapter III pertains to the admission and enrolment of advocates. As discussed in the earlier segment of this judgment, the Advocates Act is a complete code for admission of advocates on the State roll. Section 28 empowers the SBCs to make rules to carry out the purposes of Chapter III. According to Section 28(2), the SBCs can make rules providing for the:

(a) time within which and form in which an advocate shall express an intention for the entry of their name in the State roll under Section 20;

(b) form in which an application shall be made to the SBCs for admission as an advocate and how such application shall be disposed of by the enrolment committee of the SBCs;

(c) conditions subject to which a person may be admitted as an advocate; and

(d) instalments in which the enrolment fee may be paid.

54. The admission of persons as advocates on the State roll is within the exclusive domain of the SBCs.[64] The Advocates Act vests rule-making power under Section 28 with the SBCs, who are the chosen representatives of legal practitioners, to regulate and control the admission of people to the legal profession. In Dr. Haniraj L Chulani (supra), the issue before a three-Judge Bench was whether an SBC can refuse admission as an advocate to a medical practitioner who does not want to give up their medical practice. This Court held that the rule-making power conferred on the SBCs to lay down further conditions for controlling the entry to the legal profession is not unfettered.[65]

It was held that the rule-making power of the SBCs draws sustenance from the guidelines laid down by the Advocates Act. It was further observed that the "[r]ule-making power conferred on the SBCs is inherently hedged in with the obligation to frame only such rules regarding enrolment which would fructify the purpose of having efficient members of the Bar who can stand up to the expectation of the noble and learned profession to which they are to be given entry." Given the above reasoning, it was held that the rule enacted by the SBC barring a medical practitioner from simultaneously practicing law was valid.

55. Section 24 lays down the eligibility qualifications for a person who seeks admission as an advocate on the State roll. Section 24(1)(e) provides that such a person must also fulfil "such other conditions as may be specified in the rules made by the State Bar Council under this Chapter." The use of the expression "other conditions" indicates that the SBCs can prescribe conditions and qualifications in addition to what has already been prescribed statutorily under Section 24(1). Section 24(1) lays down requirements such as citizenship, age, and educational efficiency that make a person eligible to be admitted on a State roll.

These minimum qualifications enable a person to effectively perform their responsibilities as legal professionals. In addition, the BCI can also prescribe "such other conditions" in addition to the qualifications already prescribed under Section 24(1). Generally, a condition is a qualification, restriction, or limitation.[66] However, the "conditions" to be imposed by the SBCs should be consistent with the qualifications already prescribed by the statute. The BCI cannot prescribe any conditions or qualifications that:

(i) seek to modify what has already been prescribed by the statute;

(ii) are contrary to the stipulated qualifications; and

(iii) are inconsistent with the object and purpose of the Advocates Act.

56. Section 24(1)(e) has to be read conjointly with Section 28(1)(d) which empowers the SBCs to make rules prescribing "the conditions subject to which a person may be admitted as an advocate on any such roll." Since Section 24(1) already prescribes the basic substantive qualifications, the SBCs are empowered under Section 24(1)(e) read with Section 28(1)(d) to make rules concerning other conditions not already prescribed under Section 24(1).

57. Section 49 pertains to the general power of the BCI to make rules. It provides that the BCI may make rules for discharging its functions under the Advocates Act. The BCI may prescribe rules providing for the conditions subject to which an advocate may be entitled to vote at Bar Council elections, qualifications for membership of Bar Councils and disqualification for such membership, minimum qualifications required for admission to a course for a degree in law in any recognised university, etc. Importantly, Section 49(1)(h) empowers the BCI to make rules prescribing the fees which may be levied in respect of any matter under the Advocates Act.

Pursuant to this, the BCI has prescribed fees under Part VIII of the BCI Rules. It mandates the SBCs to levy fees not exceeding the limits prescribed under Part VIII. The BCI has prescribed fees for varied purposes including petitions challenging the election of one or more members of the SBCs, complaints of professional misconduct under Section 35, certificates as to the date of enrolment and the continuance of the name of the advocate on the roll. The above legislative scheme suggests that the SBCs and the BCI act as the delegates of Parliament under the Advocates Act.

ii. Bar Councils cannot levy fees beyond the express stipulation of law

58. While acting as a delegate of Parliament, the SBCs and the BCI can frame rules under the Advocates Act. However, any rule enacted by the SBCs is only ancillary and cannot be so exercised to bring into existence substantive rights, obligations or disabilities not contemplated by the provisions of the parent enactment.[67] Further, the rules must align with the object and purpose of the Advocates Act, namely, the creation of a common bar and regulation of legal practitioners and their qualifications, enrolment, right to practice, and discipline.

59. A legislation can confer the power to make subordinate legislation upon a delegate. In conferring such powers, the legislation has to specifically law down

the policy, principles, and standards that will guide the subordinate authority.[68] The legislative policy can be determined from the preamble and the provisions of an enactment.[69] The delegate derives its legislative powers from the parent statute.

Unlike the legislature, which has sovereign legislative powers derived from the Constitution, the delegated authority is conferred powers by the parent enactment. Therefore, delegated authority must strictly conform to the provisions of the statute under which it is framed.[70] A delegate cannot alter or change the legislative policy.[71] A delegate cannot override the provisions of the parent enactment either by exceeding the legislative policy or making provisions inconsistent with the enactment.[72]

60. In Agricultural Market Committee v. Shalimar Chemical Works Ltd.,[73] the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act 1966 allowed the market committee to levy market fees on all transactions of purchase and sale provided the transactions took place within the notified market area. Section 12 created a legal fiction by providing that if any notified agricultural produce, livestock, or products of livestock is taken out of a notified market area, it shall be presumed to have been purchased or sold within such area.

The market committee framed bylaws providing that the notified agricultural produce, livestock or products of livestock shall be deemed to have been purchased or sold after the notified commodity has been weighed, measured, counted or when it is taken out of the notified market area. Thus, the bylaws introduced additional circumstances to the legal fiction contemplated under Section 12.

61. A two-Judge Bench of this Court identified the following relevant principles in matters of delegated legislation:

"26. the delegate which has been authorized to make subsidiary rules and regulations has to work within the scope of its authority and cannot widen or constrict the scope of the Act or the policy laid down thereunder. It cannot, in the garb of making rules, legislate on the field covered by the Act and has to restrict itself to the mode of implementation of the policy and purpose of the Act." Given the above principle, it was observed that Section 12 is a fiscal provision and had to be construed strictly.

It was further observed that any circumstance, situation, factor, or condition which was not contemplated by the Act could not be taken into consideration to raise the presumption regarding sale or purchase of the notified agricultural produce. It was held that the bylaw introduced additional factors such as

'weighed', 'measured', and 'counted' which were not contemplated under Section 12. Therefore, the bylaws were held to be ultra vires for widening the scope of the presumption under Section 12.

62. In Assam Co. Ltd. v. State of Assam,[74] the State Government framed a rule empowering the State authorities to reexamine the computation of agricultural income made by the Central officers. It was contended that this rule was beyond the power delegated under the Assam Agricultural Income Tax Act. A three-Judge Bench of this Court observed:

"10. It is an established principle that the power to make rules under an Act is derived from the enabling provision found in such Act. Therefore, it is fundamental that a delegate on whom such power is conferred has to act within the limits of the authority conferred by the Act and it cannot enlarge the scope of the Act. A delegate cannot override the Act either by exceeding the authority or by making a provision that is inconsistent with the Act. Any rule made in exercise of such delegated power has to be in consonance with the provisions of the Act, and if the rule goes beyond what the Act contemplates, the rule becomes in excess of the power delegated under the Act, and if it does any of the above, the rule becomes ultra vires the Act."

63. In Assam Co. Ltd. (supra), it was observed that enactment empowered the State Government to make such rules as were necessary for carrying out the purposes of the enactment. It was further observed that the object and the scheme of the enactment did not empower the State authorities to recompute agricultural income contrary to the computation made by the Central officers. It was held that the rule framed by the State government was ultra vires because it enlarged the scope of the enactment.

64. In Consumer Online Foundation and Others v. Union of India,[75] this Court was dealing with the validity of the levy of development fees on embarking passengers by the lessees of the Airports Authority of India[76] at the international airports in New Delhi and Mumbai. The unamended Section 22A of the Airports Authority of India Act 1994[77] empowered the AAI, after the previous approval of the Central Government, to levy development fees on embarking passengers "at the rate as may be prescribed."

A two-Judge Bench of this Court held that the development fee was in the nature of a cess or tax for generating revenue for the specified purposes mentioned in Section 22A.[78] Further, it was held that the power to levy a development fee under Section 22 could not be exercised without the rules prescribing the rate at which the development fee was to be levied. Since no rules were framed

prescribing the rate of development fee, it was held that the levy was without authority of law.

65. In Consumer Online Foundation (supra), the Central Government determined the rate of development fee in two letters communicated to the lessees. This Court held that under Section 22A the Central Government only had the power to grant its approval to the levy and collection of development fees but had no power to fix the rate at which the development fee would be levied and collected from embarking passengers. The rates determined by the Central Government were held to be ultra vires the AAI Act.

66. From the above discussion, we can cull out the following principles: (i) a delegate cannot act contrary to the express provisions and object of the parent legislation; (ii) a delegate cannot widen or constrict the scope of the parent legislation or the legislative policy prescribed under it; and (iii) a fiscal provision has to be construed strictly and a delegate cannot consider any circumstance, factors or condition not contemplated by the parent legislation.

67. The legislative policy of enrolment and admission of advocates is contained in Chapter III of the Advocates Act. Section 24(1) lays down the qualifications subject to which an advocate may be admitted on a State roll. Section 24(1)(f) provides that the enrolment fee payable by general candidates is Rupees seven hundred fifty and by SC and ST candidates, Rupees one hundred and twenty-five. Section 24(1)(f) reflects the legislative policy of the Advocates Act that subject to the fulfilment of other conditions of Section 24(1), the payment of the stipulated monetary amount will make a person eligible to be admitted as an advocate.

68. Presently, the SBCs charge enrolment fees in the following manner: (i) they charge an enrolment fee according to the legal stipulation under Section 24(1)(f), but charge miscellaneous fees, and (ii) they charge an enrolment fee beyond the legal stipulation in addition to charging miscellaneous fees. Section 24(1)(f) expressly stipulates that the total enrolment fees shall be Rupees seven hundred fifty for advocates belonging to the general category and Rupees one hundred twenty-five for advocates belonging to the SC and ST category.

The SBCs cannot charge "enrolment fees" beyond the express legal stipulation under Section 24(1)(f) as it currently stands. Therefore, prescribing enrolment fees beyond Rupees seven hundred for general candidates and Rupees one hundred twenty-five for SC and ST candidates is contrary to Section 24(1)(f). The subject matter of enrolment fee is covered by the Advocates Act. Therefore, the SBCs, being delegated authorities, do not have any legislative powers to prescribe enrolment fees contrary to the statutory stipulation.

69. As discussed in the above segments of this judgment, the legislature prescribed the enrolment fee under Section 24(1)(f) to cover "all functions" carried out by the SBCs and the BCI under the Advocates Act. The legislative history suggests that the legislature was averse to imposing any charges other than enrolment fees at the time of enrolment. This was in furtherance of the legislative object to foster an inclusive Bar. However, the SBCs are imposing miscellaneous fees and charges in the guise of an enrolment fee, which cumulatively exceed the statutory stipulation under Section 24(1)(f). The decision of the SBCs to charge an enrolment fee beyond the stipulated amount is contrary to the legislative object of the Advocates Act.

70. Section 24(1)(f) is a fiscal regulatory provision and has to be construed strictly. Parliament has prescribed the enrolment fees in the exercise of its sovereign legislative powers. The SBCs and the BCI, being delegates of Parliament, cannot alter or modify the fiscal policy laid down by Parliament. The delegate can create substantive rights and obligations only to the extent to which the parent enactment empowers the delegate.[79]

By prescribing additional fees at the time of enrolment, the SBCs have created new substantive obligations not contemplated by the provisions of the Advocates Act. The basis for the fees imposed by the SBCs has to be traceable to the provisions of the statute. There is no express provision in the Advocates Act empowering the SBCs to levy fees, except for the enrolment fee and stamp duty, if any, under Section 24(1)(f), at the time of admission of advocates on the State roll. The decision of the SBCs to charge miscellaneous fees is contrary to the legislative prescription of the Advocates Act.

