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V.S. DREAM COACHING

INDIRAPURAM GHAZIABAD

For
H.J.S. P.C.S. (J) A.P.O. & CLAT

Year – 2025



Secret of success is to
know something
nobody else knows

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NEWSLETTER

November 2025

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IN THE SERVICE OF JUDICIAL FRATERNITY

V.S. DREAM COACHING

1. Special Intensive Revision (SIR)

The Special Intensive Revision (SIR) of electoral rolls is a strategic exercise by the Election Commission of India (ECI) aimed at thoroughly updating, verifying and correcting the voter lists across India. While routine roll updates happen annually, SIR is a far more comprehensive, time-bound house-to-house verification drive, often preceding major elections. Its goal is to ensure that the electoral roll is accurate, inclusive and free from errors such as duplicates, deceased voters, or ineligible entries.

Special Intensive Revision (SIR)

SIR refers to a large-scale, intensive revision of electoral rolls by the Election Commission of India under its constitutional and statutory powers. Usually triggered in anticipation of high-stakes elections or when the rolls have remained largely unchanged for years, the SIR involves steps such as fresh enumeration forms, house-to-house verification by Booth Level Officers (BLOs), document verification of voters, deletion of ineligible entries, and inclusion of those omitted. The SIR 2025 in Bihar, where more than 8 crore voters were to be re-verified, is the latest example. Key facts:

The legal basis lies in Article 324 of the Constitution (superintendence, direction and control of elections) and Section 21(3) of the Representation of the People Act, 1950, which allows the Commission to carry out “special revision of the electoral roll.”

The objective is to include every eligible citizen (18+ years) and to remove duplicates, deceased persons, ineligible entries and correct errors like wrong names or addresses.

It is not simply a summary revision but combines features of a full enumeration (intensive revision) and summary updates, hence the nomenclature “Special Intensive”.

Special Intensive Revision Significance

The SIR exercise offers multiple benefits for democracy and electoral integrity:

Reduces ghost voters and multiple registrations: By removing duplicate entries, the fairness of elections improves.

Reflects demographic changes: Large-scale migration, new elector entrants, and urbanization distort old rolls; SIR addresses this.

Improves inclusion of marginalised groups: Young voters, internal migrants, disabled voters get properly registered.

Strengthens transparency and trust: When voters feel the list is updated and inclusive, public confidence in the system increases.

Facilitates efficient polling logistics: Clean rolls help better planning: fewer spoiled ballots, accurate polling station allocation (as seen in Jaipur creation of new booths).

Special Intensive Revision Objectives

The major objectives of conducting a Special Intensive Revision are:

Accuracy: To update and correct the electoral roll so that duplicate names, deceased voters, and ineligible persons are removed.

Inclusion: To ensure that all eligible citizens, including first-time voters, migrants, and those omitted earlier, are included in the voter list.

Legitimacy: To strengthen public trust in elections by cleansing rolls and thereby reinforcing the “one person, one vote” principle.

Demographic adjustment: With increasing migration (rural→urban), changing residencies, newly eligible voters (18+), SIR helps the roll reflect ground realities.

Pre-election readiness: Especially before major Assembly or Lok Sabha elections, a clean roll reduces litigations and helps smooth polling operations.

Special Intensive Revision Legal Framework

The legal and constitutional basis for SIR is critical for understanding its authority and challenges:

Article 324 (1): Grants the ECI superintendence, direction and control of elections to Parliament and State Legislatures.

Article 326: Guarantees adult suffrage to all citizens aged 18+ for elections to Lok Sabha and State Assemblies.

Representation of the People Act, 1950, Section 16 and 19: Sets out criteria for voter eligibility (citizen, 18+, ordinary resident). Section 21(3) empowers the ECI to order special roll revision.

Registration of Electors Rules, 1960: Specifies procedures for enrolment, revision, etc. Some legal commentators note that the term “Special Intensive Revision” itself is not explicitly present in the Rulebook, raising questions of nomenclature and procedural clarity.

Special Intensive Revision Process

The SIR process involves several distinct phases and features which differentiate it from routine roll updates:

Notification & Planning: The ECI issues notification specifying qualifying date (e.g., July 1, 2025 in Bihar).

House-to-House Enumeration: BLOs visit every house in assigned polling booth area and distribute pre-filled “Enumeration Forms” to existing electors and new eligible persons.

Submission of Documents: For voters enrolled after a certain past date (e.g., Jan 2003 in Bihar SIR) proof of date/place of birth and parentage is required. This is stricter than earlier frameworks.

Verification & Deletions/ Additions: EROs scrutinise the submissions, identify deaths, duplicates, migration, ineligible voters and remove them; simultaneously new inclusions are processed. For example in Jaipur, 741 new polling booths were to be created under SIR to accommodate changes.

Draft Publication & Objections: A draft roll is published, objections entertained, grievance redressal mechanism applied. The Supreme Court directed ECI to publish details of deleted names in the Bihar SIR litigation.

Final Roll & Freeze: The final roll is constituted and frozen for ensuing election. Additions/deletions after that are restricted to special cases.

Special Intensive Revision Features

The key features of the Special Intensive Revision (SIR) has been listed below:

- Focus on every household rather than selective updates.
- Time-bound completion preceding major elections.
- Special emphasis on migrants, youth, and excluded electorates.
- Integration of digital tools, SMS alerts, online enumeration portals.

- Stronger document verification for entries added post last intensive revision.

Bihar SIR 2025

The SIR exercise launched in Bihar in mid-2025 offers concrete insights and lessons. This case underlines both the scale and complexity of SIR. It also highlights the balancing act between thoroughness of revision and inclusivity of electoral participation.

The ECI notified SIR with the qualifying date 1 July 2025, marking all citizens turning 18 by 1 October 2025 as eligible for inclusion.

More than 8 crore voters were subject to enumeration; BLOs and 4 lakh volunteers were mobilised.

The process required voters registered after Jan 2003 to provide proof of their name, birth date and parent's details. This was stricter than past editions of intensive revision.

The Supreme Court directed the ECI to publish details of deletions and make it widely known via websites and media.

Civil society organisations like Association for Democratic Reforms (ADR) flagged deviations from 2003 norms and alleged risk of large-scale exclusion.

As part of booth rationalisation, districts such as Jaipur created hundreds of new polling stations under SIR to avoid over-crowding.

Special Intensive Revision Challenges

While SIR is conceptually sound, its implementation has raised serious concerns:

Risk of disenfranchisement: The demand for additional documents (especially for post-2003 entries) may exclude legitimate voters lacking birth or parentage proof. Critics argue that this risks excluding the poor, migrants and marginalised groups.

Timing before elections: Conducting a full-scale revision just before a major election may create confusion, logistic issues, and allegations of bias. For example, state parties asked for clarity that SIR is not a citizenship verification exercise.

Terminology & procedural clarity: The term “Special Intensive Revision” is not explicitly mentioned in existing rules, leading to questions about legal basis and consistency.

Resource and staffing constraints: House-to-house enumeration at scale demands huge human and technological resources, field officials have flagged shortages.

Digital divide and accessibility: Rural, remote, migrant or low-literate citizens may be disadvantaged in online enumeration or document submission.

Political objections and litigations: Some opposition parties allege SIR may be used to manipulate voter lists for favourable outcomes. For example, the Supreme Court is hearing a PIL (Association for Democratic Reforms vs ECI) challenging the 2025 Bihar SIR.

Way Forward:

Given the importance and complexity of SIR, a set of reforms can help strengthen its outcomes:

Define clear legal guidelines: While Section 21(3) of RP Act provides power, transparent guidelines on document requirements, timeline and inclusion criteria can reduce disputes and litigations.

Ensure minimal documentation barrier: Maintain presumption of validity for earlier registered voters; avoid blanket demands of new proof unless probable cause exists.

Use technology to streamline the process: Mobile apps for enumeration, GIS mapping of premises, online grievance portals for exclusion/delayed enrolment can enhance efficiency and reduce errors.

Inclusion focus: Special camps for migrants, disabled, first-time voters; mass awareness campaigns in multiple languages; mobile verification vehicles in remote areas.

Stakeholder consultation: Political parties, civil society organisations, tribal and migrant groups must be consulted to detect potential exclusion and build confidence in the exercise.

Real-time monitoring & public disclosure: Publishing lists of deleted/included names, reasons for deletion, leveraging transparency to reduce fear of disenfranchisement.

Post-roll audit & feedback mechanism: Conduct sample audits after the roll is finalised to verify inclusion of marginalised groups, and correct omissions before polling.

Synchronise with delimitation and polling station rationalisation: Changes in constituency boundaries, migration flows, and new polling station creation (as seen in Jaipur) must be integrated into SIR design.

SIR Election Commission

The Election Commission of India (ECI) plays a central role in planning and executing the Special Intensive Revision (SIR). It issues formal notifications specifying the schedule, qualifying date, and procedures for enumeration. The ECI also supervises the house-to-house verification, document scrutiny, and final roll publication. Through its constitutional authority under Article 324, the Commission ensures that every eligible citizen is included and every error or duplicate is eliminated from the voter roll.

Chief Electoral Officer

The Chief Electoral Officer (CEO) of each state or union territory is responsible for implementing SIR on the ground. Acting under the guidance of the Election Commission, the CEO coordinates with District Election Officers, Electoral Registration Officers, and Booth Level Officers. The CEO ensures timely data collection, field verification, training of staff, public awareness drives, and transparent grievance redressal during the revision. Their reports form the basis for ECI's final electoral roll approval.

Special Intensive Revision

The Election Commission of India (ECI) has launched the next phase of the Special Intensive Revision (SIR) of electoral rolls across 12 states and Union Territories, including Tamil Nadu, Kerala, West Bengal, and Puducherry, ahead of upcoming Assembly elections. The process begins on November 4, 2025, covering over 51 crore voters, with the final roll to be released on February 7, 2026. Voters must prove eligibility using one of 13 documents, including the Aadhaar card, a provision introduced after procedural reforms during the Bihar SIR. States like Tamil Nadu and Kerala have sought clarifications, citing concerns over large-scale voter verification. Meanwhile, Assam has been excluded due to the ongoing NRC exercise, making this one of India's largest voter verification drives since 2002.

2. Four Labour Codes

Labour laws have long shaped India's economic journey, advancing growth, empowerment, and social justice. Reforms evolve over time to suit changing conditions and worker requirements. By consolidating 29 fragmented statutes into a unified framework, the Four Labour Codes mark a decisive transformation, simplifying compliance, expanding protections and social security, and extending coverage to the unorganised and gig sectors while balancing employer flexibility with worker rights.

Implemented on **21-11-2025**, together, they aim to balance flexibility for employers with protection for workers, while reducing compliance burdens.

Ministry of Labour and Employment has notified multiple enforcement dates for 4 Labour Codes. Key provisions were brought into effect in phases during 2021, 2023, and 2025, along with the repeal of several earlier labour laws.

Rationale behind adopting Labour Codes

The codification of Labour Laws was required to overcome multiple overlapping of laws and establish a coherent, future ready framework for India's evolving economy. It simplifies compliance, strengthens enforcement, and replaces outdated colonial era provisions.

The aim was to simplify registration and licensing via Single Registration, License, and Return, easing compliance and boosting jobs. The **Second National Commission** urged grouping laws into 4—5 codes, and the Labour Ministry pursued this after wide consultations from 2015—2019. Consequently, the Code on Wages was notified in August 2019, followed by the remaining three Codes in September 2020.

The table below highlights key differences between the earlier labour laws and the new Labour Codes:

Basis	Earlier Labour Laws	Labour Codes
Number of Statutes	29 laws with 1,436 Rules	4 Codes with 351 Rules
Registration	8 separate registrations	Single
License	4	Single
Returns	31	Single (Electronic)
Compliance Filing	Monthly & state-specific	Annual consolidated returns
Inspection Mode	On-site paper audits	Risk-based digital inspections
Grievance Redressal	Multiple tribunals	Unified facilitation centres

Decoding the Labour Codes

A. Code on Wages, 2019:

The **Code on Wages, 2019** (Wages Code) consolidates and modernises India's wage regulations into a single statute, subsuming four earlier legislations. Its primary objective is to guarantee fair, timely, and equitable payment to all workers, irrespective of sector or type of employment, while ensuring uniformity in definitions and introducing a national floor wage to strengthen wage security and reduce disputes.

B. Code on Industrial Relations, 2020:

The **Industrial Relations Code, 2020** (IR Code) consolidates and amends laws on trade unions, retrenchment, and industrial disputes, providing uniform definitions. It is **pro-labour, pro-employment, and pro-growth**, fostering industrial harmony, inclusive participation, and ease of doing business.

C. Code on Social Security

The **Code on Social Security, 2020** (Social Security Code) consolidates multiple laws into one framework, ensuring universal protection and extending coverage to organised, unorganised, gig, and platform workers with digitisation and portability at its core. It modernises benefit schemes like Employee State Insurance Corporation ('ESIC') and the Employee Provident Fund ('EPF'), promotes ease of doing business through simplified compliance, and unifies diverse labour laws to expand worker benefits. By strengthening implementation with transparent digital systems, it balances social security with streamlined governance.

D. Occupational, Safety, Health and Working Conditions Code, 2020

The **Occupational Safety, Health and Working Conditions Code, 2020** (OSHC Code) unifies 13 labour laws into a comprehensive framework for workplace safety, health, and welfare. It establishes uniform standards including an 8-hour day/48-hour week baseline, mandatory appointment letters, and risk-based compliance. The Code applies across factories, mines, plantations, transport, and service sectors. By simplifying registration and inspections, it reduces regulatory complexity while strengthening worker protection and welfare facilities.

Key Changes and Impact of the Four Labour Codes:

Standardised Definitions:

- A uniform definition of “**Wages**” with a 50% cap on exclusions ensures fair calculation of gratuity, retrenchment compensation, and social security, preventing manipulation. The term ‘wages’ to include basic pay, dearness allowance, and retaining allowance.
- Section 2(zr) of IR Code expands “**Worker**” to include sales promotion staff, journalists, and supervisors earning up to Rs. 18,000, extending protections.
- Section 2(p) of IR Code broadens “**Industry**” to cover any systematic activity between employer and worker, regardless of profit motive or capital, bringing nonprofit and low investment sectors under scope.
- Definition of **Inter-State Migrant Workers** expanded to include direct, contractor-based, and self-migrating workers, **OSHW Code**. Benefits include journey allowance, portability of BOCW fund benefits, ration portability, and grievance helplines.
- Expanded definitions of **Working Journalists & AV Workers** include electronic/digital media journalists, dubbing artists, stunt persons, and audio-visual workers, granting them recognition and protections.

Wages and working hours:

- Earlier, minimum wages covered only “scheduled employments,” about 30% of workers. Section 5 of Wages Code, now grants all employees a statutory right to minimum wages, extending protection to organised and unorganised sectors, ensuring wage security and safeguarding against exploitation.
- **Section 9** of Wages code introduces a statutory **floor wage** set by the Central Government, based on minimum living standards like food, housing, and clothing. States will keep their minimum wages above this baseline, with regular revisions to reflect inflation, reduce disparities, and ensure fairness.
- Appropriate governments can fix minimum wages for hourly, daily, or monthly periods across varied work categories, considering skill, region, and job difficulty. Wages include a **basic rate plus allowances**, with mandatory revisions at least every **five years** to stay relevant.

Workers/ Employees:

- Minimum wages now apply to all employees, supported by a statutory floor wage that prevents states from undercutting pay. Wage determination based on skill, geography, and job arduousness promotes fairness and incentivises upskilling.
- Standardised across labour codes with wages, forming at least **50% ceiling on exclusions** (such as HRA, overtime, commissions, or special allowances), ensuring fair PF, gratuity, and compensation calculations

- The IR Code streamlines union recognition: 51% membership grants sole negotiating status; else, a council forms.
- Section 13 of Wages Code defines normal working hours will be limited to **48 per week, with a daily cap of 12 hours** including breaks; annual leave eligibility reduced from 240 to 180 days. A weekly paid holiday is required, and Section 14 mandates **overtime at twice** the normal rate, ensuring fair pay, preventing exploitation, and safeguarding worker health.
- Section 17 of Wages Code mandates timely wages, daily at shift end, weekly before holiday, fortnightly within 2 days, **monthly within 7 days**, and **termination dues within 2 days**.
- Employees below the wage ceiling who work at least 30 days in a year are entitled to an annual bonus of 8.33%—20% of wages, ensuring economic justice, profit sharing, and boosting morale, loyalty, and motivation among workers.
- Model Standing Orders in service sectors explicitly allow work from home, subject to mutual agreement between employer and employee. This enhances flexibility, particularly benefiting women and those seeking better work—life balance.
- Fixed-term employees now receive **gratuity after 1 year** and enjoy parity in benefits with permanent staff.
- ESIC and EPFO extended nationwide; commuting accidents recognised; hazardous occupations broadly covered, including journalists, stunt performers, and audiovisual workers.
- Applicability for EPFO coverage extended to all establishments with ≥ 20 employees, reducing litigation and expanding retirement savings.
- **ESIC benefits extended to in-laws** and dependent siblings, broadening coverage.
- Nationwide coverage, voluntary membership for <10 employees, mandatory for hazardous work, optional for plantations. Limitation on EPF inquiries (5 year start, 2 year completion).
- Reduced deposit for appeals (25% vs. 40—70%).
- Self-assessment of construction cess for faster collection.
- Fixed term employment is formally recognised, with such workers entitled to parity in wages, benefits, and social security with permanent employees, including eligibility for gratuity.
- Workers, under Section 62 of IR Code, in all establishments will now give **14 days'** notice before striking. Previously limited to public utility services, this requirement now applies universally, ensuring predictability and reducing sudden disruptions.
- Social Security Code recognizes for the first-time with schemes for life, disability, health, maternity, and pension benefits, for gig and platform workers.

- Informal, **contractual, migrant, gig, platform, and self-employed** workers gain wage parity, social security coverage, journey allowances, portability of benefits, and grievance helplines.
- National and State Social Security Boards will be established, and creation of a Social Security Fund will also be done.
- Aadhaar verified national database of unorganised, gig, migrant workers to map skills and platform workers with portability of benefits across India.
- The Core and non-core activities defined, under OSHW Code. The contract labour allowed in certain core activities under specified conditions. Threshold for applicability raised from **20 to 50 workers**. Principal employers responsible for welfare facilities and unpaid wages.
- Accidents while travelling to/from work now deemed employment related for compensation.
- The Factories with ≥ 500 workers, BOCW employers with ≥ 250 , and mines with ≥ 100 workers will be required to constitute safety committees with employer and worker representatives.
- The OSHWC Code mandates risk assessments, biosafety containment, exposure monitoring, and medical exams to prevent occupational diseases.
- Certified workers, accident reporting, empowered safety officers, and safety committees build transparency and a participatory culture.

Employer:

- Section 43 of Wages Code makes employers directly liable for wage payments, including proprietors and firms. Section 50(3) requires wage slips for transparency, while Section 12 ensures piece-rate workers earn at least the minimum time rate, protecting vulnerable sectors.
- Establishments with 300+ workers are mandated to draft standing orders; threshold raised from 100, ensuring flexibility.
- With prior approval from government the threshold in cases of lay off, retrenchment, or closure has been increased from 100 to 300 workers, providing employers more operational flexibility while safeguarding larger workforces.
- Cooperative compliance through inspector-cum-facilitators, third-party audits, compounding of minor offences, and digitalisation of processes enhance governance.
- Career Centres modernise job matching, while digitalisation reduces compliance costs, increases transparency, and speeds up approvals.
- Employers can issue appointment letters in prescribed format, detailing designation, wages, and social security, ensuring transparency and reducing disputes.
- Employers will provide safe workplaces, annual health check-ups, and welfare facilities.
- Mandatory **crèche facilities** for establishments with ≥ 50 workers.

- Employers will be required to provide free annual health check-ups for all employees; plantation employers can opt into ESIC for medical services.
- Employers gain single-window clearances, centralized licensing, digitized returns, and stronger emergency plans with drills and spill-response systems.

Gender Inclusion:

- Wages Code has introduced provisions for Gender Inclusive Employment Policies:
 - **Section 3** prohibits discrimination based on gender, including transgender identity, in recruitment, wages, and employment, guaranteeing equal pay for equal work.
 - **Section 42** mandates 1/3rd women members in Central and State Advisory Boards, ensuring inclusive policymaking and fair wage representation.
- Under IR Code, the Grievance Redressal Committees are mandated to include women in proportion to their workforce share, ensuring gender-sensitive dispute resolution.
- Women Centric Maternity benefits (26 weeks, adoption/surrogacy coverage), work from home flexibility, simplified certification, medical bonus, nursing breaks, and mandatory crèche facilities.
 - Women are provided larger scope to work in all establishments, facilities, and transport.
 - Women permitted night work with safeguards, promoting gender equality and workforce participation.⁷
 - Women workers are entitled to a ₹3,500 medical bonus if care isn't provided, plus two daily nursing breaks until the child is 15 months old.
 - Equal pay for equal work, maternity benefits, and representation of women in advisory boards foster inclusivity and higher participation.

Offences and Disputes

- First time offences punishable only with fines can now be compounded by paying **50% of the maximum fine**. This shift focuses from punishment to compliance, fostering cooperation, reducing fear driven enforcement, and encouraging adherence to wage laws.
- Compounding of offences (50% or 75% of max fine).
- Decriminalisation: 30-day improvement notice, fines replacing imprisonment.
- Under OSHW Code, the Courts can direct at least 50% of fines imposed for contraventions to be paid as compensation to injured workers or their families.

- **Time-bound** dispute resolution mechanisms reduce litigation delays and industrial unrest, while strike notice requirements ensure predictability and stability.

Ease of doing Business:

- The Code enables electronic record keeping, registration, and communication. Digital filings reduce manipulation and corruption, improve transparency, and accelerate compliance processes. This lowers administrative costs, reduces paperwork, and enhances efficiency.
- Unified single registration replaces multiple registrations, simplifying compliance and creating a centralised database.
- Electronic single registration, single return, and single all-India licences valid for 5 years with deemed approvals.
- Licensing thresholds are raised (from 10→20 with power, from 20→40 without power).
- Time-bound approvals (30 days) for factory construction or expansion, with deemed permission.
- A single **tripartite National Occupational Safety and Health Advisory Board** replaces six earlier boards, setting uniform national standards mandatory for states.

Implementation Roadmap of Four Labour Codes

For effective implementation of the Four Codes, here's a code wise description for workers, employers, employees and structured departments to know:

Wage Code Compliance

- Restructure CTC so at least **50% qualifies as wages**; recalibrate PF, gratuity, and bonus.
- Monitor floor wage notifications and state minimum wage revisions; update pay structures every five years.
- Align payroll SOPs with overtime provisions (**double rate**) and strict wage payment timelines.
- Digitise registers and returns; adopt single electronic return mechanisms.
- Engage with Inspector cum Facilitators for advisory inspections and transparent adherence.

Industrial Relations Code Compliance

- Maintain verified union membership records and protocols for negotiating councils.
- Adopt or update model standing orders for establishments with **300+ workers**.

- Calculate and deposit Reskilling Fund (15 days' wages) for retrenchment with documentation.
- Systematise strike/lockout notices and track conciliation timelines.
- Ensure digital recordkeeping, e-filing of returns, and women's representation in grievance committees.

Social Security Code Compliance

- Confirm EPF applicability for establishments with **20+ employees**; apply ESI thresholds including contractor counts.
- Register under EPFO/ESIC, maintain electronic records, and adopt digital filing of returns.
- Set up ledgers to compute aggregator contributions (1—2% of turnover, capped at 5% of payouts) and remit properly.
- Ensure fixed term employees qualify for gratuity after one year of continuous service.
- Provide maternity entitlements, crèche facilities, and flexible work options where required.
- Integrate Aadhaar/UAN, onboard unorganised workers on the e-Shram portal, and maintain accurate data for portability of benefits.
- Cooperate with Inspector cum Facilitators under the technology based inspection system.

OSHC Code Compliance

- Register establishments electronically under the unified system; digitise registers and secure single licences/returns.
- Issue appointment letters to all employees in prescribed format with wages, designation, and social security details.
- Configure HR/time systems to comply with **8-hour day / 48-hour week** baseline and double wages for overtime with consent.
- Provide mandatory welfare facilities: drinking water, crèches, canteens, restrooms, first aid, annual medical check-ups, PPE standards, and incident reporting.
- Register contractors where applicable, ensure welfare facilities for contract labour, and pay wages directly if contractors' default.
- Cooperate with Inspector cum Facilitators, allow third party audits, and comply with safety committee requirements for larger establishments.

Conclusion

Applying Labour Codes uniformly can look challenging due to varied state capacities, compliance costs for smaller firms, and the integration of unorganised, gig, and migrant workers into national systems. Overtime and fixed term rules require careful monitoring, while resistance from employers used to older laws

highlights the need for strong digital systems and awareness. Yet, the **four Labour Codes** mark a historic shift toward simplification, transparency, and inclusivity. Their success rests on effective digital implementation, balanced enforcement, and cooperation among all stakeholders.

3. Important Supreme Court Cases

November 2025

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S.N.	Subject	Case Reference
1.	Once the facts alleged in the complaint disclose the commission of an offence, then the magistrates are empowered to direct police to register FIR under Section 156(3) Cr.P.C [now Section 175(3) of BNSS].	Sadiq B. Hanchinmani Vs. State of Karnataka & Ors., decided on 04.11.2025
2.	The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC 1860 (now BNS 2023). The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands. In case of non-compliance, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.	Mihir Rajesh Shah Vs. State of Maharashtra and Anr., decided on 06.11.2025
3.	Judgment passed in favor of party who died before hearing is nullity if legal heir wasn't brought on record. If a decree is a nullity, its invalidity can be set up whenever and wherever it is sought to be enforced, even at the stage of execution.	Vikram Bhalchandra Ghongade Vs. State of Maharashtra & Ors. decided on 06.11.2025
4.	'Non-disclosure of a conviction' constitutes a suppression of material information violating the electorate's fundamental right to make an informed choice. Upheld the disqualification of a former councillor, who had not disclosed her criminal antecedent in an election affidavit that she was convicted in a cheque dishonor matter and suffered one-year incarceration.	Poonam Vs. Dule Singh & Ors., decided on 06.11.2025
5.	Mere use of the word 'arbitration' is	M/s. Alchemist Hospitals Ltd.

	not sufficient to treat the clause as an arbitration agreement when the corresponding mandatory intent to refer the disputes to arbitration and the consequent intent to be bound by the decision of the arbitral tribunal is missing.	Vs. M/s. ICT Health Technology Services India Pvt. Ltd., decided on 06.11.2025
6.	On the aspect of the powers of the Courts under Section 482 Cr.P.C, it is settled that at the stage of quashing, the Court is not required to conduct a mini trial. Thus, the jurisdiction under Section 482 Cr.P.C. with respect to quashing is somewhat limited as the Court has to only consider whether any sufficient material is available to proceed against the accused or not. If sufficient material is available, the power under Section 482 should not be exercised.	Muskan Vs. Ishaan Khan (Sataniya) and Ors., decided on 06.11.2025
7.	The judiciary draws its strength from discipline and not dominion, underscoring that obedience to binding precedent is a constitutional duty. The simple duty of Courts is to apply precedent as it stands and give effect to appellate directions as they are framed. In that discipline lies the confidence of litigants and the credibility of courts. Judges do not sit to settle scores. The gavel is an instrument of reason and not a weapon of reprisal. A vindictive stance is incompatible with the oath to uphold the Constitution and the law.	Rohan Vijay Nahar & Ors. Vs. State of Maharashtra & Ors., decided on 07.11.2025
8.	An order allowing an application for rejection of a plaint amounts to a decree and is therefore appealable under Section 13(1A) of the Commercial Courts Act, 2015. However, an order rejecting such an application is not appealable under the same provision and can instead be challenged through a revision or a petition under Article 227 of the	MITC Rolling Mills Pvt. Ltd. and Anr. Vs. M/s. Renuka Realtors and Ors., decided on 10.11.2025

	Constitution, as the case may be.	
9.	Insurance companies cannot evade their obligation to compensate victims in motor accident cases, even when there is a breach of a policy condition. Insurers retain the right to recover the compensation amount from the vehicle owner thereafter.	Akula Narayana Vs. The Oriental Insurance Company Ltd. & Anr., decided on 10.11.2025
10.	The safeguards under Sections 19(3) and 19(4) of the Prevention of Corruption Act, 1988, which prevent a conviction from being set aside due to defects in sanction unless they result in a “failure of justice”, do not apply when the validity of the sanction is questioned at the trial stage. These protections operate only at the appellate or revisional stage, once the trial court has already taken cognizance based on the sanction.	T. Manjunath Vs. State of Karnataka and Anr., decided on 10.11.2025
11.	A DNA test cannot be directed as a matter of course to determine paternity, especially when it risks illegitimising a child and intrudes upon individual privacy. Scientific tools like DNA profiling cannot be used for “fishing inquiries” and must be resorted to only in cases of eminent need, where the investigation cannot proceed without it. The presumption under Section 112 of the Evidence Act operates as 'Conclusive Proof' of the legitimacy of a child born during the subsistence of a valid marriage. This presumption endures unless it is affirmatively established, by strong and unambiguous evidence, that the parties to the marriage had no access to each other at any time when the child could have been begotten. Since the law favours legitimacy and frowns upon the illegitimacy, the burden is cast upon the person who asserts 'illegitimacy' to displace the presumption.	R. Rajendran Vs. Kamar Nisha and Ors., decided on 10.11.2025

12.	A subsequent purchaser who relies unquestioningly on the assertions of the vendor, without exercising due diligence or making reasonable inquiries, cannot claim protection of Section 19(b) of the Specific Relief Act, 1963, as a bona fide purchaser for value without notice. To invoke Section 19(b) protection, a purchaser must establish: (a) purchase for value; (b) payment made in good faith; and (c) absence of notice of the earlier contract.	K.S. Manjunath and Ors. Vs. Moorasavirappa @ Muttanna Chennappa Batil, since (D) by his LRS. and Ors., decided on 10.11.2025
13.	In execution petition, the primary onus lies on the decree-holder to show that the judgment debtor has willfully disobeyed the conditions of the decree.	Kapadam Sangalappa and Ors. Vs. Kamatam Sangalappa and Ors., decided on 11.11.2025
14.	A tenant who challenges a “fair rent” order but does not obtain a stay on it cannot rely on the pending case to avoid eviction. Mere filing of an appeal does not operate as a stay of the decree/order under appeal is the statutory ordainment in sub-rule (1) of Rule 5 of Order XLI, CPC. If a person does not seek stay of an order passed by a Court below, it would only indicate either of the two things viz., (i) that he is willing to comply with the order, or (ii) that he has no objection to the orders of the Court below being put into execution.	K. Subramaniam (D) through LRS. K.S. Balakrishnan & Ors. Vs. M/s. Krishna Mills Pvt. Ltd., decided on 11.11.2025
15.	A counterclaim can't be filed by a defendant against co-defendants. A counterclaim can only be filed against the plaintiff on a cause of action incidental or connected with the cause of action on which the plaintiff's suit was filed.	Sanjay Tiwari Vs. Yugal Kishore Prasad Sao & Ors., decided on 12.11.2025
16.	Delay in trial or prolonged incarceration cannot, by itself, justify	Union of India Vs. Vigin K. Varghese, decided on

	the grant of bail in cases involving commercial quantity of narcotic drugs when the mandatory twin conditions under Section 37 NDPS Act remain unmet.	13.11.2025
17.	Consistent ocular evidence prevails over medical evidence. Upholds conviction in POCSO Act, 2012	Dinesh Kumar Jaldhari Vs. State of Chhattisgarh, decided on 13.11.2025
18.	Mere pendency of a writ petition does not relieve litigants of their obligation to exhaust alternative time-bound remedies provided under special laws.	Kolanjiammal (D) through LRS. Vs. The Revenue Divisional Officer, Perambalur District & Ors., decided on 14.11.2025
19.	Where the witnesses have had an opportunity to see the accused prior to the holding of the TIP, the evidentiary worth of such proceedings stands considerably diminished. It is the duty of the prosecution to establish beyond doubt that right from the time of arrest, the accused was kept baparda to rule out the possibility of his face being seen before the identification proceedings are conducted. If the witnesses have had any opportunity to see the accused before the TIP – whether physically or through photographs – the credibility and sanctity of the identification proceedings would stand seriously compromised. In all proceedings where a witness is examined via video conferencing, the trial court must facilitate the electronic transmission of the witness's prior statements to them.	Raj Kumar @ Bheema Vs. State of NCT of Delhi, decided on 17.11.2025
20.	If some offences are quashed on compromise, FIR can't be sustained for other offences from same transaction.	Prashant Prakash Ratnaparki and Ors. Vs. State of Maharashtra and Anr., decided on 17.11.2025
21.	Struck down the Tribunal Reforms Act, 2021, relating to the appointments, tenure, and service conditions of the members of various Tribunals. Act cannot be sustained as it violates the principles relating to "separation of	Madras Bar Association Vs. Union of India and Anr., decided on 19.11.2025

	powers and judicial independence." The Act amounts to "legislative overruling" of binding judgments without curing any defects.	
22.	Ruled out any special quota/weightage for promotee judges in the posts of District Judges, observing that there is no nationwide pattern of disproportionate representation of direct recruits in the Higher Judicial Service. A perceived feeling of "heartburn" among judicial officers cannot justify the creation of any artificial classification within the cadre Higher Judicial Service(HJS). On the entry into a common cadre from different sources (Regular Promotion, Limited Departmental Competitive Exam and Direct Recruitment) and assignment of seniority as per the annual roster, the incumbents lose their 'birthmark' of the source from which they are recruited.	All India Judges Association and Ors. Vs. Union of India and Ors., decided on 19.11.2025
23.	The Court cannot impose any timelines for decisions of the President and the Governor on granting assent to Bills under Articles 200/201 of the Constitution. The concept of Courts declaring "deemed assent" to the Bills if the timelines are breached was antithetical to the spirit of the Constitution and against the doctrine of separation of powers. The concept of Courts declaring "deemed assent" is virtually a take over of the functions reserved for the Governor.	In Re: Assent, Withholding or Reservation of Bills by The Governor and the President of India, decided on 20.11.2025
24.	Trial courts do not become functus officio after permitting further investigation and are obligated to seek explanations from investigating agencies for significant delay in filing supplementary charge sheets. The accused cannot be made to suffer endlessly with this threat of continuing	Robert Lalchungnunga Chongthu @ R.L. Chongthu Vs. State of Bihar, decided on 20.11.2025

	investigation and eventual trial proceedings bearing over their everyday existence.	
25.	Indian Courts have no jurisdiction to appoint an arbitrator for a foreign-seated arbitration, irrespective of the nationality or domicile of the parties.	Balaji Steel Trade Vs. Fludor Benin S.A. & Ors., decided on 21.11.2025
26.	The offence of rape, being of the gravest kind, must be invoked only in cases where there exists genuine sexual violence, coercion, or absence of free consent. To convert every sour relationship into an offence of rape not only trivialises the seriousness of the offence but also inflicts upon the accused indelible stigma and grave injustice. Such instances transcend the realm of mere personal discord. The misuse of the criminal justice machinery in this regard is a matter of profound concern and calls for condemnation.	Samadhan S/o. Sitatram Manmothe Vs. State of Maharashtra & Anr., decided on 24.11.2025
27.	A judgment-debtor cannot, at a belated stage, assail an auction sale in execution proceedings, particularly once the sale has been completed. Such a challenge is impermissible under Order XXI Rule 96(3) of the Code of Civil Procedure when the judgment-debtor had a prior opportunity to raise objections before the proclamation of sale was issued.	G.R. Selvaraj (D), through LRS. Vs. K.J. Prakash Kumar and Ors., decided on 25.11.2025
28.	Voiced strong disapproval of attempts at bench hunting, noting growing trends amongst litigants to seek reversal of a prior bench's ruling by approaching a subsequent bench. Permitting such practices would undermine the very purpose of Article 141, as no judgment could have finality if it could be reopened merely because a later bench believes its own view to be a 'better' view.	Sk. Md. Anisur Rahaman Vs. State of West Bengal & Anr., decided on 26.11.2025

29.	Complaints arising from the dishonour of account payee cheques must be instituted only before the court that has jurisdiction over the branch of the bank where the payee maintains their account. Even if the cheque is deposited at a branch different from the payee's home branch, for the purposes of jurisdiction under the Negotiable Instruments Act, the complaint must still be filed before the court governing the home branch of the payee's bank account. The ruling of Yogesh Upadhyay Vs. Atlanta Ltd., (2023) 19 SCC 404, held to be per incuriam. The case of Yogesh Upadhyay wrongly held that the Courts situated at any of the branches of the payee bank, where the cheque is presented, will get jurisdiction. Only the home branch where the account of the payee is maintained will get jurisdiction.	Jai Balaji Industries Ltd. and Ors. Vs. M/s. HEG Ltd., decided on 28.11.2025
30.	Marriage, in its true essence, is a sacred and noble institution founded on mutual trust, companionship, and respect. However, in recent times, this pious bond has regrettably been reduced to a mere commercial transaction. The evil of dowry, though often sought to be camouflaged as gifts or voluntary offerings, has in reality become a means to display social status and to satiate material greed.	Yogendra Pal Singh Vs. Raghvendra Singh alias Prince and Anr., decided on 28.11.2025
31.	Once an arbitrator is appointed, the arbitral process must proceed unhindered. There is no statutory provision for review or appeal from an order under Section 11, which reflects a conscious legislative choice. The High Court did not have the jurisdiction to reopen or review its earlier order passed under Section	Hindustan Construction Company Ltd. through its Authorised Signatory Yogesh Dalal Vs. Bihar Rajya Pul Nirman Nigam Ltd. and Ors., decided on 28.11.2025

	11(6) of the Arbitration and Conciliation Act. Once the appointment was made, the court became functus officio and could not sit in judgment over the very issue it had already settled. The review order cuts against the grain of the Act, undermines the principle of minimal judicial interference, and effectively converts the review into an appeal in disguise.	

IN THE SUPREME COURT OF INDIA

Sadiq B. Hanchinmani
Vs.
State of Karnataka & Ors.

R1: The State of Karnataka
R2: Chndrumal
R3: Sanjay
R4: Nandkumar
R5: Vijay

[Criminal Appeal No. _____ of 2025
@ SLP (Criminal) No.11336 of 2022]

Sadiq B. Hanchinmani
Vs.
State of Karnataka & Ors.

R1: The State of Karnataka
R2: Mrs. Veena
R3: Madhav

[Criminal Appeal No. _____ of 2025
@ SLP (Criminal) No. _____ of 2025 @ Diary No. 39619 of 2022]

Head Note - Once the facts alleged in the complaint disclose the commission of an offence, then the magistrates are empowered to direct police to register FIR under Section 156(3) Cr.P.C [now Section 175(3) of BNSS].

JUDGMENT

Ahsanuddin Amanullah, J.

1. Delay condoned.
2. Leave granted in both petitions.
3. The instant criminal appeals, at the instance of the complainant, seek to assail the Final Judgments and Orders dated 18.11.2021 in CRLP No.100651/2018 [2021:KHC-D:90] (hereinafter referred to as the 'Second Impugned Order') and dated 24.07.2019 in CRLP No.100549/2018 [2019:KHC-D:5908] (hereinafter referred to as the 'First Impugned Order') passed by two learned Single Judges of the High Court of Karnataka, Bench at Dharwad (hereinafter referred to as the

'High Court'), whereby the High Court allowed the accused-private respondents' petitions under Section 482¹ of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code'), consequently quashing the Order dated 18.01.2018 passed by the learned Judicial Magistrate First Class-III Court, Belagavi (hereinafter referred to as the 'JMFC'), insofar as it related to the respective accused-private respondents.

BRIEF FACTS:

4. The appellant-complainant lodged a private complaint viz. PCR No.1/2018 before the JMFC against the private respondents under Sections 120B, 201, 419, 471, 468 and 420 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC').

5. The appellant-complainant had filed a suit being O.S. No.43/2009 before the learned II Additional Senior Civil Judge, Belagavi, seeking a declaration that he is the owner in possession of the suit property as per oral gift by his father and also to declare the Sale Deed dated 03.02.2009 executed by his father Bashirahmad in favour of accused no.1 as illegal, void and not binding on him. It is relevant to note that Bashirahmad remained ex-parte since he did not contest the suit.

The matter was heard and the suit came to be dismissed on 28.03.2013. Consequently, the appellant preferred an appeal being R.F.A. No.4095/2013 before the High Court. An interim application under Order XLI Rule 5² read with Section 151³ of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') was filed seeking stay of the operation of the Judgment and Decree dated 28.03.2013. Vide Order dated 03.06.2013, the High Court passed an interim order to maintain status quo regarding title and possession of the suit property, which was extended during the pendency of the appeal, but was subsequently vacated.

6. During the pendency of the afore-noted appeal, the appellant came to know that on 18.06.2015, Veena, (accused no.1) though in the F.I.R. her name is mentioned as Meena and her husband, along with others, broke open the lock put to the suit property without permission and trespassed into the same and started renovation/construction in the suit property. The appellant issued a Notice calling upon them to stop the renovation/construction work. The renovation/construction work was stopped.

The appellant later came to know that, on 18.10.2015, accused nos.1 and 2 and others again broke open the lock put to the property and re-started the work. The appellant then filed an application under Order XXXIX Rule 2-A⁴ read with Section 151 of the CPC, being I.A.No.1/2015 in R.F.A. No.4095/2013, seeking

initiation of contempt proceedings against accused nos.1 and 4. Accused no.1 filed a reply to I.A.No.1 of 2015 and produced a document embossed as an E-Stamp Paper dated 20.05.2013, styled as a Rent Agreement and some rent receipts. The said Rent Agreement was executed by accused no.1 in favour of accused no.2.

7. The appellant filed an application before the Inspector General of Registration and Commissioner of Stamps, Bengaluru, Department of Stamps and Registration, Government of Karnataka, for getting a certified copy of the document, which was produced by the contemnor/accused no.1 before the Court in the first appeal, styled as a Rent Agreement. The appellant came to know that the said E-Stamp Paper was fake, as he obtained certified copy(ies) of the Stamp Paper bearing same serial number, which did not tally with the Stamp Paper that was produced before the High Court.

8. The Rent Agreement was executed by accused no.1 in favour of accused no.2, and the appellant alleges that it was ante-dated to show that it came into existence prior to the date of the status quo Order passed by the High Court.

9. It is contended that all the accused, in collusion with one another, created and produced the forged, fabricated and manufactured document to obtain a favourable order and to obtain the possession of the suit property and have also concocted the rent receipts to justify their possession over the property. A complaint was also lodged with Khade Bazar Police Station, Belagavi to enquire about the forgery and concoction of the document. Still, no steps were taken by the police on the said complaint.

10. The appellant later filed a private complaint before the JMFC. The JMFC vide Order dated 18.01.2018 felt that the matter was to be referred for investigation under Section 156(3)⁵ of the Code. The JMFC referred the case for investigation to the Khade Bazar Police Station. Accordingly, a First Information Report was registered against accused nos.1 to 7 as Crime No.12/2018 (hereinafter referred to as the 'FIR') for offences punishable under Sections 120B, 201, 419, 471, 468 and 420 of the IPC, and investigation was undertaken. The learned JMFC in the Order dated 18.01.2018 recorded 'The complainant has complied with the directions issued by the Hon'ble Supreme Court in Priyanka Shrivastava vs. State of UP in (2015) 6 SCC 287.' (sic)

11. The High Court, in the First Impugned Order, observed as under, inter alia:

'10. Without mentioning anything the learned Magistrate has passed the order for further investigation though no law contemplated the learned Magistrate to go for further investigation. If at all any further investigation has to be made that will be only after if any final report is filed by the investigating agency and if there are

any deficiencies and if any request is made by the police under Section 173(8) Cr.P.C, then under such circumstances the Court can exercise. But when the private complaint has been filed and directly the court has passed for further investigation without any justifiable reasons in that light, the said order itself appears to be not justifiable since the court has not applied its mind and it is not sustainable in the eye of law.'

(emphasis supplied)

12. The High Court, in the Second Impugned Order, recorded, inter alia, as below:

'24. Even though, respondent No.2 filed a suit before the civil court seeking declaration of his right over the property claiming to be the owner of the property on the basis of the oral gift deed and that the registered sale deed executed by his father in favour of accused No.1 is not binding on him, admittedly, the said suit filed in O.S.No.43/2009 came to be dismissed and it is held that registered sale deed is executed by the father of respondent No.2 conveying the title over the property in favour of accused Nos.1, and respondent No.2 is not entitled for the declaration as sought for.

Challenging the said judgment and decree, RFA No.4095/2013 is filed before this court, which is still pending for consideration. Even though status-quo order was passed in respect of the title and possession of the property, it is made clear by this court that it is only to protect the title and possession of accused No.1, who is held to be in possession over the schedule property. Even though the said finding given by the trial court is under challenge before this court, the fact remains that there are no prima facie materials to contend that the possession of the property was handed over in favour of respondent No.2 by his father at any time.

27. It is also pertinent to note that accused No.2 and 5 to 7 who are petitioners herein, are not parties either in O.S.No.43/2009 or in RFA No.4095/2013 before this court. Under such circumstances, respondent No.2 should have made clear about the role played by these petitioners in concocting the document as contented by him and producing the same before the court to take advantage of the same in the first information.'

(emphasis supplied)

THE APPELLANT'S SUBMISSIONS:

13. The primary contention of the appellant is that the Rent Agreement produced by Chandrumal M. Parchani-respondent in collusion with other respondents on an E-Stamp Paper is fake.

14. The learned counsel for the appellant vehemently submitted that even the Inspector General of Registration and Commissioner of Stamps, addressed a letter to the Registrar, High Court of Karnataka, stating that on perusal of the reports submitted by the Area Manager (EStamping) and the authorized signatory of the Karnataka State Souharda Federal Co-operative Ltd., Bengaluru, prima facie, the EStamp purchased by Chandrumal M. Parchani-respondent and used for the Rent Agreement is a fake E-Stamp.

15. The learned counsel further stated that the District Registrar, Belagavi, has directed that a police complaint be filed against Chandrumal M. Parchani-respondent, the purchaser of the E-Stamp Paper and Sri Gajanana Multipurpose Souharda Sahakari Niyamit, Danegalli, Shahapur, Belagavi which sold the fake E-Stamp Paper and a separate complaint has been filed qua the said Sri Gajanana Multipurpose Souharda Sahakari Niyamit.

16. The learned counsel emphasised that when the appellant filed an application before the Inspector General of Registration and Commissioner of Stamps, Department of Stamps and Registration, Government of Karnataka, for obtaining a Certified Copy of the document, which was produced before the High Court styled as a Rent Agreement, the appellant came to know that the said E-Stamp Paper was fake, as he obtained certified copy(ies) of Stamp Paper bearing a same serial number, which did not tally with the Stamp Paper that was produced before the High Court.

17. Learned counsel urged that it is conspicuous from the facts of the case that all the private respondents, in both appeals, in collusion with each other, concocted, forged, fabricated and manufactured the document and produced the same before the High Court with mala fide intention to obtain a favourable order and gain possession of the suit property. It was advanced that the private respondents played fraud upon the Court and also caused obstacles in the stream of the justice delivery system.

18. In addition, learned counsel canvassed that the possibility of a conspiracy hatched by the accused cannot be ruled out since there is prima facie material that substantiates the appellant's claim that the EStamp Paper is a forged document.

19. It is further submitted that the appellant wrote a letter to various authorities, including the learned Chief Justice of the High Court. In turn, the Secretary to the learned Chief Justice, vide Letter dated 14.09.2017, instructed to follow-up with the investigation on the complaint filed against the purchaser of the fake E-Stamp Paper and the Sri Gajanana Multipurpose Souharda Sahakari Niyamit, the issuer of the fake E-Stamp Paper.

20. Learned counsel contended that the High Court overlooked Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, (2021) 19 SCC 401, holding that criminal proceedings should not be thwarted at the initial stage and the police should be allowed to investigate into the matter and to submit a Final Report, when there are prima facie materials against the accused.

21. Learned counsel pointed towards the conduct of Veenarespondent. It is stated that she has deliberately and intentionally concealed facts regarding the filing of Special Leave Petitions (Civil) No.1667-1668/2016 titled 'Meena M. Dongare v Sadiq S/O Bashirahmad Hanchanmani' against the Order dated 07.12.2015 in IA No.1/2023 passed by the High Court. The same was taken up on 01.02.2016, but withdrawn on the first date of listing as under:

'Learned senior counsel appearing for the petitioner seeks permission to withdraw the Special Leave Petitions with liberty to approach the High Court. In view thereof, the Special Leave Petitions are dismissed as withdrawn with liberty to approach the High Court by filing appropriate application for appropriate relief.'

22. Learned counsel for the appellant submits that the High Court, through the Impugned Orders, has turned a blind eye to the fake EStamp Paper, despite discrepancies such as party names and the amount of stamp duty.

23. The learned counsel wrapped up submissions by pointing out that the investigation at the relevant point was at a nascent stage, and the persons involved were on anticipatory bail, and no harm would have been caused if the investigation was allowed to be completed.

24. Learned counsel submitted that the disputed document was first produced before the High Court in R.F.A. No.4095 of 2013, and only then did the existence of such document come to the knowledge of the appellant. After obtaining a copy of the said document from the department concerned and also after obtaining reports from the Karnataka State Souharda Federal Co-Operative Ltd., Bengaluru, it is evident that it was accused no.2 who had forged the E-Stamp Paper and the document styled as a Lease/Rent Agreement before the High Court. As such, an in-depth investigation was required. It was prayed to allow the appeals.

SUBMISSIONS BY RESPONDENT NO.1-THE STATE OF KARNATAKA:

25. The counsel for the State reiterated some submissions made by the appellant but clarified and supplemented the same infra.

26. It is submitted by the learned counsel for the State that the main ground urged by respondents no.2 to 5 (accused nos.2, 5, 6 and 7) in Criminal Appeal

No._____ of 2025 @ SLP(Crl.) No. 11336 of 2022 as reflected in the Second Impugned Order before the High Court was that earlier, accused nos.1 and 3, against whom criminal proceedings were initiated, had approached the High Court by filing CRLP No.100549/2018 seeking the quashing of proceedings initiated against them. The High Court, therein, concluded that the JMFC, without application of judicial mind, had referred the matter for investigation. Therefore, Criminal Petition No.100549/2018 was allowed and proceedings against respondents no. 2 and 3 (accused nos.1 and 3) in Criminal Appeal No._____ of 2025 @ SLP(Crl.) No._____ of 2025 @ Diary No.39619 of 2022 were quashed vide the First Impugned Order.

27. Learned counsel argued that accused nos.2, 5, 6 and 7 claimed parity as they contended that they were also on similar footing. But allegations against accused nos.1 and 3 are different from those against accused nos.2, 5, 6 and 7. Therefore, parity should not be extended to them.

28. Learned counsel submitted that applying the same principles, the Second Impugned Order followed, but the learned Single Judges ought to have remanded the matter as the JMFC's Order dated 18.01.2018 referring the matter for investigation to the police was a curable defect, hit by Section 460⁶ of the Code, as it would fall under irregularities which do not vitiate proceedings.

29. Learned counsel submitted that the Second Impugned Order opined that the appellant had not made clear the role played by the accused nos.2, 5, 6 and 7 in concocting and forging the document and concluded that their role, against anybody, including the Court, was unclear, but based on the documents on record, it was evident that the forged E-stamp Paper was purchased by accused no.2. Prayer was made to pass appropriate Order/Judgment, factoring in the submissions noted supra.

SUBMISSIONS BY THE PRIVATE RESPONDENTS:

30. It is pertinent to note that learned counsel for the accused-private respondents entered appearance but the private respondents did not file any Counter-Affidavit. Learned counsel supported the Impugned Orders and urged that no good ground was made out to upset the views taken therein.

31. Learned counsel submitted that vide Order dated 28.03.2016 in I.A. No.3/2016, the High Court vacated the status quo Order dated 03.06.2013, qua the suit property and the keys of premises were handed over to accused no.1 during the pendency of R.F.A. No.4095/2013.

32. It was also submitted that the appellant harboured ulterior motive against the private respondents, which is why he had chosen to register the private complaint i.e., PCR No.1/2018.

33. Learned counsel argued that as R.F.A. No.4095/2013, concerning the suit property, was decided ultimately in favour of the private respondents concerned, therefore, no criminal liability could be hoisted on them.

ANALYSIS, REASONING AND CONCLUSION:

34. The questions for consideration may be summed up as:

(i) whether the direction for investigation to the police issued by the JMFC under Section 156(3) of the Code, which was quashed by the Impugned Orders, is justified based on the facts and circumstances of the cases, and;

(ii) whether the JMFC had sufficient material before it so as to justify the course of action of referring the matter for investigation to the police invoking power under Section 156(3) of the Code, resulting in the institution of the FIR.

35. The relevant and undisputed facts are that in R.F.A. No.4095/2013 before the High Court, an interim application under Order XLI Rule 5 read with Section 151 of the CPC was filed seeking stay of the operation of the Judgment and Decree dated 28.03.2013. Vide Order dated 03.06.2013, the High Court passed an interim order to maintain status quo regarding title and possession of the suit property, which was extended during the pendency of the appeal, but was subsequently vacated. During the pendency of R.F.A. No.4095/2013, the appellant came to know that on 18.06.2015, accused no.1 and her husband, along with others, had broken open the lock put to the suit property without permission and trespassed into the same and started renovation/construction in the suit property.

The appellant issued a Notice calling upon them to stop the renovation/construction work. The renovation/construction work was stopped. The appellant later came to know that, on 18.10.2015, accused nos.1 and 2 and others again broke open the lock put to the property and re-started the work. Thereafter, the appellant filed an application under Order XXXIX Rule 2-A read with Section 151 of the CPC i.e. I.A.No.1/2015 in R.F.A. No.4095/2013, seeking initiation of contempt proceedings against accused nos.1 and 4. Accused no.1 filed a reply to I.A.No.1 of 2015 and produced a document embossed as an E-Stamp Paper dated 20.05.2013, styled as a Rent Agreement and some rent receipts.

This Rent Agreement was executed by accused no.1 in favour of accused no.2. The defence taken in the reply to I.A.No.1 of 2015 was that prior to the passing of the status quo order on 03.06.2013, the suit property had already been let out to accused no.2 on 20.05.2013 on rent basis, with a copy of the Rent Agreement also annexed therewith. Further, rent receipts for a monthly rental of Rs.3,000/- (Rupees Three Thousand) were also enclosed. We may pause here since this will

be a turning point in the present cases. The Rent Agreement by accused no.1 in favour of accused no.2 is said to have been executed on 20.05.2013.

However, the Rent Agreement which was produced shows it was executed on E-Stamp Paper bearing no.IN-KA82473995873571L dated 20.05.2013. This document upon verification by the appellant, under the Right to Information Act, 2005 from the Inspector General of Registration and Commissioner of Stamps, Bengaluru, Department of Stamps and Registration, Government of Karnataka reveals that the said E-Stamp Paper Number with the same date of registration related to a Sale Agreement between one J.D. Duradundi and one S.B. Janagouda. Thus, it is clear that the Rent Agreement produced before the High Court was shown on the EStamp Paper was used by the aforesaid persons for a Sale Agreement, unconnected to accused nos.1 and 2 or to any Rent Agreement.

36. The accused no.1 has also stated that the tenant i.e., accused no.2 might have renovated and cleaned the suit property on 18.10.2015. This is where the Court finds the truth coming out. In the copy of the Rent/Lease Agreement which has been brought on record before the High Court by accused no.1 herself, it is clearly stipulated that accused no.2 will not change the nature of the premises and should not carry out any repairs to the said premises without the written consent of accused no.1.

It is not the case of accused no.1 that accused no.2 had sought any permission. Arguendo, assuming that accused no.2 might have made some renovations, the same by itself would not serve to absolve accused no.1 of the responsibility cast by the Order dated 03.06.2013 to maintain status quo; further, if she was aware that accused no.2 was violating the terms of the Rent/Lease Agreement, inaction on her part to take appropriate action or steps against/in respect of accused no.2 would make her responsible for any violation of the Order dated 03.06.2013, which she concedes might have been done by accused no.2 on 18.10.2015, i.e., during the period of subsistence of the Order dated 03.06.2013, as the status quo came to be vacated only on 28.03.2016. Examined, additionally, from another lens, even if an injunction order is subsequently set aside, consequences for breach/violation of the same when it subsisted, could still befall upon the violator, as held in *Samee Khan v Bindu Khan*, (1998) 7 SCC 59.⁷

37. At this juncture, it would be apposite to refer to the position of law enunciated in *Madhao v State of Maharashtra*, (2013) 5 SCC 615, wherein it was held that:

'18. When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of

the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself.

As said earlier, in the case of a complaint regarding the commission of cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the precognizance stage and avail of Section 156(3).'

(emphasis supplied)

38. In the background of the factual position, the JMFC's Order dated 18.01.2018 cannot be faulted. Enough material is available to justify a full-fledged investigation by the police. The JMFC, to our mind, had rightly referred the matter for investigation to the police since a prima facie case stood made out against the accused, in view of the material that was available with the JMFC. In *Ramdev Food Products Private Limited v State of Gujarat*, (2015) 6 SCC 439, three learned Judges of this Court opined:

'13. We may first deal with the question as to whether the Magistrate ought to have proceeded under Section 156(3) or was justified in proceeding under Section 202(1) and what are the parameters for exercise of power under the two provisions.

22. Thus, we answer the first question by holding that:

22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.

22.2. The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed". Category of cases falling under para 120.6 in *Lalita Kumari* [*Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1: (2014) 1 SCC (Cri) 524] may fall under Section 202.

22.3. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.

38. In *Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy* [(1976) 3 SCC 252: 1976 SCC (Cri) 380], *National Bank of Oman v. Barakara Abdul Aziz* [(2013) 2 SCC 488: (2013) 2 SCC (Cri) 731], *Madhao v. State of Maharashtra* [(2013) 5 SCC 615: (2013) 4 SCC (Cri) 141], *Rameshbhai Pandurao Hedau v. State of Gujarat* [(2010) 4 SCC 185: (2010) 2 SCC (Cri) 801], the scheme of Sections 156(3) and 202 has been discussed. It was observed that power under Section 156(3) can be invoked by the Magistrate before taking cognizance and was in the nature of preemptory reminder or intimation to the police to exercise its plenary power of investigation beginning with Section 156 and ending with report or charge-sheet under Section 173. On the other hand, Section 202 applies at post-cognizance stage and the direction for investigation was for the purpose of deciding whether there was sufficient ground to proceed.'

(emphasis supplied)

39. *Ramdev* (supra) was noticed in *Cardinal Mar George Alencherry v State of Kerala*, (2023) 18 SCC 730. The High Court, especially vide the First Impugned Order, seems to have been unduly swayed by the usage of the term 'further' by the JMFC. The relevant extract from the First Impugned Order has already been quoted hereinabove. It would be in the fitness of things to note the JMFC's Order dated 18.01.2018:

'On perusal of the private complaint, it is noticed that the aforesaid case needs to be further investigated by the police. Hence, this Court feels that the aforesaid case needs to be referred under Sec.156(3) of Cr.P.C. Hence, the above matter is referred to Khade Bazar P.S. for investigation under Sec.156(3) of Cr.P.C.'

(emphasis supplied)

40. The afore-extract leaves no room of doubt that the JMFC had referred the matter to police under Section 156(3) of the Code, and the usage of 'further' was not in the context of Section 173(8) of the Code, which fine distinction the First Impugned Order has glossed over. The case(s) at hand, in our considered view, demonstrate material showing the commission of cognizable offence(s), on the face of it, which would merit police investigation. Therefore, interdiction of the Impugned Orders is necessitated.

41. This Court in a composition of three learned Judges observed in *Neeharika Infrastructure (P) Ltd. (supra)* as follows:

'16. In a given case, there may be allegations of abuse of process of law by converting a civil dispute into a criminal dispute, only with a view to pressurise the accused. Similarly, in a given case the complaint itself on the face of it can be said to be barred by law. The allegations in the FIR/complaint may not at all disclose the commission of a cognizable offence. In such cases and in exceptional cases with circumspection, the High Court may stay the further investigation. However, at the same time, there may be genuine complaints/FIRs and the police/investigating agency has a statutory obligation/right/duty to enquire into the cognizable offences.

Therefore, a balance has to be struck between the rights of the genuine complainants and the FIRs disclosing commission of a cognizable offence and the statutory obligation/duty of the investigating agency to investigate into the cognizable offences on the one hand and those innocent persons against whom the criminal proceedings are initiated which may be in a given case abuse of process of law and the process.

However, if the facts are hazy and the investigation has just begun, the High Court would be circumspect in exercising such powers and the High Court must permit the investigating agency to proceed further with the investigation in exercise of its statutory duty under the provisions of the Code. Even in such a case the High Court has to give/assign brief reasons why at this stage the further investigation is required to be stayed. The High Court must appreciate that speedy investigation is the requirement in the criminal administration of justice.'

42. It was further highlighted:

'33.15. When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 CrPC, only has to consider whether the allegations in the FIR disclose the commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.'

(emphasis supplied)

43. Thus, on an overall circumspection of the facts and circumstances of the case, the material on record and the submissions made by learned counsel for the parties, the First and Second Impugned Orders dated 24.07.2019 and 18.11.2021 are set aside. FIR Crime No.12 of 2018, Khade Bazar Police Station stands restored. The police is directed to investigate the case expeditiously in accordance with law. It goes without saying that the private parties shall be at liberty to produce material to indicate their defence(s)/position during the police

investigation as also before the Court concerned, in accordance with law, at the appropriate stage.

44. Before parting, it is made clear that the observations made in this Judgment are only for the purposes of considering the issue(s) before us and shall neither prejudice nor aid the parties in any proceedings pending inter-se. The appeals stand allowed as indicated above. Pending applications stand closed. In the circumstances, however, we propose no order as to costs.

.....J. [Pankaj Mithal]

.....J. [Ahsanuddin Amanullah]

New Delhi

November 04, 2025

1 '482. Saving of inherent powers of High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.'

2 '5. Stay by Appellate Court.- (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

Explanation.-An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.

(2) Stay by Court which passed the decree.- Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied-

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Subject to the provisions of sub-rule (3), the Court may make an ex parte order for stay of execution pending the hearing of the application.

(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of Rule 1, the Court shall not make an order staying the execution of the decree.'

3 '151. Saving of inherent powers of Court.- Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.'

4 '2-A. Consequence of disobedience or breach of injunction.- (1) In the case of disobedience of any injunction granted or other order made under Rule 1 or Rule 2 or breach of any of the terms on which the injunction was granted or the order made, of the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.'

5 '156. Police officer's power to investigate cognizable case.-

(1)...

(2)...

(3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned.'

6 '460. Irregularities which do not vitiate proceedings.- If any Magistrate not empowered by law to do any of the following things, namely:-

(a) to issue a search-warrant under Section 94;

(b) to order, under Section 155, the police to investigate an offence;

(c) to hold an inquest under Section 176;

(d) to issue process under Section 187, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction;

(e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of Section 190;

(f) to make over a case under sub-section (2) of Section 192;

(g) to tender a pardon under Section 306;

(h) to recall a case and try it himself under Section 410; or

(i) to sell property under Section 458 or Section 459, erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.'

7 This position of law was recently reiterated in *Lavanya C v Vittal Gurudas Pai*, 2025 SCC OnLine SC 499, where one of us (P. Mithal, J.) was part of the coram.

IN THE SUPREME COURT OF INDIA

Mihir Rajesh Shah
Vs.
State of Maharashtra and Anr.

[Criminal Appeal No. 2195 of 2025]
[Criminal Appeal No. 2189 of 2025]
[Criminal Appeal No. 2190 of 2025]
[S.L.P. (Crl.) No. 8704 of 2025]

Head Note - (i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC 1860 (now BNS 2023);

(ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;

(iii) In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate.

(iv) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.

The requirement of informing the arrested person the grounds of arrest, in the light of and under Article 22(1) of the Constitution of India, is not a mere formality but a mandatory binding constitutional safeguard which has been included in part III of the Constitution under the head of Fundamental Rights. Thus, if a person is not informed of the grounds of his arrest as soon as maybe, it would amount to the violation of his fundamental rights thereby curtailing his right to life and personal liberty under Article 21 of the Constitution of India, rendering the arrest illegal.

Oral intimation shall be allowed only "exceptional circumstances," such as a crime being committed in front of a police officer. In such cases, oral communication of the grounds is permissible at the time of arrest. However, a written copy of grounds of arrest must be supplied to the arrested person within a reasonable time and in no event later than two hours prior to production of the arrestee before the magistrate for remand proceedings.

JUDGMENT

Augustine George Masih, J.

1. These Appeals being Criminal Appeal No.2195 of 2025, Criminal Appeal No.2189 of 2025 and Criminal Appeal No.2190 of 2025 were originally filed as Special Leave Petitions where leave was granted vide Order dated 22.04.2025. Since, in all these Appeals similar questions of law are involved, they are being decided by this common judgment. Special Leave Petition (Criminal) No.8704 of 2025 was tagged with the above-mentioned matters vide Order dated 02.06.2025.

2. The main issue as raised by the Appellants in these Appeals is the violation of the Appellants' right under Article 22(1) of the Constitution of India and Section 50 of the Code of Criminal Procedure, 1973 ("CrPC 1973") now Section 47 of Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS 2023") as the appellants assert that they were not informed of grounds of their arrest in writing.

3. For convenience, Criminal Appeal No. 2195 of 2025 is taken as the lead case. The facts in a nutshell are that on 07.07.2024, a white BMW car, driven at a high speed, collided violently with the complainant's scooter from behind. The force of the impact propelled both the complainant and his wife onto the car's bonnet, whereby the complainant was thrown to the side, and tragically, his wife became ensnared between the vehicle's front left wheel and bumper. Notwithstanding this grievous state, the driver, alleged to be Mihir Rajesh Shah, the Appellant herein, persisted in his reckless flight, dragging the victim, thereafter absconding without rendering assistance or reporting the incident to authorities.

The victim succumbed to the severe injuries sustained in this collision, as medically confirmed, while the complainant sustained minor injuries. FIR No. 378/2024 was registered at Worli Police Station under the relevant provisions of Bharatiya Nyaya Sanhita, 2023 ("BNS 2023"), and the Motor Vehicles Act, 1988. Initial investigative steps included the identification of the offending vehicle through CCTV footage, and the discovery near Kalanagar Junction Flyover of the damaged BMW alongside Rajrishi Rajendra Singh Bindawat and Rajesh Shah, father of Mihir Rajesh Shah (hereinafter, "Appellant").

Arrests soon followed, with co-accused Rajrishi Rajendra Singh Bindawat being taken into custody on the same day and Mihir Rajesh Shah being apprehended on 09.07.2024. The evidence collected firmly established the Appellant as the driver at the material time, including CCTV footage capturing his presence at the wheel, consumption of alcohol shortly before the incident, an attempt to alter his appearance, and use of a Fastag registered in his name, amongst other incriminating particulars.

4. The remand proceedings saw the Appellant being produced before the Judicial Magistrate First Class with initial police custody extending subsequently into judicial custody; a course contested on the grounds that the grounds of arrest were not furnished in writing as mandated by Article 22(1) of the Constitution of India and Section 47 of BNSS 2023 equivalent to Section 50 of CrPC 1973.

5. The Appellant's challenge against the legality of arrest was ultimately considered by the High Court of Bombay in Criminal Writ Petition No. 3533 of 2024 wherein, vide Judgment dated 25.11.2024, the High Court of Bombay, notwithstanding the acknowledgment of this procedural lapse, upheld the validity of arrest due to the Appellant's conscious awareness of the gravity of the offence, supported by substantial evidence and the Appellant's evasion of arrest, thereby justifying custody despite the missing written grounds. The Appellant approached this Court challenging the Judgment of Bombay High Court contending that grounds of arrest as mandated under Section 47 of BNSS 2023 were not informed to him in writing.

6. This Court, while considering the Special Leave Petition recorded that the Court is not inclined to entertain the petition on its merits and issued notice only to the extent of considering the question of law/legal position. In connected cases, being Criminal Appeal No. 2189 of 2025 and Criminal Appeal No. 2190 of 2025, this Court vide Order dated 22.04.2025, has granted ad interim relief and directed the Appellants to be released on bail during pendency of these Appeals. In Special Leave Petition (Criminal) No. 8704 of 2025 vide Order dated 02.06.2025, ad interim relief was also granted to the Petitioner therein directing his release on bail. On 13.12.2024, Mr. Shri Singh, learned counsel, who was present in the Court was appointed as Amicus Curiae to assist this Court in this matter.

7. Then, while granting leave on 22.04.2025, this Court formulated the following questions of law for consideration:

(a) Whether in each and every case, even arising out of an offence under Indian Penal Code, 1860 ("IPC 1860") now Bharatiya Nyaya Sanhita, 2023 (BNS 2023) would it be necessary to furnish grounds of arrest to an accused either before arrest or forthwith after arrest, and

(b) Whether, even in exceptional cases, where on account of certain exigencies it will not be possible to furnish the grounds of arrest either before arrest or immediately after arrest, the arrest would be vitiated on the ground of non-compliance with the provisions of Section 50 of the CrPC 1973 (now Section 47 of BNSS 2023).

8. Learned Senior Counsel appearing for the Appellant submits that the action of the Respondent of arresting the Appellant without informing the grounds of arrest

is in gross violation of the constitutional protection and mandate of Article 21 and Article 22(1) of the Constitution of India and Section 47 of BNSS 2023. He substantiates his contention relying upon the decision of this Court in *Pankaj Bansal v. Union of India and Others*¹, contending that this Court has clearly held that to meet the requirement of Article 22(1) of the Constitution of India, the mode of conveying the grounds of arrest must necessarily be meaningful so as to serve the intended purpose and therefore it must be furnished to the arrestee in writing as a matter of course.

9. Reliance is also placed upon the decision of this Court in *Prabir Purkayastha v. State (NCT of Delhi)*², wherein while dealing with the issue of communication of grounds of arrest to the arrestee in the offences related to the Unlawful Activities (Prevention) Act, 1967 ("UAPA"), this Court relying upon *Pankaj Bansal* (supra) reiterated that the grounds of arrest shall be furnished to the person arrested under UAPA or any other offence in writing without any exception at the earliest.

10. He further relies upon the decision of this Court in *Vihaan Kumar v. State of Haryana and Another*³, wherein it was held that the requirement of informing a person arrested, of grounds of arrest is a mandatory requirement of Article 22(1) of the Constitution of India and it must be conveyed in such a mode and method so as to achieve the object of the constitutional safeguard. He contends that Article 22 of the Constitution of India does not differentiate between offences under BNS 2023 (earlier IPC 1860) or offences under any other special statute such as UAPA, thereby claiming violation of Article 22(1) of the Constitution of India and Section 47 of BNSS 2023 by the Respondent. He, therefore, prays for the arrest to be declared illegal and the Appellant to be set at liberty.

11. On the other hand, learned Counsel for the Respondent-State submits that the mode of communication of grounds of arrest is not specified in the provision of Section 47 of BNSS 2023. The reliance on the decisions in the cases of *Pankaj Bansal* (supra) and *Prabir Purkayastha* (supra), is misplaced as both the cases pertain to special statutes and the facts therein are not similar to the present case.

It is argued that the mandate of Article 22(1) is to inform the grounds of arrest to the arrestee and there is no specific statutory mandate to provide such grounds in writing. The Respondent while supporting the Judgment of the High Court of Bombay contends that while informing grounds of arrest to the arrestee is mandatory, the mode thereof is not specified, and hence, the Appellant has been arrested in consonance with law and by following all procedural safeguards.

12. Learned Amicus Curiae submits that the grounds of arrest must be communicated to the arrested person in all cases without any exception regardless of the nature of offences i.e. offences under BNS 2023 (IPC 1860) or under any special statute such as UAPA etc. irrespective of the mode of

conveying/ communication specified or not in the statute. Reliance is placed upon Pankaj Bansal (supra) and Prabir Purkayastha (supra) for submitting that even the special statutes do not provide for an exception from informing grounds of arrest.

13. Further, regarding the mode of informing the grounds of arrest, learned Amicus Curiae submits that Article 22(1) of the Constitution of India as well as the procedural law under BNSS 2023 (CrPC 1973) do not make it mandatory to provide such grounds in writing to the arrestee. He submits that as long as the remand court or any other court is convinced that the grounds of arrest have been duly communicated, the mandate under Article 22(1) and BNSS 2023 would stand satisfied.

This Court in Pankaj Bansal (supra) observed that ideally grounds of arrest should be informed in writing, however, in Vihaan Kumar (supra) it was acknowledged that it might not be practical to provide grounds of arrest to an accused in each and every case in writing and thus clarified that there is no mandate to communicate the grounds of arrest in writing. Nevertheless, for investigations under special statutes such as Prevention of Money Laundering Act, 2002 ("PMLA") or UAPA, this Court has specifically held that such grounds of arrest be communicated in writing. The decisions in cases of Pankaj Bansal (supra) and Prabir Purkayastha (supra) need to be read harmoniously with Vihaan Kumar (supra) which provides as a general rule that grounds of arrest are not mandated to be communicated in writing.

14. On the aspect of timeframe within which grounds of arrest must be supplied to the arrested person, he submits that there is no straightjacket formula regarding the timeframe within which grounds of arrest must be communicated/supplied to the arrested person. The law provides that the grounds of arrest ought to be communicated at the time of arrest or at the earliest possible instance. The grounds of arrest must be provided forthwith i.e. within a reasonable time so as to allow the arrested accused an effective opportunity to consult a legal practitioner and be sufficiently prepared to oppose remand. The reasonable time would depend on the facts of each case; however, the grounds must be provided prior to the remand hearing.

15. Learned Amicus Curiae rests his submissions by stating that there can be no doubt that non-communication of the grounds of arrest to the arrested person amounts to the violation of Article 22(1) of the Constitution of India, entitling the arrestee to be released from the custody. However, there can be no absolute rule that if an arrest is found to be contrary to law, all investigative procedures linked to the arrest must be deemed to have been vitiated. The effect of failure to communicate grounds of arrest would have to be seen in the context of proceedings when such an objection is raised and the nature of investigation conducted after the arrest of the accused.

16. Having heard the learned Counsels for the parties, learned Amicus Curiae and on perusal of the material on record, we find it apposite that prior to undertaking and answering the aforementioned issues, it is imperative to delve into the constitutional mandate and statutory provisions relatable to informing of grounds of arrest to the arrested person as well as the existing jurisprudence as developed by this Court while dealing with such provisions.

17. The genesis of informing the grounds of arrest to a person flows from the Constitutional safeguard provided in Article 21 of the Constitution of India, which reads "No person shall be deprived of his life or personal liberty except according to procedure established by law". The expression 'personal liberty' has been given a wide meaning through various judicial pronouncements. One of which is that personal liberty includes procedural safeguards from the abuse of power by the State agencies and scrutiny of the actions of the State.

18. Article 22 of the Constitution of India further strengthens the protection of personal liberty of a person by providing that a person arrested must be informed of the grounds of his arrest at the earliest and should not be detained without informing him of such grounds. Article 22 reads as follow:

"22. Protection against arrest and detention in certain cases.-

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply-

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless-

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient

cause for such detention: Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe-

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of subclause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and (c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4)."

19. The Constitutional safeguard provided under Article 22 of the Constitution of India has been effectuated by the legislature by incorporating Section 50 of CrPC 1973 (now Section 47 of BNSS 2023) which puts into force the procedural mandate providing for the protection of the personal liberty of the person so arrested. Section 47 of BNSS 2023 casts a duty on the police officer or other person arresting any person without a warrant shall communicate him the grounds of arrest, which is reproduced herein below:

"47. Person arrested to be informed of grounds of arrest and of right to bail.-

(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a nonbailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf."

20. Section 50A of the CrPC 1973 now Section 48 of BNSS 2023 was further added to extend the scope of such protection by casting a duty upon the person arresting to inform such grounds of arrest to his friend, relative or any other person nominated by arrested person. Section 48 of BNSS 2023 reads as follows:

"48. Obligation of person making arrest to inform about arrest, etc., to relative or friend.-

(1) Every police officer or other person making any arrest under this Sanhita shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information and also to the designated police officer in the district.

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as the State Government may, by rules, provide.

(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person."

21. After having discussed the constitutional mandate and statutory provisions giving effect to the constitutional mandate in Article 22 of the Constitution of India, let us now consider the jurisprudence developed by this Court with respect to furnishing of grounds of arrest through its decisions.

22. In Pankaj Bansal (supra), this Court while dealing with the issue of furnishing grounds of arrest under Section 19(1) of PMLA has underscored that Article 22(1) of the Constitution mandates that no arrested person shall be detained without being informed of the grounds of such arrest at the earliest opportunity. The manner in which such grounds are to be communicated must be efficacious and substantive which must fulfil the essential objective and mandate of the constitutional provisions. It was further held that there exists no plausible justification as to why a written copy of the grounds of arrest ought not be provided to the arrestee as a standard procedural requirement without any exception.

23. This Court has reached the above conclusion based on the proposition that mere oral communication of such grounds, in the absence of any written document, renders the compliance susceptible to factual disputes which often result into conflicting claims between the arrested person and the investigating agency. This conflict results in jeopardizing the integrity of the arrest process and thereby giving an opportunity to the accused person to claim an immediate release. This situation may be obviated by furnishing the grounds of arrest in writing. Apart from the practical difficulties, furnishing grounds of arrest in writing also results into effective compliance of the mandate provided under Article 22 of the Constitution of India. The relevant portion of the decision in Pankaj Bansal (supra) is reproduced herein:

"38. In this regard, we may note that Article 22(1) of the Constitution provides, inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 PMLA enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail.

The twin conditions set out in the provision are that, firstly, the court must be satisfied, after giving an opportunity to the Public Prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorised officer arrested him/her under Section 19 and the basis for the officer's "reason to believe" that he/she is guilty of an offence punishable under the 2002 Act.

It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 PMLA, is meant to serve this higher purpose and must be given due importance.

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

given case, it may boil down to the word of the arrested person against the word of the authorised officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned.

Though ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person straightaway, as held in *V. Senthil Balaji v. State* [(2024) 3 SCC 51 : (2024) 2 SCC (Cri) 1]. Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorised officer in terms of Section 19(1) PMLA, to the arrested person under due acknowledgment, instead of leaving it to the debatable ipse dixit of the authorised officer.

43. The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. Conveyance of this information is not only to apprise the arrested person of why he/she is being arrested but also to enable such person to seek legal counsel and, thereafter, present a case before the court under Section 45 to seek release on bail, if he/she so chooses. In this regard, the grounds of arrest in *V. Senthil Balaji v. State* [(2024) 3 SCC 51 : (2024) 2 SCC (Cri) 1], are placed on record and we find that the same run into as many as six pages.

The grounds of arrest recorded in the case on hand in relation to Pankaj Bansal and Basant Bansal have not been produced before this Court, but it was contended that they were produced at the time of remand. However, as already noted earlier, this did not serve the intended purpose. Further, in the event their grounds of arrest were equally voluminous, it would be well-nigh impossible for either Pankaj Bansal or Basant Bansal to record and remember all that they had read or heard being read out for future recall so as to avail legal remedies.

More so, as a person who has just been arrested would not be in a calm and collected frame of mind and may be utterly incapable of remembering the contents of the grounds of arrest read by or read out to him/her. The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) PMLA.

44. We may also note that the grounds of arrest recorded by the authorised officer, in terms of Section 19(1) PMLA, would be personal to the person who is arrested and there should, ordinarily, be no risk of sensitive material being

divulged therefrom, compromising the sanctity and integrity of the investigation. In the event any such sensitive material finds mention in such grounds of arrest recorded by the authorised officer, it would always be open to him to redact such sensitive portions in the document and furnish the edited copy of the grounds of arrest to the arrested person, so as to safeguard the sanctity of the investigation.

45. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) PMLA of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception.

The decisions of the Delhi High Court in *Moin Akhtar Qureshi v. Union of India* [2017 SCC OnLine Del 12108] and the Bombay High Court in *Chhagan Chandrakant Bhujbal v. Union of India* [2016 SCC OnLine Bom 9938 : (2017) 1 AIR Bom R (Cri) 929], which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that ED's investigating officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants.

As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) PMLA, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) PMLA. Further, as already noted supra, the clandestine conduct of ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of ED and, thereafter, to judicial custody, cannot be sustained."

24. In *Prabir Purkayastha* (supra), of which, one of us was a member (B.R. Gavai, J., as he then was), this Court reiterated the principle laid down in the above judgment, while dealing with offences under UAPA and held that any individual arrested for alleged commission of offences under the UAPA or any other offence for that matter, has both a fundamental and a statutory right to be informed in writing such grounds of arrest.

The Court further held that a copy of such written grounds must be furnished to the arrested person at the earliest without any exception observing that the communication provided under Article 22 and Section 50 of CrPC 1973 (now Section 47 of BNSS 2023) is not a mere procedural formality but a vital safeguard with the ultimate objective to enable the arrested person to effectively consult legal aid and be prepared to raise objections in remand hearing and apply for his/her bail. The right to life and personal liberty, safeguarded under Articles

20, 21 and 22 of the Constitution, stands as the paramount fundamental right. Accordingly, infringement of these constitutional protections commands rigorous judicial scrutiny and strict enforcement.

25. It was said that any breach of the constitutional safeguards provided under Article 22 would vitiate the lawfulness of arrest and subsequent remand and entitle the arrested person to be set at liberty. The relevant portion in *Prabir Purkayastha* (supra) is reproduced herein:

"19. Resultantly, there is no doubt in the mind of the court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as this information would be the only effective means for the arrested person to consult his advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India.

20. The right to life and personal liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon this fundamental right has been frowned upon by this Court in a catena of decisions. In this regard, we may refer to the following observations made by this Court in *Roy V.D. v. State of Kerala* [(2000) 8 SCC 590 : 2001 SCC (Cri) 42] : (SCC p. 593, para 7)

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

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

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

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

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

26. Subsequently, in *Vihaan Kumar* (supra), this Court underscored that a failure to comply with the requirement of informing the grounds of arrest soon after the arrest would render the arrest illegal. The Court referred to the above-mentioned decisions of this Court and observed that although the ideal mode of communication of grounds of arrest is to provide such grounds in writing, there is no such statutory requirement to provide such grounds in writing. The Court noted that it may not be practical to communicate grounds of arrest in writing in every situation, but if such a course is followed, the controversy about non-compliance will not arise at all.

27. It was further observed that to ensure the effective implementation of the constitutional mandate in Article 22, the law further requires such grounds to be effectively communicated not only to the detainee/arrestee but also to their friends, relatives or any other nominated person as envisaged in Section 50A of CrPC 1973 (now Section 48 of BNSS 2023). The legislative intent behind the incorporation of Section 50A of CrPC 1973 is to ensure that those in a position to act, i.e. secure legal representation, initiate the process for bail, are empowered to do so without any delay, thereby safeguarding the fundamental rights of the arrested person as enshrined in Article 21 of the Constitution of India. The relevant portion of *Vihaan Kumar* (supra) is reproduced herein:

"11. The view taken in *Pankaj Bansal v. Union of India* [(2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450] was reiterated by this Court in *Prabir Purkayastha v. State (NCT of Delhi)* [(2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573]. In paras 28 and 29, this Court held thus: (*Prabir Purkayastha* case, SCC p. 278)

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

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(emphasis supplied)

16. An attempt was made by the learned Senior Counsel appearing for the first respondent to argue that after his arrest, the appellant was repeatedly remanded to custody, and now a charge-sheet has Criminal Appeal No. 2195 of 2025 Page 26 of 52 been filed. His submission is that now, the custody of the appellant is pursuant to the order taking cognizance passed on the charge-sheet. Accepting such arguments, with great respect to the learned Senior Counsel, will amount to completely nullifying Articles 21 and 22(1) of the Constitution.

Once it is held that arrest is unconstitutional due to violation of Article 22(1), the arrest itself is vitiated. Therefore, continued custody of such a person based on orders of remand is also vitiated. Filing a charge-sheet and order of cognizance will not validate an arrest which is per se unconstitutional, being violative of Articles 21 and 22(1) of the Constitution of India. We cannot tinker with the most important safeguards provided under Article 22.

N. Kotiswar Singh, J. (supplementing)- I had the benefit of going through the draft opinion of my esteemed Brother Hon'ble Mr Justice Abhay S. Oka and I concur with the analysis and conclusions arrived at. However, I wish to add a few lines in supplement to the aforesaid opinion.

2. The issue on the requirement of communication of grounds of arrest to the person arrested, as mandated under Article 22(1) of the Constitution of India, which has also been incorporated in the Prevention of Money Laundering Act, 2002 under Section 19 thereof has been succinctly reiterated in this judgment.

The constitutional mandate of informing the grounds of arrest to the person arrested in writing has been explained in *Pankaj Bansal v. Union of India* [(2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450] so as to be meaningful to serve the intended purpose which has been reiterated in *Prabir Purkayastha v. State (NCT of Delhi)* [(2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573].

The said constitutional mandate has been incorporated in the statute under Section 50CrPC (Section 47 of the BNSS). It may also be noted that the aforesaid provision of requirement for communicating the grounds of arrest, to be purposeful, is also required to be communicated to the friends, relatives or such other persons of the accused as may be disclosed or nominated by the arrested person for the purpose of giving such information as provided under Section 50-ACrPC. As may be noted, this is in the addition of the requirement as provided under Section 50(1)CrPC.

3. The purpose of inserting Section 50-ACrPC, making it obligatory on the person making arrest to inform about the arrest to the friends, relatives or persons nominated by the arrested person, is to ensure that they would be able to take immediate and prompt actions to secure the release of the arrested person as permissible under the law. The arrested person, because of his detention, may not have immediate and easy access to the legal process for securing his release, which would otherwise be available to the friends, relatives and such nominated persons by way of engaging lawyers, briefing them to secure release of the detained person on bail at the earliest.

Therefore, the purpose of communicating the grounds of arrest to the detainee, and in addition to his relatives as mentioned above is not merely a formality but to enable the detained person to know the reasons for his arrest but also to provide the necessary opportunity to him through his relatives, friends or nominated persons to secure his release at the earliest possible opportunity for actualising the fundamental right to liberty and life as guaranteed under Article 21 of the Constitution. Hence, the requirement of communicating the grounds of arrest in writing is not only to the arrested person, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution meaningful and effective failing which, such arrest may be rendered illegal."

28. Before we delve into analysing the provisions of law and jurisprudential developments by this Court, we find it quintessential to discuss the impact of arrest on an individual. The arrest of an individual invariably impacts not only the person arrested himself, but also the persons associated with him, i.e. family, friends, relatives, etc., affecting their psychological balance and overall social well-being. This Court has on several occasions underscored that there is a stigma attached to arrest which impairs the reputation and the standing of an

individual in society. The stigma attached to arrest undermines a person's social dignity and results into consequences that reverberate beyond the individual but also extend to their social circle.

29. The impacts of arrest are multidimensional and are not only limited to societal impact but also extend to the physical and mental health of the person. Mental health issues like depression due to custodial confinement can be aggravated by inadequate and overcrowded conditions prevalent in prisons. Such conditions severely impinge upon the fundamental rights of the arrested person and curtail his dignity and personal liberty.

30. This Court in *Arnesh Kumar v. State of Bihar and Another*⁴, observed that arrest results in embarrassment, restricts freedom, and leaves permanent scars. Lawmakers and the police are aware of this. The police and lawmakers are at odds, and it appears that the police have not learned the lesson that is implied in and reflected in the CrPC 1973 (now BNSS 2023). Despite long years of independence, it still maintains its colonial image and is primarily viewed as an instrument of oppression and harassment, and it is undoubtedly not regarded as a friend of the public.

31. In *Joginder Kumar v. State of U.P. and Others*⁵, this Court while framing guidelines regarding the rights of an arrested person has observed that the existence of a power to arrest and the justification to use such power are two different aspects. The person making arrest must be able to justify the arrest with reasons apart from his power to do so. Arrest of a person can cause irreversible damage to his reputation in the society as well as his self-esteem, therefore, arrest cannot be made in a routine manner. The Police Officer making an arrest must be cautious while arresting a person and ought to satisfy himself after a reasonable investigation to justify the person's complicity and also the effect as well as the need of arrest. This Court has further observed that except in heinous offences, arrest must be avoided.

32. Having perused the jurisprudential developments and impact of arrest on a person, let us now consider the issues at hand.

33. The mandate contained in Article 22(1) of the Constitution of India is unambiguous and clear in nature, it provides that the arrested person must be informed of the grounds of arrest as soon as they can be. It further provides that the arrested person has the right to defend himself by consulting a legal practitioner of his choice. This constitutional mandate has been effectuated by the legislature in Section 50 of CrPC 1973 (now Section 47 of BNSS 2023) which provides that an arrested person shall be forthwith communicated with the grounds of his arrest.

34. The objective enshrined in Article 22(1) of the Constitution of India for furnishing grounds of arrest stems from the fundamental principle of providing opportunity to a person to allow him to defend himself from the accusations that are levelled against him leading to his arrest. The salutary purpose of informing the grounds of arrest is to enable the person to understand the basis of his arrest and engage legal counsel to challenge his arrest, remand or seek bail and/or avail of any other remedy as may be available to him/her under law.

35. It is pertinent to note that the arrested person must be given early access to legal assistance to enable him to defend himself and oppose the remand. The early access to legal counsel becomes a quintessential object to ensure that the personal liberty of the arrested person is protected. This Court in *Suhas Chakma v. Union of India and Others*⁶ while emphasizing on the need of pre-litigation assistance has directed that the "Guidelines on Early Access to Justice at Pre-arrest, Arrest and Remand Stage Framework" as framed by the National Legal Services Authority, are to be diligently pursued. The guidelines provide for legal assistance to the arrested person at the stage before remand.

The remand advocate shall interact with the arrestee with the objective to inform him about the allegations against him and the grounds being put by the prosecution for seeking remand. The guidelines also provide for making available the translated copy of documents to the arrested person in the language he/she understands. The purpose of securing legal assistance before remand is not merely symbolic, but it is to ensure that the accused is afforded an effective opportunity to oppose the prayer for police custody and to place before the magistrate any circumstances that may warrant refusal or limitation of such custody.

If the accused is not represented through a Counsel, he/she should be made aware that he/she is entitled for legal aid. As far as possible, it shall be ensured that every accused person is represented by an advocate, if he is not able to avail such assistance, he should be given free legal aid. A three-judge Bench of this Court in *Ashok v. State of Uttar Pradesh*⁷ held that an accused who is not represented by an advocate is entitled for free legal aid at all material stages starting from remand.

36. This statutory safeguard of legal assistance stands also reinforced by Section 38 of the BNSS 2023, which confers upon an arrested person the right to meet an advocate of his choice during interrogation, albeit not throughout its course. The object of this provision is to ensure meaningful access to legal assistance at the earliest stage, so that the advocate, once informed, may effectively exercise the rights available in law, including representation during remand proceedings and invocation of the right to seek bail.

37. Section 167 of CrPC 1973 (now Section 187 of BNSS 2023) while dealing with remand provides for a positive mandate on the police officer to forward the accused to the magistrate before expiry of such period as fixed under Section 57 CrPC 1973 (now Section 58 of BNSS 2023) when investigation cannot be completed in twenty-four hours. It further mandates that the magistrate to not authorize the detention of accused unless he is physically produced before him.

The purpose of this provision mandating the production of accused before magistrate for exercise of the power of remanding him to custody under this section is with the dual purpose. First, ensuring physical presence of the accused and second to afford him an opportunity to be heard. The intent of this provision is not merely to be heard at the stage of remand but to be represented by the counsel of his choice.

Thereafter, the duty is cast upon the magistrate to apply his judicial mind to the material produced before him, hear the accused or the counsel representing him to determine whether the accused should be remanded to police custody or should be detained at all within the parameters prescribed in Section 167 of CrPC 1973 (Section 187 of BNSS 2023). The magistrate is not acting as a post office simply putting a stamp of approval to the remand papers as presented before him. In *Manubhai Ratilal Patel v. State of Gujarat and Others*⁸ this Court held that it is obligatory on the part of the magistrate to satisfy himself whether the materials placed before him justify such a remand.

38. These above discussed principles embody the manifestation of the constitutional safeguard sought to be achieved in Article 22 of the Constitution of India which is that the arrested person must be well equipped with the information not only about his arrest but the reasons and grounds thereof prior to his production before the magistrate so as to enable him to effectively defend himself and oppose the police and judicial custody and even press for bail. The obligation to inform the grounds of arrest to the arrestee is thus, not just a mere procedural formality, instead it flows from the fundamental right of personal liberty which sets the further course for protection from the oppressive restrictions imposed upon the free movement in the society of an arrestee during remand.

39. A plain reading of Article 22(1) of the Constitution of India shows that the intent of the constitution makers while incorporating the provisions was not to create any exceptional circumstances, instead it reads as "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest.", it casts a mandatory unexceptional duty on the State to provide the arrested person with the grounds of such arrest with the objective to enable that person to be able to defend himself by consulting a legal practitioner of his choice.

This mandate of Article 22 (1) is notwithstanding any exception. This Court has made it explicit that the constitutional obligation under Article 22 is not statute-specific and it is grounded in fundamental right of life and personal liberty under Article 21 of the Constitution of India, therefore making it applicable to all offences including those under the IPC 1860 (now BNS 2023).

40. The requirement of informing the arrested person the grounds of arrest, in the light of and under Article 22(1) of the Constitution of India, is not a mere formality but a mandatory binding constitutional safeguard which has been included in part III of the Constitution under the head of Fundamental Rights. Thus, if a person is not informed of the grounds of his arrest as soon as maybe, it would amount to the violation of his fundamental rights thereby curtailing his right to life and personal liberty under Article 21 of the Constitution of India, rendering the arrest illegal.

41. Another aspect, which flows from the above discussion and merits consideration is the mode of informing grounds of arrest to the arrested person to effectively serve the intended purpose of Article 22(1) of the Constitution of India. This Court, as observed above, had held that it would not be ideal to read out the grounds of arrest to a person who is arrested, as he may not be in the frame of mind to remember the contents of grounds that are read out to him. The Court underscored that if the authorities are permitted to read out the grounds and claim compliance with the constitutional and statutory mandate, the very purpose of the constitutional protection would be nugatory.

42. As mentioned above, it has been held while dealing with the mode of communicating the grounds of arrest so as to serve the intended purpose of the constitutional mandate that the language used in Article 22(1) and 22(5) regarding communication of the grounds is identical and therefore the interpretation of Article 22(5) shall ipso facto apply to Article 22(1). The grounds of arrest must be furnished in writing, in order to attend the true intended purpose of Article 22(1).

Reference at this stage may be made to the Constitution Bench Judgment of this Court in *Harikisan* (supra) wherein while dealing with the Article 22(5) of the Constitution of India in the context of the right of a detainee to be made aware of the grounds of arrest, it has been held that the same should be furnished in a language which he can understand and in a script which he can read, if he is a literate person. The relevant portion thereof reads thus:

"7. It has not been found by the High Court that the appellant knew enough English to understand the grounds of his detention. The High Court has only stated that 'he has studied up to 7th Hindi standard, which is equivalent to 3rd English standard'. The High Court negatived the contention raised on behalf of

the appellant not on the ground that the appellant knew enough English, to understand the case against him, but on the ground, as already indicated, that the service upon him of the Order and grounds of detention in English was enough communication to him to enable him to make his representation. We must, therefore, proceed on the assumption that the appellant did not know enough English to understand the grounds, contained in many paragraphs, as indicated above, in order to be able effectively to make his representation against the Order of Detention.

The learned Attorney-General has tried to answer this contention in several ways. He has first contended that when the Constitution speaks of communicating the grounds of detention to the detinue, it means communication in the official language, which continues to be English; secondly, the communication need not be in writing and the translation and explanation in Hindi offered by the Inspector of Police, while serving the Order of Detention and the grounds would be enough compliance with the requirements of the law and the Constitution; and thirdly, that it was not necessary in the circumstances of the case to supply the grounds in Hindi.

In our opinion, this was not sufficient compliance in this case with the requirements of the Constitution, as laid down in clause (5) of Article 22. To a person, who is not conversant with the English language, service of the Order and the grounds of detention in English, with their oral translation or explanation by the police officer serving them does not fulfil the requirements of the law. As has been explained by this Court in the case of *State of Bombay v. Atma Ram Sridhar Vaidya* [1951 SCC 43 : (1951) SCR 167] clause (5) of Article 22 requires that the grounds of his detention should be made available to the detinue as soon as may be, and that the earliest opportunity of making a representation against the Order should also be afforded to him.

In order that the detinue should have that opportunity, it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detinue should be in a position effectively to make his representation against the Order, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him. Communication, in this context, must, therefore, mean imparting to the detinue sufficient knowledge of all the grounds on which the Order of Detention is based.

In this case the grounds are several, and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given by the police officer serving those on the detinue would not amount to communicating the grounds. Communication, in this context, must mean bringing home to the

detenue effective knowledge of the facts and circumstances on which the Order of Detention is based.

8. We do not agree with the High Court in its conclusion that in every case communication of the grounds of detention in English, so long as it continues to be the official language of the State, is enough compliance with the requirements of the Constitution. If the detained person is conversant with the English language, he will naturally be in a position to understand the gravamen of the charge against him and the facts and circumstances on which the order of detention is based. But to a person who is not so conversant with the English language, in order to satisfy the requirements of the Constitution, the detenue must be given the grounds in a language which he can understand, and in a script which he can read, if he is a literate person."

43. Further, the above judgment has been reiterated and followed by this Court in *Lallubhai Jogibhai Patel v. Union of India and Others*⁹ where it has been reaffirmed that grounds of detention must be communicated to the detenu in writing in a language which he understands.

44. On perusal of the above two judgments, it turns out that mere communication of the grounds in a language not understood by the person arrested does not fulfil the constitutional mandate under Article 22 of the Constitution of India. The failure to supply such grounds in a language understood by the arrestee renders the constitutional safeguards illusory and infringes the personal liberty of the person as guaranteed under Article 21 and 22 of the Constitution of India. The objective of the constitutional mandate is to place the person in a position to comprehend the basis of the allegations levelled against him and it can only be realised when the grounds are furnished in a language understood by the person, thereby enabling him to exercise his rights effectively.

45. From the catena of decisions discussed above, the legal position which emerges is that the constitutional mandate provided in Article 22(1) of the Constitution of India is not a mere procedural formality but a constitutional safeguard in the form of fundamental rights. The intent and purpose of the constitutional mandate is to prepare the arrested person to defend himself. If the provisions of Article 22(1) are read in a restrictive manner, its intended purpose of securing personal liberty would not be achieved rather curtailed and put to disuse.

The mode of communicating the grounds of arrest must be such that it effectively serves the intended purpose as envisioned under the Constitution of India which is to enable the arrested person to get legal counsel, oppose the remand and effectively defend himself by exercising his rights and safeguards as provided in law. The grounds of arrest must be provided to the arrestee in such a manner that

sufficient knowledge of facts constituting grounds is imparted and communicated to the arrested person effectively in a language which he/she understands. The mode of communication ought to be such that it must achieve the intended purpose of the constitutional safeguard.

The objective of the constitutional mandate would not be fulfilled by mere reading out the grounds to the arrested person, such an approach would be antithesis to the purpose of Article 22(1). There is no harm in providing the grounds of arrest in writing in the language the arrestee understands, this approach would not only fulfil the true intent of the constitutional mandate but will also be beneficial for the investigating agency to prove that the grounds of arrest were informed to the arrestee when a challenge is made to the arrest on the plea of non-furnishing of the grounds of arrest.

46. This Court is of the opinion that to achieve the intended objective of the constitutional mandate of Article 22(1) of the Constitution of India, the grounds of arrest must be informed to the arrested person in each and every case without exception and the mode of the communication of such grounds must be in writing in the language he understands.

47. It would not be out of context now to refer to an obligation which has been imposed on a person making arrest, as provided under Section 50A read in relation to Section 50 of the CrPC 1973 (now Section 48 and 47 of BNSS 2023 respectively), to inform the arrestee of his right to indicate his relative, friend or such other person for the purpose of giving information with regard to his arrest. Simultaneously, a duty has also been cast on the person making arrest to forthwith thereafter inform of such arrest with reasons and the place where the arrested person is being held to the such indicated person.

The police officer/person making any arrest shall make an entry of the fact as to who has been informed of such an arrest in a book to be kept in the police station. Further protection in this regard is reflected when a duty has been cast on the magistrate to satisfy himself, when the arrestee is produced before him, that the above requirement stands complied with. This requirement is in addition to the rights of an arrestee to be made aware of the grounds of arrest.

48. The second issue which requires consideration is when grounds of arrest are not furnished either prior to arrest or immediately after the arrest, would it vitiate the arrest for non-compliance of the provisions of Section 50 of CrPC 1973 (now Section 47 of BNSS 2023) irrespective of certain exigencies where furnishing such grounds would not be possible forthwith.

49. It is by now settled that if the grounds of arrest are not furnished to the arrestee in writing, this noncompliance will result in breach of the constitutional

and statutory safeguards hence rendering the arrest and remand illegal and the person will be entitled to be set at liberty. The statute is silent with regard to the mode, nature or the time and stage at which the grounds of arrest has to be communicated. Article 22 says 'as soon as may be' which would obviously not mean prior to arrest but can be on arrest or thereafter. The indication is as early as it can be conveyed. There may be situations wherein it may not be practically possible to supply such grounds of arrest to the arrested person at the time of his arrest or immediately.

50. It may so happen that in the presence of a police officer a cognizable offence is being committed and the factual matrix presents a tangible and imminent risk of the suspect absconding or committing further offence(s). For instance, in a case involving a murder being committed in front of a police officer, it may not be possible for the officer to provide the grounds of arrest in writing before the arrest or forthwith on the arrest to the accused. A rigid insistence upon informing of written ground(s) of arrest before or at the time of effecting the arrest or immediately thereafter may result into police officer not being able to discharge their duty and responsibility efficiently and effectively.

The constitutional safeguards, valuable as they are, cannot be interpreted in a manner so as to allow it to metamorphose into a procedural impediment that handicaps the law enforcing agencies in due lawful discharge of their duties. Therefore, a balance between compliance of the constitutional as also the statutorily mandated safeguards on the one hand vis-a-vis the effective discharge of lawful statutory law enforcement duties and responsibilities cast upon the State agencies must be struck.

51. Supplanting the above situation, there may be a case wherein the Investigating Officer has sent a notice for appearance of the accused to join the investigation under Section 41A of CrPC 1973 (now Section 35(3) to 35(6) of BNSS 2023) pursuant to which the accused has joined the investigation. The Investigating Officer, after perusal of material available before him and/or on interrogating the accused, makes up his mind that the arrest of the accused person is required for further investigation or has other reason(s) for arrest, in such cases, since the accused is under the supervision of the Investigating Agency and there exists no apprehension of him absconding, it becomes incumbent upon the Police Officer to supply the grounds of arrest in writing on arresting the accused person. This can also be followed, for instance, in cases involving offences which are primarily based on documentary evidence/records, economic offences such as under PMLA where the grounds of arrest in writing be furnished to the arrested person on arrest simultaneously.

52. We thus hold, that, in cases where the police are already in possession of documentary material furnishing a cogent basis for the arrest, the written grounds

of arrest must be furnished to the arrestee on his arrest. However, in exceptional circumstances such as offences against body or property committed in flagrante delicto, where informing the grounds of arrest in writing on arrest is rendered impractical, it shall be sufficient for the police officer or other person making the arrest to orally convey the same to the person at the time of arrest.

Later, a written copy of grounds of arrest must be supplied to the arrested person within a reasonable time and in no event later than two hours prior to production of the arrestee before the magistrate for remand proceedings. The remand papers shall contain the grounds of arrest and in case there is delay in supply thereof, a note indicating a cause for it be included for the information of the magistrate.