71. On 26 June 2013, the BCI passed a resolution directing the SBCs to charge Rupees six thousand as enrolment fees for general candidates and Rupees three thousand for SC and ST candidates. Importantly, the resolution stated that the SBCs could charge other fees according to "their own suitability." On 22 December 2016, the BCI addressd a letter to all the SBCs directing them to charge the revised enrolment fees. The BCI resolution dated 26 June 2013 prompted many SBCs such as the Odisha Bar Council to enhance their enrolment fees. Section 24(1)(f) stipulates the enrolment fee to be charged by the SBCs.

In the face of the express stipulation of law, the BCI had no authority to pass a resolution revising the enrolment fees charged by the SBCs. The fact that the enrolment fee stipulated under Section 24(1)(f) has not been revised by the legislature does not clothe the BCI with any authority to direct the SBCs to charge revised enrolment fees. Since the BCI exercises general supervision and control over all the SBCs, it is incumbent upon it to ensure that the SBCs strictly

follow the mandate of the Advocates Act. The resolution dated 26 June 2013 is devoid of legal authority and contrary to Section 24(1)(f) of the Advocates Act.

G. All fees charged at the time of enrolment are 'enrolment fees'

72. In this batch of matters, we have transferred to this Court similar petitions pending before the Kerala High Court. In T Koshy v. Bar Council of Kerala,[80] the SBC was charging special fees for enrolment from candidates who had retired from government service. A Single Judge of the Kerala High Court observed that the special fees were charged in addition to the enrolment fees and other miscellaneous charges such as application form fee, registration fee, enrolment certificate fee, and verification fee.

The vires of the miscellaneous fees was not challenged before the High Court. The High Court construed the special fee charged by the SBC as an enrolment fee and held that the amount charged by the SBC was over and above the enrolment fee stipulated by Section 24(1)(f). In appeal, the Division Bench of the High Court upheld the judgment of the Single Judge by holding that Section 28(2)(d) did not empower the SBC "to prescribe any fee for enrolment, either in the form of enrolment fee or special fee."[81] The Special Leave Petition filed by the SBC was dismissed by this Court on 4 June 2019.[82]

73. In adjudicating upon WP (C) No. 3068 of 2023,[83] another Single Judge of the Kerala High Court relied on T Koshy (supra) to observe that the SBC is only entitled to collect the enrolment fee stipulated under Section 24(1)(f) of the Advocates Act. Subsequently, the writ petition was heard by a Division Bench of the Kerala High Court which passed an interim order directing the SBC to admit the petitioners on the State roll by accepting Rupees seven hundred fifty as enrolment fees.

74. Given the above background, two issues arise for consideration:

(i) whether the miscellaneous fees which are charged in addition to the enrolment fee at the time of enrolment can be considered as enrolment fee; and

(ii) whether the SBCs or the BCI can charge miscellaneous fees as a pre-condition for enrolment.

i. Charges other than the enrolment fee cannot be a valid pre-condition

75. Section 24(1) of the Advocates Act lays down the conditions subject to which an advocate may be admitted on a State roll. Section 24(1)(f) provides that the enrolment fee is paid by the advocate "in respect of the enrolment." The use of the phrase "in respect of the enrolment" conveys that the fee is paid for the entire

enrolment process. Under the Advocates Act, the process of enrolment commences when an applicant makes an application to the SBC within whose jurisdiction the applicant proposes to practice.

Thereafter, the enrolment committee of the SBC scrutinizes the application on the basis of the eligibility qualifications laid down under Section 24(1). The name of an applicant who is found eligible is entered on the roll of advocates and a certificate of enrolment is issued to the applicant by the SBC. The enrolment fee prescribed under Section 24(1)(f) comprehends the whole enrolment process.

76. On 27 December 2016,[84] the BCI passed a resolution fixing the verification fees charged by the SBCs at the time of submission of enrolment forms. The resolution was in the following terms "The State Bar Councils/ Enrolment Committees of the State Bar Councils shall require the Xerox as well as the original certificates of the candidates applying for enrolment. Following certificates shall be required to be submitted alongwith the enrolment forms:-

(a) Certificate of concerned Board for Secondary/10th examination.

(b) Certificate of concerned Board for Senior Secondary or intermediate examination.

(c) Certificate of graduation, if any or/and the LLB degree or the provisional certificates of these Degrees granted by the University as well as the mark-sheets of all the three or five year of LL.B. examinations.

The office of State Bar Councils shall charge a sum of Rs. 2500/- for verification of the said certificates from the candidates at the time of submission of the enrolment forms only."

77. In view of the BCI resolution, many SBCs increased the verification fees charged by them. Currently, the SBCs charge various fees such as verification fees, application fees, registration fees, and identity card fees at the time of enrolment. The SBCs charge these fees as concomitant to the process of enrolment. For instance, a verification fee is charged for the verification of academic qualification certificates of the candidates. The verification fee is collected from the candidates "at the time of submission of enrolment forms." These additional fees are in furtherance of the process of enrolment of advocates and are encompassed within the meaning of the phrase "in respect of the enrolment" appearing in Section 24(1)(f).

78. Additionally, the SBCs also collect charges such as building fund and benevolent fund from advocates at the time of enrolment. These charges are per se not related to the process of enrolment, but in most cases the candidates have

no choice but to pay the levies. The SBCs admit that they charge the fees at the time of enrolment as a one-time payment for all the services offered by them. The SBCs contend that they charge these fees at the time of enrolment because the advocates do not pay periodic fees after enrolment.

79. Admission on the roll of advocates is a pre-requisite for any person intending to practice law in India. At the time of enrolment, candidates have little agency but to pay the miscellaneous fees imposed by the SBCs to get enrolled. Nonpayment of the fees means that a candidate cannot get enrolled on the State roll. Thus, all the miscellaneous fees collected from a candidate at the time of enrolment essentially serve as a pre-condition to the process of enrolment. Section 24(1) specifically lays down the pre-conditions subject to which an advocate can be enrolled on State rolls. Since Section 24(1)(f) specifies the amount that can be charged by the SBCs as an enrolment fee, the SBCs and the BCI cannot demand payment of fees other than the stipulated enrolment fee as a pre-condition to enrolment.

80. Rule 40 under Section IVA of Chapter II of Part VI under the BCI Rules mandates every advocate borne on the rolls to pay the SBC a sum of Rupees three hundred every third year.[85] The sum under Rule 40 can only be collected from advocates already admitted on the State rolls. Therefore, this sum cannot be collected from persons at the time of enrolment. It must be collected from advocates after they are admitted on the State roll.

ii. Article 14: substantive equality and manifest arbitrariness

81. Article 14 has a substantive content that mirrors the quest for ensuring fair treatment of an individual in every aspect of human endeavour and existence.[86] In Joseph Shine v. Union of India,[87] one of us (D Y Chandrachud, J) observed that substantive equality is directed at eliminating individual, institutional, and systemic discrimination against disadvantaged groups which effectively undermines their full and equal participation in society at the social, economic, political, and cultural levels. It was further observed:

"172. The primary enquiry to be undertaken by the Court towards the realisation of substantive equality is to determine whether the provision contributes to the subordination of a disadvantaged group of individuals. The disadvantage must be addressed not by treating a woman as "weak" but by construing her entitlement to an equal citizenship. The former legitimises patronising attitudes towards women. The latter links true equality to the realisation of dignity. The focus of such an approach is not simply on equal treatment under the law, but rather on the real impact of the legislation. Thus, Section 497 has to be examined in the

light of existing social structures which enforce the position of a woman as an unequal participant in a marriage."

82. In Navtej Singh Johar v. Union of India,[88] a Constitution Bench held that Section 377 undermined substantive equality because it created barriers, systemic and deliberate, for the effective participation of the members of the LGBTIQ+ community in the workforce.

83. In Bonnie Foi Law College (supra), a Constitution Bench of this Court recognized the effect of the exorbitant enrolment fees charged by the SBCs:

"54. We also have one caveat arising from the plea that different State Bar Councils are charging different fees for enrolment. This is something which needs the attention of the Bar Council of India, which is not devoid of the powers to see that a uniform pattern is observed and the fee does not become oppressive at the threshold of young students joining the Bar."

84. The burden of payment of enrolment fees and other miscellaneous fees imposed by the SBCs falls equally on all persons seeking enrolment. While the burden is facially neutral, it perpetuates structural discrimination against persons from marginalized and economically weaker sections of the society. In more than one way, the process of enrolment perpetuates a culture[89] of systemic exclusion and discrimination that impacts the entry of law graduates into the legal profession and even beyond.

A law graduate in India undergoes legal education which typically entails a study of a three-year LLB course or an integrated five-year course. The model of legal education in India is largely centred around a standardized admissions test. Candidates desirous of taking the admission test have to pay a hefty fee for taking the examination and in many cases engage tutors or coaching classes to prepare for these tests. Although the engagement of tutors or purchase of preparation material is a choice a candidate can choose not to make, it puts them against a cohort of competitors who have engaged such help.

Once admitted to a recognized institute for legal education, a student has to afford the fees of the college either by paying on their own or by availing of a student loan. Students are also expected and sometimes mandated to partake in internships, research work, and co-curricular and extra-curricular activities among others.[90] Partaking in these activities entails additional expenses.

85. Young law graduates seeking to enter litigation start from a position of disadvantage. In S Seshachalam v. Bar Council of Tamil Nadu,[91] Justice R Banumathi summed up the struggle of young advocates in apt words:

"26. The profession of Law is a noble calling. The legal fraternity toils day and night to be successful in the profession. Although it is true that slowly working one's way up is the norm in any profession, including Law, but initially young advocates have to remain in the queue for a prolonged period of time and struggle through greater hardships. Despite being extremely talented, a number of young lawyers hardly get proper opportunity or exposure in their profession.

New entrants to the profession in the initial stages of the profession suffer with the meagre stipend which young lawyers may receive during their initial years, coupled with the absence of a legislation concerning this, they struggle to manage their food, lodging, transportation and other needs. Despite their valiant efforts, they are unable to march ahead in their profession.

It is only after years of hardwork and slogging that some of the fortunate lawyers are able to make a name for themselves and achieve success in the profession. For the majority of the legal fraternity, everyday is a challenge. Despite the difficult times, the lawyer who sets up practice straight after enrolment, struggles to settle down in the profession. Some of the lawyers remain struggling throughout their lives yet choose to remain in the profession. It is something like "riding a bicycle uphill with the wind against one".

(emphasis added)

86. Young law graduates who start litigating right after graduation earn anywhere between Rupees ten thousand to Rupees fifty thousand per month, depending upon the location of their practice and the chambers they join. The structure of the Indian legal setup is such that the struggle for getting acceptance in chambers and law firms is greater for those who belong to the marginalized sections, first-generation advocates, or law graduates without a degree from a National Law University.

A recent report suggests that many law students from the Dalit community face English language barriers, reducing their opportunities of practicing before the High Courts and the Supreme Court where the court proceedings are in English.[92] In a legal system that is predisposed against the marginalized, the pre-condition of paying exorbitant fees in the name of enrolment fee creates a further barrier for many.

87. In Neil Aurelio Nunes v. Union of India,[93] a two-Judge Bench of this Court, explained the redundancy of the concept of merit and the struggles of a firstgeneration learner:

"33. The crux of the above discussion is that the binary of merit and reservation has now become superfluous once this Court has recognised the principle of

substantive equality as the mandate of Article 14 and as a facet of Articles 15(1) and 16(1). An open competitive exam may ensure formal equality where everyone has an equal opportunity to participate. However, widespread inequalities in the availability of and access to educational facilities will result in the deprivation of certain classes of people who would be unable to effectively compete in such a system.

Special provisions (like reservation) enable such disadvantaged classes to overcome the barriers they face in effectively competing with forward classes and thus ensuring substantive equality. The privileges that accrue to forward classes are not limited to having access to quality schooling and access to tutorials and coaching centres to prepare for a competitive examination but also include their social networks and cultural capital (communication skills, accent, books or academic accomplishments) that they inherit from their family.

The cultural capital ensures that a child is trained unconsciously by the familial environment to take up higher education or high posts commensurate with their family's standing. This works to the disadvantage of individuals who are first-generation learners and come from communities whose traditional occupations do not result in the transmission of necessary skills required to perform well in open examination. They have to put in surplus effort to compete with their peers from the forward communities.

On the other hand, social networks (based on community linkages) become useful when individuals seek guidance and advice on how to prepare for examination and advance in their career even if their immediate family does not have the necessary exposure. Thus, a combination of family habitus, community linkages and inherited skills work to the advantage of individuals belonging to certain classes, which is then classified as "merit" reproducing and reaffirming social hierarchies."

(emphasis added)

88. Social capital and networks play an important role in the Indian legal setup in advancing legal careers. Most litigation chambers hire advocates through networks and community linkages. The structure of the Indian legal system is such that social capital and networks also play an important role in getting clients. The lack of social capital and network is acutely felt by advocates from marginalized communities.[94]

The marginalized sections of our society face insurmountable obstacles in navigating the Indian legal system.[95] This is further compounded by their lack of representation in the legal profession. Greater representation of the marginalized

communities in the legal profession will increase the diversity within the profession, enable the marginalized sections to trust the legal system and facilitate the delivery of legal aid and services to unrepresented communities.

89. Section 24(1)(f) prescribes an enrolment fee of Rupees seven hundred fifty from general candidates and Rupees one hundred twenty-five from SC and ST candidates. Therefore, the enrolment fee prescribed for candidates from the SC and ST communities is far less than the fees paid by a candidate from the general category.

In 1993, Parliament increased the enrolment fee for general candidates from Rupees two-hundred fifty to Rupees seven-hundred fifty, without disturbing the fees paid by candidates from the SC and ST community. This shows that Parliament is conscious of the socio-economic marginalization of the SC and ST community. However, the present enrolment fee structure reinforces the socio-economic marginalization of the SCs and STs.

For instance, the Bar Council of Maharashtra and Goa charges a cumulative fee of Rupees fifteen thousand from the general candidates and Rupees fourteen thousand five hundred from SC and ST candidates. Similarly, in Manipur, the general category candidates pay Rupees sixteen thousand six hundred fifty as an enrolment fee while a candidate from the SC and ST category pays Rupees sixteen thousand fifty. Thus, the candidates from the SC and ST category practically pay as much as the candidates from the general category. This is evidently against the legislative policy of the Advocates Act.

90. Dignity is crucial to substantive equality. The dignity of an individual encompasses the right of the individual to develop their potential to the fullest.[96] The right to pursue a profession of one's choice and earn livelihood is integral to the dignity of an individual. Charging exorbitant enrolment fees and miscellaneous fees as a pre-condition for enrolment creates a barrier to entry into the legal profession.

The levy of exorbitant fees as a pre-condition to enrolment serves to denigrate the dignity of those who face social and economic barriers in the advancement of their legal careers.[97] This effectively perpetuates systemic discrimination against persons from marginalized and economically weaker sections by undermining their equal participation in the legal profession. Therefore, the current enrolment fee structure charged by the SBCs is contrary to the principle of substantive equality.

91. In Ravinder Kumar Dhariwal v. Union of India,[98] a three-Judge Bench of this Court held that substantive equality is aimed at producing equality of outcomes

through different modes of affirmative action. The purpose of the Advocates Act of creating an inclusive Bar cannot be defeated by having exclusionary conditions which seek to create social and economic barriers. The Bar Councils have a responsibility in the public interest to ensure greater representation of persons from marginalized communities in the legal profession.

92. The decision of the SBCs to charge exorbitant fees also suffers from the vice of manifest arbitrariness. In Khoday Distilleries Ltd v. State of Karnataka,[99] this Court laid down the following principles for challenging delegated legislation: (i) the test of arbitrary action which applies to executive actions does not necessarily apply to delegated legislation; (ii) a delegated legislation can be struck down only if it is manifestly arbitrary; and (iii) a delegated legislation is manifestly arbitrary if it is not in conformity with the statute or offends Article 14.

In Clariant International Ltd. v. SEBI,[100] a three-Judge Bench of this Court held that when any criterion is fixed by a statute or by a policy, the subordinate authority must follow the policy formulation broadly and substantially. Non-conformity with the legislative policy will render delegated legislation arbitrary.[101]

93. In Shayara Bano v. Union of India,[102] a Constitution Bench held that manifest arbitrariness must be something done by the legislature capriciously, irrationally, and/or without adequate determining principles. It was further held that legislation which is excessive and disproportionate would also be manifestly arbitrary.

In Joseph Shine (supra), one of us (D Y Chandrachud, J) held that an "adequate determining principle" is a principle that aligns with constitutional values. With respect to a piece of delegated legislation, an adequate determining principle is a principle that aligns with the legislative policy of the parent enactment as well as constitutional values. Delegated legislation that is forbiddingly excessive or disproportionate will also be manifestly arbitrary.[103]

94. As held in the preceding segments of this judgment, the SBCs at the time of enrolment charge fees in contravention of Section 24(1)(f) and the legislative policy of the Advocates Act. Therefore, the excess enrolment fees charged by the SBCs are manifestly arbitrary. Further, the effect of charging exorbitant enrolment fees as a pre-condition for enrolment has created entry barriers, especially for people from marginalized and economically weaker sections, to enter into the legal profession. Thus, the current enrolment fee structure is manifestly arbitrary because it denies substantive equality.

iii. Article 19(1)(g): unreasonableness

95. Section 30 of the Advocates Act inheres in every advocate whose name is entered in the State roll the right to practice in all courts throughout the territory of India. Article 19(1)(g) of the Constitution provides that all citizens of India shall have the right to practice any profession or to carry on any occupation, trade, or business. Article 19(6) subjects the right under Article 19(1)(g) to reasonable restrictions.

Further, the provision allows the State to make any law relating to the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business. Thus, the right to practice law is not only a statutory right but also a fundamental right protected under Article 19(1)(g).[104] However, the right of citizens to practice law can be regulated and is not absolute.[105] Under the Advocates Act, only those advocates who are admitted on the State roll have a right to practice throughout the territory of India.[106]

96. In Chintamanrao v. State of Madhya Pradesh,[107] a Constitution Bench explained the purpose of the expression "reasonable restrictions" thus:

"8. The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality."

97. In Rashid Ahmed v. Municipal Board, Kairana,[108] a Constitution Bench of was called upon to decide the validity of bye-laws framed by the Municipal Board. Bye-law 2 provided that no person could establish any new market or place for wholesale transactions without the previous permission of the Municipal Board. Justice S R Das (as the learned Chief Justice then was), speaking for the Constitution Bench, held:

"11. The Constitution by Article 19(1) guarantees to the Indian citizen the right to carry on trade or business subject to such reasonable restrictions as are mentioned in clause (6) of that article. The position, however, under Bye-law 2 is that while it provided that no person shall establish a market for wholesale transactions in vegetables except with the permission of the Board, there is no bye-law authorising the respondent Board to issue the licence. The net result is that the prohibition of this bye-law, in the absence of any provision for issuing licence, becomes absolute."

98. In Mohammad Yasin v. Town Area Committee, Jalalabad,[109] a Constitution Bench of this Court was called upon to determine the validity of the bye-laws framed by the Town Area Committee imposing licence fees on any person intending to sell in wholesale at any place in the town area. The issue before this Court was whether the Committee had legal authority to impose the fees.

Justice S R Das (as the learned Chief Justice then was) observed that a "licence fee on a business not only takes away the property of the licensee but also operates as a restriction on his right to carry on his business, for without the payment of such fee the business cannot be carried on at all." It was held that the restriction on the fundament right under Article 19(1)(g) can be imposed by the State according to Article 19(6). It was held that an illegal impost is an unreasonable restriction on the right to carry on occupation, trade or business under Article 19(1)(g):

"12. If, therefore, the licence fee cannot be justified on the basis of any valid law no question of its reasonableness can arise, for an illegal impost must at all times be an unreasonable restriction and will necessarily infringe the right of the citizen to carry on his occupation, trade or business under Article 19(1)(g) and such infringement can properly be made the subject-matter of a challenge under Article 32 of the Constitution."

99. In Mohammad Yasin (supra), the United Provinces Town Areas Act 1914 empowered the Town Area Committee to charge fees for the use or occupation of any immoveable property vested in or entrusted to the management of the Town Area Committee, including any public street or place. It was held that this power did not include the power to levy licence fees on a person intending to sell in wholesale at any place in the town area. Therefore, it was held that the licence fee imposed by the Town Area Committee was ultra vires the 1914 Act:

"20. In our opinion, the bye-laws which impose a charge on the wholesale dealer in the shape of the prescribed fee, irrespective of any use or occupation by him of immovable property vested in or entrusted to the management of the Town Area Committee including any public street, are obviously ultra vires the powers of the respondent Committee and, therefore, the bye-laws cannot be said to constitute a valid law which alone may, under Article 19(6) of the Constitution, impose a restriction on the right conferred by Article 19(1)(g). In the absence of any valid law authorising it, such illegal imposition must undoubtedly operate as an illegal restraint and must infringe the unfettered right of the wholesale dealer to carry on his occupation, trade or business which is guaranteed to him by Article 19(1)(g) of our Constitution."

100. In Cooverjee B Bharucha v. Excise Commissioner,[110] another Constitution Bench held that a licence fee levied without the authority of law was not protected under Article 19(6). In R M Seshadri v. District Magistrate,[111] the District Collector imposed a condition compelling the licencee to exhibit at each performance one or more approved films of such length and for such length of time as directed by the Government. The condition was challenged for violation of Article 19(1)(g). A Constitution Bench of this Court observed that the condition was couched in wide language and did not lay down any guideline to the licencing authority. It was held that a "condition couched in such wide language is bound to operate harshly upon the cinema business and cannot be regarded as a reasonable restriction."

101. We can cull out the following principles from the above discussion: (i) the power of the authority to impose restrictions on the right under Article 19(1)(g) is not absolute and must be exercised in a reasonable manner; (ii) any fees or licences levied by the authorities must be valid and levied on the basis of the authority of law; and (iii) delegated legislation which is contrary to or beyond the scope of the legislative policy laid down by the parent legislation places an unreasonable restriction in violation of Article 19(1)(g).[112]

102. According to the current enrolment fee structure of the SBCs, an advocate has to pay anywhere between Rupees fifteen thousand to Rupees forty-two thousand as a pre-condition to enrolment. As held in the above segments of this judgment, the SBCs charge enrolment fees in excess of the stipulated fee prescribed under Section 24(1)(f). The excess enrolment fee imposed by the SBCs is without authority of law. Compounded with this there are no reasonable criteria behind the decision of the SBCs to charge such exorbitant amounts as enrolment fees.

The SBCs cannot have unbridled powers to charge any fees given the express legislative policy under Section 24(1)(f). Imposing excessive financial burdens on young law graduates at the time of enrolment causes economic hardships, especially for those belonging to the marginalized and economically weaker sections of the society. Therefore, the current enrolment fee structure charged by the SBCs is unreasonable and infringes Article 19(1)(g).

H. Financial implications for the SBCs and the BCI

103. As discussed in the above segments of this judgment, we are cognizant of the fact that the SBCs and the BCI depend entirely on the amount collected from candidates at the time of enrolment for performing their functions under the Advocates Act, including payment of salaries to their staff. According to the legislative scheme of the Advocates Act, the Bar Councils must only charge the

amount stipulated under Section 24(1)(f) as an enrolment fee. Instead of devising ways and means to charge fees from enrolled advocates for rendering services, the SBCs and the BCI have been forcing young law graduates to cough up exorbitant amounts of money as a pre-condition for enrolment.

104. Once the advocates are enrolled on the State rolls, the Bar Councils can charge fees for the services provided to the advocates in accordance with the provisions of the Advocates Act. It is for the SBCs and the BCI to devise an appropriate method of charging fees that is fair and just not only for the law graduates intending to enroll, but also for the advocates already enrolled on the State rolls.

There are several reasonable ways by which the SBCs and BCI can and already do collect funds at later stages of an advocate's career. For instance, under the Advocates Welfare Fund Act 2001, advocates must affix mandatory welfare stamps on vakalatnamas which are used to collect funds for advocate welfare. Unlike an enrollment fee charged before a graduate is given a fair chance to earn a living, such sources of income are directly correlated to the advocates' practice.

105. It is clarified that the only charges permissible at the stage of enrolment are those stipulated under Section 24(1)(f) of the Advocates Act. All other miscellaneous fees, including but not limited to, application form fees, processing fees, postal charges, police verification charges, ID card charges, administrative fees, photograph fees etc. charged from the candidates at the time of admission are to be construed as part of the enrollment fee. The fees charged under these or any similar heads cannot cumulatively exceed the enrolment fee prescribed in Section 24(1)(f).

106. The Advocates Welfare Fund Act 2001[113] is enacted to provide for the constitution of a welfare fund for the benefit of advocates. Section 3 provides that the appropriate government shall constitute an Advocates Welfare Fund. Section 15 mandates the SBCs to pay annually to the welfare fund an amount equal to twenty per cent of the enrolment fee received by it under Section 24(1)(f) of the Advocates Act.[114] This decision will not have any effect on the obligation of the SBCs under Section 15 because they will continue to charge the enrolment fee as stipulated under Section 24(1)(f).