53. The above indicated lower limit of two hours minimum interval before the production is grounded in the functional necessity so that the right as provided to an arrestee under the Constitution and the statute is safeguarded effectively. This period would ensure that the counsel has adequate time to scrutinize the basis of arrest and gather relevant material to defend the arrestee proficiently and capably while opposing the remand. Any shorter interval may render such preparation illusory, thereby resulting in non-compliance of the constitutional and statutory mandate. The two-hour threshold before production for remand thus strikes a judicious balance between safeguarding the arrestee's constitutional rights under Article 22(1) and preserving the operational continuity of criminal investigations.

54. In view of the above, we hold with regard to the second issue that non supply of grounds of arrest in writing to the arrestee prior to or immediately after arrest would not vitiate such arrest on the grounds of non-compliance with the provisions of Section 50 of the CrPC 1973 (now Section 47 of BNSS 2023) provided the said grounds are supplied in writing within a reasonable time and in any case two hours prior to the production of the arrestee before the magistrate for remand proceedings.

55. It goes without saying that if the abovesaid schedule for supplying the grounds of arrest in writing is not adhered to, the arrest will be rendered illegal entitling the release of the arrestee. On such release, an application for remand or custody, if required, will be moved along with the reasons and necessity for the same, after the supply of the grounds of arrest in writing setting forth the explanation for non-supply thereof within the above stipulated schedule. On receipt of such an application, the magistrate shall decide the same expeditiously and preferably within a week of submission thereof by adhering to the principles of natural justice.

56. In conclusion, it is held that:

i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC 1860 (now BNS 2023);

ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;

iii) In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate.

iv) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.

57. After having come to the above conclusion, it is pertinent to note that the provision of law under Section 50 of CrPC 1973 (Section 47 of BNSS 2023) does not provide for a specific mode of or time frame for communication of the grounds of arrest to the person arrested. This Court in *Prabir Purkayastha* (supra), held that the grounds of arrest be conveyed to the arrestee in writing in all offences at the earliest, which means it need not be given at the time of arrest but within a reasonable time thereafter, for offences under all the statutes, which period would be as has been laid down above in this order.

58. We are cognizant that there existed no consistent or binding requirement mandating written communication of the grounds of arrest for all the offences. Holding as above, in our view, would ensure implementation of the constitutional rights provided to an arrestee as engrafted under Article 22 of the Constitution of India in an effective manner. Such clarity on obligation would avoid uncertainty in the administration of criminal justice. The ends of fairness and legal discipline therefore demand that this procedure as affirmed above shall govern arrests henceforth.

59. In Criminal Appeal No. 2195 of 2025, while issuing notice, this Court had clarified that the Court is not inclined to entertain the petition on its merits, and notice was issued only to settle the issues to bring about clarity thereon, with that having been reached the same stands disposed of.

60. As far as the Criminal Appeal No. 2189 of 2025 and Criminal Appeal No. 2190 of 2025 are concerned, this Court while granting leave on 22.04.2025 had by way of ad interim relief directed the Appellants to be released on bail during pendency of these Appeals, the same shall continue. However, the prosecution may move an application for remand or custody, if required, along with the reasons and necessity for the same, after the supply of the grounds of arrest in

writing to the accused, before the magistrate if the case has not been committed for trial and in case the trial having commenced before the Trial Court as the case may be.

61. The Appeals are disposed of in the above terms.

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

63. Special Leave Petition (Criminal) No. 8704 of 2025 was tagged with these Appeals and the Petitioner was granted an ad interim relief directing his release on bail vide Order dated 02.06.2025. Since there being no update with regard to effecting of service upon the Respondent nor any reply has been filed, the ad interim relief shall continue, and the petition be listed before an appropriate bench after obtaining the orders on the administrative side from the Hon'ble the Chief Justice of India.

64. We acknowledge and appreciate the constructive assistance rendered by the learned Amicus Curiae and the learned Counsels for the parties to this Court.

65. We direct the Registry to send one copy of this judgment to all the Registrar Generals of the High Courts and the Chief Secretaries of all the States and Union Territories.

.....CJI. [B.R. Gavai]

.....J. [Augustine George Masih]

New Delhi;

November 06, 2025.

1 (2024) 7 SCC 576 : 2023 SCC OnLine SC 1244

2 (2024) 8 SCC 254

3 (2025) 5 SCC 799 : 2025 SCC OnLine SC 269

4 (2014) 8 SCC 273 : AIR 2014 SC 2756

5 (1994) 4 SCC 260

6 2024 SCC OnLine SC 3031

7 (2025) 2 SCC 381 : 2024 SCC OnLine SC 3580

8 (2013) 1 SCC 314

9 (1981) 2 SCC 427

IN THE SUPREME COURT OF INDIA

Vikram Bhalchandra Ghongade

Vs.

State of Maharashtra & Ors.

**[Civil Appeal No. _____ of 2025
arising out of SLP (Civil) No. 9947 of 2024]**

Head Note - Judgment passed in favor of party who died before hearing is nullity if legal heir wasn't brought on record.

If a decree is a nullity, its invalidity can be set up whenever and wherever it is sought to be enforced, even at the stage of execution.

JUDGMENT

Atul S. Chandurkar, J.

1. Application seeking permission to appear and argue in person is allowed.
2. Leave granted.
3. The appellant, who is the legal heir of the original plaintiffs, seeks to execute the decree passed by the trial Court in favour of the original plaintiffs. The executing Court has, however, refused to permit execution of the decree passed by the trial Court on the ground that the appeal preferred by the defendant Nos. 4 and 5 could not be stated to have abated notwithstanding the death of defendant Nos. 4 and 5 prior to hearing of the first appeal. The said appeal having been decided on merits and the decree passed by the trial Court having been modified, the decree passed by the trial Court could not have been executed.
4. The facts lie in a narrow compass. It is the case of the appellant that his predecessor- Mr. Arjunrao Thakre was allotted agricultural land from Survey Nos.106 and 107/1 situated at Village Takarkheda, Taluka Arvi, District Wardha, Maharashtra being an Ex-Army Serviceman. After his death, it was alleged that the said land was re-allotted by the Collector, Wardha to the defendant Nos.3 to 5.

The legal heirs of late Mr. Arjunrao Thakre filed RCS No.181 of 2001 for a declaration that the allotment of the said land in favour of defendant Nos.3 to 5 was illegal. The trial Court vide its judgment dated 14.08.2006 decreed the suit by holding the allotment of the suit land in favour of defendant Nos.3 to 5 to be illegal. It also declared that the predecessor of the plaintiffs had been allotted the

said land and thus, his legal heirs were the owners of the same. Accordingly, a decree for possession of the said land was passed in their favour.

5. The defendant Nos.4 and 5 being aggrieved by the aforesaid decree preferred an appeal under Section 96 of the Code of Civil Procedure, 1908 (for short, "the Code"). Before the appeal could be heard, the defendant No.4 died on 27.10.2006, while the defendant No.5 died on 20.09.2010. This fact was not brought to the notice of the first appellate Court, which heard the counsel for the parties on 28.09.2010. The first appeal was partly allowed on 20.10.2010. The decree passed by the trial Court was modified and the plaintiffs were held entitled only to a portion of the lands that had been allotted to Mr. Arjunrao Thakre.

The original plaintiffs being aggrieved by the aforesaid decree of the first appellate Court preferred a second appeal under Section 100 of the Code. The said appeal came to be disposed of by the Registrar (Judicial) as abated against defendant Nos. 4 and 5 on the ground that they had expired during pendency of the first appeal and their legal heirs had not been brought on record within the limitation period. The original plaintiffs sought restoration of the second appeal by urging that the first appeal preferred by defendant Nos.4 and 5 itself had abated as the said defendants had died during pendency of the first appeal and their legal heirs had not been brought on record.

It was, thus, urged that the judgment of the first appellate Court was a nullity as the appeal filed by the said defendants had abated. The High Court vide its order dated 03.12.2012 noted these facts and by observing that the said factual position was not in dispute, held that the second appeal could not have been dismissed as abated. The second appeal was accordingly restored. The original plaintiffs thereafter sought to withdraw the second appeal by urging that the first appeal preferred by defendant Nos.4 and 5 itself had abated and the judgment of the trial Court was in operation. The second appeal was, accordingly, dismissed as withdrawn.

6. The appellant thereafter sought to execute the decree passed by the trial Court on 14.08.2006. He, accordingly, filed Regular Darkhast No.22 of 2022 before the executing Court. The executing Court issued notices to the judgment debtors and thereafter heard the parties. The appellant urged that since the first appeal preferred by defendant Nos.4 and 5 had abated, the decree passed by the trial Court was liable to be executed. The executing Court however found that the defendant No.5 had expired on 20.09.2010 and the first appeal had been decided on 20.10.2010. After the death of defendant No.5 on 20.09.2010, there was a period of ninety days for bringing his legal heirs on record.

As the first appeal was decided prior to the expiry of the period of ninety days, it could not be said that the first appeal had abated by virtue of the death of

defendant No.5. It further observed that if the first appeal would have been decided after 19.12.2010, then it could be said that it had abated. The executing Court, therefore, held that the decree passed by the trial Court having merged with the decree passed by the first appellate Court, the appellant was not justified in seeking execution of the decree passed by the trial Court. The execution application preferred by the appellant came to be dismissed with costs.

7. The appellant being aggrieved by the aforesaid order approached the High Court by filing Writ Petition No. 5791 of 2023. The learned Judge of the High Court on 11.03.2024 upheld the order passed by the executing Court and dismissed the said writ petition. Being aggrieved, the appellant has come up in appeal.

8. The appellant-in-person submits that the defendant No.4 having expired on 27.10.2006 and the defendant No.5 having expired on 20.09.2010, their legal heirs were never brought on record. The first appellate Court heard the learned counsel for the parties on 28.09.2010, which was after the death of both the defendants. The said appeal was partly allowed on 20.10.2010.

Thus, when the appeal was decided, both the appellants, namely defendant Nos. 4 and 5 had expired and their legal heirs had not been brought on record. As a result, the adjudication by the first appellate Court was a nullity and the decree passed by it on 20.10.2010 could not have been executed. The decree passed by the trial Court was the only decree holding the field. Its execution was rightly sought by the appellant. The executing Court erred in holding that the judgment of the first appellate Court was legal and valid despite the death of both the appellants.

The appellant-in-person invited attention to the provisions of Order XXII Rule 2 (2) and Rule 6 of the Code to urge that the order passed by the executing Court was contrary to law. The learned Judge of the High Court committed a similar error while dismissing the writ petition. He placed reliance on the decision in P. Chandrasekharan and others vs. S. Kanakarajan and others¹, and prayed that the execution proceedings be restored to enable the appellant to execute the decree passed by the trial Court.

9. The legal heirs of the defendant Nos.4 and 5 though served have not chosen to contest the present proceedings. Mr. Sanjeev Kaushik, learned counsel appearing for the respondent No.3 supported the impugned order and submitted that the executing Court rightly declined to execute the decree passed by the trial Court. The said decree having been modified by the first appellate Court, that was the only decree that was liable to be executed. Mr. Shrirang B. Verma, learned counsel appearing for the respondent Nos. 1 and 2 also supported the order passed by the executing Court as upheld by the High Court.

10. Having heard the appellant-in-person as well as the learned counsel for the respondents, we are of the view that the executing Court erred in dismissing the execution petition as not maintainable. The decree passed by the first appellate Court having been passed in an appeal, where both the appellants had expired prior to the appeal being heard, its decree in favour of dead persons was a nullity. The decree passed by the trial Court, therefore, is liable to be executed.

11. It is not in dispute that the suit filed by the predecessors of the appellant was decreed on 14.08.2006. The trial Court declared the original plaintiffs as owners of the suit land that had been allotted to Mr. Arjun Thakre. The plaintiffs were held entitled to receive possession of the said lands. The subsequent allotment of the same land in favour of defendant Nos.3 to 5 was held to be illegal. The defendant No.3 did not choose to challenge this decree. It is only the defendant Nos.4 and 5, who preferred an appeal under Section 96 of the Code. During pendency of that appeal, the defendant No.4 expired on 27.10.2006, while the defendant No.5 expired on 20.09.2010.

The record indicates that the appeal was heard on 28.09.2010. As per the provisions of Order XXII Rule 6 of the Code, if a party expires between the conclusion of hearing and pronouncement of the judgment, the same does not result in abatement of such proceedings and the judgment on being pronounced, would have the same force and effect as if it had been pronounced before the death of such party took place. In view of the fact that the defendant Nos.4 and 5 had died prior to the appeal being heard on 28.09.2010, it is evident that the proceedings in the said appeal are not saved by the provisions of Order XXII Rule 6 of the Code. In effect, the appeal was decided notwithstanding the death of both the appellants, who had preferred the appeal.

12. According to the executing Court, since the appeal was decided on 20.10.2010, which was prior to expiry of a period of ninety days from the death of defendant No.5 on 20.09.2010, the appeal could not have been disposed of as abated. It is correct that the abatement of a proceeding cannot take place prior to expiry of the prescribed period of limitation of ninety days under Article 120 of the Limitation Act, 1963 for bringing on record the legal heirs. Notwithstanding this position, the fact remains that prior to the appeal being heard and thereafter decided, both the appellants who had filed the said appeal were no more.

The judgment pronounced in the first appeal on 20.10.2010 was, thus, in favour of the parties who were no more alive. The said adjudication, therefore, amounted to a nullity and the same did not have the force of law. This position is not in doubt and we may only refer to the decisions in *Rajendra Prasad and another vs. Khirodhar Mahto and others*² and *Amba Bai and others vs. Gopal and Others*³ in this regard. The appellant, therefore, is justified in contending that the decree passed by the first appellate Court was a nullity as it was passed in favour

of the appealing parties, who had expired prior to the appeal being heard and decided. As a result, the only decree that could be enforced was the one passed by the trial Court on 14.08.2006.

13. In our view, therefore, the appellant is justified in seeking execution of the decree passed by the trial Court on the premise that the decree passed by the first appellate Court was a nullity having been passed in favour of dead persons. We are fortified in this view by the decision in *Bibi Rahmani Khatoon and others vs. Harkoo Gope and others*,⁴ wherein it was held as under:

"If a party to a proceeding either in the trial Court of any appeal or revision dies and the right to sue survives or a claim has to be answered, the heirs and legal representatives of the deceased party would have to be substituted and failure to do so would result in abatement of proceedings. Now, if the party to a suit dies and the abatement takes place, the suit would abate. If a party to an appeal or revision dies and either the appeal or revision abates, it will have no impact on the judgment, decree or order against which the appeal or revision is preferred. In fact, such judgment, decree or order under appeal or revision would become final."

These observations though made in the context of abatement of proceedings, the same position would arise when the appellant/s expires prior to hearing of the appeal, which is subsequently allowed without the legal heirs being brought on record. In the case in hand, the judgment in favour of the deceased appellants would be a nullity in the absence of the legal heirs being brought on record and the judgment of the trial Court would be the one that would govern the rights of the parties. Hence, the decree passed by the trial Court would revive for being executed.

14. The execution proceedings herein could not have been dismissed on the ground that the decree passed by the trial Court was superseded by the decree passed by the first appellate Court and was modified. Since the decree of the first appellate Court was a nullity, the plaintiffs were entitled to execute the decree passed by the trial Court. It is well settled that if a decree is a nullity, its invalidity can be set up whenever and wherever it is sought to be enforced, even at the stage of execution as held in *Kiran Singh and others vs. Chaman Paswan and others*⁵.

15. We may note that the legal heirs of defendant Nos.4 and 5 who had preferred the first appeal did not take any steps whatsoever to have themselves impleaded before the first appellate Court. Even after the appellant filed the execution proceedings, no steps have been taken by the legal heirs of defendant Nos.4 and 5 to have themselves impleaded. Even before this Court, they have not chosen to contest the proceedings. The contest by respondent No.3, who was the defendant

No.3 before the trial Court, would be of no avail as the defendant No.3 did not challenge the decree passed by the trial Court.

16. For all these reasons, we are of the view that the executing Court committed an error in dismissing the execution proceedings that sought to execute the decree passed by the trial Court. The learned Single Judge was also not justified in upholding the order passed by the executing Court. The appellant would be entitled to seek execution of the decree passed in Regular Civil Suit No.181 of 2001.

Accordingly, the order dated 21.06.2023 passed by the executing Court in Regular Darkhast No.22 of 2022 as well as the order passed by the High Court in Writ Petition No.5791 of 2023 on 11.03.2024 are set aside. The execution proceedings are restored for being decided in accordance with law by the executing Court. The civil appeal is allowed in aforesaid terms leaving the parties to bear their own costs.

.....**J. [Pamidighantam Sri Narasimha]**

.....**J. [Atul S. Chandurkar]**

New Delhi,

November 06, 2025.

1 2007 INSC 495

2 Civil Appeal No. 2275 of 1994 decided on 11.01.1994

3 2001 INSC 263

4 1981 INSC 100

5 1954 INSC 45

IN THE SUPREME COURT OF INDIA

**Poonam
Vs.
Dule Singh & Ors.**

[Special Leave Petition (Civil) No. 12000 of 2025]

Head Note - 'Non-disclosure of a conviction' constitutes a suppression of material information violating the electorate's fundamental right to make an informed choice. Upheld the disqualification of a former councillor, who had not disclosed her criminal antecedent in an election affidavit that she was convicted in a cheque dishonor matter and suffered one-year incarceration.

JUDGMENT

Atul S. Chandurkar, J.

1. The petitioner suffered a conviction under Section 138 of the Negotiable Instruments Act, 1881. She, however, failed to disclose her conviction in the nomination form for the election to the post of Councillor. Her election was challenged by the first respondent, and the trial Court unseated her from the post of Councillor holding her to be disqualified under the provisions of The Madhya Pradesh Municipalities Act, 1961. The revision application preferred by the petitioner having been dismissed, she has preferred the present Special Leave Petition.

2. In the elections held for the post of Councillor at Nagar Parishad, Bhikangaon, the petitioner came to be elected from Ward No.5 securing the highest number of votes. Notification to that effect dated 04.10.2022 came to be issued. The first respondent filed an election petition under Section 20 of the Madhya Pradesh Municipalities Act, 1961 (hereinafter, "the Act of 1961") read with The Madhya Pradesh Nagar Palika Nirvachan Niyam, 1994 (hereinafter "the Rules of 1994") and sought a declaration that the petitioner be held disqualified for holding the post of Councillor and that her seat be declared as vacant.

In the election petition, it was pleaded by the first respondent that on 07.08.2018, the petitioner had been convicted in proceedings filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter, "the Act of 1881"). She had been sentenced to suffer rigorous imprisonment for a period of one year and also ordered to pay compensation. The fact of her conviction, however, had not been disclosed by the petitioner in the affidavit filed along with the nomination form as required by Rule 24-A of the Rules of 1994. Though other grounds of challenge were also raised, same are not relevant for the present purpose. It was

thus prayed that the petitioner be declared disqualified from holding the post of Councillor.

3. The petitioner filed her reply and opposed the election petition by raising a plea that the order of conviction dated 07.08.2018 was no longer in existence as the same had set aside in appeal. She stated that the election petition was liable to be dismissed as she had not incurred any disqualification as mentioned in Section 35 of the Act of 1961.

4. The parties led evidence before the trial Court and after considering the same, the learned Judge of the trial Court held that the petitioner had been convicted under Section 138 of the Act of 1881 which fact had not been disclosed in the affidavit filed along with the nomination form. It was further held that since it was mandatory on the part of a candidate to disclose if he/she had suffered any conviction, the voters had a right to obtain correct information.

As the conviction of the petitioner was not mentioned in her affidavit, it was clear that this had affected the voters from Ward No.5. The election of the petitioner was held to be materially affected. It was thus concluded that since the petitioner failed to disclose the fact of her conviction in her affidavit, she was disqualified from continuing as a Councillor. By the judgment dated 17.02.2025, the election of the petitioner was set aside holding her to be disqualified for holding the post of Councillor from Ward No.5. Her election was declared null and void.

5. The petitioner being aggrieved by her disqualification challenged the same by filing a revision application before the High Court under Section 26 (2) of the Act of 1961. One of the contentions raised on behalf of the petitioner was that the order of conviction had been set aside on 30.12.2022 and hence the same could not be the basis for unseating her. It was also urged that the first respondent had failed to prove that the election of the petitioner had been materially affected on account of non-compliance of the provisions of Rule 24-A of the Rules of 1994.

The learned Judge of the High Court held that the petitioner had failed to disclose the fact of her conviction in her affidavit filed along with the nomination form. This resulted in breach of Rule 24-A of the Rules of 1994. Consequently, the provisions of Section 22(1) (d) (iii) of the Act of 1961 were attracted and the same was the ground for declaring the election of the petitioner to be void. While arriving at this finding, it was observed that the petitioner did not enter into the witness box to establish that by failing to disclose her conviction, her election was not materially affected nor did it influence the election.

The judgment of the trial Court was thus upheld by recording a finding that by failing to disclose her conviction in the affidavit filed along with nomination form, there was a breach of Rule 24-A of the Rules of 1994 and the petitioner's

election was rightly set aside. The revision application was thus dismissed. Being aggrieved, the petitioner has approached this Court under Article 136 of the Constitution of India

6. Mr. Vivek Tankha, learned Senior Advocate for the petitioner made the following submissions:

a. The election of the petitioner was wrongly declared as null and void. Assuming that there was a failure on the part of the petitioner to disclose her conviction under Section 138 of the Act of 1881, it could not be said that such nondisclosure was of a substantial nature that would affect the outcome of the election for it to be set aside. The conviction was for an offence not involving moral turpitude and therefore such non-disclosure was not of a material nature. The offence being compoundable in nature and the conviction of the petitioner having been subsequently set aside, no material difference could be stated to have been made on account of non-disclosure of such conviction in the affidavit. To substantiate this contention the learned Senior Advocate placed reliance on the decisions in Ravi Namboothiri vs. K.A. Baiju & others¹ and Karikho Kri vs. Nuney Tayang and another². It was thus urged that the election of the petitioner having been wrongly set aside, she was liable to be restored to her elected post.

b. The first respondent (election petitioner) had failed to prove that the election of the petitioner as a returned candidate had been materially affected on account of non-disclosure of her conviction in the affidavit filed along with the nomination form. Hence, her election could not have been set aside under Section 22 (1) (d) (i) or (iii) of the Act of 1961. There were no pleadings in the election petition that by the improper acceptance of the petitioner's nomination form or on account of non-compliance of the provisions of Rule 24-A of the Rules of 1994, the election of the petitioner had been materially affected. This material aspect was not taken into consideration while unseating the petitioner.

7. On the other hand, Mr. Sarvam Ritam Khare, learned Advocate appearing for the first respondent opposed the appeal by urging as under:

a. The fact that the petitioner had been convicted for the offence punishable under Section 138 of the Act of 1881 not having been disclosed in the affidavit required to be filed under Rule 24-A of the Rules of 1994, it was clear that the nomination form of the petitioner was wrongly accepted in breach of Section 22 (1) (d) (i) of the Act of 1961. There had also been non-compliance with the requirements of the Act of 1961 and the Rules of 1994 thereby affecting the petitioner's nomination. On this count, the election of the petitioner had been rightly set aside. In support of this submission the learned Advocate placed reliance on the decisions in Resurgence India Vs. Election Commission of India and another³ and Krishnamoorthy Vs. Shivakumar and others.⁴

b. Since the petitioner was convicted on 07.08.2018 and the said conviction continued to operate when the nomination form was filed, the subsequent acquittal of the petitioner on 30.12.2022 after the elections were held was of no consequence. The eligibility of a candidate was required to be determined as on the date of submission of the nomination form. Both the Courts had rightly found that the conviction of the petitioner was operating when she had submitted the nomination form.

c. After the election of the petitioner was set aside, fresh elections were held to fill in the vacancy as caused. The petitioner had again contested the said election but was unsuccessful. Since the petitioner had lost the subsequent election, the challenge raised by her to the order passed by the trial Court had now been rendered infructuous. On these grounds, it was urged that there was no case made out to interfere with the impugned adjudication.

8. We have heard the learned counsel for the parties at length and with their assistance we have also perused the documentary material on record. Before considering the challenge raised by the petitioner, it would be necessary to first deal with the submission of the first respondent that by virtue of the subsequent election to fill in the vacancy caused by the disqualification of the petitioner, her challenge as raised had been rendered infructuous. In this regard, it is necessary to note that after the present proceedings were filed, a bye election was notified and the polling was scheduled on 07.07.2025. This Court on 25.06.2025 directed that though the bye election could be held, the result thereof would be subject to outcome of the present proceedings.

It is thus clear from the aforesaid that the holding of the subsequent election for filling in the vacancy caused by the unseating of the petitioner was made subject to outcome of these proceedings. It therefore cannot be gainsaid that with the conduct of the bye elections, the challenge raised by the petitioner to the order passed by the trial Court had become infructuous. Notwithstanding the conduct of the bye elections, the present challenge would be required to be adjudicated on merits since the rights of the petitioner stand protected by virtue of the interim order dated 25.06.2025. The said contention raised by the first respondent therefore cannot be accepted.

9. Coming to the challenge raised by the petitioner, it is to be noted from the pleadings of the first respondent in the election petition that the petitioner had failed to disclose the fact that on 07.08.2018 she had been convicted under Section 138 of the Act of 1881. This material fact was required to be disclosed by her in the affidavit mandated to be filed under Rule 24-A of the Rules of 1994 along with her nomination form. To appreciate this contention, it would be first necessary to refer to the relevant statutory provisions. Section 22 (1) (d) of the Act of 1961, insofar as it is material fact for the present purpose reads as under:

"22. Grounds for declaring election or nomination to be void-

(1) Subject to the provisions of sub-section (2), if the Judge is of the opinion -
.....

(d) that the result of the election, or nomination in so far as it concerns a returned candidate has been materially affected -

(i) by the improper acceptance of any nomination; or

(ii) by the improper acceptance or refusal of any vote or reception of any vote which is void; or

(iii) by the non-compliance with the provisions of this Act or of any rules or orders-made there under save the rules framed under Section 14 in so far as they relate to preparation and revision of list of voters; he shall declare the election or nomination of the returned candidate to be void."

The aforesaid statutory provisions indicate that the election of returned candidate can be declared to be void on account of improper acceptance of his/her nomination form or on account of non-compliance with the provisions of the Act of 1961 or the Rules of 1994 or orders made thereunder.

10. Rule 24-A of the Rules of 1994 requires each candidate to furnish information with regard to declaration of criminal antecedents, assets, liabilities and educational qualifications. The said provision insofar as it is relevant for the present purpose reads as under:

"24-A. (1) Each candidate shall furnish the information relating to -Declaration of criminal antecedent, assets, liabilities and educational qualification-

(i) any pending criminal case in which he is charged and any disposed criminal case in which he has been convicted;"

Rule 24-A (2), (4) and (5) of the Rules of 1994 being relevant are reproduced hereunder:

"(2) The nomination paper shall be rejected, if the affidavit is not enclosed."

"(4) The Returning Officer shall, as soon as may be after furnishing of the information to him under sub-rule (1), display the aforesaid information by affixing a copy of the affidavit, at a conspicuous place at his office for the information of electors of the concerned ward for which the nomination paper is filed and, shall on demand from any other candidate/elector of the ward, make

available the information received of the candidate and, shall also publicize the information received through the media."

"(5) If any candidate or elector files an affidavit against the information contained in the affidavit filed by a candidate under sub-rule (1), it shall also be displayed in the manner prescribed in sub-rule (4)."

11. As required by Rule 24-A(5) of the Rules of 1994, the petitioner filed her affidavit in the prescribed format. The relevant portion of the said affidavit dated 09.09.2022 reads as under:

AFFIDAVIT

As per Rule 24-A(1)(5)(Amended) of the M.P. Nagarpalika Nirvachan Niyam, 1994

For election to Parshad Ward No.5 from Nagar Parishad, Bhikangaon (6) I have been/have not been convicted of an offence(s) [other than any offence(s) referred to in sub-section (1) or sub-section (2), or cover in sub-section(3), of section 8 of the Representation of the People Act, 1951 (43 of 1951)] and sentenced to imprisonment for one year or more.

If the deponent is convicted and punished as aforesaid, he shall furnish the following information: In the following cases, I have been convicted and sentenced to imprisonment by a court of law:

A	The details of cases, Section (s) of the concerned Act(s) and description of the offence(s) for	Nirank
B	Name of the Court(s), Case No. and date(s) of order(s):	Nirank
C	Punishment imposed	Nirank
D	Whether any appeal was/has been filed against the conviction order. If so, details and the present status of the appeal:	Nirank

VERIFICATION

I, the deponent, above named, do hereby verify and declare that the contents of this affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed there from. I further declare that:

(a) There is no case of conviction or pending case against me other than those mentioned in items 5 and 6 of part A and B above;

(b) I, my spouse, or my dependents do not have any asset or liability, other than those mentioned in items 7 and 8 of Part A and items 8, 9 and 10 of Part B above. Verified at this day of 09/09/2022 DEPONENT (emphasis supplied by us)

12. Undisputably, the petitioner was convicted on 07.08.2018 under Section 138 of the Act of 1881. The conviction was in force when the petitioner submitted her nomination form on 09.09.2022. In the affidavit filed under Rule 24-A of the Rules of 1994, the petitioner failed to disclose her conviction as stated above. To that extent, the plea raised by the first respondent and accepted by both Courts that there was a failure on the part of the petitioner in not disclosing her conviction in the affidavit filed under Rule 24-A of the Rules of 1994 which in turn resulted in non-compliance with the provisions of the Act of 1961 or the Rules of 1994 is correct.

13. On consideration of the statutory provisions as well as the documentary material on record it becomes clear that under Rule 24-A (1) of the Rules of 1994, every candidate contesting elections is required to furnish information which includes declaration of criminal antecedents, etc. The information required to be furnished is with regard to any pending criminal case in which the candidate is charged or any criminal case that has been disposed of and has resulted in his conviction.

Failure to furnish such affidavit can result in rejection of the nomination paper. The Returning Officer is required to display the nomination furnished by each candidate by affixing a copy of the affidavit at a conspicuous place at his office so as to provide information to the electors from the concerned ward. He is also required to publicise the information received through the media. Similarly, contents of the affidavit required to be filed under Rule 24-A (1) are also required to be displayed in the aforesaid manner.

The object behind disclosing such information is to enable the voters to get knowledge about the criminal antecedents, assets, liabilities and educational qualifications of the candidates contesting the elections. That such information is required to be furnished in furtherance of the right to information available to the electorate under Article 19 (1) (a) of the Constitution of India is now wellsettled.

14. In this context, it would be necessary to refer to the three Judge Bench decision in Union of India vs. Association for Democratic Reforms.⁵ While considering the question whether a voter had a right to get relevant information including that with regard to involvement in an offence, this Court while recognising such right to get information in the context of Article 19(1)(a) of the Constitution of India held as under:

"In our view, democracy cannot survive without free and fair election, without free and fairly informed voters. Votes cast by uninformed voters in favour of X or Y candidate would be meaningless. As stated in the aforesaid passage, onesided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce. Therefore, casting of a vote by misinformed and non-informed voter or a voter having onesided information only is bound to affect the democracy seriously.

Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions. Entertainment is implied in freedom of 'speech and expression' and there is no reason to hold that freedom of speech and expression would not cover right to get material information with regard to a candidate who is contesting election for a post which is of utmost importance in the democracy."

It thereafter concluded as under:

"Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. Voters' speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is must. Voter's (little man citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law breakers as law makers."

15. It is an admitted position that, the petitioner failed to disclose her conviction for the offence punishable under Section 138 of the Act of 1881 and that she had been sentenced to imprisonment for a period of one year. It is also not disputed that on 09.09.2022 when the petitioner submitted her affidavit as required by Rule 24-A (1) of the Rules of 1994, her conviction was in force. The petitioner was therefore obligated to furnish information about her conviction and consequently being sentenced to imprisonment for a period of one year. She however failed to do so. Pertinently, Rule 24-A (1) requires a declaration to be made of an order or conviction, irrespective of the quantum of sentence imposed.

In other words, the material information to be furnished is the fact of any conviction suffered by a candidate. It is therefore clear that by failing to disclose her previous conviction, the petitioner furnished false and incorrect information as regards her criminal antecedents. As a result the verification of her affidavit was false and incorrect despite the fact that the petitioner had full knowledge of her conviction which she had subjected to further challenge. As a consequence, the ground under Section 22 (1) (d) (iii) of the Act of 1961 became available for declaring her election to be void.

Further, as a result of such false information being furnished by the petitioner in her affidavit filed under Rule 24-A (1) of the Rules of 1994, her nomination paper was improperly accepted. These factual aspects have been considered by the trial Court and thereafter affirmed by the High Court in exercise of its revisional jurisdiction. This factual position was not contested by the learned Senior Advocate for the petitioner. It is thus clear that by failing to disclose her conviction and consequent sentence of imprisonment for a period of one year, a ground for declaring her election as Councillor became available to the first respondent.

16. The learned Senior Advocate for the petitioner tried to extricate the case of the petitioner from such position by urging that the conviction of the petitioner was not for an offence involving moral turpitude. It was a conviction under Section 138 of the Act of 1881 and thus it could not be said that there was any serious or heinous crime committed by the petitioner. For her conviction in such an offence, the petitioner was not liable to be visited by an order of disqualification under the Act of 1961. To substantiate this contention he sought to derive support from the decisions of this Court in Ravi Namboothiri and Karikho Kri (supra).

Having considered both these decisions, we find that the same are clearly distinguishable in view of the statutory provisions involved therein as well as the relevant factual aspects. In Ravi Namboothiri (supra), the appellant therein was finally convicted for the offence punishable under Section 38 read with Section 52 of the Kerala Police Act, 1961 and was sentenced to a fine of Rs. 200/-. The said appellant however while filing his nomination for the elections to the Panchayat failed to disclose the fact of his conviction under Section 38 read with Section 52 of the Kerala Police Act, 1961. On this count his election to the Panchayat was set aside as he had suppressed information with regard to his past conviction.

The appellant challenged his disqualification before this Court. It was found that what was required to be disclosed under Section 52(1A) of the Kerala Panchayat Raj Act, 1994 were the details with regard to criminal cases in which the candidate was involved at the time of submission of his nomination. Reference was made to the previous of Section 102 (1)(ca) of the Kerala Panchayat Raj Act, 1994 which made furnishing of details by an elected candidate under Section 52 (1A) a ground for declaring an election to be void if such details furnished were fake.

It was held by this Court that the word "involvement" in a criminal case at the time of filing of the nomination in Section 52 (1A) would only mean cases where a criminal complaint was pending investigation/trial, cases where the conviction and/or sentence was current at the time of filing of the nomination and cases

where the conviction was the subject matter of any appeal or revision pending at the time of nomination. It was found that besides Rule 6, Form No. 2-A required details even of cases where the candidate was convicted earlier.

Since the said appellant had failed to disclose details of his earlier conviction in Form No.2-A, his election was liable to be declared as void under Section 102 (1)(ca). This Court however found that under provisions of Section 38 and 52 of the Kerala Police Act, 1961, the conviction of the said appellant was for disobedience of the directions issued by a police officer. By observing that such offence could not be treated to be a substantive offence, it was observed that protest was a tool in hands of the society and therefore failure on the part of said petitioner to disclose his conviction for the offence consequent upon holding a 'dharna' in front of the Panchayat Office could not be taken as a ground for declaring an election to be void.

It further observed that the Kerala Police Act, 1961 was a successor legislation of certain police enactments of the colonial era, whose object was to scuttle the democratic aspirations of the indigenous population. Accordingly, this Court held that the High Court was not correct in declaring the election of the said petitioner to be void on the ground that he had failed to disclose to in Form No.2-A of his conviction which amounted to undue influence on the free exercise of the electoral right.

17. We may note that in the aforesaid decision, the requirement was to furnish information with regard to involvement in a criminal case as required by Section 52(1A) of the Kerala Panchayat Raj Act, 1994. Further the said appellant on his conviction was merely sentenced to fine of Rs.200/- for the offence under Section 38 read with Section 52 of the Kerala Police Act, 1961. There was no sentence of imprisonment.

In the present case, the petitioner after her conviction was sentenced to an imprisonment for a period of one year. The affidavit required to be filed under Rule 24-A (1) of the Rules of 1994 specifically requires furnishing of details as regards any sentence of imprisonment for a period of one year or more. The statutory requirement in the present case is thus distinct from the requirements in Ravi Namboothiri (supra) which makes the said decision distinguishable.

18. In Karikho Kri (supra), the successful candidate in the assembly elections was found to have not disclosed in his affidavit details with regard to ownership of vehicles, failure to submit no dues certificate with regard to electricity charges and municipal dues. His election was declared to be void under Section 100 (1)(d)(i) of the Representation of the People Act, 1951. While considering the challenge to the judgment of the High Court, this Court found that the vehicles in question had either been gifted or sold by the appellant prior to filing of his

nomination and hence the said vehicles could not be considered to be owned by his family members.

It was further found that the said appellant had disclosed the value of his assets which included the value of the vehicles in question. It was then found that what was not disclosed by the appellant was not of a substantial nature so as to impact his candidature or the result of the election. In fact, a finding was recorded that there were no actual outstanding dues payable by the appellant and hence there was no defect whatsoever so as to render the acceptance of his nomination form to be improper. Additionally, it was found that though the election of the appellant had been invalidated under Section 100(1)(d)(iv) of the Representation of the People Act, 1951, it had not been shown as to how the result of the election had been materially affected by the acceptance of his nomination form.

On these counts, the judgment of the High Court was set aside and the election of the said appellant was found to be valid. The aforesaid facts are sufficient to distinguish the said decision in the wake of the undisputed facts of the present case. The petitioner herein having been convicted and sentenced to imprisonment for a period of one year which fact was not disclosed in the affidavit filed along with the nomination form is sufficient to hold that the ratio of the aforesaid decision cannot be applied to the present case.

19. It is now necessary to deal with the contention raised on behalf of the petitioner that notwithstanding her conviction, the same was not for committing a serious offence or one touching upon moral turpitude. The conviction being under Section 138 of the Act of 1881, the petitioner was not liable to be unseated for her conviction for a minor offence. We are unable to accept this contention which seeks to dilute the fact of non-disclosure of the petitioner's conviction in the nomination form.

Rule 24A-(1) requires a candidate to disclose any order of conviction suffered by him by filing an affidavit along with the relevant information before the Returning Officer. The format of the affidavit prescribed under the Rules of 1994 requires a disclosure as regards conviction and sentence of imprisonment for a duration of one year and more. The validity of Rule 24-A(1) of the Rules of 1994 has not been subjected to any challenge. It would therefore have to be treated as valid.

Its compliance has been made mandatory as failure to furnish such information along with an affidavit as prescribed visits a candidate with the consequence of non-compliance of the provisions of the Rules of 1994. This in turn is a ground to challenge the election of the returned candidate. In absence of any provision in the Rules of 1994 that would enable the Court to condone such non-compliance or exempt its compliance on the ground that the conviction was for a non-serious

offence or one not involving moral turpitude, adopting such course as urged would do violence to the Act of 1961 and the Rules of 1994.

20. At this stage, we may refer to the decision of this Court in Krishnamoorthy (supra) wherein this Court considered the effect of non-disclosure of criminal cases in respect of serious offences including those involving moral turpitude. After noting that the right to contest an election was neither a fundamental right nor a common law right, it was observed as under:

"The controversy which has emanated in this case is whether non-furnishing of the information while filing an affidavit pertaining to criminal cases, especially cases involving heinous or serious crimes or relating to corruption or moral turpitude would tantamount to corrupt practice, regard being had to the concept of undue influence".

It was thereafter concluded in paragraph 86 as under:

"In view of the above, we would like to sum up our conclusions:

(a) Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.

(b) When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.

(c) Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.

(d) As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a nondisclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act.

(e) The question whether it materially affects the election or not will not arise in a case of this nature."

This Court was concerned with the suppression of various cases of embezzlement by the concerned candidate in his nomination form. The reference to heinous or serious offences or offences relating to corruption or moral turpitude would have

to be seen in that factual backdrop. This Court was not dealing with an offence that was not heinous or not involving moral turpitude. It is therefore not the ratio of Krishnamoorthy (supra) that disclosure only of serious and heinous offences is mandated and that failure to disclose conviction for a minor or non-serious offence could be condoned, as a principle.

We may however clarify that ultimately it is a matter of exercise of judicial discretion in the given facts of the case, as was exercised in Ravi Namboothiri (supra), as to whether such nondisclosure is fatal or not. Hence, the decision in Krishnamoorthy (supra) cannot be the basis to hold that non-disclosure of conviction in case of a minor offence was always intended to be condoned and not viewed seriously.

21. The plea raised by the petitioner that her election could not be set aside in the absence of it being proved that the result of the election had been materially affected on account of the improper acceptance of her nomination form need not detain us. Once it is found that there has been non-disclosure of a previous conviction by a candidate, it creates an impediment in the free exercise of electoral right by a voter. A voter is thus deprived of making an informed and advised choice. It would be a case of suppression/non-disclosure by such candidate, which renders the election void.

22. In this regard, we may refer to the decision in Kisan Shankar Kathore vs. Arun Dattatray Sawant & Others⁶. Therein the election of the returned candidate to the Legislative Assembly was challenged by a voter from the constituency on the ground that the nomination form of the returned candidate had been improperly accepted by the Returning Officer and that the election was void due to non-compliance of the provisions of the Representation of the People Act, 1951. There were in all five candidates in the fray.

In the election petition, the High Court held that the returned candidate failed to make material disclosures in the affidavit filed along with the nomination form and hence the nomination form was improperly accepted by the Returning Officer. It further held that the result of the election was materially affected due to non-disclosure of relevant information. Accordingly, the election of the returned candidate was set aside. While considering the challenge to the said judgment, this Court noted that the aspect of non-disclosure of material information was an admitted fact.

Referring to the decisions in Association for Democratic Reforms (supra) and People's Union for Civil Liberties (PUCL) Vs. Union of India and another⁷, it was held that if the required information as per the guidelines of the Election Commission was not given, the same would amount to suppression/non-disclosure of relevant information. On the aspect of the result of the election

being materially affected due to nondisclosure of such information, it was observed in paragraph 28 as under:-

"Issue No. 8 pertains to the question as to whether the election result was materially affected because of nondisclosure of the aforesaid information. The High Court took note of provisions of Section 100 (1)(d)(i) and (iv) and discussed the same. Thereafter, some judgments cited by the appellant were distinguished and deciding this issue against the appellant, the High Court concluded as under:

"137. In my opinion, it is not necessary to elaborate on this matter beyond a point, except to observe that when it is a case of improper acceptance of nomination on account of invalid affidavit or no affidavit filed therewith, which affidavit is necessarily an integral part of the nomination form; and when that challenge concerns the returned candidate and if upheld, it is not necessary for the Petitioner to further plead or prove that the result of the returned candidate has been materially affected by such improper acceptance.

138. The avowed purpose of filing the affidavit is to make truthful disclosure of all the relevant matters regarding assets (movable and immovable) and liabilities as well as criminal actions (registered, pending or in respect of which cognizance has been taken by the Court of competent jurisdiction or in relation to conviction in respect of specified offences). Those are matters which are fundamental to the accomplishment of free and fair election. It is the fundamental right of the voters to be informed about all matters in relation to such details for electing candidate of their choice.

Filing of complete information and to make truthful disclosure in respect of such matters is the duty of the candidate who offers himself or who is nominated for election to represent the voters from that Constituency. As the candidate has to disclose this information on affidavit, the solemnity of affidavit cannot be allowed to be ridiculed by the candidates by offering incomplete information or suppressing material information, resulting in disinformation and misinformation to the voters. The sanctity of disclosure to be made by the candidate flows from the constitutional obligation."

Affirming the said finding, it was held in paragraph 38 as under:-

"Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void."

23. In *Sri Mairembam Prithviraj @ Prithviraj Singh Vs. Shri Pukhrem Sharatchandra Singh*⁸, two candidates were in the election fray. The returned candidate failed to submit any documents as regards his educational qualification alongwith the nomination form. The acceptance of his nomination form was accordingly challenged. The High Court held that the declaration made by the returned candidate as regards his educational qualification was false. The said finding was upheld by this Court. On the question as to whether the election of the returned candidate was materially affected due to such improper acceptance of the nomination form, reference was made to the decision in *Kisan Shankar Kathore* (supra). It was thereafter held in paragraph 23 as under:-

"23. Mere finding that there has been an improper acceptance of the nomination is not sufficient for a declaration that the election is void under Section 100 (1) (d). There has to be further pleading and proof that the result of the election of the returned candidate was materially affected. But, there would be no necessity of any proof in the event of the nomination of a returned candidate being declared as having been improperly accepted, especially in a case where there are only two candidates in the fray.

If the returned candidate's nomination is declared to have been improperly accepted it would mean that he could not have contested the election and that the result of the election of the returned candidate was materially affected need not be proved further. We do not find substance in the submission of Mr. Giri that the judgment in *Durai Muthuswami* (supra) is not applicable to the facts of this case."

Though in the aforesaid case there were only two candidates who contested the elections, the principle that failure to disclose relevant information in the affidavit filed along with the nomination form amounted to non-disclosure of material information was accepted. That such wrongful acceptance of the nomination form of the returned candidate would result in the election being materially affected rendering it void was recognised as a consequence.

24. Even otherwise, it is clear from the decision in *Krishnamoorthy* (supra) that non-furnishing information pertaining to criminal antecedents has the effect of causing undue influence which creates an impediment in the free exercise of electoral right by a voter. When there is such non-disclosure of criminal antecedents, this Court held in paragraph 86(e) that the question whether the election is materially affected or not would not arise in such a case.

It is thus clear that by failing to disclose her conviction under Section 138 of the Act of 1881, the petitioner suppressed material information and thus failed to comply with the mandatory requirements of Rule 24-A(1) of the Rules of 1994. The acceptance of her nomination form has therefore been rightly held to be

improper. She being the returned candidate, her election was rendered void. It is thus obvious that on account of such wrongful acceptance of her nomination form, the election was materially affected. This contention of the petitioner also fails.

25. We may now indicate why discretion under Article 136 of the Constitution of India does not deserve to be exercised in the present case. The Constitution Bench in *Pritam Singh vs. State*⁹ while explaining the scope and powers of the Court under Article 136 has held that:

"Generally speaking, this Court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against."

Having considered the entire matter, we are not persuaded to hold that the petitioner has made out an exceptional case for this Court to hold that notwithstanding the failure on the part of the petitioner to disclose her conviction leading to the sentence of imprisonment of one year, such lapse should be condoned. The information furnished in her affidavit filed under Rule 24-A(1) of the Rules of 1994 has been found to be incorrect and false.

The petitioner rests on her subsequent acquittal in appeal, which event occurred after her election. She did not step into the witness box to explain her inadvertence, which is now sought to be put forward. The plain reading of Rule 24-A(1) and its requirement does not admit of any doubt whatsoever.

Moreover, both the Courts have concurrently found that the petitioner failed to disclose her conviction without any justifiable reason. In these facts therefore, no special or exceptional case has been made out by the petitioner for this Court to exercise jurisdiction under Article 136 of the Constitution of India. In the passing, we may observe that the petitioner had contested the bye election that had occasioned by her removal and she lost the same.

26. For all the above reasons, the Special Leave Petition stands dismissed.

.....J. [Pamidighantam Sri Narasimha]

.....J. [Atul S. Chandurkar]

New Delhi,

November 06, 2025.

1 2022 INSC 1187

2 2024 INSC 289

3 2013 INSC 617

4 2015 INSC 960

5 2002 INSC 253

6 2014 INSC 384

7 2023 INSC 176

8 2016 INSC 1000

9 1950 INSC 9

IN THE SUPREME COURT OF INDIA

M/s. Alchemist Hospitals Ltd.

Vs.

M/s. ICT Health Technology Services India Pvt. Ltd.

**[Civil Appeal No. _____ of 2025
arising out of SLP (Civil) No. 19647/2024]**

Head Note - Mere use of the word 'arbitration' is not sufficient to treat the clause as an arbitration agreement when the corresponding mandatory intent to refer the disputes to arbitration and the consequent intent to be bound by the decision of the arbitral tribunal is missing.

JUDGMENT

Dipankar Datta, J.

1. Leave granted.

2. The present civil appeal assails the judgment and order of the High Court of Punjab & Haryana at Chandigarh¹ in ARB No. 471 of 2021, whereby a learned Judge of the High Court dismissed an application under Section 11(6) of the Arbitration and Conciliation Act, 1996² filed by the appellant.

BRIEF FACTS

3. The material facts relevant to decide the present appeal are as follows:

a. The appellant is a private healthcare institution having its principal establishment at Panchkula, Haryana. Desirous of upgrading its existing hospital-information software to a more advanced, integrated system, the appellant entered into a Software Implementation Agreement³ dated 1st November 2018 with the respondent, a Bengaluru-based technology company specialising in digital health-management platforms.

b. Under the agreement, the respondent undertook to implement its proprietary hospital-management product known as "HINAI Web Software"⁴, a software intended to streamline patient-care operations, billing, diagnostics, and record management across the appellant's facilities.

c. Clause 8.28 of the Agreement which forms the focal point of this lis is reproduced as follows:

"8.28 - Arbitration

The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives, who have authority to settle the controversy and who are at a higher level of management, than the persons with direct responsibility for administration of this Agreement. If the matter is not resolved by negotiation pursuant to paragraph above, then the matter will proceed to mediation as set forth below:

Any dispute, controversy or claim arising out of or relating in any way to the Agreement/the relationship, including without limitation, any dispute concerning the construction, validity, interpretation, enforceability or breach of the Agreement, shall be resolved by arbitration through senior management comprising respective Chairmen of the two parties (Arbitrators).

Should the dispute not be resolved within fifteen (15) days after arbitration, the complaining party shall seek remedies through the courts of law. The demand for arbitration should be made within a reasonable time (maximum 60 days) after the dispute or matter in question has arisen."

d. Following execution of the agreement, the appellant began implementing the HINAI software in November 2018. However, the appellant alleges that there were repeated procedural delays and technical failures on the part of the respondent, including sluggish performance, billing malfunctions, and incomplete integration of diagnostic modules.

e. Relying on assurances from the respondent, the appellant permitted a second attempt at implementation within three months. The HINAI software went live again on 1st January 2020. The appellant alleges that there were numerous operational issues once again and the system was rolled back on 1st April 2020.

f. On even date, the appellant addressed an e-mail to the respondent invoking Clause 8.28 of the Agreement and requesting a mediation meeting between the Chairmen of the two companies at Panchkula or, alternatively, through videoconference in view of pandemic restrictions. The respondent replied on 3rd April, 2020 vide e-mail asking for the appellant's cooperation.

g. Appellant called upon the respondent to concur in the appointment of a sole arbitrator and suggested the names of two retired Chief Justices for acting as an arbitrator by a notice dated 29th June, 2020, issued under Sections 11 and 21 of the A&C Act. Respondent acknowledged receipt of the notice by email dated 29th July 2020, sought time to respond, and on 25th August 2020 filed a reply requesting trial of the project one last time.

Having spent so much of effort by both parties. It was an unfortunate decision of roll back. For ICT it is not only loss of name but also loss in revenue as our cost incurred till date is more than the revenue we have got from Alchemist. We still

request Alchemist if there is any way for making the project lie which will be in the best interest of both sides. For which if ITC has to spent some more effort, we will be honouring the same if Alchemist ensures Master date and processes are frozen and agreed one last time.

h. Constrained by the respondent's communication, the appellant approached the High Court invoking Section 11(6) of the A&C Act and praying for the appointment of a sole arbitrator to adjudicate the disputes arising under the Agreement.

IMPUGNED JUDGMENT AND ORDER

4. The High Court observed that on a plain reading of Clause 8.28 of the Agreement, the parties had envisaged a three-tier process for resolving disputes: first, by negotiation between senior management executives; next, through mediation between the respective Chairmen of the parties; and finally, by permitting the complaining party to seek remedies through the courts of law if the dispute remained unresolved within fifteen days.

5. The High Court held that the term "arbitration" had been loosely employed in Clause 8.28 and that the true intention discernible from its language was only to provide for negotiation and mediation at an internal company level. It was further observed that the Chairmen of both parties could not be regarded as private or independent adjudicators, and that no element of finality or binding effect was attached to their determination. Also, in the event of a disagreement between the two Chairmen, an outcome not improbable, the process would reach a deadlock, after which the parties were expressly free to approach civil courts.