107. The SBCs and the BCI are directed to ensure that the fees charged at the time of enrollment comply with Section 24(1)(f) and the provision is not defeated either directly or indirectly under the garb of different nomenclatures. The SBCs cannot charge an enrolment fee or miscellaneous fees above the amount prescribed in Section 24(1)(f). No case is made out for this Court to exercise its

power under Article 142 to implement the BCI Draft Enrolment Rules in their current form.

108. The result of this decision would have entitled advocates who have paid the excess enrolment fee to a refund from the SBCs.[115] The SBCs have been levying the enrolment fees for a considerable duration and utilizing the collected amounts to carry out their day-to-day functioning. Therefore, we declare that this judgment will have prospective effect. Resultantly, the SBCs are not required to refund the excess enrolment fees collected before the date of this judgment.

I. Conclusions

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

a. The SBCs cannot charge "enrolment fees" beyond the express legal stipulation under Section 24(1)(f) as it currently stands;

b. Section 24(1)(f) specifically lays down the fiscal pre-conditions subject to which an advocate can be enrolled on State rolls. The SBCs and the BCI cannot demand payment of fees other than the stipulated enrolment fee and stamp duty, if any, as a pre-condition to enrolment;

c. The decision of the SBCs to charge fees and charges at the time of enrolment in excess of the legal stipulation under Section 24(1)(f) violates Article 14 and Article 19(1)(g) of the Constitution; and

d. This decision will have prospective effect. The SBCs are not required to refund the excess enrolment fees collected before the date of this judgment.

110. In view of the above, the writ petition, transferred cases and transfer petitions are disposed of.

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

.....CJI. [Dr. Dhananjaya Y. Chandrachud]

.....J. [J.B. Pardiwala]

New Delhi;

July 30, 2024

1 "SBCs"

2 "Advocates Act"

3 Section 3, Advocates Act

4 "BCI"; Section 4, Advocates Act

5 Section 25, Advocates Act

6 Section 22, Advocates Act

7 Section 24, Advocates Act [It reads:

24. Persons who may be admitted as advocates on a State roll.-(1) Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfils the following conditions, namely:-

(a) he is a citizen of India:

Provided that subject to the other provisions contained in this Act, a national of any other country may be admitted as an advocate on a State roll, if citizens of India, duly qualified, are permitted to practise law in that other country;

(b) he has completed the age of twenty-one years;

(c) he has obtained a degree in law-

(i) before the [12th day of March, 1967], from any University in the territory of India; or

(ii) before the 15th day of August, 1947, from any University in any area which was comprised before that date within India as defined by the Government of India Act, 1935; or

[(iii) after the 12th day of March, 1967, save as provided in sub-clause (iii-a), after undergoing a three-year course of study in law from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or

(iii-a) after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68, or any earlier academic year from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or]

[(iv) in any other case, from any University outside the territory of India, if the degree is recognised for the purposes of this Act by the Bar Council of India; or]

[he is a barrister and is called to the Bar on or before the 31st day of December, 1976; [or has passed the articled clerk's examination or any other examination specified by the High Court at Bombay or Calcutta for enrolment as an attorney of that High Court;] or has obtained such other foreign qualification in law as is recognised by the Bar Council of India for the purpose of admission as an advocate under this Act];

(e) he fulfils such other conditions as may be specified in the rules made by the State Bar Council under this Chapter;

[(f) he has paid, in respect of the enrolment, stamp duty, if any, chargeable under the Indian Stamp Act, 1899 (2 of 1899), and an enrolment fee payable to the State Bar Council of [six hundred rupees and to the Bar Council of India, one hundred and fifty rupees by way of a bank draft drawn in favour of that Council]:

Provided that where such person is a member of the Scheduled Castes or the Scheduled Tribes and produces a certificate to that effect from such authority as may be prescribed, the enrolment fee payable by him to the State Bar Council shall be [one hundred rupees and to the Bar Council of India, twenty-five rupees].

[Explanation.-For the purposes of this sub-section, a person shall be deemed to have obtained a degree in law from a University in India on the date on which the results of the examination for that degree are published by the University on its notice-board or otherwise declaring him to have passed that examination.]]

8 Akshai M Sivan v. Bar Council of Kerala, Writ Petition (Civil) No. 3068 of 2023

9 Manimaran v. Bar Council of India, Writ Petition (MD) No. 8756 of 2023

10 Amey Shejwal v. Bar Council of Maharashtra and Goa, Writ Petition No. 3795 of 2021

11 "BCI Draft Enrolment Rules"

12 "BCI Rules"

13 Section 41, Legal Practitioners Act 1879

14 Report of the All-India Bar Committee (1953) 15

15 Ibid

16 "1926 Act"

17 All-India Bar Committee (supra) 40

18 Law Commission of India, Fourteenth Report, Reform of Judicial Administration 1958 (Volume 1) 575. [It observed: "It appears to us that the amount of Rs. 500 proposed by the Committee is excessive. At present various State bar Councils are receiving payments which range from Rs. 50 to Rs. 100 from each entrant to the profession and so far we have been able to ascertain, not only are the amounts received sufficient to finance their activities but some of these Councils have accumulated out of these and other receipts substantial amounts which have been invested by them. The creation of the All India Bar Council envisaged by the Bar Committee will no doubt involve substantial additional expenditure. Considering all aspects of the matter, we suggest that an enrolment fee of Rs 125 may be charged by the State Bar Council from each entrant out of which Rs. 25 may be paid by the State Bar Council to the All India Bar Council."]

19 The Legal Practitioners Bill 1959, Report of the Joint Committee (28 March 1960) xiii. (Raghubir Sahai and Khuswant Rai, the members of the Joint Committee noted: "The Constitution of an All India Bar was demand of the country since long and this Bill has been brought forward to meet it. Its aim would be to bring in as many eligible lawyers within its fold as possible. That is why the enrolment fee has been reduced from Rs. 500/- originally proposed in the Bill to Rs. 250/-. It would have been much better if this could be reduced to Rs. 125/- as suggested by the Law Commission and the stamp duty would have been done away with altogether.")

20 Shri Shankaraiya, Legal Practitioners Bill, Lok Sabha (27 April 1961) 14162

21 Legal Practitioners Bill, Lok Sabha (27 April 1961) 14164

22 Rajya Sabha, Advocates Bill 1961 (4 May 1961) 2125.

23 Shri H R Bhardwaj, Minister of State in the Ministry of Law, Justice and Company Affairs, Lok Sabha (26 November 1992) 451. [The minister stated: "The Bar Council of India and the State Bar Councils represented that the expenses involved in the administration of the Bar Council of India and the State Bar Councils are growing every year and that it has become necessary to revise the enrolment fee upwards from Rs. 250/- to Rs. 750/- without disturbing the fee payable in case of persons belonging to Scheduled Castes and Scheduled Tribes."]

24 Bar Council of Maharashtra v. Union of India, 2002 SCC OnLine Bom 251 [3]

25 1968 SCC OnLine SC 3

26 Entry 77, List I, Seventh Schedule, Constitution of India. [It reads: 77. Constitution, organization, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practice before the Supreme Court"]

27 Entry 78, List I, Seventh Schedule, Constitution of India. [It reads: 78. Constitution and organization (including vacations) of the High Court except provisions as to officers and servants of High Court; persons entitled to practice before High Courts.]

28 O N Mohindroo (supra) [9]; Bar Council of U P v. State of U P, (1973) 1 SCC 261 [11]

29 (1973) 1 SCC 261

30 Bar Council of U P (supra) [14]

31 Section 26A, Advocates Act

32 See Girnar Traders v. State of Maharashtra, (2011) 3 SCC 1 [80]

33 (1996) 3 SCC 342 [17]

34 Mahachandra Prasad Singh (Dr.) v. Bihar Legislative Council, (2004) 8 SCC 747 [13]

35 In re Delhi Laws Act 1912, (1951) SCC 568 [22]

36 Vasantlal Maganbhai Sanjanwala v. State of Bombay, 1960 SCC OnLine SC 27 [4]

37 Harishankar Bagla v. State of MP, (1954) 1 SCC 978 [12]

38 Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi, 1968 SCC OnLine SC 13 [13], [71]

39 Indian Express Newspapers (Bombay) (P) Ltd v. Union of India, (1985) 1 SCC 641 [77]; State of Tamil Nadu v. P Krishnamurthy, (2006) 4 SCC 517 [15]

40 Azfal Ullah v. State of U P, 1963 SCC OnLine SC 76 [13]; Rohtak and Hissar Districts Electric Supply Co. Ltd v. State of Uttar Pradesh, 1965 SCC OnLine SC 75 [18].

41 D K Trivedi and Sons v. State of Gujarat, 1986 Supp SCC 20 [33]

42 (2009) 10 SCC 755

43 M P V Sundararamier & Co. v. State of Andhra Pradesh, 1958 SCC OnLine SC 22

44 Kandivali Coop. Industrial Estate v. Municipal Corporation of Greater Mumbai, (2015) 11 SCC 161 [25]

45 (1992) 3 SCC 285 [7]

46 Article 110(2), Constitution of India. [It reads:

"110. Definition of "Money Bills"-

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes."]

47 (1954) 1 SCC 412

48 Shirur Mutt (supra) [48]

49 H H Sudhindra Thirtha Swamiar v. Commissioner for Hindu Religious and Charitable Endowments, 1963 Supp (2) SCR 302 [18]. [It was observed:

"18. A levy in the nature of a fee does no cease to be of that character merely because there is an element of compulsion or coerciveness present in it, not is it a postulate of a fee that it must have direct relation to the actual services rendered by the authority to each individual who obtains the benefit of service. If with a view to provide a specific service, levy is imposed by law and expenses for maintaining the service are met out of the amounts collected there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax."]; Indian Mica Micanite Industries v. State of Bihar, (1971) 2 SCC 236 [15].

50 Kewal Krishan Puri v. State of Punjab, (1980) 1 SCC 416 [23]; Sreenivasa General Traders v. State of A P, (1983) 4 SCC 353 [31].

51 1964 SCC OnLine SC 65 [8]

52 George Walkem Shannon v. Lower Mainland Dairy Products Board, 1938 AC 708.

53 (1999) 2 SCC 274 [9]

54 Vam Organic Chemicals Ltd v. State of U P, (1997) 2 SCC 715 [18]; A P Paper Mills Ltd. v. Government of A P, (2000) 8 SCC 167 [24].

55 Indian Mica Micanite Industries v. State of Bihar, (1971) 2 SCC 236 [14]

56 Resolution No. 32 of 2013, Gazette Notification dated 28 June 2013.

57 BCI. D 7114/2016(C1) dated 22 December 2016

58 In Re Sanjiv Dutta, Deputy Secretary, Ministry of Information and Broadcasting, (1995) 3 SCC 619 [20]; Ajitsinh Arjunsinh Gohil v. Bar Council of Gujarat, (2017) 5 SCC 465 [39]

59 Section 30, Advocates Act

60 Gupta Modern Breweries v. State of Jammu and Kashmir, (2007) 6 SCC 317 [20]

61 (2011) 9 SCC 573

62 (1980) 4 SCC 211

63 Reiterated in Bar Council of Maharashtra and Goa v. Manubhai Paragji Vashi, (2012) 1 SCC 314 [16]

64 Indian Council of Legal Aid and Advice v. Bar Council of India, (1995) 1 SCC 732 [11]

65 Dr. Haniraj L Chulani (supra) [18]

66 Union of India v. Rajdhani Grains & Jaggery Exchange Ltd, (1975) 1 SCC 676 [13]

67 Kunj Behari Lal Butail v. State of H P, (2000) 3 SCC 40 [14]

68 Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. CST, (1974) 4 SCC 98 [12]

69 Harishankar Bagla v. State of Madhya Pradesh, (1954) 1 SCC 978 [12]

70 Indian Express Newspapers (Bombay) (P) Ltd v. Union of India, (1985) 1 SCC 641 [75]; General Officer Commanding-in-Chief v. Subhash Chandra Yadav, (1988) 2 SCC 352 [14].

71 Rajnarain Singh v. Patna Administration Committee, (1954) 2 SCC 82 [32]

72 Avinder Singh v. State of Punjab, (1979) 1 SCC 137 [18]; J K Industries Ltd. v. Union of India, (2007) 13 SCC 673 [133]

73 (1997) 5 SCC 516

74 (2001) 4 SCC 202

75 (2011) 5 SCC 360

76 "AAI"

77 "AAI Act"

78 Section 22A, AAI Act.

79 See Global Energy Ltd. v. Central Electricity Regulatory Commission, (2009) 15 SCC 570 [25]

80 2016 SCC OnLine Ker 41055

81 Bar Council of Kerala v. T Koshy, W A No. 2170 of 2017.

82 Bar Council of Kerala v. N S Gopakumar, SLP(C) No. 44268 of 2018.

83 Akshai M Sivan v. Bar Council of Kerala, WP(C) No. 3068 of 2023 (order dt. 12 June 2023)

84 Communication dated 28 January 2017 by the BCI to the secretaries of the SBCs, BCI:D 529/2017(Council) dated 28 January 2017.

85 Rule 40, Section IVA, Chapter II, Part VI, BCI Rules. [It reads:

"40. Every Advocate borne on the rolls of the State Bar Council shall pay to the State Bar Council a sum of Rs. 300 every third year commencing from 1st August, 2001 along with a statement of particulars as given in the form set out at the end of these Rules, the first payment to be made on or before 1st August, 2001 or such extended time as notified by the Bar Council of India or the concerned State Bar Council.

Provided further however that an advocate shall be at liberty to pay in lieu of the payment of Rs. 60043 every three years a consolidated amount of Rs. 1000. This will be a life time payment to be kept in the fixed deposit by the concerned State Bar Council. Out of life time payment, 80% of the amount will be retained by the State Bar Council in a fixed deposit and remaining 20% has to be transferred to the Bar Council of India. The Bar Council of India and State Bar Council have to keep the same in a fixed deposit and the interest on the said deposits shall alone be utilized for the Welfare of the Advocates"44.

Explanation 1.-Statement of particulars as required by Rule 40 in the form set out shall require to be submitted only once in three years.

Explanation 2.-The Advocates who are in actual practise and are not drawing salary or not in full time service and not drawing salary from their respective employers are only required to pay the amount referred to in this rule.

Explanation 3.-This rule will be effective from 1-10-2006 and for period prior to this, advocates will continue to be covered by old rule."]

86 Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 [409]

87 (2019) 3 SCC 39 [171]

88 (2018) 10 SCC 1 [453]

89 See Nitisha v. Union of India, (2021) 15 SCC 125 [77]

90 Rule 25, Part IV of the Rules of Legal Education 2008, BCI mandates law students to complete an internship under an advocate for a minimum of 12 weeks for the three year law course and twenty weeks for the five year law course.

91 (2014) 16 SCC 72

92 Challenges for Dalits in South Asia's Legal Community, Chapter III - Dalit Justice Defenders in India, American Bar Association (2021) 16

93 (2022) 4 SCC 1

94 Challenges for Dalits in South Asia's Legal Community, Chapter III - Dalit Justice Defenders in India, American Bar Association (2021) 17

95 Hariram Bhambhi v. Satyanarayan, 2021 SCC OnLine SC 1010 [12]

96 K S Puttaswamy v. Union of India, (2017) 10 SCC 1 [525]

97 See Neil Aurelio Nunes (supra) [35]

98 (2023) 2 SCC 209 [37]

99 (1996) 10 SCC 304 [13]

100 (2004) 8 SCC 524 [63]

101 Secretary, Ministry of Chemicals & Fertilizers, Government of India v. Cipla Ltd., (2003) 7 SCC 1 [9]

102 (2017) 9 SCC 1 [101]

103 Franklin Templeton Trustee Services (P) Ltd. v. Amruta Garg, (2021) 9 SCC 606 [79]

104 N K Bajpai v. Union of India, (2012) 4 SCC 653 [25]

105 Jamshed Ansari v. High Court of Judicature at Allahabad, (2016) 10 SCC 554 [17]

106 N K Bajpai (supra) [25]

107 1950 SCC 695

108 1950 SCC 221

109 (1952) 1 SCC 205

110 (1954) 1 SCC 18 [9]

111 (1954) 2 SCC 320 PART G 64

112 Minerva Talkies v. State of Karnataka, 1988 Supp SCC 176 [15]

113 "2001 Act"

114 Section 15, Advocates Welfare Fund Act 2001. [It reads:

15. Payment of certain monies to Fund by State Bar Council - The State Bar Council shall pay to the Fund annually an amount equal to twenty per cent of the enrolment fee received by it under clause (f) of Section 24 of the Advocates Act, 1961 (25 of 1961).]

115 See Somaiya Organics (India) Ltd v. State of U P, (2001) 5 SCC 519 [46]

2. Study Material-G.K.

MAURYAN EMPIRE (322-185 BCE)
REIGN, RULER & HISTORICAL SIGNIFICANCE

FOUNDER OF MAURYAN EMPIRE – CHANDRAGUPTA MAURYA

CHANDRAGUPTA MAURYA (322 BC – 298 BC)

- **Chandraupta or Sandrokottos** (as he is referred to in Greek literature) launched a series of wars against Dhananand and also liberated the country from Greek rule.
- He laid the **foundation of the Mauryan empire** in 322 BC with help of Chanakya (Kautilya).
- After conquering the region between Beas and Bay of Bengal, Chandragupta launched expeditions throughout the country and included territories of Andhra, Karnataka, Maharashtra, Gujrat and Central regions to Mauryan empire. Thus, the **credit of first unification of North India** is attributed to Chandragupta Maurya.
- In 305 BC, Chandragupta defeated Seleucas Nikator, the Greek empire after Alexander.
- **Megasthenes, a Greek** ambassador, was sent by Seleucus in the Chandragupta Maurya court.
- According to Jaina sources, **Chandragupta embraced Jainism** towards the end of his life and abdicated the throne in favour of his son.
- Accompanied by Bhadrabahu, a Jaina saint, he went to **Shravanabelagola (Karnataka),** where he died by slow starvation (Salekhan).

Shravanabelagola is a famous Jain pilgrimage center as the statue of Gomateshwar, son of Rishabnath in Kayotsarga Mudra is situated here.

SECOND RULER OF THE MAURYAN EMPIRE – BINDUSARA

- Chandragupta was succeeded by his son Bindusara, known to the Greeks as **Amitrochates** (Sanskrit, Amitraghata = the destroyer of foes). Madrasar, Simhasena are other names used for Bindusara.
- Bindusara followed the **extreme fatalistic order (religion) 'Ajivika'** founded by Makhali Gosala. This order had complete disregard for '**karma**'.

- Bindusara maintained good diplomatic relations with Antiochus I, the Seleucid king of Syria. Antiochus sent Deimachus as ambassador to the Bindusara's court.
- Bindusara requested Antiochus to send him some sweet wine, dried figs and a Sophist (philosopher); the last being not meant for export, was not sent.
- Tibetan Buddhist monk Taranatha describes Bindusara as **"conqueror of the land between two seas"**e., peninsular India.
- **Divyavadan**, Buddhist biographical narrative of Mauryan Kings, mentions a revolt at Taxila being suppressed by Ashoka, the son of Bindusara; who was '**Kumara'** or viceroy of Ujjain at that time.

THIRD RULER OF THE MAURYAN EMPIRE – ASHOKA

- Eliminating other claimants, Ashoka was crowned to the throne in 269 BC. Radhagupta, helped Ashoka in usurping the throne.
- 8 years after coronation, Ashoka fought the horrible **Kalinga War** in 261 BC.
- Ashoka was moved by the untold miseries caused by the war, renouncing conquest by warfare, in favour of cultural conquest. In other words, Bherighosha was replaced with Dhammaghosha.
- Later on, he became **Buddhist** under the guidance of **Mogaliputta Tissa**.
- **Mogaliputta Tissa presided over the 3rd Buddhist Council** held in 250 BC at Pataliputra.
- He sent **missionaries** for propagation of Buddhism to Sri Lanka, south Indian states, Burma, Central Asia etc. He also sent ambassadors of peace to Greek Kingdoms & Greece
- **Ashoka was not an extreme pacifist** – He retained Kalinga and incorporated it into his kingdom; he also didn't disband the army.
- Under Ashoka, almost entire subcontinent came under single control **except extreme south**: Uttarapatha (Taxila), Avantirashtra (Ujjain), Prachi (Pataliputra), Kalinga (Toshali) and Dakshinpatha (Suvarnagiri) were important provinces.

MAURYAN ECONOMY	➢ Use of iron tools, diversified agriculture production, immense increase in agriculture land and irrigation facilities contributed to growth of Mauryan economy. ➢ Occurrences of famines are also reported in **kautilya's arthashastra** and Jaina texts. ➢ Sohgaura copper plate inscription & Mahasthana inscription deal with the relief measures to be adopted during a famine.

	➢ **Tolls** were also levied on commodities brought to town for sale. ➢ The normal taxation rate was one sixth of the produce. ➢ Crown land was called "**Sita**" ➢ The Mauryan Empire had a strict **legal and penal system** (civil and criminal); tax evaders attracted the death penalty. ➢ **punch-marked coins** (mostly silver) were used for transactions. ➢ Money was used not only for trade; the government paid its officers in cash. ➢ Salaries were in the range of 48,000 panas to 60 panas a year. ➢ Hired laborers were called '**karmakaras'**. ➢ There was state monopoly of mining, forest, salt, sale of liquor, manufacture of arms and metallurgy.
MAURYAN SOCIETY	➢ Society was clearly divided into a four-fold **Varna system**, **slavery** (dasas) existed in the society. ➢ Society was divided into a **number of castes and sub-castes** which were generally based on some profession or occupation. ➢ '**Varna- Shankar Vivah'** or inter-varna or inter-caste marriages too are reported; these were of two kinds, namely, '**Anulom'** (groom of higher varna/caste) and '**Pratilom'** (bride of higher varna/caste). ➢ While Kautilya mentions **9 categories of slaves**, Megasthenes reports its absence. Megasthenes also talks about 7-fold social divisions. ➢ As per the Jataka tales untouchables like **Chanadala, Nishad, Shabar** etc. existed and were treated inhumanely. ➢ **Women's position in society deteriorated severely**: widow remarriage stopped, the institution of 'ganikas' (prostitution) expanded. ➢ Most artisans were shudras, yet, they were worst paid and subjected to forced labour (vishti).
DHAMMA OF ASHOKA	➢ Ashoka was a Buddhist but he also promoted a few principles of morality known as '**Dhamma'**. The 4-cardinal points of Dhamma included: **Tolerance, Non-violence, Good Conduct** (Obeying parents

	and elders, respecting Brahmanas and Monks) & Welfare. ➢ A new officer called '**Dhammamahamatra'** was appointed for promotion of 'Dhamma'. ➢ **Sanghmitra**, daughter of Ashoka, was sent to Tamrparni (Sri Lanka) for conversion of women in Sri Lanka to Buddhism. ➢ Ashoka's Dhamma cannot be regarded as sectarian faith. His teachings were intended to maintain the existing order on the basis of tolerance.
ASHOKAN EDICTS AND INSCRIPTIONS	➢ They are the most important source of history of the Mauryan period. Depending upon their size they are categorized as follows: ➢ Major and minor rock edicts (16 and 2 respectively) ➢ Major and minor pillar edicts (17 and 3 respectively) ➢ These are reported from places like Meerut, Topara, Kaushambi, Sanchi, Sarnath, Lauriya Nandgarh, Lauriya Araraj, Rampur and Lumbini (Nepal) in and around the Ganga Valley. ➢ The **national emblem of India** is taken from the Ashoka's Sarnath Pillar. ➢ **Name of Ashoka occurs only on minor rock edicts**. He was the first king to speak to people directly through inscriptions. ➢ Mainly inscribed in **Prakrit Language and Brahmi script**. ➢ Inscriptions from Mansehra and Shahbajgarhi in Pakistan are in Prakrit language but in Kharosthi script. ➢ Kandhar Inscriptions is **bilingual**, it uses Greek and Aramaic languages and scripts.
MAURYAN ADMINISTRATION	➢ The Mauryan Empire was divided into **5 provinces** -Uttarapatha, Avantipatha, Prachyapatha, Dakshinapatha and Magadha. ➢ Mauryan Empire had a huge army & had maintained a navy.
	CENTRAL ADMINISTRATION: ➢ King was the nucleus and was assisted by **Mantri Parishad** – Yuvraj, Purohita, Senapati and others. ➢ Highest officers were called '**tirthas'** and

	Adhyakshas (superintendents) managed 26 departments.
	IMPORTANT OFFICIALS: ➢ **Mantri** – Chief Minister ➢ **Mantriparishad Adhyaksha** – Head of Council Of Minister ➢ **Purohita** – Chief priest ➢ **Senapati –** Commander-In-Chief ➢ **Yuvaraj –** Crown Prince ➢ **Samaharta –** Revenue Collector ➢ **Shulkadhyaksha** – Officer-In-Charge of Royal Income ➢ **Spies (gudhapurushas) and informers (prativedakas)** played an important role.
	LOCAL ADMINISTRATION: ➢ The Mauryan Empire also had local and municipal administration; **'Vish'or 'Ahara'** (districts) were the units of a province. ➢ Megasthenese's account mentions 6 committees of five members each for administering the municipalities.
	IMPORTANT OFFICERS: ➢ **Sitadhyaksha** – Supervised agriculture ➢ **Panyadhyaksha** -Superintendent of Commerce ➢ **Yukta** – Subordinate Revenue Officer ➢ **Prasdesika** – Chief revenue officer. ➢ **Sthanika** – Head of local administration. worked under Preadesika. ➢ **Rajuka** – Revenue settlement officer ➢ **Samsthadhyaksha** – Superintendent of market ➢ **Pauthavadhyaksha** – Superintendent of weight & measure. ➢ **Navaadhyaksha** – Superintendent of ships. ➢ **Sulkaadhyaksha** – Collector of tolls
	VILLAGE LEVEL OFFICERS: ➢ **Gramika** – The head of the village. It was an elected body. ➢ **Gramvriddhas** – panchayat consist of Village elders to settle disputes.