6. The High Court further observed that nothing in Clause 8.28 indicated any intention of the parties to refer their disputes to a private adjudicatory forum or to abide by its decision. The clause, in the High Court's view, merely contemplated negotiation and mediation without creating a binding arbitral process and hence, it proceeded to dismiss the appellant's application under Section 11(6) of the A&C Act holding that Clause 8.28 is not a valid arbitration agreement.

ISSUE

7. The seemingly simple question that we are tasked to decide in this appeal is whether Clause 8.28 of the Agreement can be considered to be a valid arbitration agreement under the A&C Act.

ANALYSIS

8. We have heard Mr. Puneet Bali, learned senior counsel for the appellant and Mr. Shamik Sanjanwala, learned counsel for the respondent.

9. An "arbitration agreement" is defined by the A&C Act as follows:

7. Arbitration agreement.-

(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in-

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

10. Modelled on the UNCITRAL Model Law on International Commercial Arbitration, 1985, the A&C Act forms the primary legislation for arbitration of disputes, especially for contractual and commercial disputes, giving primacy to the intent of the parties and every step of the way is dictated by party autonomy, as far as practicable. Section 7 of the A&C Act is no exception to this rule and party autonomy is foundational for any reference to arbitration of any dispute and/or difference that arises or might arise by and between the parties.

11. Therefore, Section 7 of the A&C Act posits certain requirements that need to be fulfilled so as to satisfy the attributes of an arbitration agreement. They are (a) there must exist an agreement between the parties to refer a dispute/all disputes to arbitration, either before or after the said disputes arise; (b) the disputes must be in connection with a defined legal relationship, whether contractual or not, and lastly, (c) the agreement must be in writing.

12. The second and the third requirements of the disputes being in connection with a defined legal relationship and that the agreement must be in writing, are non-issues in the instant case. The crux of the controversy lies in the first requirement, i.e., whether the parties agreed to have the disputes and differences arising by and between them referred to arbitration in terms of Clause 8.28.

13. It is settled law that Section 7 or any other provision of the A&C Act requires that an arbitration agreement need not be in any specific form, apart from compliance with the requirements that Section 7 of the A&C Act ordains. One may profitably refer to the decision in *Smt. Rukmanibai Gupta v. Collector, Jabalpur & Ors.*⁵ for this proposition.

14. In *K.K. Modi v. K.N. Modi*⁶, this Court set out the relevant factors to determine the existence of an arbitration agreement. The indicative factors and attributes are:

17. Among the attributes which must be present for an agreement to be considered as an arbitration agreement are:

(1) The arbitration agreement must contemplate that the decision of the tribunal will be binding on the parties to the agreement,

(2) that the jurisdiction of the tribunal to decide the rights of parties must derive either from the consent of the parties or from an order of the court or from a statute, the terms of which make it clear that the process is to be an arbitration,

(3) the agreement must contemplate that substantive rights of parties will be determined by the agreed tribunal,

(4) that the tribunal will determine the rights of the parties in an impartial and judicial manner with the tribunal owing an equal obligation of fairness towards both sides,

(5) that the agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law and lastly,

(6) the agreement must contemplate that the tribunal will make a decision upon a dispute which is already formulated at the time when a reference is made to the tribunal.

18. The other factors which are relevant include, whether the agreement contemplates that the tribunal will receive evidence from both sides and hear their contentions or at least give the parties an opportunity to put them forward; whether the wording of the agreement is consistent or inconsistent with the view

that the process was intended to be an arbitration, and whether the agreement requires the tribunal to decide the dispute according to law.

15. It would further be apposite to refer to Jagdish Chander v. Ramesh Chander⁷ where this Court has succinctly encapsulated the law on the point. The relevant passage therefrom reads:

8. This Court had occasion to refer to the attributes or essential elements of an arbitration agreement in K.K. Modi v. K.N. Modi [(1998) 3 SCC 573], Bharat Bhushan Bansal v. U.P. Small Industries Corpn. Ltd. [(1999) 2 SCC 166] and Bihar State Mineral Development Corpn. v. Encon Builders (I) (P) Ltd. [(2003) 7 SCC 418] In State of Orissa v. Damodar Das [(1996) 2 SCC 216] this Court held that a clause in a contract can be construed as an "arbitration agreement" only if an agreement to refer disputes or differences to arbitration is expressly or impliedly spelt out from the clause. We may at this juncture set out the well-settled principles in regard to what constitutes an arbitration agreement:

(i) The intention of the parties to enter into an arbitration agreement shall have to be gathered from the terms of the agreement. If the terms of the agreement clearly indicate an intention on the part of the parties to the agreement to refer their disputes to a private tribunal for adjudication and a willingness to be bound by the decision of such tribunal on such disputes, it is arbitration agreement. While there is no specific form of an arbitration agreement, the words used should disclose a determination and obligation to go to arbitration and not merely contemplate the possibility of going for arbitration. Where there is merely a possibility of the parties agreeing to arbitration in future, as contrasted from an obligation to refer disputes to arbitration, there is no valid and binding arbitration agreement.

(ii) Even if the words "arbitration" and "Arbitral Tribunal (or arbitrator)" are not used with reference to the process of settlement or with reference to the private tribunal which has to adjudicate upon the disputes, in a clause relating to settlement of disputes, it does not detract from the clause being an arbitration agreement if it has the attributes or elements of an arbitration agreement. They are:

(a) The agreement should be in writing.

(b) The parties should have agreed to refer any disputes (present or future) between them to the decision of a private tribunal.

(c) The private tribunal should be empowered to adjudicate upon the disputes in an impartial manner, giving due opportunity to the parties to put forth their case before it.

(d) The parties should have agreed that the decision of the private tribunal in respect of the disputes will be binding on them.

(iii) Where the clause provides that in the event of disputes arising between the parties, the disputes shall be referred to arbitration, it is an arbitration agreement. Where there is a specific and direct expression of intent to have the disputes settled by arbitration, it is not necessary to set out the attributes of an arbitration agreement to make it an arbitration agreement. But where the clause relating to settlement of disputes, contains words which specifically exclude any of the attributes of an arbitration agreement or contains anything that detracts from an arbitration agreement, it will not be an arbitration agreement. For example, where an agreement requires or permits an authority to decide a claim or dispute without hearing, or requires the authority to act in the interests of only one of the parties, or provides that the decision of the authority will not be final and binding on the parties, or that if either party is not satisfied with the decision of the authority, he may file a civil suit seeking relief, it cannot be termed as an arbitration agreement.

(iv) But mere use of the word "arbitration" or "arbitrator" in a clause will not make it an arbitration agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration. For example, use of words such as "parties can, if they so desire, refer their disputes to arbitration" or "in the event of any dispute, the parties may also agree to refer the same to arbitration" or "if any disputes arise between the parties, they should consider settlement by arbitration" in a clause relating to settlement of disputes, indicate that the clause is not intended to be an arbitration agreement. Similarly, a clause which states that "if the parties so decide, the disputes shall be referred to arbitration" or "any disputes between parties, if they so agree, shall be referred to arbitration" is not an arbitration agreement.

Such clauses merely indicate a desire or hope to have the disputes settled by arbitration, or a tentative arrangement to explore arbitration as a mode of settlement if and when a dispute arises. Such clauses require the parties to arrive at a further agreement to go to arbitration, as and when the disputes arise. Any agreement or clause in an agreement requiring or contemplating a further consent or consensus before a reference to arbitration, is not an arbitration agreement, but an agreement to enter into an arbitration agreement in future.

(emphasis ours)

What, therefore, follows from the above passage is that the mere use of the word "arbitration" is not sufficient to treat the clause as an arbitration agreement when the corresponding mandatory intent to refer the disputes to arbitration and the consequent intent to be bound by the decision of the arbitral tribunal is missing.

16. A similar issue arose before this Court in *Mahanadi Coalfields Ltd. v. IVRCL AMR Joint Venture*⁸. The clause in question therein was as follows:

"15. Settlement of Disputes/Arbitration:

15.1. It is incumbent upon the contractor to avoid litigation and disputes during the course of execution. However, if such disputes take place between the contractor and the department, effort shall be made first to settle the disputes at the company level. The contractor should make request in writing to the Engineer-in-Charge for settlement of such disputes/claims within 30 (thirty) days of arising of the case of dispute/claim failing which no disputes/claims of the contractor shall be entertained by the company.

15.2. If differences still persist, the settlement of the dispute with government agencies shall be dealt with as per the Guidelines issued by the Ministry of Finance, Government of India in this regard. In case of parties other than government agencies, the redressal of the disputes may be sought in the court of law."

The Court held that the mere use of the word "Arbitration" in the title of the clause without any corresponding substantive part relating to arbitration could not be considered a valid arbitration agreement under Section 7 of the A&C Act.

17. The above rulings lead us to the irresistible conclusion that mere use of the word "arbitration" in a clause of an agreement is not clinching or decisive. Section 7 presupposes an express intention of the dispute/difference being resolved through arbitration and mere reference to the term is not sufficient to meet this threshold. The A&C Act acknowledges the existence of an arbitration agreement based on its substance rather than its form. Regardless of the formal structure, effect has to be given to an arbitration agreement in essence. Arbitration being the creature of a contract, the ad idem intention of the parties is paramount to determine whether there exists a valid arbitration agreement. That being said, the invocation of the word "arbitration" nonetheless provides, at the very least, a discernible clue to the parties' underlying intention.

18. The exercise of legal drafting partakes equally of art, science and logic, but we fear that Clause 8.28 does not seem to show allegiance to any. Be that as it may, the task of interpreting the clause is embarked upon bearing in mind the authoritative rulings in the field.

19. Clause 8.28 of the Agreement states that the parties must first attempt to negotiate the dispute in good faith. This part of the clause is admittedly not disputed in its meaning. The next part of the clause specifies that if the negotiation fails, then the parties would be obligated to mediate in the stated procedure and is then followed by the punctuation (:) colon, following which it

prescribes that any dispute arising out of or relating in any way to the Agreement shall be resolved by "arbitration" through senior management comprising respective Chairmen of the two parties (Arbitrators). Moreover, the agreement further stipulates that should the dispute not be resolved within fifteen (15) days after the proposed "arbitration", the complaining party shall seek remedies through the courts of law.

20. The word "arbitration" apart from appearing in the title of the relevant clause has been used 3 (three) times in the body of the clause. It is but obvious that the appellant has sought to rely on this inclusion of the word within the clause to submit that it forms an arbitration agreement.

21. Is mere repetitive use of the word "arbitration" clinching/decisive? It is now time to ascertain in line with the aforesaid decisions, whether the parties' intention was indeed to arbitrate, or merely to delineate a structured process of mediation.

22. Since, at this stage, we are reminded of the decision in the case of Bangalore Electricity Supply Co. Ltd. v. E.S. Solar Power (P) Ltd.⁹, it would be apt to note what was observed. There occurs an interesting passage of what the Court should be minded about while gathering the intentions of the parties in a clause of the contract. It was observed:

17. The duty of the court is not to delve deep into the intricacies of human mind to explore the undisclosed intention, but only to take the meaning of words used i.e. to say expressed intentions [Kamla Devi v. Takhatmal Land, (1964) 2 SCR 152 : AIR 1964 SC 859]. In seeking to construe a clause in a contract, there is no scope for adopting either a liberal or a narrow approach, whatever that may mean. The exercise which has to be undertaken is to determine what the words used mean.

It can happen that in doing so one is driven to the conclusion that clause is ambiguous, and that it has two possible meanings. In those circumstances, the court has to prefer one above the other in accordance with the settled principles. If one meaning is more in accord with what the court considers to be the underlined purpose and intent of the contract, or part of it, than the other, then the court will choose the former or rather than the latter [Ashville Investments Ltd. v. Elmer Contractors Ltd., 1989 QB 488 : (1988) 3 WLR 867 : (1988) 2 All ER 577 (CA)].

The intention of the parties must be understood from the language they have used, considered in the light of the surrounding circumstances and object of the contract. [Bank of India v. K. Mohandas, (2009) 5 SCC 313 : (2009) 2 SCC (Civ) 524 : (2009) 2 SCC (L&S) 32] . Every contract is to be considered with reference

to its object and the whole of its terms and accordingly the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of inquiry is the meaning of an isolated clause. Bihar SEB v. Green Rubber Industries [Bihar SEB v. Green Rubber Industries, (1990) 1 SCC 731].

23. In a catena of decisions, this Court has ruled that, in essence, an arbitration agreement should have an element of the nature of finality to refer the matters to arbitration. To name a few, one may make a reference to the decisions made in the cases of Wellington Associates Ltd. v. Kirit Mehta¹⁰, Bihar State Mineral Development Corporation v. Encon Builders¹¹, BGM and MRPL- JMCT (JV) v. Eastern Coalfields Limited¹², K.K. Modi (supra) and Mahanadi (supra).

24. In Jagdish Chander (supra), this Court discussing a similar situation as is in the present case, observed that when an agreement provides that the decision of the authority will not be final and binding on the parties, or that if either party is not satisfied with the decision of the authority, he may file a civil suit seeking relief, it cannot be termed as an arbitration agreement. That is precisely the case here.

25. Upon a perusal of Clause 8.28, we are of the view that there is no indication that the proposed "arbitration" was supposed to be final and binding. In fact, the penultimate sentence of the clause stipulates that should the dispute not be resolved within fifteen (15) days after arbitration, the complaining party shall seek remedies through the courts of law. This suggests an attempt at amicable resolution inter se rather than a definitive submission to arbitration, failing which the party has the option to proceed to the courts of law.

26. Lastly, the individuals designated as "arbitrators" under the clause are the respective Chairmen of the parties themselves. Ordinarily, arbitration contemplates reference to a neutral third party, a process supported by Section 12 read with the Seventh Schedule of the A&C Act. Here, however, the mechanism envisaged is akin to an internal settlement process between the Chairmen of the two companies. While this does not ipso facto disqualify the clause from being an arbitration agreement-since this may be waived under the proviso to Section 12(5)-it remains a significant circumstance in discerning the true intention of the parties.

27. In our view, Clause 8.28 of the Agreement does not evince an intention to refer disputes to arbitration, for the above-mentioned reasons.

28. Before we part, one other interesting point that has been raised is to be looked into. Whether the non-denial of the arbitration agreement by the respondent in the correspondence between the parties post the notice being issued by the

respondent would have any bearing upon the decision to refer the parties to arbitration.

29. In *Powertech World Wide Ltd. v. Delvin International General Trading LLC*¹³, this Court no doubt took the view that correspondence post issuance of the notice for arbitration can be a factor to determine the intention of the parties. The pertinent passage is extracted hereunder:

29. Thus, any ambiguity in the arbitration clause contained in the purchase contract stood extinct by the correspondence between the parties and the consensus ad idem in relation to the existence of an arbitration agreement and settlement of disputes through arbitration became crystal clear. The parties obviously had committed to settle their disputes by arbitration, which they could not settle, as claims and counterclaims had been raised in the correspondence exchanged between them.

In view of the above, even the precondition for invocation of an arbitration agreement stands satisfied. However, a closer perusal of the decision reveals that the decision stands on a much different footing. The respondent therein had in effect consented to the arbitration by stating that they wish to appoint a different arbitrator than the one proposed. No such correspondence exists in the present case. For ease of reference, paragraph 28 of the decision observes: the respondent had neither denied the existence nor the binding nature of the arbitration clause.

On the contrary, it had requested the petitioner not to take any legal action for appointment of an arbitrator, as they wanted to suggest some other name as an arbitrator, that too, subject to the consent of the petitioner. This letter conclusively proves that the respondent had admitted the existence of an arbitration agreement between the parties and consented to the idea of appointing a common/sole arbitrator to determine the disputes between the parties. However, thereafter there had been complete silence from its side, necessitating the filing of the present petition under Section 11(6) of the Act by the petitioner.

(emphasis ours)

30. In the case of *Visa International Ltd. v. Continental Resources (USA) Ltd.*¹⁴, this Court relying on the correspondence between the parties held that this proves the existence of the arbitration agreement. This decision too can be distinguished on similar lines as in that case, in response to the applicant's letter invoking the arbitration clause, the respondent merely objected to the names of the arbitrators inter alia contending that the suggested arbitration would not be cost-effective and the demand for arbitration itself was a premature one and there was no denial of an arbitration agreement by the respondent therein.

31. In the instant case, we agree that there has indeed been no denial of the existence of an arbitration agreement by the respondent in its responses to the notice issued by the appellant. However, here, when there has indeed been no arbitration agreement in the first place, therefore, subsequent correspondence between the parties cannot displace the original intention.

Such correspondence would have indeed been sufficient to displace the original intention if it was unequivocally clear about referring the disputes to arbitration, i.e., the test mentioned under Section 7 of the A&C Act, which does not exist in the instant case. Once we take the view that there has, in fact, been no arbitration agreement in the first place, there exists no option available to the appellant other than approaching the courts of law.

CONCLUSION

32. The impugned final judgment and order of the High Court is affirmed and the appeal is consequently dismissed.

33. Appellant is free to seek remedy in accordance with law before the competent civil court. If the benefit of Section 14 of the Limitation Act, 1963 is claimed, the relevant court may decide such claim appropriately.

34. Parties shall bear their own costs.

.....**J. (Dipankar Datta)**

.....**J. (Augustine George Masih)**

New Delhi;

November 06, 2025.

1 High Court

2 A&C Act

3 Agreement

4 HINAI software

5 (1980) 4 SCC 536

6 (1998) 3 SCC 573

7 (2007) 5 SCC 719

8 (2022) 20 SCC 636

9 (2021) 6 SCC 718

10 (2000) 4 SCC 272

11 (2003) 7 SCC 418

12 2025 SCC OnLine SC 1471

13 (2012) 1 SCC 361

14 (2009) 2 SCC 55

IN THE SUPREME COURT OF INDIA

Muskan
Vs.
Ishaan Khan (Sataniya) and Ors.

**[Criminal Appeal No. 4752 of 2025
arising out of SLP (Criminal) No. 1531 of 2025]**

Head Note - On the aspect of the powers of the Courts under Section 482 Cr.P.C, it is settled that at the stage of quashing, the Court is not required to conduct a mini trial. Thus, the jurisdiction under Section 482 Cr.P.C. with respect to quashing is somewhat limited as the Court has to only consider whether any sufficient material is available to proceed against the accused or not. If sufficient material is available, the power under Section 482 should not be exercised.

JUDGMENT

Prashant Kumar Mishra, J.

1. Leave granted.
2. The present Appeal has been preferred against the impugned order dated 19.07.2024 in Misc. Criminal Case No.10695 of 2024 passed by the High Court of Madhya Pradesh at Indore wherein the High Court has quashed the proceedings emanating from FIR No. 35 of 2024 dated 28.01.2024 registered at Police Station Alot, District Ratlam, Madhya Pradesh under Section 498A of the Indian Penal Code, 18601 and Sections 3 and 4 of the Dowry Prohibition Act, 1961 against private respondent Nos.1 to 5 herein.
3. At the outset, it will be pertinent to mention that respondent Nos.1 to 5 herein have not entered appearance in the present case and vide order dated 28.03.2025, this Court appointed Mr. Prakhar Srivastava, learned counsel, as Amicus Curiae to assist the Court (Pro Bono) on behalf of the unrepresented respondents.

A. FACTUAL MATRIX

4. Brief facts of the present matter are that the marriage between the appellant and respondent No. 1 was solemnized on 20.11.2020 in accordance with Muslim traditions and customs. From the marriage, a son was born. During the initial days of the marriage, the appellant was treated well by respondent No. 1 and his family members.

5. However, after 5-6 months of the marriage, the private respondents started harassing the appellant by taunting her that her father had given nothing in dowry. Her husband and other members of his family started hurling filthy abuses at the appellant. Further, respondent No.1, told the appellant to fetch Rs.50 lakhs from her father so that he can pass the MIC examination. He told her, he will only keep her if she tells her father to give Rs.50 lakhs.

6. Due to continuous cruelty faced by the appellant at the hands of the private respondents, she returned to her paternal home and registered an FIR being FIR No.35 of 2024 registered at Police Station Alot, District Ratlam, Madhya Pradesh under Section 498A of the IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961 against Ishaan Khan, respondent No.1 (husband), Irfana Bee, respondent No.2 (mother-in-law), Ishaq Khan, respondent No.3 (father-in-law), Aaysha Bee, respondent No.4 (sister-in-law) and Shahid Khan, respondent No.5 (brother-in-law).

7. It was specifically mentioned in the FIR that after 5-6 months of marriage, all the above-named persons started taunting her for not giving dowry. It was stated that on 22.07.2021, respondent Nos.1 to 5 hurled abuses at her and her brother-in-law, who is respondent No.5, slapped her and asked her to bring dowry. Thereafter, on 27.11.2022, respondent No.1, her husband, asked her to bring Rs.50 lakhs from her father as he wanted to pursue further medical studies. Pursuant to which, her husband ousted both, the appellant and their son Iwaan Khan, from the matrimonial house. Thereafter, the appellant started residing with her parents. It was further stated on behalf of the appellant that her father made several attempts to reconcile differences, but the private respondents were adamant in their demand for the sum of Rs.50 lakhs.

8. Against FIR No.35 of 2024, respondent Nos.1 to 5 preferred Miscellaneous Criminal Case No.10695 of 2024, a petition under Section 482 of the Code of Criminal Procedure Code, 1973, for quashing of the said FIR registered under Section 498A of the IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 and all further proceedings arising therefrom.

9. The High Court vide the impugned order dated 19.07.2024 allowed the Miscellaneous Criminal Case No.10695 of 2024. Being aggrieved thereby, the present Appeal has been filed.

10. While issuing notice in this matter, this Court passed the following order on 24.01.2025:

"1. Delay condoned.

2. We have perused the complaint dated 23rd January, 2023, filed by the instant petitioner at the concerned police station, which is part of the additional documents filed by the petitioner (page no.6).

3. Prima facie, we are of the view that the matter requires consideration, more so, in view of the observation made by the High Court in Para No.10 of the impugned order.

4. Issue notice, returnable on 28.02.2025.

5. Dasti service, in addition, is permitted. Steps for service be taken within two weeks."

(emphasis supplied)

This Court noted that this matter requires consideration, more so, in view of the observation made by the High Court in paragraph 10 of the impugned order.

B. SUBMISSIONS OF PARTIES

11. We have heard the learned counsel for the appellant, learned Amicus Curiae for the unrepresented private respondent Nos.1 to 5 and learned counsel for respondent No.6-State of Madhya Pradesh.

12. Learned counsel appearing on behalf of respondent No.6/State argues that power of quashing should be exercised only in rarest of rare cases. The High Court while examining an FIR/complaint ought not to embark upon an enquiry as to the reliability and genuineness of allegations. It was also argued that merely because the appellant did not mention the two specific incidents earlier in the complaints before registration of the FIR, the same could not have been termed as an afterthought when other specific allegations of harassment and demand of dowry were mentioned. To bolster his submissions, reliance has been placed on the decisions of this Court in *Neeharika Infrastructure Private Limited v. State of Maharashtra and Others*³ and *State of Haryana and Others v. Bhajan Lal and Others*⁴.

13. Learned Amicus Curiae appearing on the behalf of the private respondents submits that a bare perusal of the complaints dated 22.01.2023 and 23.01.2023 lodged by the appellant before the Women's Cell in Ratlam and the subsequent FIR dated 28.01.2024 would reveal that there are some inconsistencies in the contents thereof.

The complaints filed before the Women's Cell in Ratlam are generic in nature whereby the appellant had inter alia alleged that since her marriage, she was not being treated properly and was subjected to abuses and constant taunts for not

bringing enough dowry and respondent No. 2 i.e. the mother-in-law, was not providing enough food and water to her whilst also keeping her under constant surveillance. Interestingly, there is no mention of either of the two dates i.e. 22.07.2021 and 27.11.2022. Further, there is no mention of a crystallized amount of dowry allegedly demanded by respondent Nos. d1 to 5 in these complaints.

14. It was further argued that the appellant was allegedly ousted from her matrimonial home on 27.11.2022 by respondent No.1. Thereafter, she filed a complaint before the Women's Cell, Ratlam on 22.01.2023 whereas the FIR was lodged after a delay of 1 year i.e. on 28.01.2024. Further, the contents of the FIR reveal that the appellant has not made specific allegations against respondent Nos. 2 to 4 and merely vague and omnibus averments have been made, which even if relied on their face value, do not constitute the commission of a cognizable offence.

15. To bolster his submissions, learned Amicus Curiae has relied on the decisions of this Court in *Lalita Kumari v. Government of Uttar Pradesh and Others*⁵, *Mahmood Ali and Others v. State of Uttar Pradesh and Others*⁶, *Digambar and Another v. State of Maharashtra and Another*⁷ and *Dara Lakshmi Narayana and others v. State of Telangana and Another*⁸.

16. The rival submissions now fall for our consideration.

C. ANALYSIS

17. The main issue that arises for our analysis is whether the High Court was right in quashing the criminal proceedings against the private respondents primarily on the ground that the earlier complaints did not mention the two specific incidents dated 22.07.2021 and 27.11.2022, which were later on added in the FIR and whether the same would not amount to conducting a 'mini trial' which is clearly prohibited under the scheme of Section 482 of the Cr.PC.

18. At the outset it will be appropriate to advert to the observations made by the High Court in paragraphs 9 and 10 of the impugned order:

"9. It is undisputed that prior to filing FIR (Annexure P/5), a written complaint dated 22.01.2023 (Annexure P/3) was filed before Mahila Police Station, Ratlam, District Ratlam (MP) for the alleged harassment meted out to respondent No.2 from her husband and in-laws (applicants before this Court). It is also not in dispute that both the parties i.e. applicant No. 1 and respondent No.2, on their counter allegations, were advised by Police Mahila Thana, Ratlam to take recourse of law, but no action was taken on the above 3 MCRC-10695-2024 complaint by respondent No.2. In such a situation, if respondent No.2 was aggrieved of advice dated 23.01.2023 given by Mahila Police Station, Ratlam,

she might have approached the Superintendent of Police for inaction on the part of the concerned Police Station on her complaint, but this has not been done.

10. It is also pertinent to note that in the (sic) above written complaint, there has not been a whisper of the events of harassment on 22.07.2021 and 27.11.2022, as narrated in the FIR (Annexure P/5). It manifests that the alleged incidents of harassment meted out to the complainant allegedly took place on 22.07.2021 and 27.11.2022 are afterthought. The contentions raised on behalf of the applicants that FIR (Annexure P/5) is a counterblast to notice (Annexure P/1) given by applicant No. 1 to respondent No.2 also finds support from the above."

(emphasis supplied)

19. From a bare perusal of the above mentioned paragraphs it can be seen that one of the important factors that weighed in while allowing the quashing application of the private respondents was that in the earlier complaints filed by the appellant, there was no mention of the events of harassment that happened on 22.07.2021 and 27.11.2022, which were later on added in the FIR dated 28.01.2024. Hence, we extract the relevant portion of the complaints dated 22.01.2023 and 23.01.2023 which would clearly indicate prime facie allegations of harassment and demand of dowry against the private respondents:

"22.01.2023

That immediately after the Nikah, the respondents namely Ishan, father-in-law Ishaq Khan, mother-in-law Irfana Bi, sister-in law (Nanad) Ayesha, Nandoi Shayid Khan, Jeth Hemuddin son of Akbar Khan resident of Ujjain started raising demand of dowry from me. They are constantly causing physical and mental harassment for the last two years. A demand of dowry is being raised every day since the day of my marriage. My father gave a Pulsar Bike but I was asked to bring a car.

On the occasion of my sister-in-law's wedding, they asked me to ask my father to give an A.C to their daughter Ayesha in the dowry. My mother-in-law did not allow my husband to come to the hospital at the time of my delivery. At the time of my 'God- Bhara', she demanded clothes and my mother-in-law puts restrictions on my eating food and having breakfast. She asks me to eat the same vegetable three times a day and asks me not to eat breakfast, she lets me drink tea once a day, she has installed cameras in my kitchen. My mother-in-law locks me in the house from outside.

She does not allow me to talk to my husband. My husband would come to me at 11 o'clock in the night and would quarrel with me and assault me. My sister-in-law and brother-in-law would come to Ghosla almost every day and would scare me and threaten to kill me. They do not give me my mobile phone, they do not let

my family members come to Ghosla and talk to me even on the phone. It is the daily routine of my father-in-law to hurl abuses morning and evening."

23.01.2023

Since after my marriage, I have been tortured and threatened. Ask your father to give a car and a demand was raised for an A.C. in my sister-in-law's marriage. When the demand could not be fulfilled by my father, I am being made to eat same vegetable for three days and they do not allow me to take my breakfast and I am given tea only once in a day. My mother-in-law, sister-in-law, brother-in-law and father-in-law come together to my room and hurl abuses and threaten me. My father-in-law hurls abuses in obscene language and my mother-in-law makes me work the entire day and does not let me eat anything.

My sister-in-law and brother-in-law everyday tell my mother-in-law to send him away over the phone. Many times they confine me in the room and lock the same from outside and I am not allowed to go out and I am not even allowed to open the window of the house. They have confined me as hostage in the house for many days. They do not let me talk to my family on phone and do not even let my family members meet me. My husband is also involved in all this. He never gives me even 2 rupees for expenses. They do not even allow me to visit my relatives. As such, being troubled by all this, I came to my parents' house."

It is also apposite that we extract the relevant portions of the FIR so as to better understand the allegations against the private respondents, particularly the two specific incidents that happened on 22.07.2021 and 27.11.2022. The relevant extract reads thus:

"I kept tolerating their taunts in order to save my marital life. But on 22.07.2021, my husband Ishan Khan, mother-in-law Irfana Bee, father-in-law Ishaq Khan, sister-in-law Aaysha Bee and brother-in-law (Nandoi) Syed Khan hurled abuses to me. My brother-in-law (Nandoi) Syed Khan slapped me also and asked me to bring dowry from your father's house. Despite all this, I kept tolerating their torture. But on 27.11.2022, my husband Ishan Khan told me that I have passed the examination of M.B.B.S. and now I have to pursue M.C.I. Examination, as such, now if you will bring an amount of Rs. fifty lacs from your father, only then, I will keep you with me and say this, he ousted me and my son Iwaan Khan from the house while holding our hand.

Thereafter, I came to my father Zahid Khan's house at Alot and narrated the entire incident to my father and mother Parveen Bee. Since then, I am residing at Alot alongwith my father. My father made several attempts to make my husband and in-laws understand but these people are adamant for their demand of dowry

of a sum of Rs. fifty lacs that unless and until, they are given a dowry of Rs. fifty lacs, they will not take me with them. Today, I have come to make a report in the police station alongwith my father Zahid Khan. I lodge the report, action may be taken."

(emphasis supplied)

20. The classic exposition on law under Section 482 of the CrP.C is found in Bhajan Lal (supra) wherein this Court elaborated upon the scope of Section 482 of the Cr.PC. It was held thus:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

21. In *Daxaben v. State of Gujarat and Others*⁹, a two-Judge Bench held as follows:

"26. Even though, the inherent power of the High Court under Section 482 CrPC, to interfere with criminal proceedings is wide, such power has to be exercised with circumspection, in exceptional cases. Jurisdiction under Section 482 CrPC is not to be exercised for the asking.

27. In *Monica Kumar v. State of U.P.* [(2008) 8 SCC 781 : (2008) 3 SCC (Cri) 649], this Court held that inherent jurisdiction under Section 482 CrPC has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.

28. In exceptional cases, to prevent abuse of the process of the Court, the High Court might in exercise of its inherent powers under Section 482 quash criminal proceedings. However, interference would only be justified when the complaint did not disclose any offence, or was patently frivolous, vexatious or oppressive, as held by this Court in *Dhanalakshmi v. R. Prasanna Kumar* [1990 Supp SCC 686 : 1991 SCC (Cri) 142 : AIR 1990 SC 494].

36. Offence under Section 306 IPC of abetment to commit suicide is a grave, non-compoundable offence. Of course, the inherent power of the High Court under Section 482 CrPC is wide and can even be exercised to quash criminal proceedings relating to non-compoundable offences, to secure the ends of justice or to prevent abuse of the process of court. Where the victim and offender have compromised disputes essentially civil and personal in nature, the High Court can exercise its power under Section 482 CrPC to quash the criminal proceedings. In what cases power to quash an FIR or a criminal complaint or criminal proceedings upon compromise can be exercised, would depend on the facts and circumstances of the case."

22. On the aspect of the powers of the Courts under Section 482 of the Cr.PC, it is settled that at the stage of quashing, the Court is not required to conduct a mini trial. Thus, the jurisdiction under Section 482 of the Cr.PC with respect to

quashing is somewhat limited as the Court has to only consider whether any sufficient material is available to proceed against the accused or not. If sufficient material is available, the power under Section 482 should not be exercised.

23. This Court in the case of *State of Odisha v. Pratima Mohanty and Others*¹⁰ held that:

"8.2. It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per the settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule.

Normally the criminal proceedings should not be quashed in exercise of powers under Section 482 CrPC when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or considering the application under Section 482 CrPC the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini-trial. As held by this Court the powers under Section 482 CrPC are very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court."

24. Further in the case of *Central Bureau of Investigation v. Aryan Singh and Others*¹¹, this Court held that at the stage of Section 482 of the Cr.PC, the High Court is not required to conduct a mini trial.

"6. From the impugned common judgment and order [*Aryan Singh v. CBI*, 2022 SCC OnLine P&H 4158] passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned trial court on conclusion of trial.

As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 CrPC, the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency."

(emphasis supplied)

25. This Court in Neeharika Infrastructure Private Limited (supra) gave following directions to the Courts exercising the power under Section 482 of the Cr.PC:

"Conclusions

33. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482CrPC and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/charge-sheet is filed under Section 173CrPC, while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482CrPC and/or under Article 226 of the Constitution of India, our final conclusions are as under:

33.1

33.2. Courts would not thwart any investigation into the cognizable offences.

33.3. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on.

33.4. The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the "rarest of rare cases" (not to be confused with the formation in the context of death penalty).

33.5. While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

33.6

33.7. Quashing of a complaint/FIR should be an exception rather than an ordinary rule.

33.8 to 33.11

33.12. The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds

that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

33.13 and 33.14....

33.15. When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482CrPC, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

(emphasis supplied)

26. Further, this Court in the case of State of Telangana v. Habib Abdullah Jeelani and Others¹² held that:

"13. There can be no dispute over the proposition that inherent power in a matter of quashment of FIR has to be exercised sparingly and with caution and when and only when such exercise is justified by the test specifically laid down in the provision itself. There is no denial of the fact that the power under Section 482 CrPC is very wide but it needs no special emphasis to state that conferment of wide power requires the Court to be more cautious. It casts an onerous and more diligent duty on the Court.

14. In this regard, it would be seemly to reproduce a passage from Kurukshetra University [Kurukshetra University v. State of Haryana, (1977) 4 SCC 451: 1977 SCC (Cri) 613] wherein Chandrachud, J. (as his Lordship then was) opined thus : (SCC p. 451, para 2)

"2. It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, it could quash a first information report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the FIR. It ought to be realised that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.""

(emphasis supplied)

27. We are of the view that the High Court has erred in law by embarking upon an enquiry with regard to credibility or otherwise of the allegations in the

complaints and the FIR. Normally, for quashing an FIR, it must be shown that there exists no prime facie case against the accused persons. In the present case, from the conjoint reading of the complaints and the FIR, it can be seen that prime facie allegations of harassment and demand of dowry are made out, despite that the High Court quashed the FIR against the private respondents primarily on the ground that the earlier two complaints that were filed by the appellant did not mention the specific instances that happened on 22.07.2021 and 27.11.2022 and the same were later on mentioned in the FIR only as an afterthought and was a counterblast to the legal notice sent by respondent no.1/husband to the appellant as she was not coming back to her matrimonial home. This approach adopted by the High Court, in our considered opinion, amounts to conducting a mini trial.

28. Accordingly, in our view, the present case warrants interference by this Court, and we do so. We hereby set aside the impugned order passed by the High Court in Miscellaneous Criminal Case No.10695 of 2024.

29. The Appeal is, accordingly, allowed. All contentions and defences available to the respective parties are kept open which shall be considered by the Trial Court on its own merits and in accordance with law.

.....**J. (Sanjay Karol)**

.....**J. (Prashant Kumar Mishra)**

New Delhi;

November 06, 2025

1 "IPC"

2 For short, 'the Cr.PC'

3 (2021) 19 SCC 401

4 1992 Supp (1) SCC 335

5 (2014) 2 SCC 1

6 (2023) 15 SCC 488

7 2024 SCC OnLine SC 3836

8 (2025) 3 SCC 735

9 (2022) 16 SCC 117

10 (2022) 16 SCC 703

11 (2023) 18 SCC 399

12 (2017) 2 SCC 779

IN THE SUPREME COURT OF INDIA

Rohan Vijay Nahar & Ors.

Vs.

State of Maharashtra & Ors.

[Civil Appeal No(S). 5454 of 2019]

[Civil Appeal No. 5501 of 2019]

[Civil Appeal No. 5511 of 2019]

[Civil Appeal No. 14074 of 2024]

[Civil Appeal No. 14075 of 2024]

[Civil Appeal No. 14076 of 2024]

[Civil Appeal No. 14077 of 2024]

[Civil Appeal No. 14087 of 2024]

[Civil Appeal No. 14078 of 2024]

[Civil Appeal No. 14083 of 2024]

[Civil Appeal No. 14079 of 2024]

[Civil Appeal No. 14080 of 2024]

[Civil Appeal No. 14081 of 2024]

[Civil Appeal No. 9434 of 2019]

[Civil Appeal No. 5468 of 2019]

[Civil Appeal No. 5458 of 2019]

[Civil Appeal No. 5473 of 2019]

[Civil Appeal No. 5455 of 2019]

[Civil Appeal No. 5466 of 2019]

[Civil Appeal No. 5456 of 2019]

[Civil Appeal No. 5457 of 2019]

[Civil Appeal No. 5460 of 2019]

[Civil Appeal No. 5469 of 2019]

[Civil Appeal No. 5462 of 2019]

[Civil Appeal No. 5503 of 2019]

[Civil Appeal No. 5465 of 2019]

[Civil Appeal No. 5459 of 2019]

[Civil Appeal No. 5461 of 2019]

[Civil Appeal No. 5467 of 2019]

[Civil Appeal No. 5463 of 2019]

[Civil Appeal No. 5464 of 2019]

[Civil Appeal No. 5483 of 2019]

[Civil Appeal No. 5834 of 2019]

[Civil Appeal No. 5504 of 2019]

[Civil Appeal No. 5512 of 2019]

[Civil Appeal No. 5474 of 2019]

[Civil Appeal No. 5508 of 2019]

[Civil Appeal No. 5476 of 2019]

[Civil Appeal No. 5506 of 2019]
[Civil Appeal No. 5478 of 2019]
[Civil Appeal No. 5487 of 2019]
[Civil Appeal No. 5480 of 2019]
[Civil Appeal No. 5481 of 2019]
[Civil Appeal No. 5608 of 2019]
[Civil Appeal No. 14105 of 2024]
[Civil Appeal No. 5502 of 2019]
[Civil Appeal No. 5509 of 2019]
[Civil Appeal No. 5513 of 2019]
[Civil Appeal No. 1592 of 2023]
[Civil Appeal No. 5505 of 2019]
[Civil Appeal No. 5507 of 2019]
[Civil Appeal No. 1504 of 2020]
[Civil Appeal No. 574 of 2020]
[Civil Appeal No. 582 of 2020]
[Civil Appeal No. 576 of 2020]
[Civil Appeal No. 14086 of 2024]
[Civil Appeal No. 14098 of 2024]
[Civil Appeal No. 14088 of 2024]
[Civil Appeal No. 14089 of 2024]
[Civil Appeal No. 14106 of 2024]
[Civil Appeal No. 14094 of 2024]
[Civil Appeal No. 14097 of 2024]
[Civil Appeal No. 6245 of 2019]
[Civil Appeal No. 1538 of 2020]
[Civil Appeal No. 1721 of 2020]
[Civil Appeal No. 3433 of 2020]
[Civil Appeal No. 1594 of 2023]
[Civil Appeal No. 14082 of 2024]
[Civil Appeal No. 14085 of 2024]
[Civil Appeal No. 14073 of 2024]
[Civil Appeal No. 14070 of 2024]
[Civil Appeal No. 14103 of 2024]
[Civil Appeal No. 14104 of 2024]
[Civil Appeal No. 5491 of 2019]
[Civil Appeal No. 5490 of 2019]
[Civil Appeal No. 5489 of 2019]
[Civil Appeal No. 5471 of 2019]
[Civil Appeal No. 5470 of 2019]
[Civil Appeal No. 5472 of 2019]
[Civil Appeal No. 5488 of 2019]
[Civil Appeal No. 5499 of 2019]
[Civil Appeal No. 5482 of 2019]

[Civil Appeal No. 5477 of 2019]
[Civil Appeal No. 5486 of 2019]
[Civil Appeal No. 5475 of 2019]
[Civil Appeal No. 5485 of 2019]
[Civil Appeal No. 5484 of 2019]
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[Civil Appeal No. 5497 of 2019]
[Civil Appeal No. 5498 of 2019]
[Civil Appeal No. 5495 of 2019]
[Civil Appeal No. 5496 of 2019]
[Civil Appeal No. 5494 of 2019]
[Civil Appeal No. 5500 of 2019]

Head Note - The judiciary draws its strength from discipline and not dominion, underscoring that obedience to binding precedent is a constitutional duty.

Restate the simple duty of Courts, apply precedent as it stands and give effect to appellate directions as they are framed. In that discipline lies the confidence of litigants and the credibility of courts.

The Constitution of India creates courts of record that are independent in their spheres and yet binds them together through a coherent hierarchy. The High Courts in India possess a wide jurisdiction, but the Supreme Court of India remains the final interpreter of law. Article 141 of the Constitution of India declares that the law laid down by this Court binds every court in the country. Further, Article 144 of the Constitution obliges all authorities, civil and judicial, to act in aid of this Court. These are not ceremonial recitals. They are the structural guarantees that convert dispersed adjudication into a single system that speaks with one voice and commands public confidence.

When a superior court reverses, modifies, or remands, the court below must give full and faithful effect to that disposition. “Resistance or evasion does not merely disserve a party before the court; it erodes predictability, multiplies litigation, and weakens faith in the rule of law.”

Judicial discipline is “the ethic that turns hierarchy into harmony.” Discipline in the judicial system “requires courtesy, restraint, and obedience to binding precedent even where a judge is personally unpersuaded.”

It clarified that the lawful course for a judge who doubts a precedent is to apply it and, if necessary, record reasons for referring the matter to a larger Bench and not to bypass or reinterpret binding law in substance.

Stare decisis et non quieta movere, means to stand by decisions and not to disturb settled matters, is not a slogan but a safeguard of equality before the law.

Judges do not sit to settle scores. The gavel is an instrument of reason and not a weapon of reprisal. A vindictive stance is incompatible with the oath to uphold the Constitution and the law.

JUDGMENT

Vikram Nath, J.

1. The judiciary draws its strength from discipline and not dominion. The Constitution of India creates courts of record that are independent in their spheres and yet binds them together through a coherent hierarchy. The High Courts in India possess a wide jurisdiction, but the Supreme Court of India remains the final interpreter of law. Article 141 of the Constitution of India¹ declares that the law laid down by this Court binds every court in the country. Further, Article 144 of the Constitution obliges all authorities, civil and judicial, to act in aid of this Court. These are not ceremonial recitals. They are the structural guarantees that convert dispersed adjudication into a single system that speaks with one voice and commands public confidence.

2. Appellate jurisdiction exists to correct errors and to settle the law so that like cases receive like outcomes. When a superior court reverses, modifies, or remands, the court below must give full and faithful effect to that disposition. The authority to decide on appeal carries the authority to require compliance, for without obedience, the hierarchy would become an empty form. Resistance or evasion does not merely disserve a party before the court, it erodes predictability, multiplies litigation, and weakens faith in the rule of law. The maxim "interest reipublicae ut sit finis litium" which literally means that it is in the public interest that litigation should come to an end, reminds us that the society has an interest in achieving finality, and finality from the apex court is the glue that holds a nationwide system of justice together.

3. Judicial discipline is the ethic that turns hierarchy into harmony. It requires courtesy, restraint, and obedience to binding precedent even where a judge is personally unpersuaded. The lawful course is to apply the precedent and, if needed, record reasons for inviting a larger Bench to reconsider it. The unlawful and unjust course is to distinguish in name while disregarding in substance or to recast issues in order to sidestep a rule that binds. "Stare decisis et non quieta movere" which means to stand by decisions and not to disturb settled matters, is not a slogan but a safeguard of equality before the law. Judges do not sit to settle scores. The gavel is an instrument of reason and not a weapon of reprisal. A

vindictive stance is incompatible with the oath to uphold the Constitution and the law.

4. Judges across our country must remember that collegiality is the companion virtue of independence and that a reversal on appeal is not a personal affront but the ordinary operation of a constitutional hierarchy that corrects error and settles law. Respect for the senior jurisdiction is not subservience. It is an acknowledgment that all courts pursue a common enterprise to do justice according to law. An Appellate Court reviews and, where necessary, sets right the decision of the lower court with restraint and measured language, and the courts below reciprocate through prompt, reasoned, and transparent compliance. Courts speak through reasons, and reasons that align with binding authority preserve both legality and legitimacy of the judiciary.

Articles 141 and 144 of the Constitution make obedience a constitutional duty and not a matter of personal preference. A judgment that attempts to resist binding authority undermines the unity of law, burdens litigants with avoidable expense and delay, and invites the perception that outcomes depend on the identity of the judge. In a constitutional judiciary, it is the law, as declared, that brings the conversation to a close. We restate the simple duty of Courts: apply precedent as it stands and give effect to appellate directions as they are framed. In that discipline lies the confidence of litigants and the credibility of courts.

5. The present batch of 96 civil appeals arises from the judgment dated 27.09.2018 rendered by the High Court of Judicature at Bombay in a group of writ petitions preferred by the appellants. The High Court declined to interfere with the revenue mutations and annotations that described the subject lands as affected by forest proceedings and as having vested in the State.

The High Court proceeded on the footing that notices said to have been issued around 1960 and published in the Official Gazette were sufficient foundation to treat the lands as private forest under the acquisition regime. On this approach the High Court dismissed the writ petitions and refused the declaratory and consequential reliefs sought by the landholders. One of those petitions is Writ Petition No. 6417 of 2015 which has given rise to the civil appeal before us titled "Rohan Vijay Nahar and Others versus The State of Maharashtra and Others."

6. Before proceeding to the specific facts of these appeals, it is necessary to set out the provisions central to the matters before us.

6.1. The Indian Forest Act, 1927, as adapted and amended in the erstwhile State of Bombay and in the State of Maharashtra, contains Chapter V which deals with control over forests and lands not being the property of Government. By the Indian Forest Act as amended by Bombay Act 62 of 1948, Section 34-A was

inserted to provide an inclusive definition of "forest" for the purposes of Chapter V. By the same amending law, "wastelands" were removed from the reach of certain parts of Chapter V with effect from 04.12.1948. Further amendments were carried out by Bombay Act 24 of 1955 and by Maharashtra Act 6 of 1961. Section 35 of this Act empowers the State Government to regulate or prohibit specified activities in any forest for stated public purposes. The aforementioned provisions have been reproduced hereunder:

"34A. Interpretation:- For the purposes of the Chapter "forest" includes any land containing trees and shrubs, pasture, lands and any other land whatsoever which the State Government may, by notification in the Official Gazette, declare to be a forest.

35. Protection of forests for special purposes:-

(1) The State Government may, by notification in the Official Gazette-

(i) regulate or prohibit in any forest-

(a) the breaking up or clearing of the land for cultivation;

(b) the pasturing of cattle;

(c) the firing or clearing of the vegetation;

(d) the girdling, tapping or burning of any tree or the stripping off the bark or leaves from any trees;

(e) the lopping and pollarding of trees;

(f) the cutting, sawing, conversion and removal of trees and timber; or

(g) the quarrying of stone or the burning of lime or charcoal or the collection or removal of any forest produce or its subjection to any manufacturing process;

(ii) regulate in any forest the regeneration of forests and their protection from fire; when such regulation or prohibition appears necessary for any of the following purposes;

(a) for the conservation of trees and forests;

(b) for the preservation and improvement of soil or the reclamation of saline or water logged land, the prevention of landslips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;

(c) for the improvement of grazing;

(d) for the maintenance of a water supply in spring, river and tanks;

(e) for the maintenance, increase and distribution of the supply of fodder, leaf manure, timber or fuel;

(f) for the maintenance of reservoirs or irrigation works and hydro-electric works;

(g) for protection against storms, winds, rolling stones, floods and drought;

(h) for the protection of roads, bridges, railways and other lines of communication; and

(i) for the preservation of the public health.

(2) The State Government may, for any such purpose, construct at its own expense in any forest such work as it thinks fit.

(3) No notification shall be made under sub section (1) nor shall any work be begun under sub section (2), until after the issue by an officer authorised by the State Government in that behalf of a notice to the owner of such forest calling on him to show cause within a reasonable period to be specified in such notice why such notification should not be made or work constructed as the case may be, and until his objection, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the State Government.

(4) A notice to show cause why a notification under sub section (1) should not be made, may require that for any period not exceeding one year or till the date of the making of a notification, whichever is earlier the owner of such forest and all persons who are entitled or permitted to do therein any or all of the things specified in clause (i) of sub section (1), whether by reason of any right, title or interest or under any licence or contract or otherwise, shall not, after the date of the notice and for the period or until the date aforesaid, as the case may be, do any or all the things specified in clause (i) of sub section (1), to the extent specified in the notice.

(5) A notice issued under sub section (3) shall be served on the owner of such forest in the manner provided in the Code of Civil Procedure, 1908 for the service of summons and shall also be published in the manner prescribed by rules.

(5A) Where a notice issued under sub section (3) has been served on the owner of a forest in accordance with sub section (5), any person acquiring thereafter the

right of a ownership of that forest shall be bound by the notice as if it had been served on him as an owner and he shall accordingly comply with the notice, requisition and notification, if any, issued under this section.

(6) Any person contravening any requisition made under sub section (4) in a notice to show cause why a notification under sub section (1) should not be made shall, on conviction , be punished with imprisonment for a term which may extend to six months or with fine, or with both.

(7) Any person contravening any of the provision of a notification issued under sub section (1) shall, on conviction, be punished with imprisonment for a term which may extend to six months, or with fine, or with both."

6.2. The Maharashtra Private Forests Acquisition Act, 1975, came into force on 30.08.1975. Section 2(c-i) of this Act defines "forest" for the purposes of that Act.

"Section 2(c-i)- "forest" means a tract of land covered with trees (whether standing, felled, found or otherwise), shrubs, bushes, or woody vegetation, whether of natural growth or planted by human agency and existing or being maintained with or without human effort, or such tract of land on which such growth is likely to have an effect on the supply of timber, fuel, forest produce, or grazing facilities, or on climate, stream flow, protection of land from erosion, or other such matters and includes-

(i) land covered with stumps of trees of forest;

(ii) land which is part of a forest or lies within it or was part of a forest or was lying within a forest on the thirtieth day of August, nineteen seventy five;

(iii) such pasture land, water-logged or cultivable or non-cultivable land, lying within or linked to a forest, as may be declared to be forest by the State Government;

(iv) forest land held or let for purpose of agriculture or for any purposes ancillary thereto;

(v) all the forest produce therein, whether standing, felled, found or otherwise;"

Section 2(f) defines "private forest" as follows:

"Section 2(f) - "'private forest' means any forest which is not the property of Government and includes-

- (i) any land declared before the appointed day to be a forest under Section 34-A of the Forest Act;
- (ii) any forest in respect of which any notification issued under sub-section (1) of Section 35 of the Forest Act, is in force immediately before the appointed day;
- (iii) any land in respect of which a notice has been issued under sub-section (3) of Section 35 of the Forest Act, but excluding an area not exceeding two hectares in extent as the Collector may specify in this behalf;
- (iv) land in respect of which a notification has been issued under Section 35 of the Forest Act;
- (v) in a case where the State Government and any other person are jointly interested in the forest, the interest of such person in such forest;
- (vi) sites of dwelling houses constructed in such forest which are considered to be necessary for the convenient enjoyment or use of the forest and lands appurtenant thereto;"

Section 3 provides that with effect from the appointed day all private forests in the State shall stand acquired and shall vest in the State Government free from all encumbrances, subject to the limited saving provided in Section 3(2).