	➢ **Sudarshan lake** was constructed during the reign of Chandragupta Maurya in Girnar Hill in Gujrat. ➢ **Tamralipti** (Tamlook in Midnapur, WB) in the east and Bharuch/ Broach/Barygaza (Gujrat) in the west were two important ports. ➢ Huge army and Navy were maintained in which all the 4 varnas were allowed to serve. ➢ **Raja** (the king), **Mitra** (Friend), **Durg** (fort), **Amatya** (the secretaries), **Janapada** (territory), **Kosha** (the treasure), **Sena** (Army) were the 7 elements of states of Kautilya's **Saptanga theory**.

DECLINE OF THE MAURYAN EMPIRE

- Over-centralisation, cumbersome bureaucracy, super heavy taxation (on almost every activity) and foreign invasions were main factors of decline.
- Neglect of the North-West frontier and construction of the great wall of China.
- Financial Crisis- Ashoka incurred huge expenditure for promotion of his 'Dhamma Mission'.
- Over-tolerant, non-violent attitude killed the fighting spirit of the army.
- After Ashoka's death in 232 BC Mauryan Empire were incompetent and oppressive.
- Pushyamitra Shunga, a Mauryan Empire army commander, killed the last Mauryan Empire Brihadrath and founded the Shunga Dynasty in 187 BC.
- Brhamins, annoyed by Ashoka for banning rituals, supported Pushyamitra Shunga who was a Brahmin.
- Pushyamitra shunga overthrew the Mauryan king and established the Shunga dynasty.

3. Study Material-Language

Proverbs – Sayings

A proverb is a short, pithy saying that expresses a traditionally held truth or piece of advice, based on common sense or experience.

S.N.	Proverb/Sayings	Meaning
1.	A bad workman always blames his tools	This proverb is used when someone blames the quality of their equipment or other external factors when they perform a task poorly.
2.	A bird in hand is worth two in the bush.	Things we already have are more valuable than what we hope to get.
3.	Absence makes the heart grow fonder.	When people we love are not with us, we love them even more.
4.	A cat has nine lives.	Cat can survive seemingly fatal events.
5.	A chain is only as strong as its weakest link.	One weak part will render the whole weak
6.	Actions speak louder than words.	Actions are a better reflection of one's character because it's easy to say things, but difficult to act on them and follow through.
7.	A drowning man will clutch at a straw.	When someone is in a difficult situation, s/he will take any available opportunity to improve it.
8.	Adversity and loss make a man wise.	We gain wisdom faster in difficult times than in prosperous times.
9.	A fool and his money are soon parted.	Foolish people do not know how to hold on to their money.
10.	A journey of thousand miles begins with a single step.	Howsoever big a task is, it starts with a small step.
11.	A leopard can't/ doesn't change its spots.	A person can't change its innate character, especially bad.
12.	A watched pot never boils	If something takes time to do, it doesn't help to constantly check on it. You just have to give it time.
13.	All good things come to an end.	Good experiences eventually come to an end.
14.	All's well that ends well.	As long as the outcome is good, problems on the way don't matter.
15.	All that glitters is not gold.	Things that look good outwardly may not be as valuable or good.
16.	All's fair in love and war.	One can break the rules of fair play under extenuating circumstances.
17.	Always put your best foot forward.	Try as hard as you can or give your best.
18.	Among the blind the one-eyed man is king.	An incapable person can gain powerful position if others in the fray are even more incapable.
19.	An apple a day keeps the doctor away.	Eating an apple a day will keep you healthy.

20.	An empty vessel makes much noise.	Foolish or stupid people are the most talkative.
21.	An idle brain is the devil's workshop.	If you've nothing to do, you'll likely think of mischief.
22.	An ounce of protection is worth a pound of cure.	A little precaution before a crisis hits is better than lot of firefighting afterwards.
23.	A picture is worth a thousand words.	It is easier to show or explain something through a picture than through words than through reams of text.
24.	Appearances can be deceptive.	Outward appearance may not be what you believe them to be.
25.	A rolling stone gathers no moss.	A person who is always changing jobs and places has the advantage of less responsibilities, but also the disadvantage of no fixed place to live.
26.	A ship in the harbor is safe, but that is not what a ship is for.	Get out of your comfort zone to grow and fulfill your potential.
27.	A stitch in time saves nine.	It's better to deal with problems immediately rather than wait by when they worsen and become much bigger.
28.	As you sow, so you shall reap.	Your actions – good or bad – determine what you get.
29.	A thing begun is half done.	A good beginning makes it easier to accomplish the rest of the project.
30.	Barking dogs seldom bite.	People who appear threatening rarely do harm.
31.	Be slow in choosing, but slower in changing.	Choose things or people after proper diligence, but once you choose, stick for long.
32.	Beauty is in the eye of the beholder.	What may seem beautiful to one person may not seem to another.
33.	Beauty is only skin deep.	A person's character, intellect, and other inner qualities are more important than his/ her physical beauty.
34.	Beggars can't be choosers.	People who depend on the generosity of others can't pick & choose things as per their liking. They've to accept what is given to them.
35.	Best things in life are free.	The most valuable things are often free.
36.	Better late than never.	It is better to get something (you desire) late than get it never.
37.	Better to be poor and healthy rather than rich and sick.	Good health is more important than money.
38.	Better to wear out than to rust out.	It is better to remain active than to be idle (used mainly for old people)
39.	Blood is thicker than water.	Relationships with family (or blood relatives) is stronger than other relationships.
40.	Cleanliness is next to Godliness.	Cleanliness is a sign of goodness, a great virtue.
41.	Clothes do not make the man.	A person's character can't be judged by his/ her clothing and outward appearance.
42.	Cowards die many times before their deaths.	Cowards suffer the feared effects of death many times over in their lives.
43.	Cross the stream where it is	To do things in the easiest possible way.

	shallowest.	
44.	Curiosity killed the cat.	Enquiring into others' work can be dangerous. One should mind own business.
45.	Curses, like chickens, come home to roost.	The consequences of doing wrong always catch up with the wrongdoer.
46.	Discretion is the better part of valor.	It is wise to be careful and not show unnecessary bravery.
47.	Don't bite off more than you can chew.	Don't take more responsibility than you can handle.
48.	Don't bite the hand that feeds you.	Don't act badly toward the person who has helped you or from whom you derive some benefits, for you may lose those benefits in future.
49.	Don't blow your own trumpet.	You should avoid proudly talking of your achievements and success in front of others.
50.	Don't cast pearls before swine.	Don't offer something valuable to someone who doesn't value it.
51.	Don't count your chickens before they hatch.	Don't make plans based on future events that may not happen at all.
52.	Don't cross a bridge until you come to it.	Deal with a situation when it happens and not unnecessarily worry about it in advance.
53.	Don't judge a book by its cover.	Just like you can't form an opinion of a book just by looking at its cover, you can't form an opinion about someone (or something) from their outward appearance.
54.	Don't kill the goose that lays the golden eggs.	If you kill a goose that lays golden eggs, you destroy something that makes lot of money for you.
55.	Don't put all your eggs in one basket.	Don't put all your effort into a single course of action, venture, investment, goal, or the like, because if it doesn't work, you lose everything.
56.	Don't put the cart before the horse.	Do things in proper order. 'Horse before the cart' is the proper order, and not 'cart before the horse'.
57.	Don't throw the baby with the bathwater.	Don't discard something valuable while getting rid of something worthless.
58.	Early bird catches the worm.	One who starts early on the work has higher chance of success.
59.	Easy come, easy go.	You say this when you get something easily and then lose it as easily.
60.	Empty bags cannot stand upright.	A poor or hungry person cannot discharge his duties well.
61.	Every cloud has a silver lining.	Every bad or negative situation can result in some benefit to you. (The presence of silver lining means that the sun is behind the cloud and will eventually emerge.)
62.	Every dog has his day.	Even the unluckiest or the most unfortunate will taste success at some point.
63.	Every man is the architect of his	Your own actions and decisions decide what you

	destiny.	achieve (or don't) in life.
64.	Every man has his price.	Anyone can be swayed to do something. It's just that some may demand high price, some low. This proverb is also used in the sense of bribing people.
65.	Fall seven times. Stand up eight.	Be resilient and try despite failures. That's how you succeed.
66.	Familiarity breeds contempt.	If you know a situation, person, or thing well, you stop respecting them and become careless.
67.	Fools rush in where angels fear to tread.	Fools or inexperienced persons get involved in situations or pursue goals without much thought. In contrast, wise are thoughtful about such situations or goals.
68.	Fortune favors the brave.	If you carry out your plans boldly, the luck is more likely to favor you.
69.	Get out while the going (getting) is good.	To leave a place or situation before conditions worsen and it becomes difficult to leave.
70.	Give them an inch and they'll take a mile.	If you give someone a small amount of power or freedom to do something, they may try to get a lot more.
71.	God helps those who help themselves.	God doesn't help those who don't try. You've to make effort if you want to succeed.
72.	Good things come to those who wait.	Patience is often rewarded.
73.	Grief divided is made lighter.	If you share your grief, it'll get easier to bear.
74.	Half a loaf is better than none.	Getting less than what one wants is better than not getting anything. It's always better to be truthful and honest, even if the opposite may get you the benefits.
75.	Hope for the best, prepare for the worst.	Be optimistic, but be prepared for a scenario where things can go wrong.
76.	If it ain't broke, don't fix it.	If something is working fine, don't change it unnecessarily.
77.	If the mountain won't come to Muhammad, Muhammad must go to the mountain.	If things don't turn the way you want them to, then adjust your way to suit those things.
78.	If wishes were horses, beggars would ride.	If things were to happen by just wishing them, even the poorest will have everything they want.
79.	If you can't beat them, join them.	If you can't beat your opponent, then work alongside them for mutual benefit.
80.	If you play with fire, you'll get burned.	If you do something dangerous or adventurous, you may get harmed.
81.	Ignorance is bliss.	If you don't know about something, you don't need to bother about it.
82.	It's better to be safe than sorry.	It's better to be cautious than regret later.
83.	It's easy to be wise after the event.	It is easy to understand what you could have done to prevent something bad from happening after it has happened.
84.	It's never too late to mend.	It's never too late to change your wrong ways or

		habits.
85.	It's not over till it's over.	Till the event has completely played, you're still in with a chance to succeed.
86.	It's no use crying over spilt milk.	There is no point in staying upset over a mistake because you can't undo what has happened.
87.	It takes two to make a quarrel.	An argument of quarrel is not one person's fault.
88.	It takes two to tango.	Where two parties are involved in a situation, fault usually lies with both if things go wrong. Rarely can one party be blamed entirely.
89.	Keep your mouth shut and your eyes open.	Speak only when necessary and remain alert and observant at all times.
90.	Laughter is the best medicine.	Thinking positively and laughing will help you to feel better.
91.	Learn to walk before you run.	Learn basic skills first before venturing into complex things
92.	Let sleeping dogs lie.	Don't talk about a bad situation people have forgotten and that could unnecessarily create problem in the present.
93.	Life begins at forty.	A person truly starts enjoying life after forty as a result of accumulated skills and wisdom.
94.	Lightning never strikes twice in the same place.	Misfortune does not occur twice in the same way to the same person.
95.	Look before you leap.	Consider all consequences before taking an action, especially when you can't retract.
96.	Make hay while the sun shines.	Make the most of favorable conditions till they last.
97.	Money doesn't grow on trees.	Spend money carefully because it's limited. You can't grow it on trees and replenish.
98.	Money talks.	Money gives one power and influence.
99.	Necessity is the mother of invention.	A need or problem forces people to come up with innovative solutions.
100.	Never put off until tomorrow what you can do today.	Don't delay doing something if you can do it immediately.
101.	Never test the depth of water with both feet.	If you're in water with both feet down, you risk being swept away by the currents.
102.	No gain without pain.	It is necessary to suffer or work hard in order to succeed or make progress.
103.	No news is good news.	If you don't receive any news about someone or something, it means that everything is fine and going normally.
104.	Once bitten twice shy.	You say this proverb when someone won't do something a second time because they had bad experience the first time.
105.	One man's junk is another man's treasure.	What may seem to be junk to one person maybe valuable to another.
106.	One shouldn't miss forest for the trees.	Sometimes you get so focused on small details that you may miss the larger context.
107.	Out of sight, out of mind.	If someone or something is not seen for a long

		time, it'll be forgotten.
108.	Pen is mightier than sword.	Thinking and writing have more influence on people and events than use of force.
109.	People who live in glass houses shouldn't throw stones at others.	People who have faults should not criticize other people for having the same faults.
110.	Persuasion is better than force.	You can achieve better results through persuasion than through coercion.
111.	Practice makes perfect.	Doing something over and over makes one better at it.
112.	Practice what you preach.	Behave the way you encourage other people to behave.
113.	Rome wasn't built in a day.	Important work takes time to complete.
114.	Silence is half consent.	If you don't object to what someone says or does, you may be assumed to agree to some extent.
115.	Slow and steady wins the race.	Slow and consistent work leads to better chance of success than quick work in spurts.
116.	Still waters run deep.	If a person doesn't speak much, it doesn't mean they lack depth or are uninteresting.
117.	Strike while the iron is hot.	Take advantage of an opportunity as soon as it comes along.
118.	The best-laid plans go astray.	Despite best preparations, things may not go your way.
119.	The end justifies the means.	A desired result is so important that any method, even a morally bad one, may be used to achieve it.
120.	The harder you work, the luckier you get.	The harder you work, the more good ideas and chances you may make for yourself.
121.	The grass is greener on the other side of the fence.	People are never satisfied with their own situation; they always think others have it better.
122.	The proof of the pudding is in the eating.	You can only judge the quality of something after you have tried, used, or experienced it.
123.	There are more ways than one to skin a cat.	There is more than one way to reach the same goal.
124.	There is no time like the present.	The best time to do something is right now. So, act now.
125.	There is safety in numbers.	A group offers more protection than when you are on your own.
126.	The road to hell is paved with good intentions.	Good intentions do not matter if a person's actions lead to bad outcomes.
127.	The show must go on.	A performance, event, etc., must continue even though there are problems.
128.	The squeaky wheel gets the grease.	People who complain the most are the ones who get attention or what they want.
129.	Time and tide wait for no man.	You've no control over passage of time; it'll keep slipping. So don't procrastinate, don't delay things.
130.	Too many cooks spoil the broth.	When too many people work together on a project, the result is inferior.
131.	Two heads are better than one.	Two persons have a better chance to solve a

		problem than one.
132.	Two wrongs don't make a right.	You shouldn't harm a person who has harmed you, even if you think that person deserves it.
133.	Watch the doughnut, and not the hole.	Focus on what you have and not on what you don't.
134.	What goes around comes around.	If someone treats other people badly, he or she will eventually be treated badly by someone else.
135.	When in Rome, do as the Romans do.	When visiting a foreign land, follow the customs of local people.
136.	When the going gets tough, the tough get going.	When conditions become difficult, strong people take action.
137.	Where there's a will, there's a way.	If you are determined enough, you can find a way to achieve what you want, even if it is difficult.
138.	Where there's smoke there's fire.	If there are rumors or signs that something is true so it must be at least partly true.
139.	Where one door shuts, another opens.	When you lose an opportunity to do one thing, an opportunity to do something else appears.
140.	While the cat's away, the mice will play.	Without supervision, people will do as they please, especially in disregarding or breaking rules.
141.	You can catch more flies with honey than with vinegar.	It's easier to win people to your side by persuasion and politeness than by confrontation and threats.
142.	You can lead a horse to water but you can't make it drink.	You can show people the way to do things, but you can't force them to act.
143.	You can't always get what you want.	Sometimes you may face disappointments in your pursuits or your wishes may not be fulfilled.
144.	You can't fit a round peg in a square hole.	You can't force someone into a role for which s/he is not suited.
145.	You can't have your cake and eat it too.	To have two things that one desires, but they're normally impossible to get simultaneously.
146.	You can't make an omelette without breaking eggs.	It is hard to achieve something important without causing unpleasant effects.
147.	You can't teach an old dog new tricks.	People who have long been used to doing things in a particular way will not abandon their habits.
148.	You can't unscramble a scrambled egg.	Some actions are irreversible.
149.	You can't win them all.	It is not possible to succeed at everything you do.
150.	You show me the man and I'll show you the rule.	Rules change depending on how influential or powerful the person likely to be affected by the rules is.

4. Current Affairs

JULY 2024

S.N.	News and Events
1.	Who took charge as the 30th Army Chief- **Upendra Dwivedi**
2.	PM Modi recently released three books based on whose life- **M. Venkaiah Naidu**
3.	Who has taken charge as the first woman Chief Secretary of Maharashtra- **Sujata Saunik**
4.	Recently, after Rohit Sharma and Virat Kohli, which Indian has retired from T20I cricket- **Ravindra Jadeja**
5.	Who was selected as the Player of the Tournament in T20 World Cup 2024- **Jasprit Bumrah**
6.	Where will the Global India AI Summit 2024 be planned- **New Delhi**
7.	Minami-Torishima Island, which was in the news recently, belongs to which country- **Japan**
8.	In the final of T20 World Cup 2024, India defeated which country to win the title for the second time- **South Africa**
9.	Who won the 'Smart Catch of the Match' award in the final of T20 World Cup 2024- **Suryakumar Yadav**
10.	In which state will South Asia's largest flying training organization be established- **Maharashtra**
11.	When is World Sports Journalist Day celebrated every year- **2 July**
12.	Who has been appointed as batting coach and mentor by Royal Challengers Bangalore- **Dinesh Karthik**
13.	The joint military exercise Maitri is organized between India and which country- **Thailand**
14.	Where will the ICC Men's T20 World Cup 2026 be held- **India-Sri Lanka**
15.	How many medals did India win in Under 23 Asian Wrestling Championship 2024- **8**
16.	Which country has recently assumed the presidency of the European Union Council- **Hungary**
17.	Which country has recently introduced holographic technology in bank notes – **Japan**
18.	Who recently became the first country to prepare a complete list of Fauna **– India**
19.	Who inaugurated the Global India AI Summit in New Delhi- **Ashwini Vaishnav**
20.	Indian Air Force Chief Air Chief Marshal VR Choudhary inaugurated

	the Air Force Weapon Systems School in- **Hyderabad**
21.	Which two cricketers have been recently appointed by Puma India as its brand ambassadors- **Riyan Parag and Nitish Kumar Reddy**
22.	With which bank did the Indian government sign a loan agreement for preparedness against epidemics- **ADB**
23.	Which Union Minister has recently launched the Nirmaan Portal- **G Kishan Reddy**
24.	Recently which United Nations agency has released the annual World Drug Report- **UNODC**
25.	Which bank has recently launched the 'MSME Sahaj' facility- **SBI**
26.	India has recently started joint military exercise 'Nomadic Elephant' with which country- **Mongolia**
27.	Dick Schoof has recently become the new Prime Minister of which country- **Netherlands**
28.	Recently which player has achieved the position of number 1 all-rounder in ICC T20I ranking- **Hardik Pandya**
29.	Who has been recently appointed as Additional National Security Advisor (NSA)- **Rajinder Khanna**
30.	Who has been recently appointed as Deputy National Security Advisor (NSA)- **T.V. Ravichandran**
31.	Who has been appointed as the Chairman of National Medical Commission- **Dr. B.N. Gangadhar**
32.	Who has recently launched the 'Sampoornata Abhiyan'- **Niti Aayog**
33.	India successfully test fired Rudram-1 missile, what type of missile is it- **air to surface**
34.	Where is the Shanghai Cooperation Organization Summit 2024 being organized- **Astana**
35.	With whom has the Indian Spices Board tied up to develop AI tools- **NIC**
36.	Who has been appointed as the chief spokesperson of the Central Government recently- **Dhirendra K Ojha**
37.	Who has taken oath again as the Chief Minister of Jharkhand- **Hemant Soren**
38.	Sheel Nagu has been appointed as the new Chief Justice of which High Court- **Punjab and Haryana High Court**
39.	Which party has won the UK parliamentary elections- **Labor Party**
40.	Under whose leadership did the Labour Party win a majority in the UK parliamentary elections- **Keir Starmer**
41.	Which organization has recently launched the 'Jeevan Samarth' initiative- **LIC**
42.	With whom has the Indian Olympic Association partnered for the Olympic Games- **BPCL**

43.	Under the leadership of which leader has the Labor Party achieved majority in the British parliamentary elections? - **Keir Starmer**
44.	When will the Union Budget 2024-25 be presented- **23 July**
45.	Who has become the first female finance minister of the United Kingdom- **Rachel Reeves**
46.	Masoud Pezeshkian has recently been elected President of which country- **Iran**
47.	With whom has DRDO developed the indigenous light tank 'Joravar'- **Larsen & Toubro**
48.	Recently which state government has launched 'Mitra Van' initiative- **Uttar Pradesh**
49.	Which country has joined the Shanghai Cooperation Organisation as a new member- **Belarus**
50.	President Draupadi Murmu visited the historic Udayagiri caves, in which state is it- **Odisha**
51.	Who will be the flag bearers of India in the opening ceremony of Paris Olympics 2024- **PV Sindhu and Sharath Kamal**
52.	Tata Power Solar Systems Limited has recently launched 'Ghar Ghar Solar' initiative in which state- **Uttar Pradesh**
53.	Who won the ICC Player of the Month award for June- **Jaspreet Bumrah**
54.	Who has been appointed as the new Chief Electoral Officer of Haryana recently- **Pankaj Aggarwal**
55.	Who was recently awarded France's highest civilian honour- **Roshni Nadar Malhotra**
56.	Recently PM Modi was awarded the highest civilian honour of which country- **Russia**
57.	The Sixteenth Finance Commission formed an Advisory Council, who is its convener- **Dr. Poonam Gupta**
58.	Who will be the main sponsor of the Indian team in the upcoming 2024 Paris Olympics- **Adani Group**
59.	Veerangana Durgavati Tiger Reserve was in the news recently, in which state is it located- **Madhya Pradesh**
60.	Who has been appointed as the Principal Advisor for the National Tuberculosis Elimination Program- **Dr. Soumya Swaminathan**
61.	Who was awarded the Best Agricultural State Award for the year 2024- **Maharashtra**
62.	Who has been appointed as the new head coach of the Indian men's cricket team- **Gautam Gambhir**
63.	Who has become the new member of the regional security group Colombo Security Conclave- **Bangladesh**
64.	Who has been recently appointed as the Commandant of Army Hospital-

	Lieutenant General Shankar Narayan
65.	Who inaugurated a new filing counter in the Supreme Court- **CJI DY Chandrachud**
66.	When is World Population Day celebrated every year- **11 July**
67.	What is the theme of World Population Day 2024- **"Leave no one behind, count everyone"**
68.	Where was the NATO summit held recently- **Washington**
69.	In which state did Home Minister Amit Shah inaugurate 'PM College of Excellence'- **Madhya Pradesh**
70.	Who won the Euro Cup 2024 title- **Spain**
71.	Carlos Alcaraz, who won the Wimbledon men's singles title 2024, is a player of which country- **Spain**
72.	Who recently won the Wimbledon Women's Singles 2024 title- **Barbora Krejcikova**
73.	Who has become the new Prime Minister of Nepal recently- **KP Sharma Oli**
74.	Which country recently won the Copa America title- **Argentina**
75.	Who won the Young Player of the Tournament award in Euro Cup 2024- **Lamin Yamal (Spain)**
76.	When is World Youth Skills Day celebrated every year- **15 July**
77.	In which state did PM Modi recently lay the foundation of India's longest urban tunnel project- **Maharashtra**
78.	The Indian government has announced how many US dollars to help Palestinian refugees - **5 million**
79.	Who recently launched the report on e-mobility R&D roadmap for India- **Ajay Kumar Sood**
80.	Where was the global conference on space research organized- **Busan, South Korea**
81.	In which country will the second Asia Pacific (APAC) ministerial conference be held- **India**
82.	ICAR's 'One Scientist-One Product' program has been launched to improve research in which field- **Agriculture and Animal Husbandry**
83.	World Heritage Young Professionals Forum 2024 is being organized by KISSK- **Archaeological Survey of India**
84.	Where was Asia's first health research-related "pre-clinical network facility" inaugurated - **Faridabad**
85.	Recently NITI Aayog has been reorganized, who is its Vice-Chairman- **Suman K Berry**
86.	When is International Criminal Justice Day celebrated every year- **17 July**
87.	Who has been re-elected as the President of the European Parliament- **Roberta Metsola**