"Section 3 - Vesting of private forests in State Government

(1) Notwithstanding anything contained in any law for the time being in force or in any settlement, grant, agreement, usage, custom or any decree or order of any court, tribunal or authority or any other document, with effect on and from the appointed day, all private forests in the State shall stand acquired and vest, free from all encumbrances, in, and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the State Government; and all rights, title and interest of the owner or any person other than Government subsisting in any such forest on the said day shall be deemed to have been extinguished.

(2) Nothing contained in sub-section (1) shall apply to so much extent of land comprised in a private forest as is held by an occupant or tenant and is lawfully under cultivation on the appointed day and is not in excess of the ceiling area provided by Section 5 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 for the time being in force or any building or structure standing thereon or appurtenant thereto.

(3) All private forests vested in the State Government under sub-section (1) shall be deemed to be reserved forests within the meaning of the Forest Act."

Section 5 authorises State Government entry and taking over of possession of private forests which stand acquired and vested.

"Section 5 - Power to take over possession of private forests"

Where any private forest stands acquired and vested in the State Government under the provisions of this Act, the person authorised by the State Government or by the Collector in this behalf, shall enter into and take over possession thereof, and if any person resists the taking over of such possession, he shall without prejudice to any other action to which he may be liable, be liable to be removed by the use of such force as may be necessary." Section 24 repeals Sections 34-A, 35, 36, 36-A, 36-B, 36-C and 37 of the Indian Forest Act on and from the appointed day, with a later reenactment mechanism for restored lands brought in by the Amending Act of 1978 operating through Section 22-A.

"Section 24 - Repeal of Sections 34-A to 37 of the Forest Act"

"(1) On and from the appointed day, Sections 34- A, 35, 36, 36-A, 36-B, 36-C and 37 of the Forest Act shall stand repealed.

(2) Notwithstanding anything contained in subsection (1), on and from the date of commencement of the Maharashtra Private Forests (Acquisition) (Amendment) Act, 1978 (14 of 1978), Sections 34- A, 35, 36, 36-A, 36-B, 36-C and 37 of the Forest Act shall, in respect of the lands restored under Section 22-A, be deemed to have been re-enacted in the same form and be deemed always to have been in force and applicable in respect of such lands, as if they had not been repealed."

6.3. The Forest (Conservation) Act, 1980, came into force on 25.10.1980. Section 2 of that Act restrains the use of forest land for non-forest purposes without the prior approval of the Central Government and also regulates de-reservation and assignment of forest land.

6.4. The Maharashtra Land Revenue Code, 19663, provides the framework for preparation and maintenance of the record of rights and for mutation of entries upon changes in title or enjoyment. The MLRC also provides departmental remedies by way of appeal, revision and correction of entries. These provisions form the revenue backdrop against which the impugned mutations and annotations were made and challenged.

7. The essential factual backdrop common to this batch of appeals may be summarised as under:

7.1 The appellants are landowners in the State of Maharashtra. The factual background across these appeals and cognate matters that have reached the High Court and this Court over time is broadly similar with only minor variations. The

Respondent State Authorities assert that during the early 1960s notices under Section 35(3) of the IFA were issued and published in the Official Gazette. The stated purpose of these notices was to call upon owners of lands described as forest to show cause why regulatory measures under Section 35(1) of the IFA should not be made and to afford them an opportunity of objection and hearing, including interim restraint as contemplated by Section 35(4) of the IFA.

Such notices were said to have been addressed to the appellants and to other similarly placed private landholders in the concerned districts. The landowners allege that such notices were not personally served as contemplated by Section 35(5) of the IFA, that no inquiry on objections was ever held, and that no proceedings culminated in a final notification under Section 35(1) of the IFA. The landowners state that the proceedings then lay dormant for extended periods.

7.2 The Maharashtra Private Forests Acquisition Act, 1975 commenced on 30.08.1975. The landowners allege that even after its commencement the State Authorities did not take possession under Section 5 of the MPFA and for decades the lands continued to be dealt with as private holdings. Transfers were effected, permissions were granted by revenue and charity authorities, planning documents described the lands as agricultural or no development zones, possession remained with private owners or transferees, and no compensation was paid. The State Authorities, on the other hand, contend that publication of the notices and the inclusive definition of private forest in Section 2(f)(iii) of the MPFA furnished the legal basis for vesting.

7.3 Beginning around 2001, the State Authorities initiated an administrative exercise to annotate village records so as to reflect affectation by forest proceedings and vesting under the MPFA. Talathis and Circle Officers made entries in village forms including the other rights column of Form VII and Form XII with references to notices under Section 35(3) of the IFA from the 1960s and in several matters the name of the State was thereafter carried into the ownership column. The landowners allege that these mutations were made without prior notice and without adherence to the MLRC. The State Authorities state that the entries were ministerial reflections of statutory consequences.

7.4 The annotations and mutations produced collateral effects. Sub-Registrars declined registration of instruments having regard to departmental instructions. Possession nonetheless remained with private parties. No award of compensation was made. Departmental remedies under the MLRC were invoked by several landholders but many such proceedings did not reach adjudication. In that situation writ petitions were filed seeking correction of records, declaratory relief regarding title and vesting, and restoration of entries consistent with private title and possession. This pattern also appears in cognate matters already decided, and it forms part of the common factual narrative that frames the present batch.

8. The nature of the challenges brought before the High Court across this subject matter, including earlier cognate petitions, was as follows:

8.1 The landholders approached the High Court by various petitions to question the legality of revenue annotations and mutation entries that described their lands as affected by forest proceedings and as having vested in the State. They sought quashing of those entries and a declaration that their lands were not private forests within the meaning of the MPFA. They also prayed for directions to restore the record of rights in the names of the private owners and for consequential reliefs to protect title and possession.

8.2 The principal grounds urged by the petitioners were that publication of a notice under Section 35(3) of the IFA in the Official Gazette without personal service under Section 35(5) of the IFA could not lawfully found any adverse consequence. They pleaded that no inquiry on objections was ever held and that no notification under Section 35(1) of the IFA was ever issued. They asserted that the proceedings lay dormant for decades and that a stale or inchoate notice could not trigger vesting under Section 3 of the MPFA. They further contended that possession had never been taken under Section 5 of the MPFA, that compensation had never been paid, and that the lands continued to be treated as private holdings in revenue and planning processes for long periods. Violations of the MLRC and breach of natural justice were also pleaded.

8.3 The State responded that issuance of notices referable to Section 35(3) of the IFA in the early 1960s brought the lands within the inclusive definition of private forest in Section 2(f)(iii) of the MPFA and that vesting under Section 3 of the MPFA followed as a matter of law. It was submitted that the challenged revenue entries were ministerial reflections of statutory consequences. The State also raised objections regarding delay and laches and pointed to departmental remedies available under the MLRC.

8.4 In many of these petitions the High Court heard the matters together and treated them as raising common questions. The issues framed typically included whether the fact of a notice said to have been issued under Section 35(3) of the IFA was by itself sufficient to attract Section 2(f)(iii) of the MPFA, whether service under Section 35(5) of the IFA and a final notification under Section 35(1) of the IFA were jurisdictional preconditions, whether long dormancy could defeat subsequent assertions of vesting, and whether the impugned mutations could stand in the face of the procedures mandated by the MLRC.

9. In one cognate batch of writ petitions decided by the High Court on 24.03.2008, namely "Oberoi Constructions Private Limited v. State of Maharashtra⁵, which was later set aside by this Court in "Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra⁶, the High Court gave the following findings:

9.1 In that matter, the petitioners were real-estate developers who had acquired lands in Mumbai Suburban District long after Gazette publications of notices said to be under Section 35(3) of the IFA. For decades the lands had been treated as non-agricultural and placed in industrial or residential zones under successive development plans. Around 2005-2006, the State Authorities made mutation and annotation entries recording the lands as "private forest" and as vested in the State under the MPFA. The petitioners challenged these entries and the foundational reliance on old Section 35(3) notices, invoking absence of personal service, the lack of any final notification under Section 35(1) of the IFA, prolonged dormancy, and inconsistency with permissions under the Maharashtra Regional and Town Planning Act, 1966 and proceedings under the Urban Land Ceiling law.

9.2 Proceeding principally on two Judge Bench decision of this Court in Chintamani Gajanan Velkar v. State of Maharashtra⁷, the High Court held that the expression in Section 2(f)(iii) of the MPFA, "a notice has been issued under Section 35(3) of the IFA", is satisfied by the fact of issuance, which could be evidenced by Gazette publication. Service under Section 35(5) of the IFA or culmination in a notification under Section 35(1) of the IFA was not treated as a jurisdictional precondition.

9.3 The High Court further held that Section 35(4) of the IFA does not create any lapse by efflux of time, and that the MPFA contains no requirement that a notice be "live" or "subsisting." The Court declined to read such a gloss into Section 2(f)(iii), rejecting arguments based on delay, abandonment, or desuetude.

9.4 Treating Section 34-A of the IFA as an inclusive interpretation clause, the High Court rejected the submission that a prior declaration under Section 34-A was a sine qua non for measures under Section 35 of the IFA or for invoking Section 2(f)(iii) of the MPFA.

9.5 On vesting and its incidents, the High Court concluded that Section 3 of the MPFA, with its non obstante clause, prevailed over inconsistent zoning, permissions, or exemptions under other enactments. Development plans under the Maharashtra Regional and Town Planning Act, 1966 and proceedings under the Urban Land Ceiling law could not defeat statutory vesting. The impugned revenue mutations and annotations were sustained as ministerial reflections of such vesting, and objections based on the MLRC were not accepted, particularly in light of directions issued in public-interest proceedings to update records.

9.6 Reliance was placed on the presumption of regularity of official acts; the fact that many petitioners were derivative owners without personal knowledge of the original events was noted. On this reasoning, the writ petitions were dismissed.

10. The judgement in Oberoi Constructions Private Limited v. State of Maharashtra (supra) was challenged in this Court and decided by a three Judge Bench on 30.01.2014 and has been the prevailing precedent in such matters viz. Godrej & Boyce (supra). This Court gave the following findings:

10.1 This Court held that the mere issuance of a notice under Section 35(3) of the IFA is not, by itself, sufficient to treat land as a "private forest" within Section 2(f)(iii) of the MPFA. The answer to the principal question was returned in the negative.

10.2 Interpreting the expression "a notice has been issued" in Section 2(f)(iii) of the MPFA, when read with Section 35 of the IFA, the Court held that "issuance" cannot be divorced from service. Given the statutory scheme, a valid notice under Section 35(3) of the IFA necessarily entails service on the owner, an opportunity to file objections, to adduce evidence, and to be heard. Because interim restraints may be imposed under Section 35(4) of the IFA and penal consequences attach under Section 35(7) of the IFA, service is inherent to the process. Section 35(5) of the IFA, requiring service in the CPC manner and publication as prescribed, reinforces this conclusion.

10.3 On this basis, the view in Chintamani Gajanan Velkar (Supra) that a bare, unserved notice sufficed for Section 2(f)(iii) of the MPFA was found to have overlooked the Bombay/Maharashtra amendments to Section 35 of the IFA and to have proceeded on an erroneous premise regarding the two-hectare exclusion. It was overruled to that extent.

10.4 The Court further clarified that Section 2(f)(iii) of the MPFA saves only "live" or "pipeline" notices, those issued and pursued in reasonable proximity to 30.08.1975. Notices left undecided for years or decades lapse into desuetude. The State is obliged to act within a reasonable time; a notice from 1956-57, never taken to its statutory culmination, cannot be revived to effect vesting on the appointed day.

10.5 On the definitional plane, the Court reaffirmed that the "means and includes" formulation in Section 2(c-i) of the MPFA does not dilute the primary sense of "forest". Lands long designated for urban use, developed under sanctioned plans and permissions, and integrated with municipal infrastructure could not, on the admitted facts, be regarded as "forest" either in the primary or extended sense of Section 2(c-i) of the MPFA.

10.6 Recognising the expropriatory character of the MPFA, the Court applied strict construction. Fundamental norms of fairness and good governance preclude unsettling settled civilian and commercial arrangements after prolonged State

inaction, particularly where the State itself facilitated and acquiesced in development over decades.

10.7 Even assuming arguendo that the lands were forest, wholesale demolition and dispossession after half a century was neither feasible nor in the public interest on the facts recorded. The equities of third-party purchasers and residents, the State's prolonged acquiescence, and the practical impossibility of "restoration" militated against such a course.

10.8 In consequence, the appeals were allowed, the High Court's judgement was set aside, and actions premised solely on stale notices under Section 35(3) of the IFA were quashed.

11. After the judgement of Godrej and Boyce (supra), the High Court has followed it as a binding precedent and used its findings to decide similar matters, whose facts are akin to those of the appellants before us. Some of these are enlisted hereunder:

11.1 Satellite Developers Ltd. v. State of Maharashtra⁸: Here the High Court held that mere issuance of a notice under Section 35(3) of the IFA does not vest land in the State. It further observed that entries made in 2006 pursuant to directions in a public interest litigation would not, by themselves, effect vesting, particularly when no further steps under Section 35(3), Section 35(4), and Section 35(5) of the IFA were undertaken.

11.2 Sinhgad Technical Education Society v. Deputy Conservator of Forests⁹: In the case of a subsequent purchaser, the High Court reaffirmed that service of notice under Section 35(3) of the IFA is mandatory.

11.3 Ozone Land Agro Pvt. Ltd. v. State of Maharashtra¹⁰: Emphasising Godrej and Boyce (supra), the High Court reiterated that mere issuance of a notice under Section 35(3) of the IFA is not sufficient to vest land with the State and declined a remand as futile given the authorities' stated stance.

11.4 Arjun Sitaram Nitnwar (Dr.) v. Tahsildar, District Thane¹¹: The High Court held that a bare Section 35(3) notice under the IFA is insufficient to effect vesting.

11.5 Lalit A. Sangtani v. State of Maharashtra¹²: The High Court underscored that due service of a notice under Section 35(3) of the IFA is mandatory.

11.6 Bharat Chandulal Nanavati v. Union of India¹³: Addressing a subsequent purchaser and proceedings under Section 22A of the MPFA, the High Court held that "issued" in Section 2(f)(iii) of the MPFA necessarily includes service. Finding no proof or contemporaneous record of service of the notice dated

17.02.1956, the High Court concluded that proceedings under Section 22A of the MPFA could not be founded merely on Section 2(f)(iii) of the MPFA.

11.7 Global Estate Developers v. State of Maharashtra¹⁴: The High Court confined itself to whether the land qualified as "private forest" under the MPFA and reiterated the mandate of service under Section 35(3) of the IFA. 11.8 Indrajeet Kashinath Kaiswal v. State of Maharashtra¹⁵: The High Court clarified that Section 2(f)(iii) of the MPFA applies only to "live" or "pipeline" notices under Section 35(3) of the IFA, not stale notices left undecided.

11.9 Nana Govind Gavate v. State of Maharashtra¹⁶: In a matter involving acquisition and subsequent return, the High Court again insisted upon proof of service of the notice under Section 35(3) of the IFA.

11.10 Shree Maruti Sansthan Trust v. State of Maharashtra¹⁷: For a subsequent purchaser, the High Court noted that apart from an entry in the "Golden Register" there was no material showing issuance and/or service of a notice under Section 35(3) of the IFA.

11.11 Vishram Vishwanath Kunte v. State of Maharashtra¹⁸: During the pendency of an inquiry under Section 22A of the MPFA, a mutation entry branded the land as forest; the High Court deprecated recurring affidavits from State officers asserting that Godrej and Boyce (supra) laid down no law, terming this "continued defiance of the law laid down by the Supreme Court in Godrej & Boyce."

12. However, for the present appellants, whose facts are similar to those of the various petitioners in the different judgements of the High Court as well as those in Godrej and Boyce (Supra) discussed above, the High Court vide the impugned judgment and order dated 28.09.2018 dismissed all the writ petitions. It would be worthwhile to record here that one member of the Division Bench of the High Court had authored the decision in Oberoi Constructions Private Limited v. State of Maharashtra (Supra) that was later overturned in Godrej and Boyce (supra). The impugned judgment proceeds on the following reasons:

12.1 The High Court framed the primary issue as whether Godrej and Boyce (supra) applied, and secondly whether subsequent purchasers could rely upon it when their predecessors-in-title had not questioned the applicability of the MPFA or the steps taken thereunder.

12.2 Proceeding from Section 3 of the MPFA, the High Court held that vesting of all "private forests" was complete on the appointed day (30.08.1975) and that any post-1975 transactions were ineffectual to confer title. Mutation entries made in 2002 were treated as a ministerial reflection of an earlier vesting rather than its source.

12.3 On Section 35 process under the IFA, the High Court accepted the State's case that notices under Section 35(3) of the IFA had been issued and served, and, in several matters, that a notification under Section 35(1) of the IFA was in force before the appointed day. Reliance was placed on the "Golden Register", Gazette extracts, possession notices referable to Section 5 of the MPFA, lists circulated in 1976, and panchanamas; the contrary pleadings of the petitioners were described as guarded or vague.

12.4 The High Court distinguished *Godrej and Boyce (supra)*, observing that the owners there had an earlier consent decree, long-standing sanctioned development, and an evidentiary vacuum on service and follow-through. On that basis, the High Court treated *Godrej and Boyce (supra)* as fact-specific and of limited assistance to subsequent purchasers.

12.5 As to the term "issued" in Section 2(f)(iii) of the MPFA and the service requirement traced to Section 35(5) of the IFA, the High Court did not dispute the principle in *Godrej and Boyce (supra)* but concluded that, on the records cited, the requirement stood satisfied in these matters.

12.6 On "stale" versus "live" notices, the High Court read *Godrej and Boyce (supra)* as context-bound and, in any event, held that even if Section 2(f)(iii) of the MPFA were unavailable, the State could succeed on the primary definition of "forest" in Section 2(c-i) of the MPFA, including by reference to natural growth and contiguity with reserved forest.

12.7 The High Court emphasised that most petitioners were subsequent purchasers who came on the scene long after 30.08.1975, and stated it was "surprising" that they sought to contest service under Section 35(3) of the IFA without affidavits from original owners or contemporaneous material; burden was effectively placed on the petitioners to dislodge official records.

12.8 Entries describing lands as "Private Forest-Forest Department" were justified as having been made pursuant to directions in PIL No. 17 of 2002 and Government circulars; the High Court considered the challenge to such entries, decades after vesting, to be misconceived.

12.9 Arguments based on Section 21 of the MPFA were rejected; the High Court treated that provision as an enabling route, not a precondition to vesting already effected by Section 3 of the MPFA.

12.10 Contentions invoking the two-hectare exclusion in Section 2(f)(iii) of the MPFA were declined, the High Court holding that later allotment of gata/survey sub-divisions could not undo vesting.

12.11 Objections raised under Section 22A of the MPFA and to certificates under Section 6 of the MPFA were addressed with reference to the Forest (Conservation) Act, 1980, the High Court reiterating that prior approval under that Act was necessary and past non-compliant issuances could not aid the petitioners.

12.12 While one exceptional matter (e.g., involving long-standing urban use or missing records) was remitted for verification by the Collector, the High Court otherwise dismissed the petitions, characterising several as commercially motivated and not bona fide, and cautioning that entertaining them would weaken forest protection.

13. We have gone through the comprehensive material on record, the submissions of the learned counsel for the appellants and for the respondent-State, as well as the impugned order of the High Court. Having done so, we are of the considered view that the impugned judgment of the High Court cannot be sustained for the following reasons:

13.1 In our opinion, the controlling legal position is settled. For vesting to occur under Section 3(1) of the MPFA Act on the footing of Section 2(f)(iii), a notice under Section 35(3) of the IFA must not only be issued but must also be served upon the landholder. The expression "issued" in Section 2(f)(iii) of the MPFA Act comprehends due service on the owner, because service alone triggers the owner's right to object, including the jurisdictional plea that the land is not a forest within Section 2(c-i) of the MPFA Act, and obliges the State to consider such objection.

We are unable to agree with the High Court that the reproduction of a draft text of Section 35(1) beneath a Section 35(3) show cause in the Gazette amounts to a concluded notification under Section 35(1) of the IFA. A notice that grants time for objections cannot coexist with a final decision under Section 35(1) without rendering the statutory hearing illusory. Mutation entries are ministerial in nature and cannot perfect an acquisition that lacks the statutory predicates. They neither create title in the State nor divest title from the private owner.

13.2 On the facts across these appeals, we find that the essential links in the statutory chain are missing. There is no proof of service of any Section 35(3) notice of the IFA on the then owners. There is no final notification under Section 35(1) of the IFA. Actual possession has at all times remained with private owners and this position is reflected in the revenue records that describe them as occupants. No possession was taken under Section 5 of the MPFA Act, no schemes were set in motion under Section 4, no compensation exercise was undertaken under Section 7, and no inquiry under Section 6 was held at a time proximate to the appointed day of 30 August 1975.

The materials produced by the State include undated and unverified possession papers that do not inspire confidence when set against decades of undisturbed private possession. In one instance the State relies on a pipeline notice which was addressed to a person who was not the owner as on 29 or 30 August 1975. In another, the land forms part of an industrial estate converted to non-agricultural use long before 1975. In yet another, there was never any claim that a Section 35(3) notice was even issued. These features are wholly inconsistent with a completed vesting under Section 3(1) of the MPFA Act.

13.3 We are not persuaded by the Respondent State's reliance on post-hoc material. Satellite imagery and panchnamas drawn in 2016 do not establish the character of the lands on the appointed day, which is the only relevant date for Section 3(1) of the MPFA Act. A nineteenth century notification, invoked for the first time at the appellate stage to suggest linkage with a reserved forest, was not the foundation of the impugned mutations and cannot be used to improve the case now. The administrative orders must stand or fall on the reasons originally given and the High Court could not sustain vesting on grounds that were never the basis of action. The absence of any notification under Section 34A of the IFA further weakens the State's position.

We also find merit in the submission that a restoration under Section 22A of the MPFA Act presupposes a lawful vesting. When the foundational vesting is unproven, any purported restoration cannot cure the defect, and in any event the limited window created by Section 22A cannot be reopened decades later. Expropriatory legislation must be construed strictly and Article 300-A of the Constitution requires that no person is deprived of property save by authority of law. When a statute prescribes a manner of doing a thing, it must be done in that manner or not at all. Here, several mandatory steps are absent. Any one missing step would defeat vesting. The High Court was therefore in error in treating the case as if only a consequential mutation remained.

13.4 We are also unable to accept the distinctions drawn by the High Court. The binding ratio on service, on the need for a live process, and on strict compliance does not turn on whether an appellant is an original owner or a subsequent purchaser. It also does not turn on whether construction has occurred on the land. The State itself has, on earlier occasions, recognised that subsequent purchasers cannot be prejudiced by undisclosed proceedings which they had no means to discover. The record here shows that the revenue entries continued to carry the names of the private owners, which indicates that even the State did not treat these lands as vested forests. To hold that a subsequent purchaser is in a worse position than one who developed land would invert the logic of the statute and would reward illegality while penalising restraint. We reject that approach.

13.5 We are further of the view that a remand for an inquiry under Section 6 of the MPFA Act is neither warranted nor efficacious. Such an inquiry is designed to be contemporaneous with the appointed day so that meaningful evidence on the character of the land can be adduced by both sides. After the passage of nearly half a century, that exercise would be largely academic and would not cure the absence of the mandatory preconditions of a served notice under Section 35(3) of the IFA and a lawful progression towards a notification under Section 35(1).

The authorities have also adopted a concluded litigating stance on the very matters they would be called upon to decide, which would not inspire confidence in the fairness of any remanded proceeding. In our opinion, the impugned judgment rests on a misreading of the Gazette, an impermissible dilution of mandatory statutory steps, and reliance on materials that are extraneous to the original basis of action. It therefore cannot be sustained.

14. While the High Court in the impugned judgement dismissed all the writ petitions by a common order, it did not attempt any principled differentiation among the petitions before it. Having closely examined the record, and in order to assess the distinctions the High Court is said to have perceived with the petitioners in *Godrej and Boyce (Supra)*, we have undertaken our own classification for clarity. We have no hesitation in stating that had this exercise been undertaken by the High Court in the impugned judgement, considerable judicial time could have been saved and directed to the unsettled legal questions on which many litigants rest their hopes. It is with this consideration in mind that we proceeded to categorise the 96 civil appeals into 3 categories.

14.1 The first category concerns the status of ownership, that is to say whether the appellants' title was derived before or after the alleged notices under IFA were issued around 1960s by the State Government. For clarification, if a title is devolved by inheritance subsequently but if the land has been owned by the same family throughout, the ownership would be deemed to be continuing since the land came first in the family's possession. On our analysis, 77 appeals involve derivative title and 19 involve continuing or ongoing title.

The second category concerns the period of ownership, namely whether ownership commenced before or after the enforcement of MPFA. In this category, 72 appellants acquired ownership after MPFA and 24 appellants owned the land before MPFA. The third category concerns the existence of construction on the subject lands. In this category, 26 appellants have raised some form of construction on the subject lands, while 70 appellants have not raised construction or the position is not clearly established on the materials placed on record.

14.2 After this categorisation, we are satisfied that there is no legally relevant distinction between the present cases and the decision in *Godrej and Boyce* (Supra). The ratio in *Godrej and Boyce* (Supra) turns on service of a notice under Section 35(3) of the IFA, the existence of a live process capable of culminating in a notification under Section 35(1) of the IFA, and strict compliance with the statutory steps that alone can support vesting under Section 3(1) of the MPFA Act on the footing of Section 2(f)(iii).

The record before us discloses the same deficiencies that were fatal in *Godrej and Boyce* (Supra). There is no proof of service of any notice under Section 35(3) of the IFA on the then owners. There is no final notification under Section 35(1) of the IFA. Possession has remained with private owners throughout. No contemporaneous action was taken under Sections 4, 5, 6 or 7 of the MPFA Act. These features mirror the very elements that led this Court to hold that vesting had not occurred in *Godrej and Boyce* (Supra).

14.3 We do not accept the distinctions on which the High Court sought to sidestep *Godrej and Boyce* (Supra). The fact that some appellants are subsequent purchasers does not diminish the requirement of service and a live statutory process. *Godrej and Boyce* (Supra) itself concerned a batch in which many parties were not original owners, yet the controlling principles were applied uniformly. The presence or absence of construction is equally irrelevant to the legal question of vesting. What matters is compliance with the prerequisites of the MPFA Act and the IFA.

The present record shows revenue entries that continued to reflect private ownership and occupation. It shows a pipeline notice addressed to a person who was not the owner on the relevant date. It shows lands long converted to non-agricultural or industrial use. None of this allows the State to dispense with service under Section 35(3) of the IFA or to conjure a final notification under Section 35(1) of the IFA from a draft placed beneath a show cause. In our opinion, the differences invoked by the High Court are insubstantial and cannot displace the binding ratio.

14.4 We find that the High Court's approach amounts to an attempt to avoid a binding precedent rather than to apply it. The impugned reasoning rests on a misreading of a Gazette publication that only reproduced a draft text and expressly invited objections. It relies on material that is subsequent to the appointed day and that was never the foundation of the impugned mutation entries. It treats mutation as if it were constitutive of title and not a ministerial reflection of underlying legal events. Each of these moves stands at odds with *Godrej and Boyce* (Supra), which requires strict adherence to the statutory sequence before vesting can be asserted.

14.5 Judicial discipline required faithful application of the law declared by this Court under Article 141 of the Constitution. Coordinate Benches of the High Court have consistently followed *Godrej and Boyce (Supra)* in closely comparable situations. The impugned judgment nonetheless revives positions that *Godrej and Boyce (Supra)* has rejected.

We also note that the Bench was presided over by the same Judge who had earlier taken a contrary view that was set aside by this Court. We do not attribute motive. However, when a judgment minimizes a binding ratio, ignores missing statutory steps, and seeks to distinguish on immaterial facts, it creates an appearance of a reluctance to accept precedent. Such an approach conveys a measure of pettiness that is inconsistent with the detachment that judicial reasoning demands. In our view, this is an unfortunate departure from the discipline of *stare decisis*.

14.6 We accordingly hold that the present appeals are indistinguishable in principle from *Godrej and Boyce (Supra)*. The record discloses the same jurisdictional defect of non-service of a notice under Section 35(3) of the IFA, the same absence of a final notification under Section 35(1) of the IFA, and the same want of contemporaneous steps under Sections 4, 5, 6 and 7 of the MPFA Act. In such circumstances the High Court could not, consistently with Article 141 of the Constitution, avoid the binding ratio by treating immaterial differences as determinative. In our opinion, fidelity to binding precedent and to the statutory scheme admits of no other conclusion than that the impugned order must be set aside.

15. In view of the foregoing analysis, the appeals are allowed.

16. The impugned judgment and order dated 27.09.2018 of the High Court of Judicature at Bombay in Writ Petition No. 6417 of 2015, amongst others, is set aside. The writ petitions before the High Court in the aforementioned matter are allowed. All mutation orders and any declarations treating the subject lands as private forests are quashed and set aside. Consequential corrections be made in the revenue records.

17. Liberty is reserved to the State to initiate such proceedings, in accordance with law, as per the relevant Statutes and to bring them to a logical conclusion after following due process of law.

18. All pending application(s), if any, stand disposed of.

.....J. [Vikram Nath]

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

1 Hereinafter referred to as, "the Constitution"

2 Hereinafter referred to as, "IFA"

3 Hereinafter referred to as, "MLRC"

4 Hereinafter referred to as, "MPFA"

5 2008 SCC OnLine Bom 311

6 (2014) 3 SCC 430

7 (2000) 3 SCC 143

8 2014 SCC OnLine Bom 66

9 2015 SCC OnLine Bom 293

10 2015 SCC OnLine Bom 5832

11 2015 SCC OnLine Bom 295

12 2016 SCC OnLine Bom 248

13 2015 SCC OnLine Bom 3862

14 2017 SCC OnLine Bom 8345

15 2015 SCC OnLine Bom 6743

16 2016 SCC OnLine Bom 340

17 2015 SCC OnLine Bom 7074

18 WP No. 594 of 2022, decided on 16.09.2022

IN THE SUPREME COURT OF INDIA

MITC Rolling Mills Pvt. Ltd. and Anr.

Vs.

M/s. Renuka Realtors and Ors.

**[Civil Appeal No(s)._____ of 2025
arising out of SLP (Civil) No(s). 10428 of 2025]**

Head Note - An order allowing an application for rejection of a plaint amounts to a decree and is therefore appealable under Section 13(1A) of the Commercial Courts Act, 2015. However, an order rejecting such an application is not appealable under the same provision and can instead be challenged through a revision or a petition under Article 227 of the Constitution, as the case may be.

Section 13(1A) of the Commercial Courts Act must be read harmoniously; the main provision permits appeals against any “judgment or order,” while the proviso limits appeals only in respect of interlocutory orders listed under Order XLIII CPC. The proviso cannot narrow the main provision's scope. Since an order rejecting a plaint amounts to a decree (a final order), it squarely falls within the main provision and remains appealable.

JUDGMENT

Mehta, J.

1. Heard.

2. Leave granted.

3. The instant appeal is directed against the final judgment and order dated 17th February, 2025, passed by the High Court of Judicature at Bombay¹ in Commercial First Appeal No. 8 of 2023, arising out of Commercial Suit No. 06 of 2021, whereby the High Court disposed of the appeal preferred by MITC Rolling Mills Pvt. Ltd.², through its authorized officer Shri Dinkar Trimbak Kajale, as a non-suit simpliciter, holding the same to be non-maintainable under Section 13(1A) of the Commercial Courts Act, 2015³.

4. The facts relevant and essential for the adjudication of the present appeal are mentioned hereinbelow.

5. The appellant-company instituted Commercial Suit No. 06 of 2021 before the Court of District Judge, Nashik⁴ seeking recovery of a sum of Rs.1,64,60,528/- (Rupees One Crore Sixty-Four Lakhs Sixty Thousand Five Hundred Twenty

Eight Only) towards principal and Rs.87,78,300/- (Rupees Eighty Seven Lakhs Seventy-Eight Thousand Three Hundred Only) towards interest, aggregating to Rs.2,52,38,828/- (Rupees Two Crores Fifty-Two Lakhs Thirty-Eight Thousand Eight Hundred Twenty-Eight Only), alleging that the respondents failed to make payment for the supply of TMT/Fe-500 material effected by the appellant-company.

6. Upon appearance, the respondents filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, seeking rejection of the plaint on the ground that the appellant-company had not undertaken the mandatory Pre-Institution Mediation and Settlement (PIMS) as contemplated under Section 12A of the CCA, 2015. The trial Court accepted the said application and rejected the plaint vide order dated 10th November, 2022. At this stage, the detailed factual matrix concerning the filing of an interim application by the appellant-company for urgent interim reliefs along with the suit, the prayer for exemption from pre-institution mediation, and the aspect of non-consideration of the same is not being adverted to.

7. Being aggrieved by the rejection of the plaint, the appellant-company preferred an appeal under Section 13(1A) of the CCA, 2015, before the High Court, raising various grounds for consideration. The High Court, however, proceeded to dismiss the appeal as not maintainable, holding that an order rejecting the plaint does not fall within the ambit of Order XLIII of CPC, and therefore, such a challenge could not be maintained under Section 13(1A) of the CCA, 2015, read with the proviso appended thereto. The order passed by the High Court is under challenge in the present proceedings by way of special leave.

8. To buttress the contention questioning the legality of the impugned order, Shri Jay Savla, learned senior counsel representing the appellant-company, referred to Section 2(2) of the CPC, which reads as below: -

"(2) 'decree' means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default."

9. Learned senior counsel fervently urged that the expression 'decree' means a formal expression of an adjudication which conclusively determines the rights of the parties and includes within its ambit the rejection of a plaint. He submitted that by virtue of the clear definition of 'decree' as provided under Section 2(2) of the CPC, an order passed under Order VII Rule 11 of the CPC rejecting the plaint

is deemed to be a decree as the same is a final adjudication of the lis before the concerned Court. Consequently, the appeal preferred under Section 13(1A) of the CCA, 2015 was maintainable and the High Court committed a grave error in holding otherwise. It was thus contended that the impugned judgment is ex facie unsustainable in law and the present appeal deserves to be accepted.

10. Per contra, learned senior counsel Shri Sukumar P. Joshi, representing the respondents, vehemently urged that the view taken by the High Court holding the appeal to be not maintainable is supported by the judgment of the Bombay High Court in *Bank of India v. Maruti Civil Works*⁶, which a three-Judge Bench of this Court has affirmed vide order⁷ dated 15th March, 2024. Thus, the High Court was wholly justified in rejecting the appeal preferred by the appellant-company.

11. He, therefore, urged that the appeal deserves to be dismissed as the impugned judgment is in consonance with the settled legal position and does not warrant any interference by this Court in exercise of jurisdiction under Article 136 of the Constitution of India.

12. We have given our thoughtful consideration to the submissions advanced at the bar and have gone through the impugned judgment and the material placed on record. We have also carefully perused the precedent(s) cited by the learned counsel for the parties.

13. The controversy essentially hinges around the question as to whether an order rejecting the plaint under Order VII Rule 11 of the CPC is appealable under Section 13(1A) of the CCA, 2015.

14. There cannot be any two views on the aspect that an order rejecting the plaint under Order VII Rule 11 CPC decides the lis finally and would tantamount to a decree within the meaning of Section 2(2) CPC. Reference in this regard may be made to a decision of this Court in *Shamsher Singh v. Rajinder Prashad*⁸, wherein a plaint was rejected under Order VII Rule 11(b) for not being properly valued for purposes of court-fees and jurisdiction. The relevant paragraph from the above judgment is quoted hereinbelow:

"3. In the present case, the plaint was rejected under Order 7 Rule 11 CPC. Such an order amounts to a decree under Section 2(2), and there is a right of appeal open to the plaintiff. Furthermore, in a case in which this Court has granted special leave, the question whether an appeal lies or not does not arise. Even otherwise, a second appeal would lie under Section 100 of the CPC on the ground that the decision of the first appellate court on the interpretation of Section 7(iv)(c) is a question of law. There is thus no merit in the preliminary objection."

[Emphasis supplied]

15. There is also no cavil with the proposition that a decree passed by a Commercial Court at the level of a District Judge exercising original civil jurisdiction or, as the case may be, the Commercial Division of a High Court would ordinarily be appealable before the High Court under Section 13(1A) of the CCA, 2015, read with the applicable provisions of the CPC.

16. At this stage, it would be apposite to take note of Section 13(1A) of the CCA, 2015, which reads as under:

"13. Appeals from decrees of Commercial Courts and Commercial Divisions-

(1) xx

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and Section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]"

[Emphasis supplied]

17. Section 13(1A) of the CCA, 2015, is in two distinct parts. The main provision contemplates appeals against 'judgments' and 'orders' of the Commercial Court to the Commercial Appellate Division of the High Court. The proviso, operating as an exception, must be construed harmoniously with the main provision and not in derogation thereof.

Where the language of the main provision is plain and unambiguous, the proviso cannot be invoked to curtail or whittle down the scope of the principal enactment, save and except where such exclusion is clearly and expressly contemplated. The proviso merely restricts appeals against interlocutory orders to those specifically enumerated under Order XLIII CPC and Section 37 of the Arbitration and Conciliation Act, 1996. Consequently, only such interlocutory orders as are expressly specified therein would be amenable to an appeal under the proviso; orders not so enumerated would not fall within the restricted fold of the proviso.

18. Coming to the judgment relied upon by the respondents, i.e., Bank of India (supra), we are of the view that the same is clearly distinguishable, and the ratio thereof has no applicability to the present situation because, in the said case, the

order under challenge was one rejecting the application moved under Order VII Rule 10 or under Order VII Rule 11(d) of the CPC. Paragraph No. 17, relied upon by the respondents for canvassing their submission, reads as under:

"17. Sub Section 1A of Section 13 provides that a person aggrieved by a judgment or order can file an appeal, however, the said provision is to be read in conjunction with the proviso which specifically states that an appeal shall lie only from orders which are specifically enumerated under Order XLIII of the CPC. The occurrences of the expression "shall" and "specifically" in the proviso has to be noted for correctly understanding the legislative intent in framing the scheme of Section 13 of the Act of 2015.

It is also noteworthy that the order under challenge in this appeal has been passed by the learned trial court rejecting the Application moved by the Defendants under Order VII Rule 10 and Rule 11(d) of the CPC. Such an order is not enumerated in Order XLIII of the CPC, though Rule 1(a) of Order XLIII enlists an order passed under Order VII Rule 10 for returning the plaint. Thus, Order XLIII enlists the order passed on an Application under Order VII Rule 10 if it is allowed; however, it does not enlist the order in case such an Application is rejected. Order XLIII also does not enlist any order passed on an Application under Order VII Rule 11(d) of the CPC."

[Emphasis supplied]

19. A bare reading of the above paragraph makes it manifest that the said case involved a challenge to an order rejecting application(s) under Order VII Rule 10 and Order VII Rule 11(d) of the CPC, which order(s) are not enumerated under Order XLIII of the CPC. Thus, there cannot be any quarrel with the proposition that such an order would not be amenable to an appeal under Section 13(1A) of the CCA, 2015, and rather, can be challenged by filing a revision or a petition/application under Article 227 of the Constitution of India, as the case may be.

20. The plaintiff who is aggrieved of the order rejecting the plaint under Order VII Rule 11 CPC cannot be left remediless or compelled to institute a fresh suit for availing such a challenge.

21. In wake of the discussion made hereinabove, the impugned order does not stand to scrutiny and is hereby quashed and set aside. The appeal preferred by the appellant-company in the High Court is held to be maintainable and hence, restored to its file and original number. The High Court shall consider and decide the same on merits, in accordance with law.

22. The appeal is allowed accordingly. No order as to costs.

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

.....J. (Vikram Nath)

.....J. (Sandeep Mehta)

New Delhi;

November 10, 2025.

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

2 Hereinafter, referred to as the "appellant-company".

3 For short, 'CCA, 2015'.

4 Hereinafter, referred to as the "trial Court".

5 For short, 'CPC'.

6 2023 SCC OnLine Bom 2667.

7 Bank of India & Ors v. M/s Maruti Civil Works, SLP(C) 6039 of 2024.

8 (1973) 2 SCC 524.

IN THE SUPREME COURT OF INDIA

Akula Narayana

Vs.

The Oriental Insurance Company Ltd. & Anr.

**[Civil Appeal No. 013509 of 2025
arising out of SLP (C) No. 8434/2023]**

Head Note - Insurance companies cannot evade their obligation to compensate victims in motor accident cases, even when there is a breach of a policy condition. Insurers retain the right to recover the compensation amount from the vehicle owner thereafter.

JUDGMENT

Manoj Misra, J.

1. Leave granted.
2. This is Claimant's appeal against the judgment and order of the High Court for the State of Telangana at Hyderabad¹ dated 08.06.2022 whereby the High Court allowed the appeal of the first-respondent (i.e., the Insurer) and set aside the award passed by the Motor Accidents Tribunal² to the extent it made the insurer liable along with the owner of the vehicle to pay compensation to the appellant.
3. There is no dispute inter se parties regarding liability of the second respondent (i.e., owner of the vehicle with which accident was caused). There is also no dispute that the vehicle was insured with the first respondent. The only dispute is whether the insurer should have been absolved totally from its liability to pay the compensation or that the insurer should have been directed to pay and recover the same from the vehicle owner.
4. The Tribunal vide its award dated 29.04.2021 held first and second respondent (i.e., insurer and owner, respectively) jointly and severally liable for the compensation payable to the claimant. Tribunal's conclusion in that behalf rests on the statement of administrative manager of the insurer, made during cross-examination, that insurer had collected additional premium for carrying conductor and cleaner. Based on that, the Tribunal concluded that since the owner had paid additional premium, the deceased, a passenger in the vehicle, would be a third party in terms of the policy.
5. The High Court on an appeal by the insurer held that though the insurer might have collected additional premium for driver, conductor and cleaner, the policy would not cover the risk of any other person or passenger. Besides that, the

vehicle being a five-seater was carrying nine persons, therefore, there was a clear breach of the terms and conditions of the policy and as such the insurer cannot be held liable.

6. Aggrieved by the order of the High Court, the claimant is before us because it finds it difficult to recover the compensation from the vehicle owner.

7. We have heard learned counsel for the parties. 8. The learned counsel for the appellant submitted that it is a clear case where additional premium was collected by the insurer for covering the risk of driver, conductor and cleaner. The claim was in respect of death of one person and therefore, even though the policy may not cover the risk of passengers, it covered the risk of at least three persons which may or may not be passengers. In support of its submission, the learned counsel for the appellant has placed reliance on a decision of this Court in *Mata Ram versus National Insurance Company Limited & Another*³.

In the alternative, the learned counsel for the appellant submitted that since the insurer had taken additional premium to cover risk of three persons who travel in the vehicle, even if there has been a violation of the policy conditions, the insurer cannot be relieved of its liability to make good the compensation though it may recover the same from the owner in light of the pay and recover principle recognized by this Court in *National Insurance Company Limited versus Swaran Singh*⁴ and *Shamanna & Anr. versus Divisional Manager, Oriental Insurance Company Limited & Others*⁵.

9. Per contra, learned counsel for the insurer submitted that the policy in question was a statutory policy; a gratuitous passenger, other than driver, conductor and cleaner, is not a third party and, therefore, the insurer would not be liable. In addition, the vehicle was a five-seater vehicle, admittedly carrying nine passengers, there was thus breach of condition of insurance. As such the insurer cannot be held liable. Hence, no interference with the judgment of the High Court is called for.

10. We have considered the rival submissions and have perused the materials on record including the decisions cited before us.

11. At the outset, we may observe that there is no appeal by the insured against High Court's order holding him not entitled to the benefit of insurance. In such circumstances, we have only to consider whether the High Court should have completely absolved the insurer of its liability or ought to have directed the insurer to pay with liberty to recover the same from the vehicle owner.

12. Where the contract of insurance is not disputed, even on breach of insurance conditions, this Court had allowed recovery of compensation from the insurer by giving right to the insurer to recover the same from the vehicle owner⁶. The pay

and recover principle has been consistently followed even though it was doubted in a reference which remained unanswered.

Taking a conspectus of various pronouncements, this Court recently in *Rama Bai v. Amit Minerals*⁷ again applied the said principle and while allowing the appeal of the claimant directed that the insurance company shall satisfy the award and may recover from the insured. Following the aforesaid decisions, we deem it appropriate to allow the appeal by directing that the first respondent (i.e., the insurer) shall satisfy the award, though, however, it can recover the amount so paid from the insured (i.e., owner of the vehicle).

13. The appeal stands allowed to the aforesaid extent.

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

.....**J. (Sanjay Karol)**

.....**J. (Manoj Misra)**

New Delhi;

November 10, 2025

1 The High Court

2 The Tribunal

3 (2018) 18 SCC 289

4 (2004) 3 SCC 297

5 (2018) 9 SCC 650

6 See decisions cited in Footnote 4 and 5.

7 2025 SCC OnLine SC 2067

IN THE SUPREME COURT OF INDIA

T. Manjunath

Vs.

State of Karnataka and Anr.

**[Criminal Appeal No(s)._____ of 2025
arising out of SLP(Crl.) No(s). 11160-11161 of 2024]**

Head Note - The safeguards under Sections 19(3) and 19(4) of the Prevention of Corruption Act, 1988, which prevent a conviction from being set aside due to defects in sanction unless they result in a “failure of justice”, do not apply when the validity of the sanction is questioned at the trial stage. These protections operate only at the appellate or revisional stage, once the trial court has already taken cognizance based on the sanction.

A discharge in departmental proceedings does not automatically absolve a public servant in a criminal case. When a witness deposing on oath in a criminal trial resiles from the original version and does not support the prosecution case, he would be liable to face prosecution for perjury. Under this pressure, the witness may choose to speak the truth. Thus, the mere fact that some of the witnesses did not support the department's case in the disciplinary proceedings would, by itself, not give any assurance that they would behave in the same manner at the criminal trial.

JUDGMENT

Mehta, J.

1. Heard.

2. Leave granted.

3. These appeals, by special leave, call into question the order dated 26th July, 2024, passed by the High Court of Karnataka at Bengaluru¹, whereby the High Court decided two Criminal Revision Petitions, being Criminal Revision Petition No. 422 of 2018² and Criminal Revision Petition No. 599 of 2018³, arising out of the order dated 23rd August, 2017, passed by the LXXVI Additional City Civil and Sessions Court & Special Court, Bengaluru⁴.

By the impugned order, the High Court allowed the revision petition filed by the State and dismissed the revision petition preferred by T. Manjunath⁵, consequently setting aside and reversing the order of the trial Court, whereby the application for discharge filed by the accused-appellant had been allowed. The High Court further granted liberty to the investigating agency to proceed against

the appellant in accordance with law, including permission to file a fresh chargesheet after obtaining the requisite sanction from the competent authority.

Factual Background

4. The factual matrix relevant and essential for the disposal of the appeals may be noted hereinbelow.

5. The accused-appellant was working as a Senior Inspector of Motor Vehicles at R.T.O. Office, K.R. Puram, Bengaluru, when a trap was attempted/arranged against him. The Lokayuktha Inspector Sri Sanjeevarayappa secured two independent witnesses who were Government servants, and in their presence, conducted the pretrap proceedings.

6. During the pre-trap proceedings, an amount of Rs. 15,000/- was entrusted to the complainant to be handed over to the accused-appellant upon demand.

7. Thereafter, the Lokayuktha Inspector, along with his trap team, two independent witnesses, and the complainant, left for the RTO office, KR Puram, Bengaluru, where the accused-appellant was working. The accused-appellant was trapped while demanding and accepting illegal gratification of Rs.15,000/- from the complainant through coaccused H. B. Mastigowda (accused No.2), a private person who is alleged to have received the amount at the instance of accused-appellant (accused No. 1).

8. The trap proceedings led to registration of Crime No.48/2012 under the Prevention of Corruption Act, 1988⁶. During the investigation, exercising powers under Section 19 of the PC Act, sanction was granted by the Commissioner of Transport for prosecution of the accused-appellant for the offences punishable under Section 7, 8, 13(1)(d), read with 13(2) of the PC Act. Chargesheet was filed against the accused-appellant for the aforesaid offences.

9. Thereafter, the accused-appellant preferred an application under Section 227 read with Section 239 of the Code of Criminal Procedure, 1973⁷, seeking discharge.

10. Two primary grounds were raised by the accused-appellant:

(a) That the accused-appellant, having been appointed by the State Government, could not have been prosecuted on the strength of sanction issued by the Commissioner of Transport, who was not competent to accord sanction for prosecuting the appellant;

(b) That the accused-appellant stood exonerated in the departmental proceedings instituted on the same charges and allegations, as were levelled in the criminal

case, and hence, the continued criminal prosecution against the accused-appellant was unjustified.

11. The trial Court vide order dated 23rd August, 2017, allowed the application and discharged the accused-appellant as well as the co-accused H.B. Mastigowda on the ground that the sanction for prosecution was not valid, as the authority that exercised jurisdiction was not the competent authority. However, liberty was given to the investigating agency to file a fresh chargesheet after obtaining sanction from the competent authority in accordance with law. The relevant findings from the trial Court's order are reproduced hereinbelow for the sake of ready reference:

"8. The issue regarding the validity of the Sanction Order is taken up for consideration as a preliminary issue.

9. As per Sec 19 of the Prevention of Corruption Act, 1988, obtaining of valid sanction from the Competent Authority to prosecute the public servant is mandatory. The accused No 1 is a Public servant, working as Senior Inspector of Motor Vehicles. He is a Group-B Officer. The service particulars of the accused No 1 (page-50 of the charge sheet file) would disclose that the Authority competent to remove the accused No 1 from the said post is the Government of Karnataka. But the Sanction Order accorded in this case is by the Commissioner of Transport which is invalid and no sanction in the eye of law.

10. The accused No. 2 is a private person. According to the prosecution, the accused No. 2 received the tainted currency notes from the complainant at the instance of the accused No. 1. Obtaining of valid sanction from the Competent Authority to prosecute the accused No 1 is mandatory. It is well settled that cognizance can be taken in respect of the offences alleged against the accused only once and if there are several accused, against some of whom sanction for prosecution may be necessary, it is mandatory that sanction be awaited till such time cognizance is awaited or otherwise, it would lead to confused state of affairs which is impermissible. Since the Sanction Order accorded to prosecute the accused No 1 in this case is by the Commissioner of Transport, which is invalid and non-est, it is just and proper to return the entire charge sheet papers to the Investigating Agency with liberty to the State to proceed further in accordance with law and to file a charge-sheet afresh after obtaining necessary sanction from the Competent Authority as far as the accused No 1 is concerned who is a public servant along with the accused No 2. Till such time, it is just and proper to discharge the accused No 1 & 2. Hence, I answer the above point accordingly."

[Emphasis supplied]

12. The above order was assailed by both the State and the accused-appellant by way of separate revision petitions before the High Court.

13. The High Court allowed the revision petition filed by the State and dismissed the revision petition preferred by the accused-appellant, setting aside the order passed by the trial Court.

14. In doing so, the High Court held that the sanction had been accorded by the competent authority observing that no liberty could be granted to the accused to contest the proceedings on the ground of the validity of sanction because the order of sanction was accorded by the competent authority in terms of the notification dated 11th February, 2010, which confers jurisdiction upon the Transport Commissioner to accord the sanction.

15. The impugned order was set aside, and the trial Court was directed to proceed against both the accused in accordance with law. The aforesaid order of the High Court is in challenge before us at the instance of the accused-appellant T. Manjunath in these appeals by special leave.

Submissions on behalf of the accused-appellant

16. Learned senior counsel, Shri Devadatt Kamat, representing the accused-appellant, vehemently and fervently contended that the departmental proceedings were instituted against the accused-appellant on identical charges and same set of facts and evidence and have culminated in the exoneration of the accused-appellant, and therefore, his prosecution in the criminal case is totally unjustified. He urged that the witnesses examined in the departmental disciplinary proceedings were the same as those who were cited by the prosecution in the criminal case.

The disciplinary authority, upon a comprehensive appreciation of the evidence, recorded a categorical finding that Shri K.R. Manjunath (complainant), Shri Nagesh (shadow witness), and Shri Maruthiraj (witness) did not support the case of the department, and that the testimony of the Investigating Officer remained uncorroborated. Based on these findings, the disciplinary authority proceeded to exonerate the accused-appellant of the charges.

17. It was the contention of learned senior counsel that the standard of proof required to bring home the charges in the disciplinary proceedings is of significantly lower degree than the standard of proof required to establish the guilt of the accused in a criminal trial. While in departmental proceedings, charges can be established merely on basis of preponderance of possibilities, in a criminal trial, the prosecution would be required to establish the charges by proving its case beyond all manner of doubt.

18. Thus, once the delinquent employee stands exonerated in the departmental proceedings, where the burden of proof is much lesser, the continuance of criminal proceedings founded on the very same set of allegations and evidence would not be justified.

19. To buttress his contentions, learned senior counsel placed reliance on Ashoo Surendranath Tewari v. Dept Superintendent⁸, and urged that the criminal proceedings sought to be pursued against the accused-appellant deserve to be quashed.

20. Further, during the course of hearing, learned senior counsel Shri Kamat handed over to the Court the office memorandum dated 3rd December, 1991, evidencing the appointment of the accused-appellant T. Manjunath, to the post of Inspector of Motor Vehicles. He referred to this document and contended that the appointment of the accused-appellant had been made under the authority of the Governor of Karnataka and, therefore, the appointing authority of the accused-appellant was the State Government. On this premise, it was urged that the sanction for prosecution could have been validly accorded only by the State Government and not by the Commissioner.

21. Shri Kamat further argued that the expression "competence" occurring in Section 19(4) of the PC Act, has to be treated at par with "jurisdiction". According to him, by virtue of Section 19(1) of the Act, the authority competent to grant sanction for prosecution of the accused-appellant was the State Government alone, and sanction accorded by an officer not authorised to remove the accused from the post was without the authority of law and suffered from patent lack of jurisdiction. He thus urged that the view taken by the High Court in reversing the order passed by the trial Court is absolutely unjustified and deserves to be set aside.

Submissions on behalf of the respondent-State

22. Per contra, Shri Aman Panwar, learned AAG representing the State of Karnataka, vehemently and fervently opposed the submissions advanced on behalf of the accused-appellant. He contended that the mere exoneration of the accused-appellant in the disciplinary proceedings cannot, by itself, furnish a ground to quash the criminal proceedings even if both proceedings are founded on the same set of facts. He submitted that the exoneration of the accused-appellant in the disciplinary proceedings was occasioned solely because the complainant, the shadow witness, and the accompanying witness did not support the case of the department. The exoneration was totally unjustified because the trap¹⁴ laying Officer had, in his deposition, fully supported the case of department.

23. He urged that the law is well settled by a catena of judgments rendered by this Court that in cases where the accused is apprehended for accepting illegal gratification, the mere fact of the complainant, the shadow witness and the accompanying witness turning hostile, would have no bearing on the outcome of the case, and that the conviction in the criminal case can be based/sustained even on the sole testimony of the trap laying officer, if found credible and trustworthy. He further submitted that the accused himself admitted having demanded the bribe when the trap memo was prepared and thus, the prosecution case is founded on unimpeachable material, the worth whereof would have to be assessed at the trial.

24. Learned counsel placed reliance on State v. T. Murthy⁹, State of MP v. Virender Kumar Tripathi¹⁰, and State of Bihar v. Rajmangal Ram¹¹ to urge that the controversy regarding the competence of the sanctioning authority and its effect on the trial has been settled by this Court in these precedents expressly holding that a sanction order cannot be struck down on the ground of lack of competence of the authority issuing it.

25. Learned AAG has vehemently and fervently controverted the claim made by Shri Kamat based on documents handed over during the course of hearing that the appointing authority of the appellant is the State Government. He urged that no such plea was taken by the appellant before the High Court and that the unverified documents handed over by the appellant across the board cannot be considered to decide the issue of appointing authority. He further contended that the office memorandum relied upon by the accused-appellant is not the appointment order at all; it is merely a posting order issued under the authority of the Governor of Karnataka.

As a matter of fact, the appointing authority of the accused-appellant is none other than the Commissioner. To substantiate this contention, learned counsel handed over an order dated 11th February, 2010, which, according to him, conclusively establishes that the Commissioner was the appointing authority competent to remove the accused-appellant from service and, as a necessary corollary, to grant sanction for prosecution. He thus urged that on both facets, namely, the question of competence as well as the aspect of the appointing authority, the accused-appellant has failed to make out any case warranting interference in the impugned order.

Discussion and Analysis

26. We have given our thoughtful consideration to the submissions advanced at the Bar and have carefully gone through the impugned order dated 26th July, 2024 passed by the High Court, as well as the order dated 23rd August, 2017 passed by the trial Court. We have also minutely perused the findings recorded

by the disciplinary authority while exonerating the accused-appellant in the departmental proceedings.

A. Effect of Departmental Clean Chit/Exoneration on Criminal Proceedings

27. First, we will consider the plea of the accused-appellant that, as the departmental proceedings have resulted in his exoneration, the criminal proceedings cannot be continued.

28. For this purpose, we have perused the findings as recorded in the Enquiry report dated 23rd September, 2021. Relevant excerpts of the report are reproduced hereinbelow for the sake of ready reference:-

"13) The points that arise for my consideration are

Point No 1: Whether the Disciplinary Authority has proved the charges?

Point No 2: What order?

14) Above points are answered as under Point No 1: In the Negative Point No 2: As per final order for the following,

REASONS

15) The Disciplinary Authority has examined the shadow witness as PW-1, complainant as PW-2, colleague of the complainant as PW-3, and the Investigation Officer came to be examined as PW-4 and got marked documents Ex P-1 to P-26 The shadow witness, complainant and his colleague i.e., PW-1 to 3 have not supported the version of the Disciplinary Authority Even though, the Disciplinary Authority cross-examined PW-1 to 3 and suggested the version of the Disciplinary Authority that, DGO has demanded bribe of Rs 24,000/- for twelve tippers, but after negotiation with the complainant PW-2, the bribe amount was reduced to Rs 18,000/- and at last PW-1 gave Rs 15,000/- to Paramesh @ Mastigouda on the say of the DGO but, the said version of the disciplinary authority has been denied by PW-1 to 3.

16) No doubt, the Disciplinary Authority succeeded in proving about the lodging of the complaint Ex P- 10, basing on it, PW-4 registered crime No 48/2012 and sent FIR vide Ex P-12 to court and his superiors The pre-trap malazar was drawn on 13/06/2012 vide Ex P-2 PW-1 has produced Rs 18,000/- (500x 36) currency notes and their numbers were noted in the sheet Ex P-1 by the panch witness i.e., PW-1 and Vishwas Investigation Officer has deposed about drawing of Ex P-4 panchanama on 13/06/2012, wherein the trap was unsuccessful as the DGO was not in the office at about 5:15 pm on 13/06/2012.

17) PW-4 has further deposed about trap panchanama Ex P-5, which was conducted on 14/06/2012, wherein the trap was conducted at 2nd floor of the RTO office, KR Puram at 12:30 pm PW-4 deposed about the recovery of Rs 15,000/- from Mastigouda and his hand wash was made in the sodium carbonate solution, the solution turned to pink colour The said mahazar Ex P-5 was concluded at Lokayukta police, MS Building, Bengaluru at 4:50 pm.

18) The prime witnesses for establishing the charges leveled against the DGO are the complainant, PW-2 and his colleague PW-3 and shadow witness PW-1 But, the said prime witnesses have not supported the version of the Disciplinary Authority The complainant is working as a Supervisor in Prashanth Crushers, which has twelve tippers plying within jurisdiction of KR Puram RTO, wherein DGO was serving as Motor Vehicle Inspector The allegation of PW-1 is that, the DGO was stopping the said tippers near Hoskote often and insisted the drivers to telephone to their owner asking him to look after the DGO otherwise DGO threatened to book case against the said tippers The owner of the sad Prashanth Crushers has asked PW-2 to lodge the complaint to the Lokayukta police Accordingly, PW-2 approached PW-4 on 12/06/2012 and disclosed about the demand of bribe amount by the DGO to PW-4, PW-4 directed PW-1 to record the conversations held between the DGO in respect of demand of bribe amount by giving the voice-recorder PW-1 met the DGO and made negotiation of bribe amount i.e. , DGO alleged to have demanded Rs 2,000/- per tipper in total Rs 24,000/-, but after negotiation, amount was reduced to Rs 18,000/- PW-1 has again approached PW-4 on 13/06/2012 and lodged the complaint, Ex P-10 and basing on it, Cr No 48/2012 was registered and FIR, Ex P-12 was sent to court and his superiors

19) PW-2, complainant has deposed before the court that, he has affixed his signature on the complaint at Ex P-10, on the say of his owner, but shown his ignorance about its content PW-2 further deposed that, DGO has never demanded bribe amount and also not asked the complainant to give the amount in the hands of said Paramesh @ Mastigouda He has given Rs 15,000/- to said Paramesh (@ Mastigouda No doubt, PW-4 has recovered Rs 15,000/- from said Paramesh under the trap and hands of the said Paramesh were washed in the sodium carbonate solution, which turned to pink colour

20) PW-3, the colleague of PW-2 has shown his ignorance about demand of bribe amount by the DGO from PW-2 and he has not accompanied PW-2 to the RTO, KR Puram office, he has not gone inside the said RTO office and he is unaware of the incident that has taken place in the RTO office Even though, the Presenting Officer cross-examined PW-3, but nothing is elicited during the cross-examination to establish the charge levelled against DGO.

21)The shadow witness, PW-1 has deposed halfheartedly before the Inquiry Officer and he does not remember how much amount was given by the complainant to the Police Inspector He further deposed that, PW-1 was standing near the door of the chamber of DGO and the door was closed, hence he could not hear the conversations and also witness anything which transpired between the complainant and the DGO PW-1, could not hear the conversation that took place inside the chamber, but PW-1 has witnessed complainant giving the tainted money of Rs 15,000/- to one Sri Mastigouda and the said amount was kept in his trouser pocket and he could not hear as to who instructed Sri Mastigouda to receive the said money During the crossexamination made by the Presenting Officer, PW-1 admitted that, he was standing near the door, when the complainant went inside the chamber and door was slightly opened at that time, he could not hear, but denied the suggestions made by the Presenting Officer that, he heard the conversations of DGO that he demanded bribe amount from the complainant and further heard that, the complainant negotiated with DGO for reducing the bribe amount and DGO asked the complainant to give the said money to Sri Mastigouda.

22) According to the theory of the Disciplinary Authority, the complainant and DGO negotiated the bribe amount from Rs 24000/- to Rs 18,000/- in order to permit twelve tippers belonging to Prashanth Crushers to ply on road i.e., within the jurisdiction of RTO, KR Puram, the complainant approached PW-4 as per the directions of his owner to lodge complaint Ex P-10, but the complainant has not supported the said version that, DGO demanded bribe amount of Rs 24,000/- and after negotiation, it was reduced to Rs 18,000/- The said amount of Rs 18,000/- (500x36) was given to PW-4 on 13/06/2012 and the value and number of the said currency notes were written on a sheet Ex P-1 by the panch witnesses PW-3 was present at the time of drawing pre-panchanama, Ex P-3 and also trap panchanama Ex P-5 on 14/06/2012 But, PW-3, who is the colleague of PW-2 i.e., employee of Prashanth Crushers has completely turned hostile and there is no corroboration in the evidence of PW- 2 and 3 with respect to demand of bribe amount by the DGO from PW-2 and he has given bribe amount of Rs 15,000/- to the said Paramesh @ Mastigouda on the say of the DGO.

23) According to Disciplinary Authority, the shadow witness, PW-1, accompanied PW-2 and 3 to the RTO office, KR Puram i.e, 2nd floor and was standing near the door of the DGOs chamber and heard the conversations between PW-2 and DGO regarding negotiation of reducing the bribe amount and he witnessed the receipt of Rs 15,000/- by the said Paramesh from PW-2 on the say of the DGO But, PW-1 categorically deposed that, he has not heard the conversations held between PW-2 and DGO and he had witnessed the incident of giving amount of Rs 15,000/- by PW-2 to the said Paramesh Evidence of PW-1 to 3 is not linking the chain of events i.e., DGO has demanded bribe amount from PW-2 and PW-2 has given the said amount to said Paramesh as per the say of the

DGO The said fact of demand of bribe amount from DGO and receipt of said bribe amount by the said Paramesh as per the say of the DGO from PW-2 is totally missing from the evidence of PW-1 to 3.

24) The solitary evidence of Investigation Officer, PW-4 alone will not establish the charge leveled against DGO PW-4 deposed that, PW-2 had approached PW-4 on 12/06/2012 disclosed about the demand of bribe amount by DGO PW-4 directed PW-2 to record the conversations of DGO in the voice-recorder PW-4 registered crime No 48/2012 on the basis of the complaint lodged by PW-2 on 13/06/2012 PW-4 has secured PW-1 and another panch witness namely, Sri Vishwas and introduced them to PW-2 and disclose about the complaint, Ex P-10 PW-4 has further deposed that, PW2 has produced Rs 18,000/- (500 x36) currency notes and the value of the said notes and numbers were noted in the sheet Ex P1 One of the police staff had smeared the phenolphthalein powder on the said currency notes and as per the directions of PW-4, Panch witness namely, Vishwas kept the said tainted notes in the pant pocket of PW-2 and the hand wash of the said Vishwas was made in the sodium carbonate solution, which turned to pink PW4 directed the complainant to give the said tainted notes to the DGO, only after demand and PW-1 had to accompany PW-2 along with PW-3 to the RTO office, KR Puram for trap Trap was not successful on 13/06/2012 as DGO left the office at 5:00 pm itself In that respect mahazar Ex P-4 was drawn PW-1 to 4 along with Vishwas and staff have returned back to PW 4's office and returned the tainted notes and also voice-recorder and also the pen camera and asked the said raiding party to come on 14/06/2012 at 10:00 am

25) PW-4 was successful in getting the trap on 14/06/2012 at 12:30 pm at 2nd floor of the RTO office, KR Puram by accompanying PW-1 to 3 and Vishwas along with his staff and the trap mahazar was drawn vide Ex P-5 at PW-4's office PW-4 has followed PW-1 to 3 along with Vishwas and the staff to RTO office He was standing at the 2nd floor amidst public PW-4 has directed PW-2 to give signal after giving the said tainted notes after demand PW- 2 made signal and the said raiding party went to the chamber of DGO and PW-2 stated that, he had given the amount to the said Paramesh and hand wash of the said Paramesh was made in the sodium carbonate solution, which turned into pink colour and the amount was seized from said Paramesh at the RTO office itself.

26) There is no corroboration in the evidence of PW- 4 and PW-1 to 3 The important aspect of demand of bribe amount by the DGO is not forthcoming from the evidence of PW-1 to 3, though it is finding place in the complaint, Ex P-10, Ex P-2 and Ex P-5 trap panchanama The acceptance of bribe amount by the said Paramesh as per say of DGO is also missing from the evidence of PW-1 to 3 The charge levelled against DGO is that, he has demanded bribe amount from PW-2 The main ingredients of illegal demand of bribe amount from the complainant and receipt of the bribe amount by said Paramesh on the say of the DGO are

missing in the instant case on hand The evidence of the PW-1 to 4 in other aspect may corroborate, but it is no way helpful to the Disciplinary Authority in proving the charge levelled against the DGO.

32) On appreciation of entire oral and documentary evidence, I hold that the charge leveled against the DGO is not established and preponderance of probabilities also do not point at his misconduct Point No 1: Hence, Point No 1 is answered in the Negative Point No 2: For the reasons stated above, I proceed to record the following findings -

FINDINGS

The Disciplinary Authority has not proved the charges framed against DGO Sri T Manjunath, Senior Inspector of Motor Vehicles, Office of Regional Transport Officer KR Puram, Bengaluru DGO will retire from service on 31/05/2028.

This report is submitted to the Hon'ble Upalokayukta in a sealed cover,

Dated this the 23 September, 2021
Sd/-"

29. Upon perusal of the above report, it is evident that the disciplinary authority's discretion was swayed by the fact that the Sri K.R. Manjunath (complainant), Sri Nagesh (shadow witness), and Sri Maruthiraj (colleague of the complainant) did not support the department's case and feigned ignorance about the transaction of bribe. However, the order of the disciplinary authority also takes note of the fact that Sri Sanjeevarappa (Investigating Officer) fully supported the case of the department and proved the trap panchnama, as per which the tainted currency notes were recovered from the hands of Paramesh @ Mastigowda (accused No. 2), and the allegation of demand of a bribe was proved against the accused-appellant. We feel that the conclusion drawn by the disciplinary authority that guilt of the delinquent employee could not be proved merely on the testimony of the trap laying officer, is premature and unfounded.

30. This Court has, in a catena of decisions¹², held that the mere fact that a decoy/complainant in a trap case turns hostile would not adversely affect the case of prosecution and that conviction can be based even on the evidence of the trap laying officer, if found reliable and trustworthy.

31. We may further observe that when a witness deposing on oath in a criminal trial resiles from the original version and does not support the prosecution case, he would be liable to face prosecution for perjury. Under this pressure, the witness may choose to speak the truth. Thus, the mere fact that some of the witnesses did not support the department's case in the disciplinary proceedings would, by itself, not give any assurance that they would behave in the same

manner at the criminal trial. In the present case, as is evident, the exoneration of the accused-appellant in the departmental proceedings is merely on the ground that the decoy and associating witnesses did not support the case of department.

32. The possibility of the criminal case still resulting into conviction, irrespective of the factum of the witnesses turning hostile being a realistic possibility, we feel that there is no merit behind the argument of Shri Kamat that exoneration in the departmental proceeding should lead to automatic discharge in the criminal case. Hence, the said argument advanced on behalf of the accused-appellant, placing reliance on Ashoo Surendranath Tewari (supra), has no merit and is rejected.

33. Though the core facts in both proceedings may bear resemblance, the viewpoint, scope, and standards for adjudication are entirely different, and each is governed by a distinct forum and procedure. Hence, exoneration in the departmental proceedings does not, ipso facto, furnish a ground for dropping the criminal charges more particularly in Trap Cases.

B. Sanction Under Section 19 PC Act: Competence and Jurisdictional Validity

34. The second fold of the argument advanced by learned counsel for the accused-appellant was based on the alleged illegality vitiating the sanction order.

35. The question of competence of the sanctioning authority - being the bone of contention between the parties, the same requires to be considered. The controversy essentially turns around whether the expression "competence" is to be understood as synonymous with "authority" or "jurisdiction" to remove the employee from service for the purposes of Section 19 of the PC Act, 1988.

36. For appreciating this submission, the language of the enabling provision, i.e., Section 19 needs to be reproduced hereunder: -

"19. Previous sanction necessary for prosecution.-

(1) No court shall take cognizance of an offence punishable under [sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]-

(a) in the case of a person who is employed, or as the case may be, was at the time of commission of the alleged offence employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office:

[Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless-

(i) such a person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month: Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation.- For the purposes of sub-section (1), the expression "public servant" includes such person-

(a) who has ceased to hold the office during which the offence is alleged to have been committed; or

(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.]

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal, or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.-For the purposes of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

[Emphasis supplied]

37. Section 19(1) clearly stipulates that where the appointing authority of the accused is the State Government, the sanction for prosecution must be accorded by the State Government and by none other. The judgments in T. Murthy (supra), Virender Kumar Tripathi (supra), and Rajmangal Ram (supra) relied upon by the learned standing counsel for the State, advert to the Explanation appended under Section 19(4).

In our view, the Explanation to Section 19(4) would become relevant and come into play only when the question of validity or otherwise of the sanction is under scrutiny before the appellate or the revisional forum¹³ as provided in sub-Section (3) of Section 19. In the present case, such a determination was made by the learned Special Judge in the original jurisdiction, who held that the sanction was invalid as it had been issued by an authority lacking jurisdiction to do so, and that no authority other than the State Government could have granted a sanction in respect of the accused-appellant, his appointment having been made by the State Government itself.

38. In this factual background, the Explanation below Section 19(4) is not germane to the controversy, for it operates only in situations where the finding, sentence, or order of the Special Judge on the aspect of sanction is under scanner before the appellate or revisional Court on the grounds specified therein. Thus, these decisions are of no assistance to the State and are distinguishable on facts.

C. Divergent claims regarding the Appointing Authority

39. Having held so, we now proceed to advert to the situation that has arisen owing to the inconsistency in the diverse claims regarding the authority who actually appointed the accused-appellant. As noted hereinabove, competing assertions have been advanced regarding the actual appointing authority of the accused-appellant, based on the documents handed over to the Court during the course of the hearing of the appeals. While learned counsel for the State maintains that the Commissioner is the appointing authority of the accused-appellant, the learned senior counsel representing the accused-appellant, on the other hand, asserts that the appointing authority is the State Government.

40. In view of this disputed factual scenario, we are of the considered opinion that, for a proper and effective resolution of the controversy, it would be expedient in the interest of justice to remit the matter to the trial Court for fresh adjudication on the limited issue regarding the actual appointing authority of the accused-appellant and the consequential bearing thereof on the validity of the sanction order.

41. The contention advanced on behalf of the accused-appellant that he is entitled to be discharged on account of his exoneration in the departmental proceedings does not merit acceptance and is, accordingly, rejected.

42. The finding recorded by the High Court on the aspect of the validity of the sanction is set aside, and the matter is remitted to the trial Court for fresh determination of the issue of sanction in accordance with law, keeping in view the above observations.

43. For this purpose, the trial Court shall be at liberty to summon the original records/contemporaneous documents pertaining to appointment of the accused-appellant, and thereafter to take an appropriate decision regarding the validity or otherwise of the sanction, in accordance with law. In case the trial Court finds that the sanction has been issued by a competent authority, the trial shall proceed. However, in case the conclusion is otherwise, the trial Court shall return the chargesheet to the investigating agency for procuring fresh sanction from the appropriate authority.

44. The appeals are disposed of in these terms.

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

.....**J. (Vikram Nath)**

.....**J. (Sandeep Mehta)**

New Delhi;

November 10, 2025.

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

2 Preferred by the State.

3 Preferred by T Manjunath (accused-appellant).

4 Hereinafter, referred to as the "trial Court".

5 Hereinafter, referred to as the "accused-appellant".

6 For short, 'PC Act'.

7 For short, 'CrPC'.

8 (2020) 9 SCC 636.

9 (2004) 7 SCC 763.

10 (2009) 15 SCC 533.

11 (2014) 11 SCC 388.

12 N. Narsinga Rao v. State of A.P., (2001) 1 SCC 691; Neeraj Datta v. State (Government of NCT of Delhi) (2023) 4 SCC 731.

13 Nanjappa v. State of Karnataka, (2015) 14 SCC 186.

IN THE SUPREME COURT OF INDIA

R. Rajendran
Vs.
Kamar Nisha and Ors.

[Criminal Appeal No. 1013 of 2021]

Head Note - A DNA test cannot be directed as a matter of course to determine paternity, especially when it risks illegitimising a child and intrudes upon individual privacy. Scientific tools like DNA profiling cannot be used for “fishing inquiries” and must be resorted to only in cases of eminent need, where the investigation cannot proceed without it.

The presumption under Section 112 of the Evidence Act operates as 'Conclusive Proof' of the legitimacy of a child born during the subsistence of a valid marriage. This presumption endures unless it is affirmatively established, by strong and unambiguous evidence, that the parties to the marriage had no access to each other at any time when the child could have been begotten. Since the law favours legitimacy and frowns upon the illegitimacy, the burden is cast upon the person who asserts 'illegitimacy' to displace the presumption.

Two-fold test that must be satisfied before a DNA test can be ordered i.e.,
(i) insufficiency of evidence; and
(ii) a positive finding regarding the balance of interests.

To rebut this presumption, the claimant must prove “non-access” between the husband and wife at the time the child could have been conceived. Mere allegations of an affair or simultaneous access by another person, do not displace this presumption.

Forcefully subjecting an individual to DNA testing constitutes a grave intrusion upon privacy and personal liberty. Such an encroachment can be justified only if it satisfies the threefold test of legality, legitimate State aim, and proportionality.

One party's willingness to waive their own privacy does not extend to waiving the privacy of others. Even if the mother voluntarily waives her privacy, that waiver does not extend to the privacy rights of the child or the alleged father.

A direction for DNA testing must have a direct and demonstrable nexus with the offences under investigation. In the absence of such nexus, compelling a person to undergo DNA profiling, amounts to unwarranted intrusion into bodily autonomy and privacy, contrary to the safeguards implicit in Articles 20(3) and 21 of Constitution of India.

This Court has consistently held that DNA testing cannot be ordered as a matter of course and must be subject to stringent safeguards to protect the dignity of individuals and the legitimacy of children born during the wedlock. The power to direct such tests must be exercised with utmost circumspection and only when the interests of justice imperatively demand such an intrusive procedure. Courts must remain vigilant against fishing inquiries masquerading as legitimate requests for scientific evidence, ensuring the sanctity of family relationships is not compromised by speculative or exploratory investigations.

JUDGMENT

Prashant Kumar Mishra, J.

1) This Appeal calls in question the impugned judgment dated 10.05.2017 passed by High Court of Madras at Madurai in Writ Appeal (MD) No.521 of 2017, whereby the High Court directed the appellant to appear before the Dean, Government Rajaji Hospital, Madurai on or before 19.05.2017, for collection of blood samples for DNA profiling as ordered by the learned Single Judge in W.P. (MD) No.15208 of 2016.

FACTUAL MATRIX

2) Respondent No.1 married one Abdul Latheef in the year 2001. Abdul Latheef was suffering from a skin ailment and, therefore, he approached the appellant, a doctor, for treatment. The appellant successfully treated Abdul Latheef's condition, which led him to confide in the appellant regarding his lack of progeny. Abdul Latheef requested the appellant to refer his wife, respondent No.1, to Dr. Indira, the appellant's first wife and a Gynaecologist, for the necessary treatment. However, instead of referring respondent No.1 to Dr. Indira, the appellant developed physical relations with her, resulting in the birth of a child on 08.03.2007.

3) When the child was approximately one and a half years old, the appellant continued his extramarital relationship with respondent No.1. Upon learning this, Abdul Latheef allegedly deserted her. Respondent No.1 then approached the appellant for assistance, as her husband had deserted her. The appellant asked respondent No.1 to pay Rs.3,00,000/- to his second wife, Dr. Devi, in return for taking her house on lease. Respondent No.1 complied, taking the house at Door No.1, Thanjavur Road, Pattukkottai Taluk, Pattukkottai, on lease from 20.08.2013.

4) According to respondent No.1, the appellant frequently visited her house and spent time with her. She subsequently asked him to marry her and make their relationship public. Upon his refusal, a quarrel ensued on 09.05.2014. Thereafter,

the appellant began avoiding her. Unable to sustain herself, respondent No.1 approached "Z" Tamil T.V. channel and appeared on a programme titled "Solvathellam Unmai", publicly narrating her complaint. This led to the registration of F.I.R. No.233/2014 dated 24.06.2014 against the appellant for offences under Sections 417 and 420 of the Indian Penal Code, 1860 and Section 4(1) of the Tamil Nadu Women Harassment Act.

5) Subsequent to the registration of the FIR, the Police moved an application before the Judicial Magistrate, Pattukkottai, seeking directions to send the appellant, respondent No.1, and the child for DNA profiling. Directions were issued to the appellant to appear before the concerned Medical Officer of the Government Hospital for drawal of blood samples. However, the appellant failed to comply with the said order.

FIRST ROUND OF LITIGATION

6) Respondent No.1, aggrieved by the lack of progress in the investigation, filed W.P. (MD) No.7746 of 2015 seeking transfer of F.I.R. in Crime No.233 of 2014 from respondent No.4/The Inspector of Police, Pattukottai Police Station, Pattukottai, Thanjavur District to the Superintendent of Police, C.B.C.I.D., Chennai. The learned Single Judge vide order dated 08.06.2015 disposed of the writ petition directing respondent No.3/Superintendent of Police, Thanjavur District to transfer the pending investigation to any other investigation officer, while directing him to monitor and supervise the investigation.

7) Respondent No.1, finding no appreciable advancement in the investigation despite the judicial intervention, was constrained to prefer another writ petition being W.P. (MD) No.15208 of 2016 seeking transfer of investigation from respondent no.4/The Inspector of Police to the Superintendent of Police, C.B.C.I.D, Chennai. She further sought an interim relief for conducting a DNA test of her child, allegedly born through the appellant. The High Court, vide interim order dated 20.10.2016, directed the appellant and respondent No.1 to appear before the Dean, Thanjavur Medical College Hospital, Thanjavur on 01.11.2016, who in turn was directed to collect blood samples of the parties to obtain a DNA report.

8) Aggrieved by the aforesaid interim order dated 20.10.2016 passed by the learned Single Judge, the appellant filed W.A. (MD) No.1428 of 2016. The Division Bench of the High Court, upon consideration, allowed the said writ appeal, noting that the interim order was passed without affording an opportunity to the appellant. The High Court set aside the order dated 20.10.2016 and remitted the matter back to the Writ Court for fresh consideration.

SECOND ROUND OF LITIGATION

9) Pursuant to the remand by the Division Bench, the learned Single Judge considered the matter afresh, after affording an opportunity to the appellant, and vide order dated 24.04.2017 in W.P. (MD) No.15208 of 2016, held that DNA profiling of the appellant, respondent No.1 and the child, was essential for the investigation in Crime No.233 of 2014. Accordingly, the learned Single Judge directed respondent No.6/Inspector of Police, Sethubavachathiram Police Station, Thanjavur District, to produce the appellant, respondent No.1 and the child before the Dean, Rajaji Government Hospital, Madurai on 10.05.2017 at 10:30 a.m.

The Inspector of Police was further directed to collect the F.T.A cards from the Forensic Science Department and submit the same to the Dean, Thanjavur Medical College Hospital on 10.05.2017, whereupon the blood samples of all the three parties were to be collected and forwarded to the Tamil Nadu Forensic Laboratory. The DNA report was directed to be sent to the learned Judicial Magistrate, Pattukottai. The learned Single Judge disposed of the said writ petition observing that the investigation in Crime No.233 of 2014 would depend upon the result of the DNA test.

10) Aggrieved by the order passed by the learned Single Judge dated 24.04.2017 in W.P. (MD) No.15208/2016, the appellant preferred Writ Appeal (MD) No.521 of 2017. The Division Bench, vide the impugned judgment dated 10.05.2017 dismissed the writ appeal, directing the appellant to appear before the Dean, Government Rajaji Hospital, Madurai on or before 19.05.2017 for collection of blood samples as ordered by the learned Single Judge. Hence, this Appeal.

SUBMISSIONS

11) Learned counsel for the appellant submitted that it is settled law that DNA testing can be granted only in exceptional cases and it cannot be permitted for mere roving and fishing inquiries, particularly when such directions may have implications on the right to privacy of the individuals involved.

12) He further contended that Section 112 of the Indian Evidence Act, 1872 mandates that any person born during the subsistence of a valid marriage between his mother and father shall be conclusively presumed to be the legitimate child born out of the wedlock.

13) Learned counsel also placed reliance on Ivan Rathinam vs. Milan Joseph²; Aparna Ajinkya Firodia vs. Ajinkya Arun Firodia³; and Banarsi Dass vs. Teeku Dutta (Mrs) and Another⁴.

14) He further submitted that the child has now attained the age of majority, and therefore, the question arises as to whether she can be compelled to undergo DNA testing without her prior consent. He also drew our attention to the belated

registration of the complaint, submitting that the child was born on 08.03.2007 and the FIR came to be lodged only on 24.06.2014 without an explanation for such delay.

15) Lastly, he placed reliance on the birth certificate, the school certificate, and the school admission certificate, all of which record the name of Abdul Latheef as the father and thus contended that there exists no eminent need for directing DNA testing. Accordingly, he prayed for setting aside of the impugned order.

16) Per contra, learned counsel for respondent No.1 submitted that the reliance placed by the appellant on Goutam Kundu vs. State of West Bengal and Another⁵ and Dipanwita Roy vs. Ronobroto Roy⁶ and similar decisions is misplaced. It was contended that those cases arose in the context of matrimonial disputes, where the Court's primary endeavour is to preserve the institution of marriage and protect the legitimacy of children. In contrast, the present case arises out of criminal proceedings, where strict proof is essential for establishing the guilt or innocence.

17) It was further submitted that where the woman herself seeks DNA test, there is no element of imputing unchastity. As regards to the apprehension of illegitimization of the child, it is stated that the child's present status is akin to that.

18) Respondent No.1 further relied upon Nandlal Wasudeo Badwaik vs. Lata Nandlal Badwaik and Another⁷ to submit that scientific advancement prevails over archaic presumptions.

19) It was also contended that this Court may draw adverse inference under Section 114(g) and (h) of the Evidence Act against the appellant for his refusal to undergo DNA testing. In this regard, strong reliance was placed on Dipanwita Roy (supra).

20) On the aspect of privacy, it was argued that the right to privacy, though constitutionally protected, can be waived by the individual concerned. Where the person voluntarily seeks the test, plea of privacy cannot be invoked. Reference was made to K.S. Puttaswamy (Retired) and Another (AADHAAR) vs. Union of India and Another⁸, to submit that once a person consents, the right stands validly waived, and no breach arises from a judicial order directing such examination.

QUESTION FOR CONSIDERATION

21) Having heard the learned counsel appearing for both the parties, the question which arises for our consideration is - whether the High Court was justified in directing the appellant to undergo DNA testing.

ANALYSIS

I. THE STATUTORY FRAMEWORK: SECTION 112 OF THE EVIDENCE ACT

22) This dispute arises from a complaint registered under Sections 417 and 420 of the IPC and Section 4(1) of the Tamil Nadu Women Harassment Act. Respondent No.1 seeks to establish the charges of cheating and harassment by demonstrating that the appellant is the biological father of her child. Consequently, before examining whether a direction for DNA profiling is legally sustainable, it is necessary to evaluate the statutory framework governing the presumption of legitimacy of a child born during the continuance of valid marriage, as enshrined under Section 112 of the Evidence Act. For ease of reference, Section 112 is reproduced below:

"112. Birth during marriage, conclusive proof of legitimacy.- The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."

(emphasis supplied)

23) It is evident from the statutory language of the provision, that it establishes a conclusive presumption in favour of legitimacy of a child born during the subsistence of a valid marriage. Embedded in this presumption is the legal recognition that the husband is deemed to be the father of the child born to his wife. This presumption also operates as a safeguard against unwarranted intrusion into the legally protected status of legitimacy, thereby ensuring stability in familial relationships and the protection of child's legal and social identity.

24) The presumption under Section 112 of the Evidence Act operates as "Conclusive Proof" of the legitimacy of a child born during the subsistence of a valid marriage, by presuming that the parents had access to each other at the relevant time. Section 4 of the Evidence Act defines "conclusive proof " as follows:

"Conclusive proof".- When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it."

This presumption endures unless it is affirmatively established, by strong and unambiguous evidence, that the parties to the marriage had no access to each other at any time when the child could have been begotten, or following the

dissolution of the marriage while the mother remains unmarried. Since the law favours legitimacy and frowns upon the illegitimacy, the burden is cast upon the person who asserts "illegitimacy" to displace the presumption.

25) "Access" or "non-access" under Section 112 of the Evidence Act must be understood in a very narrow and specific sense, referring to possibility of sexual relations between the spouses. Non-access denotes the impossibility, not merely the absence or lack of such opportunity. Even where cohabitation exists, non-access may arise due to impotency, serious illness, physical incapacity or absence during the relevant period. Conversely, the lack of cohabitation alone does not establish non-access, nor does the existence of extramarital relations, separate residences, or non-communication.

26) Allegations of multiple or simultaneous access by third parties do not negate the access between the spouses or establish non-access. Likewise, infidelity on the wife's part does not, by itself, displace the presumption of legitimacy if the husband had access. The focus remains on the child's birth, while the time of conception is relevant only to determine whether access between the spouses existed.

II. PRINCIPLES GOVERNING DNA PROFILING

27) The next aspect of the matter that requires consideration is whether the appellant can be subjected to DNA profiling to determine whether he is the biological father of the child born to respondent No.1. It becomes imperative for this Court to examine the legal framework governing the DNA testing and its permissible scope, particularly in light of presumption in favour of legitimacy enshrined under Section 112 of the Evidence Act.

28) This Court has consistently held that DNA testing cannot be ordered as a matter of course and must be subject to stringent safeguards to protect the dignity of individuals and the legitimacy of children born during the wedlock. The power to direct such tests must be exercised with utmost circumspection and only when the interests of justice imperatively demand such an intrusive procedure. Courts must remain vigilant against fishing inquiries masquerading as legitimate requests for scientific evidence, ensuring the sanctity of family relationships is not compromised by speculative or exploratory investigations.

29) The foundational parameters governing such directions were established in Goutam Kundu (supra) wherein this Court laid down the following parameters:

"26. From the above discussion it emerges-

(1) that courts in India cannot order blood test as a matter of course;

(2) wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.

(3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act.

(4) The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.

(5) No one can be compelled to give sample of blood for analysis."

30) Following the principles laid down in Goutam Kundu (supra), the approach to ordering DNA tests has been further refined in subsequent decisions. In Sharda vs. Dharmpal⁹ it was observed:

"81. To sum up, our conclusions are:

1. A matrimonial court has the power to order a person to undergo medical test.

2. Passing of such an order by the court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution.

3. However, the court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the court. If despite the order of the court, the respondent refuses to submit himself to medical examination, the court will be entitled to draw an adverse inference against him."

31) This Court in the case of Bhabani Prasad Jena vs. Convenor Secretary, Orissa State Commission for Women and Another¹⁰ held thus:

"21. In a matter where paternity of a child is in issue before the Court, the use of DNA test is an extremely delicate and sensitive aspect. One view is that when modern science gives the means of ascertaining the paternity of a child, there should not be any hesitation to use those means whenever the occasion requires. The other view is that the Court must be reluctant in the use of such scientific advances and tools which result in invasion of right to privacy of an individual and may not only be prejudicial to the rights of the parties but may have devastating effect on the child. Sometimes the result of such scientific test may bastardise an innocent child even though his mother and her spouse were living together during the time of conception.

22. In our view, when there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the

Court to reach the truth, the Court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA test is eminently needed. DNA test in a matter relating to paternity of a child should not be directed by the Court as a matter of course or in a routine manner, whenever such a request is made. The Court has to consider diverse aspects including presumption under Section 112 of the Evidence Act; pros and cons of such order and the test of "eminent need" whether it is not possible for the Court to reach the truth without use of such test."

32) We must now consider whether respondent No.1 has successfully displaced the presumption of legitimacy under Section 112 of the Evidence Act by proving non-access, so as to warrant the ordering of a DNA test.

III. REBUTTAL OF PRESUMPTION AND FAILURE TO ESTABLISH NONACCESS

33) In a case where the legitimacy of a child is questioned, the degree of proof, to rebut the presumption under Section 112 of the Evidence Act, is extremely crucial. In Kamti Devi (Smt.) and Another vs. Poshu Ram¹¹ this Court observed as follows:

"11. Whether the burden on the husband is as hard as the prosecution to prove the guilt of the accused in a trial deserves consideration in the above background. The standard of proof of prosecution to prove the guilt beyond any reasonable doubt belongs to criminal jurisprudence whereas the test of preponderance of probabilities belongs to civil cases. The reason for insisting on proof beyond reasonable doubt in criminal cases is to guard against the innocent being convicted and sent to jail if not to extreme penalty of death.

It would be too hard if that standard is imported in a civil case for a husband to prove non-access as the very concept of non-access is negative in nature. But at the same time the test of preponderance of probability is too light as that might expose many children to the peril of being illegitimized. If a Court declares that the husband is not the father of his wife's child, without tracing out its real father the fallout on the child is ruinous apart from all the ignominy visiting his mother. The bastardised child, when grows up would be socially ostracised and can easily fall into wayward life.

Hence, by way of abundant caution and as a matter of public policy, law cannot afford to allow such consequence befalling an innocent child on the strength of a mere tilting of probability. Its corollary is that the burden of the plaintiff husband should be higher than the standard of preponderance of probabilities. The standard of proof in such cases must at least be of a degree in between the two as

to ensure that there was no possibility of the child being conceived through the plaintiff husband."

34) Thus, it is clear that the standard of proof required to displace the presumption under Section 112 of the Evidence Act must be higher than mere preponderance of probabilities, yet need not reach the exacting criminal standard of proof beyond reasonable doubt. The standard must be sufficiently rigorous to ensure that there existed no possibility of child being conceived through the husband.

This intermediate threshold serves the twin objectives of preventing the illegitimization of the child on the strength of mere assertions or tilting of probabilities, while simultaneously guarding against weaponization of the statutory presumption to defeat the legitimate claims. The person seeking to rebut this presumption must, therefore, adduce strong, cogent and unambiguous evidence establishing non-access, failing which, the statutory presumption must prevail.

35) In the case at hand, the child was born on 08.03.2007, during the subsistence of a valid marriage between respondent No.1 and Abdul Latheef, solemnized in the year 2001. Following the maxim *pater est quem nuptiae demonstrant* (The father is the man whom the marriage indicates), the statutory presumption under Section 112 of the Evidence Act operates in favour of Abdul Latheef being the legitimate father of the child. As observed earlier, this presumption can be displaced only by proving non-access between the spouses. It is the case of respondent No.1 that Abdul Latheef deserted her sometime in 2008-2009, well after the child had attained the age of approximately one and half years.

No material has been placed on record by respondent No.1 to substantiate her claim of desertion, which remains a bare assertion unsupported by any evidence. It is also not the case of respondent No.1 that Abdul Latheef was suffering from any physical incapacity or impotency rendering him incapable of procreation nor has any challenge been raised to the validity of the marriage itself. Further, respondent No.1 has not indicated any circumstance even remotely, suggesting that Abdul Latheef was physically absent during the relevant time when the child could have been conceived.

36) The birth certificate dated 14.07.2009, the school transfer certificate dated 01.06.2011, and the school admission record dated 09.06.2011 each record the name of Abdul Latheef as the father of the child. These documents reflect a consistent acknowledgement of his paternity. At its highest, respondent No.1's case is one of simultaneous access, that she had physical relations with the appellant while still married to Abdul Latheef. Mere simultaneous access does

not negate the husband's access, nor does it suffice to displace the statutory presumption under Section 112 of the Evidence Act.

37) What is most striking, however, is the complete absence of any specific pleading by respondent No.1 establishing non-access between herself and Abdul Latheef during the period relevant to the conception of the child. This omission is not merely procedural but goes to the root of the matter. The presumption under Section 112 of the Evidence Act operates in favour of legitimacy, and proof of non-access at the relevant period is the only mode of rebuttal recognised by law. In absence of specific plea of nonaccess, supported by strong and unambiguous evidence, the foundation for displacing the statutory presumption simply does not exist. The presumption, therefore, remains unrebutted, and Abdul Latheef must be regarded as having had access to respondent No.1 during the relevant period.

38) This Court must nonetheless consider respondent No.1's prayer for DNA testing, with due regard to the interests of all stakeholders. As held in Bhabani Prasad Jena (supra), when there is an apparent conflict between the right to privacy and bodily integrity on one hand, and the Court's duty to ascertain the truth on the other, judicial discretion must be exercised with utmost care. Such direction can be issued only after a scrupulous balancing of interests of all parties and upon due consideration of whether, for a just decision in the matter, DNA test is eminently necessary.

39) At this juncture, it is apposite to refer to the reliance placed by respondent No.1 on Nandlal Wasudeo Badwaik (supra) and Dipanwita Roy (supra) to buttress her claim for a direction of DNA testing. These decisions, however, are clearly distinguishable on facts and do not advance the case of respondent No.1.

40) In Nandlal Wasudeo Badwaik (supra), the DNA testing had been conducted with the consent of all parties, and without objection from the wife's counsel. The results indicated that the husband was not the biological father, and the re-test at the wife's request yielded the same result. The challenge based on Section 112 of the Evidence Act was only raised after the test was conducted and the results were already part of the record.

The question before this Court, therefore, was confined to whether such DNA test results, obtained pursuant to a prior Court direction, could be admitted into evidence to rebut the presumption of legitimacy. This Court held that where a DNA report is available on record following a Court directed test, it cannot be disregarded merely because it conflicts with the presumption. The decision thus dealt with the admissibility of DNA evidence already obtained, not whether a DNA test may be ordered against an unwilling party at the first instance.

41) In *Dipanwita Roy* (supra), this Court directed a DNA test to be conducted on the child. However, the direction was not issued for the purpose of determining the legitimacy of the child. The proceedings were in the context of a petition for divorce on the ground of adultery. The DNA test was sought to establish the wife's infidelity in order to obtain a decree of divorce. The appellant's objective was not to prove that the child was illegitimate, that question arose only incidentally. This Court expressly observed that while the issue of legitimacy was incidentally involved, the DNA test would determine solely the question of infidelity, and would not disturb the presumption under Section 112 of the Evidence Act.

42) In sharp contrast, respondent No.1 in the present case seeks a direction for DNA testing precisely to dislodge the statutory presumption of legitimacy that safeguards the child, and to establish the appellant as the biological father so as to sustain the criminal charges of cheating and harassment. The decision in *Dipanwita Roy* (supra) is, therefore, inapplicable to the facts of the present case.

IV. THE TWIN BLOCKADES TO DNA TESTING AND THE RIGHT TO PRIVACY

43) This Court, in *Ivan Rathinam* (supra), has elucidated the circumstances under which DNA testing may be directed, while maintaining the balance between interests of the parties. It reads thus:

"47. First and foremost, the courts must, therefore, consider the existing evidence to assess the presumption of legitimacy. If that evidence is insufficient to come to a finding, only then should the court consider ordering a DNA test. Once the insufficiency of evidence is established, the court must consider whether ordering a DNA test is in the best interests of the parties involved and must ensure that it does not cause undue harm to the parties. There are thus, two blockades to ordering a DNA test:

(i) insufficiency of evidence; and

(ii) a positive finding regarding the balance of interests."

44) In the present case, we find no insufficiency of evidence to dislodge the presumption of legitimacy. The child was born during the subsistence of a valid marriage and the documents on record consistently record Abdul Latheef as the father. More crucially, there is no pleading whatsoever by respondent No.1 alleging non-access between herself and Abdul Latheef during the period of conception. The existing evidence, therefore, stands sufficient.

45) At this juncture, this Court has to consider whether directing a DNA test would serve the best interests of the parties involved or whether it would

occasion undue harm. The balance of interests must account for the rights and welfare of all the stakeholders-the appellant, the child who has now attained majority, and respondent No.1 herself. In the present case, this balance weighs decisively against ordering DNA testing. Such a direction would constitute a significant intrusion into the privacy and dignity of both, the appellant and the child, implicating the fundamental right to privacy guaranteed under Article 21 of the Constitution of India.

46) The contours of the right to privacy, as an intrinsic facet of Article 21 of the Constitution, were elaborated upon by this Court in *K.S. Puttaswamy and Another vs. Union of India and Others*¹²:

"325. Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right. A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal liberty under Article 21. An invasion of life or personal liberty must meet the threefold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them."

Forcefully subjecting an individual to DNA testing constitutes a grave intrusion upon privacy and personal liberty. Such an encroachment can be justified only if it satisfies the threefold test of legality, legitimate State aim, and proportionality.

47) On behalf of respondent No.1, it is contended that she has voluntarily relinquished her privacy and is willing to subject herself to DNA testing. It is further asserted that the DNA testing would remove the child's stigma of illegitimacy by establishing the true parentage. These contentions cannot override the legitimate privacy interests of the other parties involved. Respondent No.1 is not the sole party whose rights are implicated by the proposed DNA test. The appellant and the child, who has now attained majority, possess independent and equally inviolable rights to privacy and dignity. Respondent No.1's willingness to waive her own privacy does not extend to waiving the privacy of others. The appellant has consistently refused to submit to DNA testing, a refusal that is protected by the principles articulated in *Goutam Kundu* (supra).

48) Furthermore, the assertion that the child is living as illegitimate is legally untenable. In the eyes of the law, the child is the legitimate offspring of Abdul Latheef through respondent No.1, as the statutory presumption under Section 112 of the Evidence Act remains unrebutted. The legal status of the child cannot be

altered by mere assertions or by subjective perception of respondent No.1. Turning to the requirements enunciated in K.S. Puttaswamy (Privacy-9J.) (supra), we find that the proposed DNA test fails to satisfy the constitutional requisites.

There exists no legitimate aim that necessitates such an intrusive procedure, since the criminal allegations of cheating and harassment can be investigated and adjudicated on the strength of other evidence, without delving into the question of biological paternity. The test of proportionality is also manifestly not met; the invasion of privacy and dignity of the appellant and the child far outweigh any conceivable investigative benefit.

49) In view of the foregoing discussion, this Court is of the opinion that neither the element of eminent need, contemplated in Bhabani Prasad Jena (supra), nor the positive finding on the balance of interests as articulated in Ivan Rathinam (supra), can be said to have been satisfied in the facts of the present case.

V. ADVERSE INFERENCE

50) Further, this Court deems it necessary to address the contention advanced by respondent No.1 that an adverse inference ought to be drawn against the appellant under Section 114(g) and (h) of the Evidence Act, on account of his refusal to undergo DNA testing. This contention, however, is fundamentally misconceived. Without first displacing the statutory presumption of legitimacy under Section 112 of the Evidence Act by leading positive and cogent evidence of non-access, respondent No.1 cannot seek refuge in the drawing of an adverse inference against the appellant under Section 114 of the Evidence Act.

Unless the presumption under Section 112 is first rebutted, no occasion arises for directing a DNA test. Conversely, where the prerequisites for ordering such a test are not satisfied, the question of drawing any adverse inference from the appellant's refusal to undergo it does not arise at all. A similar issue arose for consideration before this Court in Aparna Ajinkya Firodia (supra) wherein V. Ramasubramanian, J. in a concurring opinion observed as under:

"26. There is another fallacy in the argument of the respondent. It is the contention of the respondent that he is seeking an adverse inference to be drawn only as against the wife under Section 114(h), upon the refusal of the wife to subject the child to DNA test. But the stage at which the wife may refuse to subject the child to DNA, would arise only after the Court comes to the conclusion that a DNA test should be ordered.

To put in simple terms, there are three stages in the process, namely, (i) consideration by the Court, of the question whether to order DNA test or not; (ii) passing an order directing DNA test, after such consideration; and (iii) the decision of the wife to comply or not, with the order so passed. The respondent

should first cross the outer fence namely whether a DNA test can be ordered or not. It is only after he convinces the Court to order DNA test and successfully secures an order that he can move to the inner fence, regarding the willingness of the wife to abide by the order. It is only at that stage that the respondent can, if at all, seek refuge under Section 114(h).

27. But today, we are actually at the outer fence in this case, adjudicating as to whether DNA test can be ordered at all. Therefore, the respondent cannot jump to the inner fence bypassing the outer fence."

As it is abundantly clear from the foregoing, and the exposition in *Aparna Ajinkya Firodia* (supra), no occasion arises to draw an adverse inference at the stage of considering whether a DNA test ought to be directed.

51) Beyond the legal framework, it is also imperative to recognise the ethical and psychological dimensions of directing DNA testing. The process though scientific, is not without profound ethical and emotional implications. The act of extracting and analysing one's genetic material intrudes into the innermost sphere of personal identity, autonomy, and privacy. It can have lasting emotional and social ramifications not only for children but also for adults, as such testing often brings to surface intimate aspects of familial and personal relationships.

In the present case, it must be borne in mind that the child has now attained majority. At the time when the FIR was registered and the direction for DNA profiling was issued by the High Court, the child was still a minor. In such circumstances, the best interests of the child ought to have been a paramount consideration before any intrusive forensic procedure was contemplated. Judicial and ethical prudence both require that autonomy, dignity and emotional wellbeing of the individual, especially of a minor, be safeguarded. A direction for DNA testing without considering the ramifications causes risks inflicting an irreversible psychological and social harm.