88.	Recently, which state government has created a world record of planting 11 lakh saplings in a single day- **Madhya Pradesh**
89.	Recently, which state has announced to give 10% reservation to Agniveers in police recruitment- **Haryana**
90.	In which state 'Ladka Bhau' scheme has been started recently- **Maharashtra**
91.	Paul Kagame has recently won the presidential election of which country- **Rwanda**
92.	Recently 'Kirti' initiative which was in news is an initiative of which ministry- **Sports Ministry**
93.	Which Indian won bronze medal in World Junior Squash Championship 2024- **Shaurya Bawa**
94.	Where is Women's Asia Cup 2024 being organized- **Sri Lanka**
95.	With the help of which Indian warship, Indians were rescued near the Oman coast- **INS Teg**
96.	Who has been re-elected as the President of the European Union's Executive Commission- **Ursula von der Leyen**
97.	DMRC inaugurated the e-waste recycling box facility in collaboration with which country- **Japan**
98.	Who has been recently appointed as the vice-captain of the Indian T20 and ODI team- **Shubman Gill**
99.	Which new AI version has been launched by OpenAI recently- **GPT-4o mini**
100.	Who has been appointed as India's ambassador to the USA- **Vinay Mohan Kwatra**
101.	In the Economic Survey 2023-24, what is the amount recommended for PM Kisan Yojana- **8000**
102.	How much money has BCCI contributed for the Paris Olympics campaign- **8.5 crores**
103.	Who will be honored by IFFM for contribution to Indian cinema- **Ram Charan**
104.	Manolo Marquez has been appointed the head coach of the Indian men's football team. He belongs to which country- **Spain**
105.	Who has become the highest run-scorer for India in women's T20I- **Smriti Mandhana**
106.	Yuki Bhambri and Albano Olivet have won which men's doubles title- **Swiss Open**
107.	Who has been recently inducted into the Tennis Hall of Fame- **Leander Paes and Vijay Amritraj**
108.	The loan limit under the Mudra scheme has been increased to – **Rs. 20 lakh**
109.	Yuki Bhambri won which doubles title with France's Albano Olivetti-

	Swiss Open
110.	What is the defense budget in the Union Budget 2024-25- **6.22 lakh crore**
111.	Who was recently appointed as the acting chief of the US Secret Service- **Ronald L. Rowe Jr.**
112.	How many crores of rupees have been allocated for the 'Khelo India' initiative in the Union Budget 2024-25 - **900 crores**
113.	NITI Aayog has recently collaborated with whom for the Global South Innovation Program- **WIPO**
114.	Krishnan Venkat Subramaniam has recently been appointed as the CEO and MD of which bank - **Federal Bank**
115.	Who has been appointed as the new president of Mumbai Cricket Association- **Ajinkya Naik**
116.	Two advanced Triput class ships were built for the Indian Navy by- **Goa Shipyard Limited**
117.	Who has been re-elected to the International Olympic Committee- **Nita Ambani**
118.	Which country will host the Olympic Winter Games 2030- **France**
119.	What is the name of the Darbar Hall in Rashtrapati Bhavan- **'Ganatantra Mandap'**
120.	Who are the flag bearers of the Indian contingent at the opening ceremony of Paris Olympics 2024- **PV Sindhu and Achanta Sharath Kamal**
121.	Which will be the fourth capital city of the Northeast region to come under railway connectivity by July next year – **Aizawl**
122.	The historical 'Moidams' has been included in the UNESCO World Heritage List, in which state is it located – **Assam**
123.	The grand event of Paris Olympics 2024 is being organized on which river in Paris- **Seine River**
124.	What is India's rank in the recently released Global Passport Index- **82nd**
125.	Which Union Minister recently launched the 'Model Skill Loan Scheme'- **Jayant Chaudhary**
126.	India's first integrated agri-export facility will be set up at which port- **Jawaharlal Nehru Port (Mumbai)**
127.	The government has targeted to open how many Pradhan Mantri Bhartiya Janaushadhi Kendras across the country by March 31, 2027- **25,000**
128.	Recently RBI has approved the proposal of which bank to convert into a universal bank- **AU Small Finance Bank**
129.	Where did Union Information and Broadcasting Minister Ashwini Vaishnav inaugurate the country's 500th community radio station- **Aizawl (Mizoram)**

130.	Which medal did Manu Bhaker win in the women's 10m air pistol event at Paris Olympics 2024 - **Bronze medal**
131.	Who has become the 7th batsman to score more than 12,000 runs in Test cricket - **Joe Root**
132.	Who has been appointed as the new Governor of Jharkhand- **Santosh Kumar Gangwar**
133.	Rajasthan government has announced to provide reservation to Agniveers in which recruitment - **Jail and Forest Guard and State Police**
134.	Who recently took over as Chairman and Managing Director of SIDBI- **Manoj Mittal**
135.	Who is the first Indian to win two medals in a single Olympics after independence – **Manu Bhaker**
136.	Which country will host the Asia Cup in the year 2025 – **India**
137.	Sado gold mine was recently declared a UNESCO World Heritage Site, in which country is it - **Japan**
138.	Who took oath as the new Governor of Assam- **Laxman Prasad Acharya**
139.	Manika Batra has become the first Indian to reach the round of 16 of the singles competition of the Olympic Games, she is associated with which sport- **Table Tennis**
140.	Lovlina Borgohain has qualified for the quarter-final of women's 75kg boxing – **Paris Olympics 2024**

5. Prelims and Mains Notes Preparation Scheme

V.S. DREAM COACHING
FOR
HJS, PCS (J.) AND CLAT

Prelims and Mains Notes Preparation Scheme is going on. Prepare your own excellent study notes to crack HJS, PCS (J) and CLAT on the subjects mentioned below under the able guidance of Hon'ble Mr. Justice Vedpal (Former Judge), High Court of Judicature at Allahabad, Ex-Director of Judicial Training and Research Institute, U.P., Lucknow and resource person of various legal academies and institutions. Seek prior appointment to avoid despair.

1.General Knowledge

1. Current Affairs
2. G.K.MCQs
3. History of India and Indian Culture
4. Geography of India
5. Indian Polity
6. Current National Issues
7. Topic of Social Relevance with special reference to newly added 9 Social Acts
8. India and the World
9. Indian Economy
10. International Affairs and Institutions
11. Development in the field of:
    - (a) Science and Technology
    - (b) Communications and Space

2.Law

1. Constitutional Law
2. Law of Evidence
3. Criminal Procedure Code
4. Code of Civil Procedure,
5. Indian Panel Code
6. Law of Contract
7. Partnership Act
8. Easements Act
9. Law of Torts
10. Transfer of Property Act
11. Principles of Equity ,
12. Law of Trust
13. Specific Relief Act
14. Hindu Law
15. Muslim Law
16. U.P. Revenue Code.
17. U.P. Municipalities Act 1916
18. U.P. Panchayat Raj Act 1947
19. U.P. Consolidation of Holdings Act, 1953
20. U.P. Urban (Planning and Development) Act, 1973

3.CLAT

1. General Knowledge
2. A Guide for CLAT

6. About Coaching

V.S. Dream coaching is one of the Premiere Law Institute that offers coaching for Judicial Services Examinations at all the three levels – Preliminary Test, Main Examination and Personality Test.

We started our journey the month of Sept. 2022 with a vision driven by the socialist ideology. Since its inception, the coaching is successfully conducting courses for Judicial Services Exams and has always worked by aligning itself to the best interest of its students. The coaching Institute is focused on providing comprehensive and reliable training and support to all its students, who plan to appear for the Judicial Services Exam and are in the search of highly qualified targeted and dedicated faculty to crack examinations successfully.

The teaching faculty of the Institute has been drawn from highly qualified persons having experience. We also guide the aspirant in preparing his own notes and quality study Material

Teaching pedagogy

Our faculty uses a teaching pedagogy which is easily understandable and is aspirant friendly. Our patron Hon'ble Mr. Justice Vedpal former Judge High Court Allahabad had been a Trainer of Trainers. Director of Judicial Training and Research institute U.P., Resource person of several Judicial Institutes and member of Law commission U.P. The faculty of the coaching Institutes consists of those who have several decade experience in teaching in the field of law.

7. About Director and faculty

Ms. Anshu Singh B.A., LL.B is the Director of the Coaching who remained associated with the law for more than two decades. The director of the coaching possess self-awareness, garner credibility, focus on relationship-building, exhibit humility, empower others, stay authentic, present themselves as constant and consistent, become role models and are fully present

The director aims to improve performance and focuses on the 'here and now' rather than on the distant past or future. The director is subject expert. And focuse on helping the individual to unlock their own potential

Regular Faculty

1. Ms. Anshu Singh, B.A. (English Literature) LL.B. The Director, herself
2. Shri Shantanu Baliyan, B.A. LL.B who is a Law graduate from C.C.S. University Campus. He has also received Certificate of Excellency from the

University. He has started teaching at a very young age and now with his teaching experience, he has developed innovative ways of teaching Law and general knowledge, which suites to the need of a law student, as well as an Judicial service aspirant. He has conducted many online and offline Courses. His notes on Law subjects as well as on general knowledge are masterly work

8. Resource persons/Guest Speakers

1. Hon'ble Mr. Justice Vedpal, Former Judge, High Court Allahabad – Mentor
2. Shri Soraj Singh, Ex-Director (Ag.), U.P. Government – Guest Speakers
3. Mrs. Kalpana Malik, B.Sc., LL.B., LL.M. (P) – Guest Speakers
4. Dr. Venu Agarwal M.A.(English), M.Com. M.Ed., PhD – Guest Speakers

9. Library with Research wing

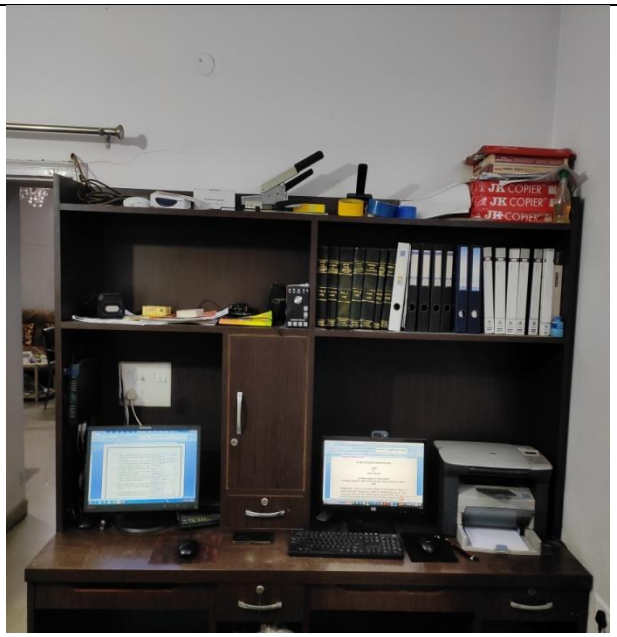
V.S. Dream Coaching has an excellent Library containing **about five thousand Books, Journals, Brochures, Notes and Guides**. The library in a coaching institute plays an important role in the life of students by serving as the store house of knowledge. It facilitates the work of the resource person and faculty also. The students have also access to library, after coaching hours. Our library changes as technology changes and remains updated in Course subjects. The coaching itself prepares study excellent and qualitative reading material.

Preparing a study material on a subject on Law and General Knowledge, is a herculean task. There is always a debatable question to be asked regarding what, and what not to include and how to differentiate the books and brochures from the ones already available in the market.

There should be a system for the verification of facts, data, etc. While preparing study material, we always keep in the mind the quality, so we hope that the book, brochures prove beneficial to all the aspirants taking examinations with law and General Knowledge.

A coaching should provide students with the fundamental knowledge base or foundation needed in order to be successful in their exam. Aspirants were surveyed to determine how they should be taught. The survey was developed based on course content. We encourage accredited programs to regularly evaluate current curricula for and develop new curricula that reflect changing construction technologies and management trends.

Library



Research wing