VI. PATERNITY AS A COLLATERAL FACTOR TO CRIMINAL CHARGES

52) The significance of safeguarding individual autonomy, particularly of children, in the context of DNA testing, was considered by this Court in *Inayath Ali and Another vs. State of Telangana and Another*¹³. In this case, it was examined whether a Court could direct DNA testing of two minor children to facilitate the proof of offences under Sections 498A, 323, 354, 506 and 509 of the Indian Penal Code, 1860. The dispute primarily concerned dowry-related offences, and the paternity of the children was not directly in issue. The complainant sought DNA testing to establish that the children were born out of a

forced relationship with her brother-in-law. Rejecting this plea, this Court held as follows:

"7. In the present proceeding, we are taking two factors into account which have been ignored by the trial Court as also the Revisional Court. The trial Court allowed the application of Respondent 2 mechanically, on the premise that the DNA fingerprint test is permissible under the law. The High Court has also proceeded on that basis, referring to different authorities including *Dipanwita Roy v. Ronobroto Roy* [*Dipanwita Roy v. Ronobroto Roy*, (2015) 1 SCC 365 : (2015) 1 SCC (Civ) 495 : (2015) 1 SCC (Cri) 683] . The ratio of this case was also examined by the coordinate Bench in the decision of *Ashok Kumar* [*Ashok Kumar v. Raj Gupta*, (2022) 1 SCC 20 : (2022) 1 SCC (Civ) 303].

8. The first factor, which, in our opinion, is of significance, is that in the judgment under appeal, blood sampling of the children was directed, who were not parties to the proceeding nor was their status required to be examined in the complaint of Respondent 2. This raised doubt on their legitimacy of being born to legally wedded parents and such directions, if carried out, have the potential of exposing them to inheritance related complication.

9. Section 112 of the Evidence Act, also gives a protective cover from allegations of this nature. The said provision stipulates:

"112. Birth during marriage, conclusive proof of legitimacy.- The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."

10. In our opinion, the trial Court as also the Revisional Court had completely ignored the said factor and proceeded as if the children were material objects who could be sent for forensic analysis. The other factor, in our opinion, which was ignored by the said two Courts is that the paternity of the children was not in question in the subject proceeding.

11. The substance of the complaint was not related to paternity of the children of Respondent 2 but the question was whether the offences under the aforesaid provisions of the 1860 Code were committed against her or not. The paternity of the two daughters of Respondent 2 is a collateral factor to the allegations on which the criminal case is otherwise founded. On the basis of the available materials, in our opinion, the case out of which this proceeding arises could be decided without considering the DNA test report. This was the reasoning which

was considered by the coordinate Bench in Ashok Kumar [Ashok Kumar v. Raj Gupta, (2022) 1 SCC 20 : (2022) 1 SCC (Civ) 303], though that was a civil suit.

Merely because something is permissible under the law cannot be directed as a matter of course to be performed particularly when a direction to that effect would be invasive to the physical autonomy of a person. The consequence thereof would not be confined to the question as to whether such an order would result in testimonial compulsion, but encompasses right to privacy as well. Such direction would violate the privacy right of the persons subjected to such tests and could be prejudicial to the future of the two children who were also sought to be brought within the ambit of the trial Court's direction."

53) In the case at hand, the paternity of the child is collateral to the primary allegations of cheating and harassment. The FIR itself reveals that the gravamen of the allegations bears no nexus to the paternity of the child. The child is neither a party to the proceedings nor is the child's status required to be ascertained to determine the commission of the offences alleged. Directing DNA testing in such circumstances would thus be wholly extraneous to the scope of the investigation and disproportionate to the object sought to be achieved.

54) A direction for DNA testing must have a direct and demonstrable nexus with the offences under investigation. In the absence of such nexus, compelling a person to undergo DNA profiling, amounts to unwarranted intrusion into bodily autonomy and privacy, contrary to the safeguards implicit in Articles 20(3) and 21 of Constitution of India.

55) Having regard to the above legal position, reliance placed by the High Court on Sections 53 and 53A of the Code of Criminal Procedure, 1973 appears to be misplaced. In the present case, the learned Single Judge of the High Court in the order dated 24.04.2017, invoked these provisions to justify the direction for DNA testing, observing that there was an eminent need to ascertain the paternity of the child in order to unearth the truth. The Division Bench, in the impugned judgment, while affirming the order of the learned Single Judge, did not independently analyse their scope and applicability. The said provisions are reproduced for ready reference:

"53. Examination of accused by medical practitioner at the request of police officer.-

(1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of

subinspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

(2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

Explanation.-In this section and in sections 53A and 54,-

(a) "examination" shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;

(b) "registered medical practitioner" means a medical practitioner who possesses any medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and whose name has been entered in a State Medical Register.

53A. Examination of person accused of rape by medical practitioner.-

(1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometres from the place where the offence has been committed, by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:-

(i) the name and address of the accused and of the person by whom he was brought,

(ii) the age of the accused,

(iii) marks of injury, if any, on the person of the accused,

(iv) the description of material taken from the person of the accused for DNA profiling, and

(v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section."

(emphasis supplied)

56) These provisions are intended to be invoked in the cases involving offences where medical examination of the accused, including the collection of blood, semen, hair samples, or nail clippings, may furnish material evidence directly bearing upon the commission of the offence. While these provisions contemplate the use of modern scientific techniques such as DNA profiling, their application is conditioned upon the existence of a clear and proximate nexus between the examination sought and the alleged offence.

57) In the present case, no such nexus is discernible. The offences alleged do not, by their nature, necessitate ascertainment of paternity or any forensic determination through DNA analysis. Merely because such testing is legally permissible in certain contexts does not justify its use as a matter of course.

CONCLUSION

58) In view of the foregoing analysis, we are constrained to hold that the impugned judgment dated 10.05.2017 cannot be sustained. The statutory presumption under Section 112 of the Evidence Act remains unrebutted, and the child continues to be, in the eyes of the law, the legitimate offspring of Abdul Latheef. Section 112 embodies a legislative policy of profound significance, it stands as a bulwark against the casual illegitimization of children on the strength of unsubstantiated allegations or mere suspicion. The presumption it creates is not a procedural formality to be lightly displaced but a substantive safeguard intended to protect the dignity, social legitimacy, and the legal rights of children born within wedlock.

59) In summation, the direction for DNA testing, as affirmed by the Division Bench, rests upon the fundamental misapprehension of both statutory framework and constitutional safeguards. The offences alleged, falling under Sections 417 and 420 of the Indian Penal Code, 1860 and Section 4(1) of the Tamil Nadu Women Harassment Act, are neither of nature nor of a circumstance that warrant recourse to DNA analysis.

The High Court's invocation of Sections 53 and 53A of the Code of Criminal Procedure, 1973, rests on a misconstruction of their contextual ambit; these provisions contemplate medical examination only where such an examination may directly yield evidence relating to commission of the alleged offence. Absent that nexus, compulsion of a DNA test transforms a lawful investigative power into an intrusive measure devoid of necessity, trenching upon the individual's bodily autonomy, privacy. Scientific procedures, however advanced, cannot be employed as instruments of speculation; they must be anchored in demonstrable relevance to the charge and justified by compelling investigative need.

60) Accordingly, the impugned judgment dated 10.05.2017 passed by the High Court in Writ Appeal (MD) No.521 of 2017 is set aside.

61) The Appeal is, accordingly, allowed.

.....**J. (Prashant Kumar Mishra)**

.....**J. (Vipul M. Pancholi)**

New Delhi;

November 10, 2025.

1 For short, 'the Evidence Act'

2 2025 SCC OnLine SC 175

3 2023 INSC 146: [2023] 4 SCR 680

4 (2005) 4 SCC 449

5 (1993) 3 SCC 418

6 (2015) 1 SCC 365

7 (2014) 2 SCC 576

8 (2019) 1 SCC 1

9 (2003) 4 SCC 493

10 (2010) 8 SCC 633

11 (2001) 5 SCC 311

12 (2017) 10 SCC 1 (Privacy-9J.)

13 (2024) 7 SCC 822

IN THE SUPREME COURT OF INDIA

K.S. Manjunath and Ors.

Vs.

Moorasavirappa @ Muttanna Chennappa Batil, since (D) by his LRS. and Ors.

**[Civil Appeal No. 13507-13508 of 2025
arising out of SLP (C) Nos. 29405-29406 of 2017]**

Head Note - A subsequent purchaser who relies unquestioningly on the assertions of the vendor, without exercising due diligence or making reasonable inquiries, cannot claim protection of Section 19(b) of the Specific Relief Act, 1963, as a bona fide purchaser for value without notice.

To invoke Section 19(b) protection, a purchaser must establish:

- (a) purchase for value;
- (b) payment made in good faith; and
- (c) absence of notice of the earlier contract.

'Notice' can also be constructive or imputed notice.

JUDGMENT

J.B. Pardiwala, J.:

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

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A. FACTUAL MATRIX

B. SUBMISSIONS OF THE PARTIES

(i). Submissions on behalf of the Appellants / Subsequent Purchasers

(ii). Submissions on behalf of the Respondents / Original Vendees

C. ANALYSIS

(I). Failure to challenge the legality and validity of termination of ATS in the suit.

(a) Views adopted by the High Courts on failure to seek declaration.

- (b) Whether the ATS dated 28.04.2000 was in nature determinable?
.....
- (II). Bona fides of the subsequent purchasers in purchasing the subject land
- (III). Readiness and willingness of the Original Vendees to perform the ATS

D. CONCLUSION

1. Leave Granted.

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

3. These appeals arise from the common judgment and order passed by the High Court of Karnataka in the Regular First Appeal Nos. 4187 of 2013 and 4160 of 2012 respectively by which the High Court allowed the two appeals filed by the vendees and thereby, set aside the judgment and decree dated 21.07.2012 passed by the 2nd Additional Senior Civil Judge at Haveri, Karnataka ("Trial Court") in Original Suit No. 36 of 2007, while granting the relief of specific performance of Agreement to Sell dated 28.04.2000 ("ATS") executed by the Respondent Nos. 6 to 13 ("Original Vendors") in favour of the Respondent Nos. 15 to 22 respectively & the Respondent Nos. 1 to 5 respectively ("Original Vendees") and holding the Appellants herein ("Subsequent Purchasers") not to be the bona fide purchasers of the subject land (as defined below) for value without notice.

A. FACTUAL MATRIX

4. For the sake of convenience, the respective positions of the contesting parties to the present lis before the various courts leading upto this Court is tabularly illustrated herein below:

BEFORE THIS COURT	BEFORE THE HIGH COURT	BEFORE THE TRIAL COURT	PARTICULARS
Appellants	Respondent Nos. 8 to 15	Defendant Nos. 9 to 16	Subsequent Purchasers of subject land
Respondent Nos. 1 to 5 (Legal Heirs of Defendant No. 7)	Appellants	Defendant No. 7	One of the Original Vendees of the subject land, however, he was arrayed as a defendant in the suit. This defendant

on record)			supported the case of plaintiffs.
Respondent Nos. 6 to 13 (Legal Heirs of Defendant Nos. 4 and 6 on record)	Respondent Nos. 1 to 6	Defendant Nos. 1 to 6	Original Vendors of the subject land
Respondent No. 14	Respondent No. 7	Defendant No. 8	One of the Original Vendees of the subject land, however, he was arrayed as a defendant in the suit. This defendant was proceeded exparte by the Trial Court
Respondent Nos. 15 to 22	Appellants	Plaintiffs	Original Vendees of the subject land
Respondent Nos. 15 to 22, Respondent Nos. 1 to 5, and Respondent No. 14 being the original purchasers of subject land are also collectively being referred to as "Original Vendees" in the present matter.			

5. On 28.04.2000, the original vendors executed an unregistered ATS in favour of the original vendees in respect of 354 Acres of Agricultural Watan Land bearing survey no. 12/2 part 12/2A situated in village Basavanakoppa, Taluk Shiggaon, District Haveri, Karnataka ("Subject Land") for a total sale consideration of Rs. 26,95,501/- out of which the original vendees paid an amount of Rs. 2,00,000/- as earnest money to the original vendors.

It was agreed that an additional amount of Rs. 5,00,000/- would be paid by the original vendees to the original vendors at the time of registration of the ATS and the balance sale amount would be paid at the time of registration of the sale deed. It was also agreed that the original vendees would execute the sale deed within two months of the original vendors, informing them about the change of subject land from new tenure to old tenure in the record of rights, surveying, measuring, fixing the boundaries of subject land and shifting 19 tenants residing on the subject land to one particular place. Between the years 2000 and 2001, the original vendees paid some further amount to the original vendors, in all aggregating to Rs. 8,12,500/-.

6. On 24.03.2001, one Sunil Anand Rao Desai, nephew of the original vendors, instituted the Original Suit No. 30 of 2001 in the court of the Principal Senior Civil Judge at Haveri against the original vendors herein inter alia seeking partition and possession of certain properties including the subject land and revocation of a partition deed dated 29.12.1996 (unrelated to the present case) to which the original vendees were not parties. On 11.04.2001, an order of status quo came to be passed by the Principal Senior Civil Judge.

When the original vendees came to know about the institution of the Original Suit No. 30 of 2001, they took steps to enforce their rights under the ATS and sought to implead themselves as parties in the said suit by filing an impleadment application dated 27.08.2001. The said application came to be rejected by the Principal Senior Civil Judge vide its order dated 16.03.2005. Later, aggrieved by rejection to impleadment application, the original vendees preferred a Writ Petition being WP No. 17952 of 2005 before the High Court. However, the same also came to be dismissed by the High Court vide its order dated 18.07.2005.

7. In the interregnum and during the pendency of the aforementioned Original Suit No. 30 of 2001, the original vendees got the subject land converted from new tenure to old tenure on behalf of the original vendors and also persuaded those 19 tenants who were residing on the subject land to relocate themselves to some other portion of the land. Meanwhile, one of the original vendees i.e. the Respondent No. 14 herein entered into an agreement dated 28.12.2002 wherein he released and relinquished his right under the ATS in favour of the remaining original vendees.

8. On 10.03.2003, the original vendors sent a Legal Notice ("Notice of Termination") to the original vendees thereby terminating the ATS and informing them of their inability to execute a sale deed inter alia for two reasons - (i) Long pendency of the Original Suit No. 30 of 2001 and the status quo order in force therein, and (ii) The death of one of the original vendors i.e., Smt. Godavari @ Mahalakshmi Kulkarni. In the said notice of termination, the original vendors called upon the original vendees to take back the earnest money paid by them and treat the ATS as cancelled within one month from the date of receipt of said notice, failing which the ATS would be "deemed to be cancelled". The relevant portion of the said notice reads as under:

"In view of the pending litigation and death of Smt. Godavari urf Mahalakshmi G. Kulkarni, my clients are not in a position to go ahead with the transaction as per agreement of sale deed dt. 28.04.2000. My clients cannot wait for an indefinite period. Furthermore they cannot be definite about their share in the land in view of the litigation and it is also subject to the decision of the court. Hence, my clients are unable to execute a sale deed in respect of the land in question as per agreement dt. 28.04.2000.

Under the circumstances, you are hereby called upon to take back your earnest money and to treat the agreement of sale dt. 28.04.2000 as cancelled within a period of one month from the date of receipt of this notice. Failing which the agreement of sale dt. 28.04.2000 is deemed to be cancelled and the legal effects and rights of my clients will take their own course and my clients will be at liberty to deal with the above said land in accordance with law."

(Emphasis Supplied)

9. To the aforesaid, the original vendees on 21.03.2003 gave a reply stating as follows:

(i). That they had fulfilled the terms of the ATS by getting the subject land surveyed, measured, and boundaries fixed, and carrying out the conversion of tenure of the subject land which otherwise was the obligation of the original vendors under the ATS;

(ii). That they had time and again requested the original vendors to perform their part of the obligation of executing the sale deed;

(iii). That they were always ready and willing to perform their part of the contract;

(iv). That the further performance of the ATS had to be suspended due to the order of status quo passed in the Original Suit No. 30 of 2001 and the same would not render the ATS unenforceable;

(v). That the original vendors were duty bound to execute the sale deed in their favour after the disposal of the Original Suit No. 30 of 2001;

(vi). That the death of one of the original vendors would not have the effect of cancellation of the ATS because the legal heirs would be bound to perform in that regard;

(vii). That for all the above grounds the question of taking back the earnest money did not arise.

10. No further response was given by the original vendors to the aforesaid reply to their notice of termination. On 10.02.2007, the plaintiff in the Original Suit No. 30 of 2001 viz., Sunil Anand Rao Desai filed a memo to withdraw the suit and get the status quo order vacated in effect thereto. On the basis of the withdrawal memo, the Principal Senior Civil Judge vide its order dated 14.02.2007 dismissed the Original Suit No. 30 of 2001 as being withdrawn and thus, the status quo order came to be vacated in effect thereto. Pursuant to the withdrawal of the said suit, the original vendors executed the sale deeds dated 20.02.2007 and 02.03.2007 respectively in favour of the subsequent purchasers, selling the subject land for a total sale consideration of Rs. 71,00,000/-.

11. Having obtained knowledge of the sale deeds executed in favour of the subsequent purchasers, the original vendees instituted the Original Suit No. 36 of 2007 in the Trial Court on 09.07.2007 inter alia the relief of seeking specific

performance of the ATS dated 28.04.2000 against both the original vendors and the subsequent purchasers.

12. The original vendees prayed for the following reliefs:

"16. The plaintiffs pray:-

(a) That the defendants be specifically ordered to perform the agreement dated 28.04.2000 and do all acts necessary to put the plaintiffs in full possession of the suit property as owners at the cost of the plaintiffs after receiving the balance consideration from the plaintiffs;

(b) That the above acts be got done through Court Commissioner in case defendant/s fail to execute and register the sale deed;

(c) In case for any reason whatsoever the court comes to the conclusion that the specific performance cannot be ordered, then the court may be pleased to order refund of amounts paid with damages and compensation which is total sum of Rs. 26,95,501/-;

(d) Costs and such other reliefs as court deems fit and proper."

13. Pursuant to the above, the Trial Court framed the following issues:

"1. Whether plaintiffs prove that, defendants No. 1, 2, 4 and 6 and two others have agreed to sell the suit land RS No. 12/2 i.e. 12/2A measuring 354 acres of village Basasvanakoppa for a sum of Rs: 26,95,501/- on 28.4.2000 and paid Rs. 2,00,000/- as earnest money?

2. Whether plaintiffs prove that, defendants No. 1, 2, 4 and 6 and others have agreed to execute the sale deed within one month after completion of the work of sub division.

3. Whether plaintiffs prove that they have paid amount of Rs. 9,45,000/- as shown in schedule B?

4. Whether plaintiffs prove that, they are ready, ever ready and always ready to perform their part of contract?

5. Whether defendants No.1 to 4 and 9 to 16 prove that suit of the plaintiffs is hopelessly barred by them?

6. Whether defendant No. 1 to 4 prove that the suit of the plaintiffs is not maintainable without seeking relief of cancellation of sale deed?

7. Whether deft. No. 10 proves that, deft. No. 9 to 16 are bonafide purchase of suit lands for valid consideration?

8. Whether plaintiffs are entitled to the relief of specific performance of contract of sale?

9. What order or decree?"

14. The Trial Court answered the issues as under:

(a) Issue Nos. 1, 2, 4 and 7 respectively were answered in the affirmative and the Issue No. 3 was answered partly in the affirmative -

(i). That the original vendees successfully proved that the original vendors had agreed to sell the subject land for sale consideration of Rs. 26,95,501/- and had paid Rs. 2,00,000/- as earnest money;

(ii). That the original vendees successfully proved that the original vendors had agreed to register the sale deed within one month after the completion of subdivision work;

(iii). That the original vendees claim to have paid Rs. 9,45,000/- in overall to the original vendors yet the evidence indicates that the original vendees had paid a total of Rs. 8,12,500/- to the original vendors;

(iv). That the original vendees successfully proved that they were always ready and willing to perform their part of the contract;

(v). That the original vendees failed to prove that the subsequent purchasers had prior knowledge of the ATS.

(vi). That the subsequent purchasers have proved that they are bona fide purchasers of the subject land for valid consideration without notice.

(b) Issue Nos. 5, 6, and 8 respectively were answered in the negative -

(i). That the delay in filing the suit was caused due to the pendency of the Original Suit No. 30 of 2001 and the original vendees had filed the suit after the execution of the sale deed by the original vendors in favour of the subsequent purchasers. Thus, the suit filed by the original vendees was within limitation from the date of the disposal of the Original Suit No. 30 of 2001 as well as the execution of the sale deeds;

(ii). That the suit of the original vendees was maintainable without seeking the relief of cancellation of the sale deeds. This was because the original vendees

were not party to those sale deeds and they had filed the suit for specific performance on the basis of ATS only;

(iii). That the original vendees failed to prove that they were in actual possession of the subject land from the date of execution of the ATS and that the subsequent purchasers had bona fide purchased the subject land. Therefore, the grant of relief of specific performance in favour of the original vendees would cause hardship to the subsequent purchasers.

(c) Issue No. 9 followed with the following order and direction -

(i). That the original vendees had failed to make good their case for grant of relief of specific performance and that in the alternative, the original vendees were entitled to refund of an amount of Rs. 8,12,500/- alongwith damages @9% p.a.

15. Aggrieved by the judgment and decree dated 21.07.2012 passed by the Trial Court, the original vendees filed two separate appeals i.e., the Regular First Appeal Nos. 4160 of 2012 and 4187 of 2013 respectively, before the High Court. As no cross objections were filed by the subsequent purchasers, the High Court framed the following point for its determination:

"1. Whether the defendant 9 to 16 had established that they were bona fide purchasers for value of the suit property?"

16. The High Court allowed the two appeals by a common judgment and order dated 22.03.2017. It was held that the subsequent purchasers had been informed of the ATS by the original vendors and a copy of the notice of termination of ATS was also shared with the subsequent purchasers. This in High Court's opinion would indicate that the subsequent execution of sale deeds in favour of the subsequent purchasers was a deliberate act and in plain disregard to the subsisting ATS in favour of the original vendees. The High Court also observed that as the original vendors had not responded to the reply of original vendees to the notice of termination, the termination of ATS could never be said to have reached to its logical end, and that the ATS was still alive and binding.

17. Thus, the High Court held that the subsequent purchasers were not bona fide purchasers of the subject land for value without notice as they were aware of the earlier ATS executed in favour of the original vendees. The High Court directed the subsequent purchasers to execute the sale deeds in favour of the original vendees and put them in physical possession of the subject land. The original vendees, in turn, were directed to pay the balance sale consideration to the subsequent purchasers. The relevant portions of the impugned judgment at Page Nos. 29 to 31 are as under:

"Apparently, there was no rejoinder to the reply notice. It is also not shown that the defendants had offered to return the advance amount received, nor was it claimed to have been returned. The termination of the agreement was hence not taken to its logical end. The unilateral termination could not therefore said to be valid and binding on the plaintiffs. Defendants no.1 to 6 were therefore aware of the circumstance that the advance amount paid by the plaintiffs was not refunded nor was it claimed to have been forfeited on any alleged breach of contract on the part of the plaintiffs.

In the face of which, the circumstance that close on the heels of, the plaintiff in the civil suit in OS 30/2001 having withdrawn the suit, that was claimed as an impediment for completion of the sale transaction, defendants no. 1 to 6 having sold the property in favour of Defendants no.9 to 16, who in turn were said to have been informed of the agreement of sale and the same having been terminated under the notice dated 10-3-2001 and a copy of the same also said to having been furnished to the said defendants, would plainly indicate that the sale transaction was carried out deliberately and blatantly in the face of a subsisting agreement of sale in favour of the plaintiffs, with a clear intention of defeating the said agreement of sale in favour of the plaintiffs.

Such a deliberate act on the part of Defendants no. 1 to 6 and 9 to 16 would not enable them to claim that as they have achieved a fait accompli, though defendants may claim to be innocent and bona fide purchasers for value, as it is found that they were aware of the agreement of sale in favour of the plaintiffs, it cannot be said that the contract is no longer capable of ; performance as the property is now in the hands of a third party. This may be true of genuinely bona fide purchasers and not such third-party purchasers who have brazenly entered into the transaction with eyes wide open and with notice of the subsisting agreement.

The consequence would be that even defendants no. 9 to 16 would be obliged to complete the sale, as persons claiming under Defendants no. 1 to 6 by the due execution of a sale deed or sale deeds in favour of the plaintiffs and to convey the suit property in favour of the plaintiffs. Incidentally, it is our firm opinion that it would be unjust to grant a lesser relief to the plaintiffs in directing the refund of the earnest money or to embark upon an exercise of determining any damages which the plaintiffs could very well claim. Such an exercise would have been justified if the defendants no. 9 to 16 had established their bona fides, which they have not. In the result, the appeals are allowed and the judgment of the trial court is set aside.

The suit for specific performance is decreed. Defendants 9 to 16 shall execute sale deeds in favour of the plaintiffs in respect of such portions of the suit property that they may have purchased from Defendants no. 1 to 6, in favour of

the plaintiffs and put them in physical possession of the same. The plaintiffs shall pay the balance sale price in consideration thereof, proportionately. The sale transactions shall be completed within a period of three months, if not earlier. In the event of default on the part of the said defendants in this regard, the plaintiffs shall be entitled to have the sale deeds executed through the court below, in the manner as may be directed by it."

(Emphasis Supplied)

18. In such circumstances referred to above, the subsequent purchasers are here before us with the present appeals.

B. SUBMISSIONS OF THE PARTIES

(i). Submissions on behalf of the Appellants / Subsequent Purchasers

19. Dr. Aditya Sondhi, the learned senior counsel appearing for the subsequent purchasers would submit that the courts below committed a serious error in decreeing the suit for specific performance filed by the original vendees in as much as the same was barred by limitation. The learned counsel argued that as per Article 54 of the Limitation Act, 1963, the period of the limitation to institute a suit for specific performance is 3 years from the date when a plaintiff has notice of refusal of performance. According to the learned counsel, the ATS was terminated by the original vendors vide notice of termination dated 10.03.2003 and thus, the limitation period could be said to have expired on 10.03.2006. However, the original vendees filed the Original Suit No. 36 of 2007 on 09.04.2007 i.e. after a delay of total 11 months.

20. He further submitted that the original vendees' explanation as regards delay in filing the Original Suit No. 36 of 2007 by relying on the pendency of their impleadment application in the Original Suit No. 30 of 2001 is misconceived in as much as:

(a) the impleadment application of the original vendees' in the Original Suit No. 30 of 2001 was filed much prior to the notice of termination and on the basis of a wholly different cause of action and

(b) the notice of termination was issued by the original vendors on 10.03.2003 i.e. later in time to the filing of the impleadment application, giving rise to a fresh cause of action in respect of specific performance.

21. The learned senior counsel further submitted that the Original Suit No. 36 of 2007 filed for seeking specific performance was not maintainable in law in the absence of there being any prayer seeking declaration in respect of the legality and validity of the termination of the ATS. For this, the learned counsel placed

reliance on the decisions of this Court in I.S. Sikandar (Dead) by LRs v K. Subramani & Ors., reported in 2013 (15) SCC 27 and R. Kandasamy (since dead) & Ors. v T.R.K. Sarawathy & Anr., reported in 2024 SCC OnLine SC 3377 respectively wherein this Court had held that a suit for specific performance is not maintainable in the absence of a prayer for declaration that the notice of termination of agreement of sale is bad in law.

22. The learned senior counsel further submitted that his clients are bona fide purchasers of the subject land for value without notice and that too after 4 years of the termination of the ATS. He would submit that at the time of the sale of the subject land there was no suit pending. According to the learned counsel, the ATS being an unregistered document and the same being terminated by the original vendors, they had no occasion to have notice to anything contrary.

The learned counsel submitted that the subsequent purchasers made bona fide enquires about the title of the original vendors and all other necessary particulars before purchasing the subject land. The subsequent purchasers were made aware by the original vendors about the termination of the ATS vide the notice of termination prior to the purchase of the suit property. It was argued that the title and possession of the subject land was with the original vendors at the time of the sale.

23. In the last, the learned senior counsel submitted that the ATS was executed in favour of six different individuals who were joint vendees and that there was no division of each person's interest. Four of the original vendees chose to file the Original Suit No. 36 of 2007 as plaintiffs. Two of the original vendees i.e. the Respondent Nos. 1 to 5 herein and the Respondent No. 14 herein respectively, were arrayed as the defendant no. 7 and defendant no. 8 respectively in the Original Suit No. 36 of 2007, out of which the defendant no. 7 supported the case of the original vendees, however, the defendant no. 8 was proceeded ex-parte by the Trial Court.

This defendant no. 8 chose not to appear before the High Court. He has not appeared before this Court as well. One of the original vendees i.e. defendant no. 7 never sought the relief of specific performance of the ATS. On such premise, the learned counsel argued that the ATS being indivisible, and in the absence of all the vendees seeking enforcement of the same, the relief of specific performance is not enforceable in law.

(ii). Submissions on behalf of the Respondents / Original Vendees

24. Mr. Devadatt Kamat, the learned senior counsel, appearing for the original vendees vehemently submitted that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned

judgement and order. On the point of limitation, the learned counsel argued that the Trial Court after due consideration of the facts of the present matter and the evidence on record rightly held that the Original Suit No. 36 of 2007 filed by the original vendees was not time barred.

He submitted that the appellant herein / subsequent purchasers had not even challenge this finding of limitation before the High Court and that the High Court limited its adjudication only to the issue whether the subsequent purchasers were bona fide purchasers or not. In arguendo, the learned counsel argued that even otherwise the original vendees would be entitled to seek the benefit of Section 14 of the Limitation Act, 1963 in as much as they were seeking impleadment in the Original Suit No. 30 of 2001.

25. It was sought to be argued that the time consumed in impleading themselves as parties in Original Suit No. 30 of 2001 and in the Writ Petition No. 17952 of 2005 has to be excluded under Section 14 of the Limitation Act, 1963 since:

(1) both the Original Suit No. 30 of 2001 and the Original Suit No. 36 of 2007 were civil proceedings;

(2) the impleadment application filed by the original vendees was dismissed by recording a finding that they were not a necessary party; and

(3) original vendees agitated their rights under the same ATS in both the proceedings and that specific submissions regarding their readiness and willingness to perform the contract were made in both the proceedings.

26. The learned counsel further submitted that the High Court was right in holding that the subsequent purchasers are not bona fide purchasers of the subject land. He argued that it is evident from the conduct and flow of events that the subsequent purchasers are not bona fide purchasers. He pointed out that the subsequent purchasers entered into sale deeds on 20.02.2007 and 02.03.2007 respectively i.e. within 6 (Six) days and 15 (Fifteen) days respectively of the withdrawal order dated 14.02.2007 passed in the Original Suit No. 30 of 2001.

The timing of the execution clearly shows that the sale deeds were executed with the sole intent to defeat the rights of the original vendees. Developing this argument further, the learned counsel submitted that the subsequent purchasers have admitted that they were shown the notice of termination dated 10.03.2003 and had the subsequent purchasers not been negligent, they would have come to know the fact that the earnest money of the original vendees was never returned by the original vendors and that the original vendees had objected to the notice of termination vide their reply dated 21.03.2003.

27. In the last, the learned senior counsel submitted that in so far as the readiness and willingness of the original vendees is concerned, the Trial Court and High Court have concurrently held that the original vendees were always ready and ever willing to perform their part of the ATS.

28. In such circumstance referred to above, the learned counsel prayed that there being no merit in the present appeals those may be dismissed.

C. ANALYSIS

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

(I). Failure to challenge the legality and validity of termination of ATS in the suit.

30. The subsequent purchasers have vehemently argued that the Original Suit No. 36 of 2007 filed by the original vendees inter alia seeking specific performance of ATS was not maintainable because the original vendees failed to also seek a declaration from the court in respect of whether the notice of termination of the ATS was bad in law or invalid. We are aware that neither the subsequent purchasers nor the original vendors had raised before the Trial Court the plea that the suit for specific performance filed by the original vendees was not maintainable in the absence of a declaration seeking the invalidity of the termination of ATS, no issue came to be framed by the Trial Court on this aspect.

However, the same would not preclude this Court to determine if the suit for specific performance filed by the original vendees was not maintainable for want of such declaration as this Court recently in R. Kandasamy (supra) had held that an appellate court would not be precluded from examining whether any jurisdictional fact exists for grant of relief of specific performance notwithstanding the fact that the trial court omitted or failed to frame issue on maintainability of the suit. The relevant observation is as under:

"25. What follows from A. Kanthamani [A. Kanthamani v. Nasreen Ahmed, (2017) 4 SCC 654; (2017) 2 SCC (Civ) 596] is that unless an issue as to maintainability is framed by the trial court, the suit cannot be held to be not maintainable at the appellate stage only because appropriate declaratory relief has not been prayed.

43. In Shrisht Dhawan v. Shaw Bros. [Shrisht Dhawan v. Shaw Bros., (1992) 1 SCC 534], an interesting discussion on "jurisdictional fact" is found in the

concurring opinion of Hon'ble R.M. Sahai, J. (as his Lordship then was). It reads: (SCC pp. 551-52, para 19)

19. What, then, is an error in respect of jurisdictional fact? A jurisdictional fact is one on existence or nonexistence of which depends assumption or refusal to assume jurisdiction by a court, tribunal or an authority. In Black's Legal Dictionary it is explained as a fact which must exist before a court can properly assume jurisdiction of a particular case. Mistake of fact in relation to jurisdiction is an error of jurisdictional fact.

No statutory authority or tribunal can assume jurisdiction in respect of subject-matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and bad. [Wade, Administrative Law.] In Raza Textiles [Raza Textiles Ltd. v. CIT, (1973) 1 SCC 633: (1973) 87 ITR 539] it was held that a court or tribunal cannot confer jurisdiction on itself by deciding a jurisdictional fact wrongly.

44. Borrowing wisdom from the aforesaid passage, our deduction is this. An issue of maintainability of a suit strikes at the root of the proceedings initiated by filing of the plaint as per requirements of Order 7 Rule 1CPC. If a suit is barred by law, the trial court has absolutely no jurisdiction to entertain and try it. However, even though a given case might not attract the bar envisaged by Section 9 CPC, it is obligatory for a trial court seized of a suit to inquire and ascertain whether the jurisdictional fact does, in fact, exist to enable it (the trial court) to proceed to trial and consider granting relief to the plaintiff as claimed.

No higher court, much less the Supreme Court, should feel constrained to interfere with a decree granting relief on the specious ground that the parties were not put specifically on notice in respect of a particular line of attack/defence on which success/failure of the suit depends, more particularly an issue touching the authority of the trial court to grant relief if "the jurisdictional fact" imperative for granting relief had not been satisfied. It is fundamental, as held in Shrisht Dhawan [Shrisht Dhawan v. Shaw Bros., (1992) 1 SCC 534], that assumption of jurisdiction/refusal to assume jurisdiction would depend on existence of the jurisdictional fact. Irrespective of whether the parties have raised the contention, it is for the trial court to satisfy itself that adequate evidence has been led and all facts including the jurisdictional fact stand proved for relief to be granted and the suit to succeed.

This is a duty the trial court has to discharge in its pursuit for rendering substantive justice to the parties, irrespective of whether any party to the lis has raised or not. If the jurisdictional fact does not exist, at the time of settling the issues, notice of the parties must be invited to the trial court's prima facie opinion

of non-existent jurisdictional fact touching its jurisdiction. However, failure to determine the jurisdictional fact, or erroneously determining it leading to conferment of jurisdiction, would amount to wrongful assumption of jurisdiction and the resultant order liable to be branded as ultra vires and bad.

45. Should the trial court not satisfy itself that the jurisdictional fact for grant of relief does exist, nothing prevents the court higher in the hierarchy from so satisfying itself. It is true that the point of maintainability of a suit has to be looked only through the prism of Section 9CPC, and the court can rule on such point either upon framing of an issue or even prior thereto if Order 7 Rule 11(d) thereof is applicable. In a fit and proper case, notwithstanding omission of the trial court to frame an issue touching jurisdictional fact, the higher court would be justified in pronouncing its verdict upon application of the test laid down in *Shrisht Dhawan* [*Shrisht Dhawan v. Shaw Bros.*, (1992) 1 SCC 534].

46. In this case, even though no issue as to maintainability of the suit had been framed in the course of proceedings before the trial court, there was an issue as to whether the agreement is true, valid and enforceable which was answered against the sellers. Obviously, owing to dismissal of the suit, the sellers did not appeal. Nevertheless, having regard to our findings on the point as to whether the buyer was "ready and willing", we do not see the necessity of proceeding with any further discussion on the point of jurisdictional fact here.

47. However, we clarify that any failure or omission on the part of the trial court to frame an issue on maintainability of a suit touching jurisdictional fact by itself cannot trim the powers of the higher court to examine whether the jurisdictional fact did exist for grant of relief as claimed, provided no new facts were required to be pleaded and no new evidence led."

(Emphasis Supplied)

31. In order to fortify their submission, the subsequent purchasers have relied upon the decision of this Court in *I.S. Sikandar* (supra) wherein the plaintiff had instituted a suit for specific performance of agreement of sale entered into with the defendants therein against the total sale consideration of Rs. 45,000/- in the year 1983. The plaintiff had paid Rs. 5,000 as part sale consideration. In 1985, the defendants issued a legal notice and called upon the plaintiff to comply with his part of the contract by paying the balance sale consideration against which the plaintiff had issued a response calling upon the defendants to execute a conveyance deed and receive the balance sale consideration.

By another letter, the plaintiff also requested the defendants to go to the office of the Sub-Registrar for the purpose of execution of the conveyance deed. However, the defendants sent a notice declining to accede to the plaintiff's request and

rescinded the agreement to sell. This Court thus was seized with the question of whether the suit for specific performance of agreement of sale filed by the plaintiff therein against the defendants was maintainable without seeking a declaratory relief with respect to the notice of termination vide which the agreement of sale was terminated. This Court held that in the absence of any prayer to declare the termination of agreement of sale as bad in law, the suit for specific performance filed by the plaintiff therein was not maintainable. The relevant observation is as under:

"36. Since the plaintiff did not perform his part of contract within the extended period in the legal notice referred to supra, the agreement of sale was terminated as per notice dated 28-3-1985 and thus, there is termination of the agreement of sale between the plaintiff and Defendants 1-4 w.e.f. 10-4-1985.

37. As could be seen from the prayer sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of agreement of sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit schedule property on the basis of agreement of sale and consequential relief of decree for permanent injunction is not maintainable in law.

38. Therefore, we have to hold that the relief sought for by the plaintiff for grant of decree for specific performance of execution of sale deed in respect of the suit schedule property in his favour on the basis of non-existing agreement of sale is wholly unsustainable in law. Accordingly, Point (i) (see para 32.1) is answered in favour of Defendant 5."

(Emphasis Supplied)

32. Furthermore, in a recent decision of this Court in Sangita Sinha v. Bhawana Bhardwaj, reported in 2025 SCC OnLine SC 723, this Court had occasion to consider and deal with I.S. Sikander (supra) and R. Kandasamy (supra) respectively. In the said case the suit property that was allotted to the vendor by a cooperative society under a registered sub-lease. Later, an unregistered agreement to sell concerning the said property was executed between the vendors and the vendee for a total sale consideration of Rs. 25,00,000/-. At the time of the execution of the agreement to sell, the vendee had paid a sum of Rs. 2,51,000/- in cash to the vendors and had issued three post-dated cheques of the amount of Rs. 7,50,000/-.

When the vendee visited the property along with her husband, the tenants of the vendors created a ruckus and drove them out. In January 2008, the vendors issued a notice to the vendee cancelling the agreement to sell and refunded to the vendee

an amount of Rs. 2,11,000/- through five demand drafts and also returned two of the three post-dated cheques of Rs. 2,50,000/- each. It was the case of the plaintiff that an advance amount of Rs. 40,000/- still remained unpaid and that the agreement for sale was unilaterally terminated. The abovementioned refunded amount was later encashed by the vendee without any objection as regards the unpaid amount.

When the vendee instituted the suit for specific performance, they failed to seek a declaration that the termination of agreement for sale was invalid. In this backdrop, this Court deliberated upon the issue of whether the suit filed by the vendee was maintainable in the absence of the declaration that the notice of termination was invalid. This Court while relying on the decisions in I.S. Sikander (supra) and R. Kandasamy (supra) respectively, held that a suit for specific performance is not maintainable in the absence of a declaratory relief that the termination of agreement was bad in law. The relevant observation is as under:

"THE AGREEMENT TO SELL DATED 25TH JANUARY 2008 STOOD CANCELLED/TERMINATED.

21. This Court is also of the view that the act of the Respondent No. 1-buyer in encashing the demand drafts leads to an irresistible conclusion that the agreement in question stood cancelled.

22. The contention of the learned counsel for the Respondent No. 1- buyer that the Agreement to Sell dated 25th January 2008 could not have been cancelled unilaterally is contrary to facts as the letter dated 07th February 2008 along with the refund of the demand drafts and two post-dated cheques was nothing but repudiation of the Agreement to Sell dated 25th January 2008 by the seller and the encashment of the demand drafts was acceptance of such repudiation by the Respondent No. 1-buyer, leading to cancellation of the Agreement to Sell dated 25th January 2008.

23. The contention that the demand drafts were encashed under protest is misconceived on facts as there is nothing on record to show that the demand drafts were encashed under protest. In fact, PW-2, who is the husband of the Respondent No. 1-buyer, has deposed that upon receipt of the demand drafts and cheques, the Respondent No. 1- buyer had not issued any letter to the seller stating that the amounts received by them were less than the earnest money paid by them.

ABSENT A PRAYER FOR DECLARATORY RELIEF THAT CANCELLATION OF THE AGREEMENT IS BAD IN LAW, A SUIT FOR SPECIFIC PERFORMANCE IS NOT MAINTAINABLE

24. This Court further finds that the seller had admittedly issued a letter dated 7th February 2008 cancelling the Agreement to Sell dated 25th January 2008, prior to the filing of the subject suit on 5th May 2008. Even though the demand drafts enclosed with the letter dated 07th February, 2008 were subsequently encashed in July, 2008, yet this Court is of the view that it was incumbent upon the Respondent No. 1- buyer to seek a declaratory relief that the said cancellation is bad in law and not binding on parties for the reason that existence of a valid agreement is sine qua non for the grant of relief of specific performance.

25. This Court in I.S. Sikandar (Dead) By LRs. v. K. Subramani, (2013) 15 SCC 27 has held that in absence of a prayer for a declaratory relief that the termination of the agreement is bad in law, the suit for specific performance of that agreement is not maintainable. Though subsequently, this Court in A. Kanthamani v. Nasreen Ahmed, (2017) 4 SCC 654 has held that the declaration of law in I.S. Sikander (Dead) By LRs. v. K. Subramani (supra) regarding non-maintainability of the suit in the absence of a challenge to letter of termination is confined to the facts of the said case, yet the aforesaid issue has been recently considered in R. Kandasamy (Since Dead) v. T.R.K. Sarawathy (supra) authored by brother Justice Dipankar Datta and the conflict between the judgment of I.S. Sikander (Dead) By LRs. v. K. Subramani (supra) and A. Kanthamani v. Nasreen Ahmed (supra) has been deliberated upon. In R. Kandasamy (Since Dead) v. T.R.K. Sarawathy (supra), it has been clarified that the appellate court would not be precluded from examining whether the jurisdictional fact exists for grant of relief of specific performance, notwithstanding the fact that the trial Court omitted or failed to frame an issue on maintainability of the suit.

26. Since in the present case, the seller had issued a letter dated 07th February, 2008 cancelling the agreement to sell prior to the institution of the suit, the same constitutes a jurisdictional fact as till the said cancellation is set aside, the respondent is not entitled to the relief of specific performance.

27. Consequently, this Court is of the opinion that absent a prayer for declaratory relief that termination/cancellation of the agreement is bad in law, a suit for specific performance is not maintainable."

(Emphasis Supplied)

33. Before delving into the discussion of whether decisions of this Court in I.S. Sikander (supra) and Sangita Sinha (supra) would be of any help to subsequent purchasers herein, we deem it necessary to look into the views adopted by various High Courts with respect to the issue at hand.

(a) Views adopted by the High Courts on failure to seek declaration.

34. The Punjab and Haryana High Court in *Brahm Dutt v. Sarabjit Singh*, reported in 2017 SCC OnLine P&H 5489, had observed that unilateral cancellation by one party is impermissible in law except in cases where the agreement itself is determinable under Section 14 of the Specific Relief Act, 1963 (for short, "the Act of 1963"). As per the court, to hold otherwise would have enabled a defendant to frustrate virtually every suit for specific performance by resorting to unilateral cancellation.

The court emphasized that the Act of 1963 had made elaborate provisions on this aspect under Chapter IV i.e., where a party seeks to rescind an agreement to sell, it is incumbent upon such party to approach the court and obtain a declaration as to the validity of such revocation or rescission. If a party claims that he had valid reasons to terminate or rescind the contract, then such terminating party should seek a declaration from the competent court, as required under Sections 27 and 31 of the Act of 1963 respectively. Therefore, in such a situation, the burden to seek a declaration regarding the validity of cancellation or termination of the contract would rest upon the defendant, who has raised such termination as a defence to resist the suit for specific performance, and not upon the plaintiff. The relevant observation is as under:

"17. However, otherwise also the defendant could not have, unilaterally, cancelled the agreement in question. Unilateral cancellation of agreement to sell by one party is not permissible in law except where the agreement is determinable in terms of Section 14 of this Specific Relief Act. Such cancellation cannot be raised as a defence in a suit for specific performance. If any such a plea of cancellation/termination is raised by the defendant then the Court can just ignore this and the plaintiff need not challenge such an alleged cancellation.

If such unilateral cancellation of non-determinable agreement is permitted as a defence then virtually every suit for specific performance can be frustrated by the defendant. Therefore the Specific Reliefs Act has made detailed provisions for this aspect. The bare perusal of the provisions of the Specific Relief Act shows that once a party claims the right of revocation or rescission, of the agreement then such a party is required to seek a declaration from the Court regarding the validity of revocation or rescission, as the case may be.

In the present case also, it was not the duty cast upon the plaintiff to challenge the alleged cancellation of agreement, which, otherwise also, is not proved on record. On the contrary, if the defendant so claimed that he had valid reasons to terminate the contract or rescind the contract then he should have sought a declaration from the competent Court, as required under Sections 27 and 31 of Specific Relief Act. Hence the plea of termination of agreement raised by the defendant has rightly not been accepted by the Courts below.

18. So far as the judgment of the Hon'ble Supreme Court in case of I.S. Sikandar (supra) is concerned, there is no dispute regarding the proposition laid down by the Hon'ble Supreme Court. However, that judgment is distinguishable on the facts of the present case. In the case before the Hon'ble Supreme Court, the defendant had, in fact, asked the plaintiff to make the payment of the money and to get the sale deed executed.

On failure of the plaintiff to make the payment the agreement had become determinable and the defendant had terminated the contract by specific communication. This action of the defendant was within the realm of the Contract Act, as provided under Sections 38 and 51 of the Contract Act and Section 14 of Specific Relief Act, which provides that in case of the performance which was required of the plaintiff/promisee is refused by him then the defendant/promisor need not perform his part of the agreement."

(Emphasis Supplied)

35. The view taken in Brahm Dutt (supra) stood affirmed by this Court in Brahm Dutt v. Sarabjit Singh, reported in 2018 SCC Online SC 3961, wherein this Court found no good reason to interfere with the view taken by the High court. The relevant portion of the order is as under:

"3. We do not find any ground to interfere with the impugned order. The special leave petition is, accordingly, dismissed."

36. Later, in Balwinder Sarpal v. Ram Kumar Bansal, reported in 2022 SCC OnLine P&H 4408, the Punjab and Haryana High Court was again confronted with a suit for possession by way of specific performance. The case arose out of an agreement for sale where the total sale consideration was fixed at Rs. 7,00,000/-, of which Rs. 1,00,000/- was paid as earnest money, and the sale deed was to be executed on 05.07.2006 upon payment of the balance consideration. On the appointed date, the plaintiff remained present in the office of the Sub-Registrar with the requisite balance sale consideration, for the purpose of execution and registration of the sale deed.

The defendants, however, failed to appear and the sale deed could not be executed, thereby compelling the plaintiff to institute the suit. The trial court noted that under a notice of termination, the defendants purported to cancel the agreement and forfeit the earnest money. Thus, the trial court, relying on the termination notice, held that the agreement stood terminated and the earnest money stood forfeited, and that in the absence of any declaratory relief sought, the suit for specific performance was not maintainable. Aggrieved by the decision of the trial court, the plaintiff preferred an appeal which came to be allowed and thus, the suit for specific performance was decreed in favour of plaintiff.

In second appeal, the defendants placed reliance upon I.S. Sikandar (supra) to contend that, since the plaintiff had not sought a declaration challenging the termination, the suit was not maintainable. The High court, however, distinguished I.S. Sikandar (supra). It was observed that in I.S. Sikandar (supra), the vendor had called upon the purchaser to complete the transaction by paying the balance sale consideration, and even afforded him a further opportunity with a caveat that failure would result in termination. The purchaser defaulted despite such opportunity, and in such circumstances, this Court upheld the termination.

In other words, it was under such circumstances that the failure to seek a declaration that the termination was unilateral and void, was considered to be detrimental to the suit for specific performance instituted by the plaintiff therein. By contrast, in Balwinder Sarpal (supra), the defendants had issued the notice of termination within five days of the stipulated date, without granting any opportunity to the plaintiff to tender the balance consideration and get the sale deed executed.

On these distinguishing facts, the High court held that I.S. Sikandar (supra) could not be applied to the case at hand. Instead, reliance was placed on Brahm Dutt (supra) to hold that a unilateral termination of an agreement for sale, effected in such manner, is not permissible. The High court observed that once it was found that the termination was unilateral and without giving any opportunity to the purchaser to perform his part of the contract, no separate declaratory relief was required with respect to the termination. The relevant observation is as under:

"9. In the present facts and circumstances wherein, the agreement in question is dated 05.04.2006 with 05.07.2006 being the target date, notice dated 10.07.2006 regarding its termination and forfeiture of earnest money was issued on 10.07.2006 whereas the suit for possession by way of specific performance came to be filed at the instance of respondent-plaintiff on 17.08.2006 i.e. without causing any delay what so ever.

This itself shows that in fact the respondent/plaintiff was always ready and willing to perform his part of agreement and the amazing swiftness shown by the appellants/defendants was not at all bona fide and the uncalled for. Before terminating the agreement in question, the appellant/defendant never called upon the respondent/plaintiff to come forward and execute the sale deed in pursuance to the agreement in question which happens to be the most relevant distinguishing factor as compared to the facts in the case of I. S. Sikandar (D) By LR's. v. K. Subramani, (2014) 1 RCR (Civil) 236. To point out the same, relevant portion from paragraph No. 17 of the aforesaid judgment is reproduced as under:-

"The period of five months stipulated under clause 6 of the Agreement of Sale for execution and registration of the sale deed in favour of the plaintiff had expired.

Despite the same, the defendant Nos. 1-4 got issued legal notice dated 06.03.1985 to the plaintiff pointing out that he has failed to perform his part of the contract in terms of the Agreement of Sale by not paying balance sale consideration to them and getting the sale deed executed in his favour and called upon him to pay the balance sale consideration and get the sale deed executed on or before 18.3.1985. The plaintiff had issued reply letter dated 16.3.1985 to the advocates of defendant Nos. 1-4, in which he had admitted his default in performing his part of contract and prayed time till 23.05.1985 to get the sale deed executed in his favour.

Another legal notice dated 28.03.1985 was sent by the first defendant to the plaintiff extending time to the plaintiff asking him to pay the sale consideration amount and get the sale deed executed on or before 10.04.1985, and on failure to comply with the same, the Agreement of Sale dated 25.12.1983 would be terminated since the plaintiff did not avail the time extended to him by defendant Nos. 1-4. Since the plaintiff did not perform his part of contract within the extended period in the legal notice referred to supra, the Agreement of Sale was terminated as per notice dated 28.03.1985 and thus, there is termination of the Agreement of Sale between the plaintiff and defendant Nos. 1-4 w.e.f. 10.04.1985.

As could be seen from the prayer sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of Agreement of Sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit schedule property on the basis of Agreement of Sale and consequential relief of decree for permanent injunction is not maintainable in law."

10. From the portion reproduced hereinabove, it can be easily traced out that in the case of I.S. Sikandar (Supra), the purchaser was initially called upon by the vendor to get the sale deed executed on payment of balance sale consideration. The purchaser having failed to do so, another opportunity was even granted to him to perform his part of the agreement with a caveat that in case the purchaser failed to do so by the stipulated date, the agreement would stand terminated. It was under those circumstances, when the purchaser failed to perform his part of obligation under the agreement, the Hon'ble Supreme Court accepted the plea of termination of the agreement.

On the contrary, in the present case, notice of termination was issued by appellants/defendants merely within 5 days of the target dates and that too without granting any opportunity to the respondent/plaintiff to pay the balance consideration and get the sale deed executed. In these distinguishing circumstances, the judgment passed in the case of I. S. Sakandar (supra) can't be made applicable to the present case. More than that even the unilateral

termination of agreement in question could not be accepted, in view of the law laid down by this Court in case of Brahm Dutt v. Sarabjit Singh, 2018 (1) L.A.R. 119.

11. Once the alleged termination of agreement in question, in the facts and circumstances of the present case has not been found to be bona fide being done in a unilateral manner without even calling upon the respondent/plaintiff to perform their part of agreement and particularly under the circumstances, wherein, the suit was filed promptly thereafter, no declaration, challenging the alleged termination was called for."

(Emphasis Supplied)

37. In S.K. Ravichandran v. M. Thanapathy, reported in 2022 SCC OnLine Mad 9094, the plaintiff had instituted a suit for specific performance of an agreement for sale of immovable property owned by the defendant. The parties had entered into a written agreement for sale dated 19.08.2007 for a total consideration of Rs. 11,80,000/- , out of which the plaintiff paid Rs. 1,50,000/- as advance on the very same day. The agreement stipulated that upon payment of the balance consideration of Rs. 10,30,000/- on or before 15.10.2007, the sale deed would be executed and registered. The plaintiff tendered the balance consideration and was assured by the defendant that he would attend the office of the Sub-Registrar prior to the stipulated date.

It was further agreed that both the parties would appear before the Sub-Registrar on 09.10.2007. While the plaintiff duly presented himself on that date, the defendant failed to do so. Consequently, on 12.10.2007, the plaintiff dispatched a telegram and a detailed letter requesting the defendant to attend the Sub-Registrar's office on 15.10.2007. The plaintiff remained present on the appointed day, but despite due receipt of the communication, the defendant neither appeared nor responded. The plaintiff thereafter learnt that the defendant was attempting to alienate the suit property to third parties, compelling him to institute a suit for specific performance and permanent injunction.

The defendant by relying on I.S. Sikandar (supra) resisted the suit on the ground that, in the absence of a specific challenge to the alleged termination of the agreement, the suit was not maintainable. The plaintiff, on the other hand, contended that the agreement did not contain any clause permitting termination in the event of default, and that unilateral cancellation was impermissible in law. Relying upon the decision in Brahm Dutt (supra), it was urged that unilateral cancellation of a contract, except in cases where the agreement is determinable under Section 14 of the Act of 1963 is not sustainable in the eyes of law.

Such a cancellation, if pleaded as a defence, could be ignored by the court and the plaintiff did not require to seek a separate declaratory relief. Relying on the dictum as laid in *Brahm Dutt (supra)*, the Madras High Court held that since the agreement in question did not provide for termination upon the purchaser's failure to pay the balance consideration by a stipulated date, the unilateral cancellation pleaded by the defendant was of no legal effect. It was reiterated that law does not permit such unilateral termination. The relevant observation is as under:

"15. He would further submit that since the appellant did not come forward to get the sale deed by paying balance sale consideration and he was not ready and willing to perform his part of contract, the respondent cancelled the sale agreement and when the respondent communicated the appellant, regarding the cancellation of the deed, the appellant has not challenged the cancellation of the sale agreement. Without challenging the cancellation of the sale agreement, the Suit is not maintainable.

16. In support of his contention, he relied on the following Judgments:-

(i) *I.S. Sikandar (D) by LRS., v. K. Subramani*, (2013) 15 SCC 27;

(ii) *Ravindran v. Danton Shanmugam*, (2017) 3 Mad LJ 265;

(iii) *Mohinder Kaur v. Sant Paul Singh*, (2019) 9 SCC 358 and

(iv) *Prabakaran v. Geetha*, (2022) 3 CTC 650.

25. It is the contention of the learned counsel for the respondent that the suit itself was not maintainable on the ground that though the respondent cancelled the agreement, the appellant has not challenged the cancellation. In this regard, the learned counsel for the appellant would submit that the sale agreement does not speak about the termination of the contract. Unilateral cancellation is not permissible under law, except where the agreement is determinable in terms of Section 14 of the Specific Relief Act.

Such cancellation cannot be raised as a defence in a suit for specific performance. If any such plea is raised by the respondent, the Court can just ignore the same and the plaintiff need not challenge the unilateral cancellation separately. Further, the plea regarding the maintainability of the suit is to be raised at the first instance in the written statement. Therefore, the said plea cannot be adjudicated in the appeal. The citation referred to by the learned counsel for the respondent is not applicable to the present case on hand.

26. A careful perusal of the sale agreement Ex.A.1 clearly shows that the time stipulated for the balance sale consideration is on or before 15.10.2007, it does not speak about the termination of the contract, in case the appellant will not pay

the balance sale consideration on particular date. Therefore, the law does not permit unilateral cancellation as referred to above."

(Emphasis Supplied)

38. The view taken by the Madras High Court in S.K. Ravichandran (supra) also came to be affirmed by this Court in S.K. Ravichandran v. M. Thanapathy, reported in 2022 SCC Online SC 2369, wherein one of us, J.B. Pardiwala, J., was a part of the Bench. This Court found no good reason to interfere with the above decision. The relevant portion is as under:

"2. We do not find any reason to interfere with the impugned order. The Special Leave Petition is accordingly dismissed."

39. The Delhi High Court was also seized of a similar issue in the case of Rajesh Sethi S.C. v. P.C. Sethi, reported in 2023 SCC OnLine Del 7010. In the said case, the plaintiff had filed a suit for specific performance of agreement to sell. The agreement to sell was terminated by the defendants on the ground that the property was an HUF property. The High court observed that such unilateral termination is not permissible under law, especially when the defendant vendor neither had any valid reason nor had filed any suit seeking a declaration that the agreement to sell was void. Thus, the plea that the agreement to sell was unilaterally terminated by the defendant vendor as the suit property was an HUF property is not valid. The relevant observation is as under:

"145. The question which now needs deliberation is whether the Agreement to Sell dated 14.01.2004 Ex P-1/D- 2 had been validly terminated by Col. P.C. Sethi vide his Letter dated 21.03.2004, before the expiry of the three month period for execution as provided in the said Agreement.

146. To evaluate the validity of a unilateral rescission of a contract it would be apposite to refer to the judgment of the Madras High Court in Raja Rajeswara Dorai v. A.L.A.R.R.M. Arunachellan Chettiar, 1913 SCC OnLine Mad 276 where it was observed that a unilateral expression of rescission of a contract by one of the parties to the contract cannot be held to relieve him from his obligation to have the contract rescinded by Court under the substantive law and within the time allowed by statutory law if he wants as a plaintiff the assistance of the Court in obtaining certain reliefs on the basis that the contract has ceased to exist.

It was observed that repudiation of a contract by one party alone cannot get the party any relief except as consequent of getting a declaration and a rescission by the Court. Thus, a contract can be properly rescinded without the intervention of a Court only by the act of both parties or, if the original contract or Deed itself, by clauses of forfeiture or similar clauses, puts an end to the contract or transaction. However, even the latter case has to be determined by both the

parties and only then the aid of the Court is not required. Therefore, even though a contract or transaction may be voidable at the instance of one party, its rescission is effectuated, not by the mere repudiation of one party, but by the decree of declaration of this Court.

147. It has been further explained by Punjab and Haryana High Court in the case of Brahm Dutt v. Sarabjit Singh, 2017 SCC OnLine P&H 5489 that unilateral cancellation of Agreement to Sell by one party is not permissible in law except where the agreement is determinable in terms of Section 14 of this Specific Relief Act, 1963 and such cancellation cannot be raised as a defense in a suit for Specific Performance. If any such plea of cancellation/termination is raised by the defendant, the Court can just ignore the same and the plaintiff is also not required to challenge such a cancellation or revocation.

It was further observed that if such unilateral cancellation of non-determinable agreements is permitted as a defense, then virtually every suit for specific performance can be frustrated by the defendant. On the contrary, if the defendant so claimed that he had valid reasons to terminate the contract or rescind the contract then he ought to have sought a declaration from the competent Court, as required under Sections 27 and 31 of Specific Relief Act, 1963.

148. Thus, once a party claims the right of revocation or rescission of the Agreement, then such a party is required to seek a declaration from the Court regarding the validity of revocation or rescission, as the case may be.

149. In the present case, the Col. PC Sethi has given contrary reasons in his Letter of Revocation dated 21.03.2004 to those which have been stated in his Written Statement clearly reflecting that the reason for rescission on the ground that the property was an HUF was an afterthought. Be that as it may, the reason provided in the Letter of Rescission dated 21.03.2004 cannot by any means be construed as a valid one to unilaterally rescind the Agreement to Sell even before the tenure of executing the same had expired. Col. PC Sethi clearly had second thoughts about the sale and wanted to wriggle out of this Agreement to Sell on one ground or the other. Such unilateral rescission is not permissible under law, especially when the Col. PC Sethi neither had any valid reason, nor filed any suit for seeking a declaration that the Agreement to Sell was void. Therefore, the plea that the Agreement to Sell dated 14.01.2004 was unilaterally rescinded by Col. PC Sethi as the suit property is an HUF asset is not sustainable in the present case.

150. Thus, the cancellation/termination of Agreement by Col. P.C. Sethi is not valid and the Agreement to Sell is held to be subsisting and executable to the extent of the share of Col. P.C. Sethi."

40. Further, in the case of Kavi Ghei v. Rohit Vaid, reported in 2024 SCC OnLine Del 6118, the plaintiff had filed a suit for specific performance of agreement to sell executed by the defendant nos. 1 and 2 respectively therein and the cancellation of subsequent sale deed executed by the defendant nos. 1 and 2 respectively in favour of the defendant no. 3. The facts of the case were such that the plaintiff and the defendant nos. 1 and 2 therein had entered into an agreement to sell for the sale of property for a consideration of Rs. 3,22,50,000/- . Pursuant to execution of the agreement to sell, the plaintiff paid Rs. 21,00,000/- to the defendant nos. 1 and 2 respectively.

In terms of the agreement to sell, the sale deed was to be executed on or before 15.05.2004. For the purpose of raising the funds for the purchase of suit property, the plaintiff had also availed a loan of Rs. 2,00,00,000/- from a bank. However, the plaintiff received a notice of termination from the defendant nos. 1 and 2 dated 21.04.2004, wherein they informed the plaintiff that they had decided not to sell the suit property to the plaintiff. The reason for such refusal was stated to be that the plaintiff himself had supposedly reduced the sale consideration to Rs. 2,00,00,000/- from the agreed sum of Rs. 3,22,50,000/- and informed the neighbours about the sale even though sale had not been effected, and also attempted to avoid the brokerage.

The defendant nos. 1 and 2 respectively further sought to refund the aforesaid amount paid by the plaintiff by annexing cheques with the notice of termination. The High court found that none of the reasons as assigned in the notice of termination were acceptable as they did not reflect any dubious conduct on part of the plaintiff which would justify a premature termination of the agreement to sell. The High court while placing reliance on Brahm Dutt (supra) held that the termination of agreement to sell was not in accordance with any of the clauses of the agreement and further it was not with the consent of the both parties. Thus, it was held therein that the unilateral termination of agreement to sell by the defendant nos. 1 and 2 was not valid and that agreement to sell was still subsisting and executable. The relevant observation is as under:

"82. It is argued on behalf of Defendant 3 that without challenging the termination of agreement to sell dated 21-3- 2004, the present suit for Specific Performance is not maintainable under the law.

115. The facts of the present case may thus, be analysed to ascertain whether the unilateral termination of ATS, was justified. Admittedly, the parties entered into an agreement to sell dated 21-3-2004, Ext. PW 1/1 in regard to the suit property for the sale consideration of Rs 3,22,50,000 and that a sum of Rs 21,00,000 was paid by the plaintiff as advance money to the defendants and a balance amount of

Rs 3,01,50,000 remained to be paid at the time of registration of the sale deed at which time the physical vacant possession was to be handed over to the plaintiff.

116. this agreement to Sell was not only signed by the plaintiff and the defendants but was also witnessed by the two witnesses, namely, Colonel C.K. Vaid r/o B-1, Sundar Nagar, New Delhi and by Ms Ranjana Ahuja r/o 903, Nirmal Towers, 26 Barakhamba Road. It was thus, clearly stipulated in terms of the agreement to Sell that the sale deed was required to be executed by 15-5-2004.

117. However, before the expiry of the stipulated period for honouring the respective obligations, the defendant has admittedly terminated the agreement on 20-4-2004 i.e. much prior to the date stipulated for completion of the obligations under the agreement.

121. From the notice of termination, the three grounds stated for premature cancellation are: (i) Renegotiations of terms in regard to the cash competent of the agreed sale consideration. (ii) Informing the neighbours even though the sale had not been effected. (iii) The endeavour to avoid the broker in order to save the brokerage amount.

132. Any of the reasons as stated in this Letter of Termination, Ext. DW 1/1, has not been proved or established and it does not reflect to any conduct of the plaintiff which justify premature termination of the agreement to Sell.

152. It cannot be overlooked that even though Defendant 3 was being cautious in enter into this sale transaction and had been conscious and aware of the earlier subsisting Agreement to Sell, he has admitted that he did not in any manner contact the plaintiff or otherwise satisfy himself about the valid termination of the earlier Agreement to Sell. The manner in which the entire transaction has been executed, clearly establishes that Defendant 3 while has been a party to the creation and execution of the documents and has even mentioned about the earlier Agreement to Sell in the sale deed, Ext. PW 1/1 but has deliberately not contacted the plaintiff, to confirm from him about the alleged cancellation of the earlier Agreement to Sell, as any prudent reasonable person would do in the given circumstances especially when the consequences of the earlier Agreement to Sell, were well within the knowledge and of all the parties.

153. Defendant 3 has acted selectively and had chosen to ensure that there was proper paper work done and has not acted like a reasonable person, to ensure the cancellation of earlier Agreement to Sell. Though he has claimed himself to be a bona fide purchaser, but from the fact that earlier ATS was well within the knowledge of the defendants, manner in which the documents have been executed and also the fact that the notice of termination of the agreement to Sell

has been served subsequently, the only inference that can be drawn is that the subsequent sale in favour of Defendant 3, has been made without there being any valid termination of prior Agreement to Sell with the plaintiff. The termination has neither been in accordance with any Clause of ATS nor is it with the consent of both the parties.

154. Thus, the unilateral cancellation/termination of agreement to sell dated 21-3-2024 Ext. PW 1/1 by Defendants 1 and 2 is not valid and the agreement to Sell is held to be subsisting and executable. Moreover, it is proved that Defendant 3 is not a bona fide purchaser as claimed by him.

155. In conclusion, there being a valid subsisting Agreement to Sell, which was well within the knowledge of Defendant 3. He cannot defend the subsequent Sale Deed executed in his favour. The plaintiff continues to have a right to seek the execution of the agreement to Sell, Ext. PW 1/1, in his favour."

(Emphasis Supplied)

41. A similar view was taken by the Andhra Pradesh High Court in A. Kanthudu v. S. Venkat Narayana, Appeal No. 678 of 2007 and the Delhi High Court in Ajay Narain v. Arti Singh, reported in (2025) 316 DLT 425.

42. In addition to the views expressed by various High courts, as discussed above, this Court, in the recent decision of Annamalai v. Vasanthi, reported in 2025 SCC OnLine SC 2300, wherein one of us, J.B. Pardiwala, J., was a member of the Bench, had the occasion to consider whether a suit for specific performance is maintainable without seeking a declaration that the termination of the agreement was invalid in law. This Court held that where a contract confers upon a party the right to terminate it under certain conditions, and if such right is exercised, then the continued subsistence of the contract becomes doubtful.

In such cases, the plaintiff must first obtain a declaration that the termination is invalid before seeking specific performance. However, where no such contractual right to terminate exists, or where the right has been waived, and a party nevertheless proceeds to terminate the contract unilaterally, such termination would amount to a repudiatory breach, in which event the non-terminating party can directly seek specific performance without first seeking a declaration as aforesaid. The relevant observation is as under:

"Issues for consideration

12. Upon consideration of the rival submissions and having regard to the facts of the case, in our view, following issues arise for our consideration:

A. Whether the High Court was justified in interfering with the finding of the first appellate court qua payment of additional amount of Rs. 1,95,000 by the plaintiff-appellant? If receipt of additional payment by D-1 and D-2 is proved, as found by the first appellate court, whether it could be held that plaintiff was not ready and willing to perform its part under the contract?

B. Whether the suit for specific performance was maintainable without seeking a declaration that termination of the agreement was invalid in law?

C. Whether in the facts of the case the plaintiff was entitled to the discretionary relief of specific performance?

When a declaratory relief is essential

25. A declaratory relief seeks to clear what is doubtful, and which is necessary to make it clear. If there is a doubt on the right of a plaintiff, and without the doubt being cleared no further relief can be granted, a declaratory relief becomes essential because without such a declaration the consequential relief may not be available to the plaintiff. For example, a doubt as to plaintiff's title to a property may arise because of existence of an instrument relating to that property. If plaintiff is privy to that instrument, Section 31 of Specific Relief Act, 1963 enables him to institute a suit for cancellation of the instrument which may be void or voidable qua him.

If plaintiff is not privy to the instrument, he may seek a declaration that the same is void or does not affect his rights. When a document is void ab initio, a decree for setting aside the same is not necessary as the same is non est in the eye of law, being a nullity. Therefore, in such a case, if plaintiff is in possession of the property which is subject matter of such a void instrument, he may seek a declaration that the instrument is not binding on him.

However, if he is not in possession, he may sue for possession and the limitation period applicable would be that as applicable under Article 65 of the Limitation Act, 1963 on a suit for possession. Rationale of the aforesaid principle is that a void instrument/transaction can be ignored by a court while granting the main relief based on a subsisting right. But, where the plaintiff's right falls under a cloud, then a declaration affirming the right of the plaintiff may be necessary for grant of a consequential relief. However, whether such a declaration is required for the consequential relief sought is to be assessed on a case-to-case basis, dependent on its facts.

26. A breach of a contract may be by non-performance or by repudiation, or by both. In Anson's Law of Contract (29th Oxford Edn.), under the heading "Forms of Breach Which Justify Discharge", it is stated thus:

"The right of a party to be treated as discharged from further performance may arise in any one of three ways: the other party to the contract (a) may renounce its liabilities under it; (b) may by its own conduct make it impossible to fulfill them, (c) may fail to perform what it has promised. Of these forms of breach, the first two may take place not only in the course of performance but also while the contract is still wholly executory i.e., before either party is entitled to demand a performance by the other party of the other's promise. In such a case the breach is usually termed an anticipatory breach. The last can only take place at or during the time for performance of the contract."

27. Ordinarily, for a breach of contract, a party aggrieved by the breach i.e., failure on the part of the other party to perform its part under the contract can claim compensation or damages by accepting the breach as a termination of the contract, or/and, in certain cases, obtain specific performance by not recognizing the breach as termination of the contract.

In a case where the contract between the parties confers a right on a party to the contract to unilaterally terminate the contract in certain circumstances, and the contract is terminated exercising that right, a mere suit for specific performance without seeking a declaration that such termination is invalid may not be maintainable. This is so, because a doubt/cloud on subsistence of the contract is created which needs to be cleared before grant of a decree enforcing contractual obligations of the parties to the contract.

28. Now we shall consider few decisions of this Court where the question of grant of relief of specific performance of a contract in teeth of termination of the contract without seeking a declaration qua subsistence of the contract was considered. In *I.S. Sikandar v. K. Subramani*, the agreement for sale stipulated sale within a stipulated time frame; on failure of the plaintiff to respond to the notice seeking execution of sale, the agreement was terminated. In that context, this Court held:

"36. Since the plaintiff did not perform his part of contract within the extended period in the legal notice referred to supra, the agreement of sale was terminated as per notice dated 28-3-1985 and thus, there is termination of the agreement of sale between the plaintiff and defendants 1-4 w.e.f. 10-4-1985

37. As could be seen from the prayers sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of agreement of sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit scheduled property on the basis of agreement of sale and consequential relief of decree for permanent injunction is not maintainable in law.

38. Therefore, we have to hold that the relief sought for by the plaintiff for the grant of decree for specific performance of execution of sale deed in respect of the suit scheduled property in his favor on the basis of nonexisting agreement of sale is wholly unsustainable in law."

29. In *A. Kanthamani (supra)*, the decision in *I.S. Sikandar (supra)* was considered, and it was held:

"30.3. Third, it is a well settled principle of law that the plea regarding the maintainability of suit is required to be raised in the first instance in the pleading (written statement) then only such plea can be adjudicated by the trial court on its merits as a preliminary issue under Order 14 Rule 2 CPC. Once the finding is rendered on the plea, the same can be examined by the first or/and second appellate court. It is only in appropriate cases, where the court *prima facie* finds by mere perusal of plaint allegations that the suit is barred by any express provision of law or is not legally maintainable due to any legal provision; a judicial notice can be taken to avoid abuse of judicial process in prosecuting such suit. Such is, however, not the case here.

30.4. Fourth, the decision relied on by the learned counsel for the appellant in *I.S. Sikandar* turns on the facts involved therein and is thus distinguishable." 30. In *R. Kandasamy (since dead) v. T.R.K. Sarawathy*, this Court considered both *I.S. Sikandar (supra)* and *A. Kanthamani (supra)*, and clarified the law by observing as under:

"47. However, we clarify that any failure or omission on the part of the trial court to frame an issue on maintainability of a suit touching jurisdictional fact by itself cannot trim the powers of the higher court to examine whether the jurisdictional fact did exist for grant of relief as claimed, provided no new facts were required to be pleaded and no new evidence led."

31. From the aforesaid decisions what is clear is that though a plea regarding maintainability of the suit, even if not raised in written statement, may be raised in appeal, particularly when no new facts or evidence is required to address the same, the issue whether a declaratory relief is essential or not would have to be addressed on the facts of each case.

32. In our view, a declaratory relief would be required where a doubt or a cloud is there on the right of the plaintiff and grant of relief to the plaintiff is dependent on removal of that doubt or cloud. However, whether there is a doubt or cloud on the right of the plaintiff to seek consequential relief, the same is to be determined on the facts of each case. For example, a contract may give right to the parties, or any one of the parties, to terminate the contract on existence of certain conditions.

In terms thereof, the contract is terminated, a doubt over subsistence of the contract is created and, therefore, without seeking a declaration that termination is bad in law, a decree for specific performance may not be available. However, where there is no such right conferred on any party to terminate the contract, or the right so conferred is waived, yet the contract is terminated unilaterally, such termination may be taken as a breach of contract by repudiation and the party aggrieved may, by treating the contract as subsisting, sue for specific performance without seeking a declaratory relief qua validity of such termination.

(Emphasis Supplied)

43. Thus, in view of the above discussion, the following principles of law are discernible:

(i). Unilateral termination of the agreement to sell by one party is impermissible in law except in cases where the agreement itself is determinable in nature in terms of Section 14 of the Act of 1963;

(ii). If such unilateral termination of a non-determinable agreement to sell is permitted as a defence, then virtually every suit for specific performance can be frustrated by the defendant by placing an unfair burden on the plaintiff, who despite performing his part of the obligations and having showcased readiness and willingness, would require to also seek a separate declaration that the termination was bad in law. In such cases, the burden cannot be casted upon the plaintiff to challenge the alleged termination of agreement;

(iii). Where a party claims to have valid reasons to terminate or rescind a non-determinable agreement to sell, with a view to err on the side of caution, it should be such terminating party, if at all, who ideally should approach the court and obtain a declaration as to the validity of such termination or rescission, and not the non-terminating party. However, this must not mean that the defendant (the terminating party) in such cases would mandatorily be required to seek a declaration because Sections 27 and 31 of the Act of 1963 respectively, while using the phrase "may sue" merely give an option to any person to have the contract rescinded or adjudged as void or voidable;

(iv). Once the alleged termination of a non-determinable agreement in question is found to be not for bona fide reasons and being done in a unilateral manner on part of the defendant, it cannot be said that any declaration challenging the alleged termination was required on part of plaintiff;

(v). If a contract itself gives no right to unilaterally terminate the contract, or such right has been waived, and a party still terminates the contract unilaterally then that termination would amount to a breach by repudiation, and the

nonterminating party can directly seek specific performance without first seeking a declaration; and

(vi). In the event it is found that the termination of agreement to sell by the defendant was not valid, then such an agreement to sell will remain subsisting and executable.

44. Before applying the aforesaid principles of law to the facts of the present case, and bearing in mind that unilateral termination of an agreement to sell by one party is impermissible in law except where the agreement is by its very nature determinable, it is, as a necessary corollary, essential to also determine whether the ATS dated 28.04.2000 was determinable in nature or not.

(b) Whether the ATS dated 28.04.2000 was in nature determinable?

45. The Commentary on the Indian Contract Act and Specific Relief Act authored by Pollock & Mulla (17th Edition) states that determinable contracts derive their existence from the determination clause envisaged in the contract and there are essentially three types of determination clauses, viz. (i) termination for cause that allows a party to terminate the contract if the other party breaches a specific term or if a specified event occurs, (ii) termination for convenience that allows a party to end the contract without having to give a reason and (iii) termination upon expiry of the term of the contract.

46. The law regarding the contracts that are determinable first came up before this Court in *Indian Oil Corporation v. Amritsar Gas Service and Ors.*, reported in (1991) 1 SCC 533, wherein this Court had held the contract to be determinable in nature because one of the clauses of the contract permitted either parties to terminate the same without assigning any reason and by sending a 30 day notice to the other party. The relevant paragraph is reproduced as follows:

"12. The arbitrator recorded finding on Issue No. 1 that termination of distributorship by the appellant-Corporation was not validly made under clause 27. Thereafter, he proceeded to record the finding on Issue No. 2 relating to grant of relief and held that the plaintiff-respondent 1 was entitled to compensation flowing from the breach of contract till the breach was remedied by restoration of distributorship.

Restoration of distributorship was granted in view of the peculiar facts of the case on the basis of which it was treated to be an exceptional case for the reasons given. The reasons given state that the Distributorship Agreement was for an indefinite period till terminated in accordance with the terms of the agreement and, therefore, the plaintiff-respondent 1 was entitled to continuance of the distributorship till it was terminated in accordance with the agreed terms. The award further says as under:

"This award will, however, not fetter the right of the defendant Corporation to terminate the distributorship of the plaintiff in accordance with the terms of the agreement dated April 1, 1976, if and when an occasion arises."

This finding read along with the reasons given in the award clearly accepts that the distributorship could be terminated in accordance with the terms of the agreement dated April 1, 1976, which contains the aforesaid clauses 27 and 28. Having said so in the award itself, it is obvious that the arbitrator held the distributorship to be revokable in accordance with clauses 27 and 28 of the agreement. It is in this sense that the award describes the Distributorship Agreement as one for an indefinite period, that is, till terminated in accordance with clauses 27 and 28.

The finding in the award being that the Distributorship Agreement was revokable and the same being admittedly for rendering personal service, the relevant provisions of the Specific Relief Act were automatically attracted. Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced, one of which is 'a contract which is in its nature determinable'. In the present case, it is not necessary to refer to the other clauses of subSpecial section (1) of Section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with reasons given in the award itself that the contract by its nature is determinable.

This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act and there is an error of law apparent on the face of the award which is stated to be made according to 'the law governing such cases'. The grant of this relief in the award cannot, therefore, be sustained."

(Emphasis Supplied)

47. The High Court of Madras in *A Murugan and Others v Rainbow Foundation Ltd and Ors.*, reported in 2019 SCC OnLine Mad 37961, had further elaborated on the aspect of determinable contracts. For the purpose of ascertaining determinability, the court bifurcated contracts into several categories:

(i) contracts that are unilaterally and inherently revocable or capable of being dissolved such as licenses and partnerships at will;

(ii) contracts that are terminable unilaterally on a "without cause" or "no fault" basis;

(iii) contracts that are terminable forthwith for cause or that cease to subsist "for cause", without a provision for remedying the breach;

(iv) contracts which are terminable for cause subject to a breach notice being issued and an opportunity to cure the breach being given, and;

(v) contracts without a termination clause, which could be terminated for breach of a condition but not a warranty, as per applicable common law principles. The court held that the abovementioned (iii), (iv) and (v) categories of contract are not determinable contracts. The court further observed that although the (iv) and (v) categories are terminable yet the same cannot be said to be in nature determinable. The relevant observations are as under:

"17. On examining the judgments on Section 21(d) of SRA 1877 and Section 14(c) of the Specific Relief Act, as applicable to this case, i.e. before Act 18 of 2018, I am of the view that Section 14(c) does not mandate that all contracts that could be terminated are not specifically unenforceable. If so, no commercial contract would be specifically enforceable. Instead, Section 14(c) applies to contracts that are by nature determinable and not to all contracts that may be determined. If one were to classify contracts by placing them in categories on the basis of ease of determinability, about five broad categories can be envisaged, which are not necessarily exhaustive.

Out of these, undoubtedly, two categories of contract would be considered as determinable by nature and, consequently, not specifically enforceable: (i) contracts that are unilaterally and inherently revocable or capable of being dissolved such as licences and partnerships at will; and (ii) contracts that are terminable unilaterally on "without cause" or "no fault" basis. Contracts that are terminable forthwith for cause or that cease to subsist "for cause" without provision for remedying the breach would constitute a third category.

In my view, although the Indian Oil case referred to clause 27 thereof, which provided for termination forthwith "for cause", the decision turned on clause 28 thereof, which provided for "no fault" termination, as discussed earlier. Thus, the third category of contract is not determinable by nature; nonetheless, the relative ease of determinability may be a relevant factor in deciding whether to grant specific performance as regards this category.

The fourth category would be of contracts that are terminable for cause subject to a breach notice and an opportunity to cure the breach and the fifth category would be contracts without a termination clause, which could be terminated for breach of a condition but not a warranty as per applicable common law principles. The said fourth and fifth categories of contract would, certainly, not be determinable in nature although they could be terminated under specific circumstances. Needless to say, the rationale for Section 14(c) is that the grant of specific performance of contracts that are by nature determinable would be an

empty formality and the effectiveness of the order could be nullified by subsequent termination."

(Emphasis Supplied)

48. In *Narendra Hirawat & Co. v. Sholay Media Entertainment Pvt. Ltd.*, reported in (2020) SCC OnLine Bom 391, the Bombay High Court observed that the phrase "a contract which is in its nature determinable" would mean a contract which is determinable at the sweet will of a party to it, without reference to the other party or without reference to any breach committed by the other party or without any eventuality or circumstance. In other words, the phrase would contemplate a unilateral right in a party to a contract to determine the contract without assigning any reason. The relevant observation is as under:

"8. When the relevant provision [section 14(d) of the Specific Relief Act] uses the words "a contract which is in its nature determinable", what it means is that the contract is determinable at the sweet will of a party to it, that is to say, without reference to the other party or without reference to any breach committed by the other party or without reference to any eventuality or circumstance. In other words, it contemplates a unilateral right in a party to a contract to determine the contract without assigning any reason or, for that matter, without having any reason. The contract in the present case is not so determinable; it is determinable only in the event of the other party to the contract committing a breach of the agreement. In other words, its determination depends on an eventuality, which may or may not occur, and if that is so, the contract clearly is not "in its nature determinable"."

(Emphasis Supplied)

49. The Delhi High Court in *DLF Home Developers Limited v. Shipra Estate Limited*, reported in 2021 SCC OnLine Del 4902, while considering an agreement to sell a property held that the question whether a contract is in its nature determinable must be answered by ascertaining whether the party against whom it is sought to be enforced would otherwise have the right to terminate or determine the contract when the other party is willing to perform and is not in default. In other words, where a contract cannot be terminated so long as the other party remains willing to perform its part, such a contract is not determinable and, in equity, is specifically enforceable. The relevant observation is as under:

"78. Section 14 of the Specific Relief Act, 1963 sets out certain classes of contracts that are not specifically enforceable. One such class of contracts comprises of contracts, which are in their nature determinable. Clause (d) of Section 21 of the Specific Relief Act, 1877 expressly provided that contracts which are in their nature 'revocable' are unenforceable. The said statute was

repealed and replaced by the Specific Relief Act, 1963. Clause (c) of Section 14(1) of the Specific Relief Act, 1963, as was in force prior to Specific Relief Act, 1877, expressly provided that contracts, which are in the nature determinable, were not specifically enforceable. The word 'revocable' as used in Clause (d) of Section 21 of the Specific Relief Act, 1877 was replaced by the word 'determinable'.

The rationale for excluding such contracts, which are in their nature determinable, from the ambit of those contracts which may be specifically enforced, is apparent. There would be little purpose in granting the relief of specific performance of a contract, which the parties were entitled to terminate or otherwise determine. The relief of specific performance is an equitable relief. It is founded on the principle that the parties to a contract must be entitled to the benefits from the contracts entered into by them. However, if the terms or the nature of that contract entitles the parties to terminate the contract, there would be little purpose in directing specific performance of that contract. Plainly, no such relief can be granted in equity.

79. Viewed in the aforesaid perspective, it is at once apparent that the contract is in its nature determinable if the same can be terminated or its specific performance can be avoided by the parties. Thus, contracts that can be terminated by the parties at will or are in respect of relationships, which either party can terminate; would be contracts that in their nature are determinable. If a party can repudiate the contract at its will, it is obvious that the same cannot be enforced against the said party.

80. However, if a party cannot terminate the contract as long as the other party is willing to perform its obligations, the contract cannot be considered as determinable and it would, in equity, be liable to be enforced against a party that fails to perform the same. Almost all contracts can be terminated by a party if the other party fails to perform its obligations. Such a contract cannot be stated to be determinable solely because it can be terminated by a party if the other party is in breach of its obligations. The party who is not in default would, in equity, be entitled to seek performance of that contract.

In such cases, it cannot be an answer to the non-defaulting party's claim that the other party could avoid the contract of the party seeking specific performance, had breached the contract; therefore, the same is not specifically enforceable. Thus, the question whether a contract is in its nature determinable, must be answered by ascertaining whether the party against whom it is sought to be enforced would otherwise have the right to terminate or determine the contract even though the other party are ready and willing to perform the contract and are not in default.

81. The contention advanced on behalf of Indiabulls that the ATS is in its nature determinable as Indiabulls could terminate it on failure of the other parties to perform their obligations is, plainly, unmerited. This contention is premised on the basis that Indiabulls is correct in its assumption that the other parties had breached the terms of their obligation. Concededly, if the other parties were ready and willing to fully perform their obligations, Indiabulls would not have any recourse to the termination clause. Such recourse is contingent on the failure of the other parties to perform the contract. It cannot be stated that the contract by its very nature is not specifically enforceable because it entitles a party to terminate the contract if the other parties have failed to perform their obligations.

94. The question whether the contract by its very nature is determinable is required to be answered by ascertaining the nature of the contract. Contracts of agency, partnerships, contracts to provide service, employment contracts, contracts of personal service, contracts where the standards of performance are subjective, contracts that require a high degree of supervision to enforce, and contracts in perpetuity are, subject to exceptions, in their nature determinable. These contracts can be terminated by either party by a reasonable notice.

(Emphasis Supplied)

50. In *Affordable Infrastructure & Housing Projects (P) Ltd. v. Segrow Bio Technics India (P) Ltd.*, reported 2022 SCC OnLine Del 4436, the lease deed provided for a termination clause. Under the termination clause, the respondent had an option to terminate the lease deed by serving a 15 days' written notice in case the petitioner failed to make the payment for two consecutive months. The Delhi High Court on the strength of *DLF Home* (supra) observed that almost all contracts can be terminated by a party, if the other party fails to perform its obligations and that such contracts cannot be stated to be determinable solely because it can be terminated by a party if the other party is in breach of an obligation.

The non-defaulting party would in equity be entitled to seek performance of that contract. The court held that the question whether a contract is in its nature determinable must be answered by ascertaining whether the party against whom it is sought to be enforced would otherwise have a right to terminate or determine the contract even though the other party is ready and willing to perform the contract and is not in default. The relevant observation is as under:

"37. The law as stated above mandates against grant of stay against Termination Notice in respect of the Contracts which are determinable. The petitioner has relied upon *DLF Home Developers Limited v. Shipra Estate Limited*, (2022) 286 DLT 100, wherein it was observed that a party cannot terminate the Contract so long as the other party is willing to perform its obligations. The Contract cannot

be considered as determinable as it would in equity be liable to be enforced against a party that fails to perform the same. Almost all Contracts can be terminated by a party, if the other party fails to perform its obligations. Such a Contract cannot be stated to be determinable solely because it can be terminated by a party if the other party is in breach of the obligations.

The party who is not in default would in equity be entitled to seek performance of that Contract. In such cases, it cannot be an answer to a non-defaulting party's claim that the other party could avoid the Contract of the party seeking specific performance and the same is not specifically enforceable. Thus, the question whether the Contract is in its nature determinable must be answered by ascertaining whether the party against whom it is sought to be enforced would otherwise have a right to terminate or determine the Contract even though the other party is ready and willing to perform the Contract and is not in default."

(Emphasis Supplied)

51. The Bombay High Court in Kheoni Ventures (P) Ltd. v. Rozeus Airport Retail Ltd., reported in 2024 SCC OnLine Bom 773, also observed that in order to arrive at a conclusion whether a contract is determinable or not, it is to be ascertained whether the parties have a right to terminate it on their own, without the stipulation of any contingency and without assigning any reason. The relevant observation is as under:

"11. In order to infer whether a contract is determinable or otherwise, it is to be ascertained, whether the parties have a right to terminate it on their own, without stipulation of any contingency and without assigning any reason. An inherently determinable contract would permit either party to terminate it without assigning any reason and merely by indicating, that the contract shall come to an end, either by giving a notice for specified period, if stipulated or even without such a notice."

(Emphasis Supplied)

52. Having discussed the law on unilateral termination vis-a-vis determinable contracts as above, we now advert to the facts of the present matter. The existence of the ATS executed between the original vendors and the original vendees is not in dispute. The question that falls for our consideration is with respect to the requirement of seeking a declaration from the court as regards the legality and validity of the purported termination of the said ATS by the notice of termination dated 10.03.2003 issued by the original vendors. It may not be out of place to state at this stage that the ATS in question does not contain any clause enumerating the events of default under which the ATS could be terminated.

Nor is it the case of the parties that time was made the essence of contract. In fact, the Trial Court has already gone into this issue and held that the terms of the ATS did not reflect any intention to make time the essence of the contract as no specific date for execution of the sale deed is to be found in the ATS. Clause 7 of the ATS clearly provides that upon change of entries in the record of rights from new tenure to old tenure, the sale deed would be executed.

Clause 11 further provides that it was for the original vendors to intimate the original vendees upon completion of the work of sub-division, survey, and fixation of boundary of the subject land, and only thereafter the sale deed was to be executed within one month of such intimation. Thus, the execution of the sale deed was pegged not to a fixed date but to future contingencies dependent upon the acts of the original vendors themselves. There is nothing on record to indicate that the original vendors had performed their part of the obligation by informing the original vendees about the completion of the work of sub-division, survey, and fixation of boundary of the subject land.

53. Despite such stipulations, the original vendors issued the notice of termination dated 10.03.2003 upon the original vendees purporting to terminate the ATS on two grounds, namely, (i) the pendency of Original Suit No. 30 of 2001 and the order of status quo therein, and (ii) the death of one of the original vendors, i.e. Late Smt. Godavari @ Mahalaxmi Kulkarni. The notice also called upon the original vendees to take back the earnest money paid and to treat the ATS as cancelled within one month, failing which the ATS would be deemed to have been cancelled and the original vendors would be at liberty to deal with the land.

54. We have given our thoughtful consideration to the reasons so assigned in the notice of termination. We find it difficult to accept that either of the grounds could constitute a valid basis for terminating the ATS. The pendency of a civil suit and an order of status quo therein cannot by itself frustrate the ATS. At the highest, the performance of the ATS could have stood suspended pending the disposal of the said proceedings. Since the original vendees had no role to play in the institution or continuance of the Original Suit No. 30 of 2001, they could not have been made to suffer the consequences of a litigation to which they were complete strangers.

Likewise, the death of one of the original vendors did not and could not have absolved the other remaining vendors of their obligations. The legal heirs could have very well stepped into the shoes of the deceased vendor and performed the contract. The reasons assigned, therefore, appears not only tenuous but also wholly extraneous to the obligations of the original vendors. It is also pertinent to note that the original vendees immediately responded to the notice of termination by way of their detailed reply dated 21.03.2003. In the said reply, the original

vendees categorically denied the validity of the termination and refuted the grounds stated therein.

In the reply, the original vendees asserted that they had already performed their obligations by making substantial payments of Rs. 8,12,500/- out of the total sale consideration of Rs. 26,95,501/- , by getting the land surveyed, measured, boundaries fixed, and the tenure converted on the original vendors' behalf. The original vendees also asserted that the performance of ATS was only suspended by virtue of the status quo order which could not have rendered the ATS impossible of performance and that the death of one of the vendors did not in law affect the enforceability, and thus, the ATS remained subsisting. They further made it clear that in such circumstances there was no question of refund of earnest money at all.

55. Despite such a categorical stance of the original vendees, no response was sent by the original vendors to further assign reasons or substantiate the termination. The original vendors chose to remain silent, content to live off their unilateral notice without taking the termination to its logical conclusion. This conduct on the part of the original vendors cannot be countenanced as a bona fide exercise. We are of the firm view that the ATS being non-determinable in nature (as discussed below), no unilateral expression of termination could have lawfully extinguished the obligations undertaken thereunder.

What emerges from the record is that the grounds cited in the notice of termination were pressed into service more as a matter of convenience to the original vendors rather than as a consequence of any breach or failure attributable to the original vendees. The pendency of an earlier suit and the death of one of the vendors were circumstances wholly extraneous to the performance of the ATS and incapable in themselves of furnishing a lawful foundation for termination. Such grounds merely afforded a convenient pretext to the original vendors to disown their obligations. We are of the firm view that the law ought not be read in a manner to permit the original vendors to invoke convenience as a cloak for such unilateral cancellation of the ATS.

56. It is further significant to note that in the notice of termination dated 10.03.2003, the original vendors purported to call upon the original vendees to "take back" the earnest money and other amounts already paid under the ATS. However, the record reveals that even after issuance of the said notice and despite original vendees having immediately repudiated the termination of ATS through their reply dated 21.03.2003, no steps whatsoever were taken by the original vendors to actually effectuate the refund. No draft, cheque, or any other mode of repayment was tendered at any point of time.

In substance, therefore, the recital in the notice asking the original vendees to "take back" the money was nothing more than an empty formality, bereft of any real intent to restore the parties to their respective original positions. This conduct of the original vendors assumes significance for more than one reason. First, none of the clauses of the ATS empowered the original vendors to either terminate the agreement unilaterally or to forfeit the earnest money. Secondly, if the original vendors were genuinely desirous of putting an end to the ATS, the natural and necessary corollary of such termination would have been to refund the amounts received without casting upon the original vendees the burden of physically claiming or taking back what was rightfully theirs.

It appears from the conduct of the original vendors that by seeking to shift the burden in this manner, the original vendors sought to cloak their inaction and conveniently get rid of themselves of the obligations flowing from the ATS, while continuing to retain the monies that had been paid towards part performance of the ATS by the original vendees. Termination, if at all validly effected, requires both relinquishment of rights under the contract and restitution of benefits already received.

In failing to refund the earnest money, the original vendors not only acted contrary to the terms of the ATS which contained no clause of forfeiture but also demonstrated the lack of bona fide intention to truly rescind the agreement. If indeed the original vendors were assiduous in their attempt to bring the ATS to an end, in principle they should have approached a competent court to seek a declaration as to the termination of contract as observed by various precedents as above-mentioned.

57. We are of the view, having regard to the peculiar and distinguishable facts of the present case, that the decisions of this Court in I.S. Sikander (supra) and Sangita Sinha (supra) would not be of any help to the subsequent purchasers as both of them are distinguishable as far as the present case is concerned.

58. The reliance placed by the subsequent purchasers upon the decision of this Court in I.S. Sikandar (supra), in our considered view, is wholly misconceived. The factual foundation of I.S. Sikandar (supra) was materially distinct from the circumstances of the present case and therefore, the ratio thereof cannot be invoked to the aid of the subsequent purchasers herein. In I.S. Sikandar (supra), the purchaser had defaulted in performing his part of the contract despite being afforded multiple opportunities by the vendors. The vendors therein had, by way of a legal notice, specifically called upon the purchaser to tender the balance sale consideration and complete the execution of the sale deed within a stipulated period.

Upon the purchaser's failure to comply, the vendors further extended the time, coupled with a caveat that if the purchaser did not perform his obligations by the extended date, the agreement would stand terminated. It was only after the purchaser again defaulted, despite such repeated opportunities, that the vendors terminated the agreement. In such circumstances, this Court held that the purchaser could not maintain a suit for specific performance without first seeking a declaration that the termination was invalid, since by his own conduct he had allowed the agreement to become determinable and its termination was rooted in his own breach.

However, the present case stands on an entirely different footing. The alleged termination was not preceded by any call upon the original vendees to perform their obligations nor was any opportunity granted to the original vendees to tender the balance sale consideration or secure execution of the sale deed. On the contrary, the original vendors sought to terminate the ATS citing reasons entirely extraneous to the performance of the original vendees.

In *I.S. Sikandar (supra)*, the termination was an outcome of the purchaser's repeated failure to perform his contractual obligations despite reminders and extensions, thereby rendering the agreement determinable. In contrast, the termination in the present case was a unilateral act of convenience on the part of the original vendors unconnected with any default on the part of the original vendees in the performance of ATS. This unilateral termination was effected without any preceding notice, without opportunity to the original vendees of further performance, and without refund of earnest money.

59. Further, the decision in *Sangita Sinha (supra)* is also distinguishable for in that case this Court held the suit for specific performance to be not maintainable owing to the absence of a declaratory relief, since the vendee's act of encashing the demand drafts amounted to acceptance of the vendor's repudiation and having no readiness and willingness to perform the contract, thereby effectively cancelling the agreement to sell, whereas, in the present case, the termination was effected by the original vendors despite the readiness and willingness of original vendees, which we shall discuss below, and despite the fact that no part of the earnest money or any further sums paid by the original vendees was ever refunded by the original vendors while terminating the ATS.

60. In fact, as explained in *Brahm Dutt (supra)*, the unilateral cancellation of an agreement to sell is impermissible except where the agreement is determinable within the meaning of Section 14 of the Act of 1963. This principle now stands affirmed by this Court also in *Brahm Dutt (supra)*, *Balwinder Sarpal (supra)* and *S.K. Ravichandran (supra)* respectively.

61. In view of the above discussion, it is as clear as a noon day that as far as the facts of present case are concerned, the notice of termination dated 10.03.2003 was nothing but a unilateral act of repudiation by the original vendors. As discussed above, the ATS contained no clause permitting termination in the circumstances cited. The reasons relied upon by the original vendors for termination were matters over which the original vendees had no control.

Further, the act of the original vendors merely asking the original vendees to "take back" the monies paid, while never actually refunding it, reinstates that the alleged termination was not genuine on their part but rather a device of convenience to escape their contractual obligations under the ATS. Moreover, there is no evidence on record to indicate that the original vendors ever called upon the original vendees to perform their part of the contract prior to such termination.

In view of all that is stated above, the termination of ATS vide notice of termination dated 10.03.2003 was not only unilateral but also not bona fide and cannot be sustained. Once such termination is found to be invalid, what next follows is that the ATS continues to remain alive, subsisting, and executable. Further, as the law subsists, once the alleged termination of agreement in question is found to be not bona fide and being done in a unilateral manner, no declaration challenging the alleged termination is required.

62. Since in principle unilateral termination of the contract is impermissible except where the agreement is determinable within the meaning of Section 14 of Act of 1963, it also becomes necessary, at this juncture, to examine whether the ATS dated 28.04.2000 was in its nature determinable. This question requires to be answered on a scrutiny of the terms of the ATS and the nature of the rights and obligations flowing therefrom.

63. On perusal of the clauses of the ATS, it becomes clear that none of the terms thereof conferred upon either party any right to unilaterally terminate or rescind the contract, whether for cause, for convenience, or on the happening of any contingency. The scheme of the contract, as discernible from its clauses, particularly clauses 7 and 11 respectively, indicate that the execution of the sale deed was made conditional upon the fulfilment of certain antecedent events, namely, the conversion of the subject land from new tenure to old tenure and the completion of the work of sub-division.

Clause 7 of the ATS contemplated that upon change of entries in the record of rights from new tenure to old tenure, the sale deed would be executed whereas clause 11 provided that it was for the original vendors to intimate the original vendees about the completion of the work of sub-division, survey, and fixation of boundary of the subject land, and only thereafter the sale deed was to be executed

within one month of such intimation. It is therefore clear that the ATS was not a contract conferring any right upon either party to bring it to an end at will. Its life and performance were tethered to the completion of certain obligations. None of the clauses of the ATS envisaged that the same could be terminated on any cause or no-cause basis, much less that the original vendors could retain the amounts already paid by the original vendees.

64. In this backdrop, it would be useful to advert to the classification set out in A. Murugan (supra), wherein the Madras High Court categorised contracts into five broad classes depending on their ease of determinability. Out of those, the first two i.e., (i) contracts inherently revocable such as licences and partnerships at will, and (ii) contracts terminable unilaterally on a "without-cause" basis, were held to be determinable in nature. The remaining classes, namely, (iii) contracts terminable for cause without provision for cure, (iv) contracts terminable for cause with notice and opportunity to cure, and (v) contracts without a termination clause but terminable only for breach of a condition, were all held not determinable in nature.

65. Further, as laid down in DLF Home (supra), the question whether a contract is in its nature determinable lies in ascertaining whether the party against whom specific performance is sought has the right to terminate the contract even when the other party is ready and willing to perform. This means if the contract cannot be terminated so long as the other party stands willing to perform, it is not determinable in its nature and would, in equity, be specifically enforceable. The same reasoning was followed in Affordable Infrastructure (supra), where it was held that a contract terminable for breach cannot merely for that reason be regarded as determinable, otherwise, no contract could ever be specifically enforced.

66. Applying these principles, the ATS in the present case cannot be said to be a determinable contract. Viewed in light of the classification as set out in A. Murugan (supra), the ATS would squarely fall within category (v) as mentioned above. The ATS was devoid of any clause enabling termination for convenience or otherwise empowering either party to terminate unilaterally. The only conceivable circumstance in which ATS could be brought to an end in the present case was upon a breach of a condition by either of the parties.

Thus, the original vendors did not possess any contractual right to terminate the ATS in the absence of default by the original vendees. The grounds cited in the notice of termination dated 10.03.2003, namely, the subsistence of a status quo order and the death of one of the original vendors cannot be said to be based on any default or breach by the original vendees. The original vendees had performed their part by paying a substantial amount and were also ready and willing to perform the terms of ATS.

(II). Bona fides of the subsequent purchasers in purchasing the subject land

67. The counsel for subsequent purchasers submitted that appellants / subsequent purchasers are bona fide purchasers of the subject land for value without the notice of the prior ATS. It is the case of the subsequent purchasers that they made bona fide enquires about the title of the original vendors and all other particulars that they could enquire upon. The case of the subsequent purchasers before the Trial Court and High Court respectively was that they had purchased the subject land on the information and instructions furnished by the original vendors wherein the subsequent purchasers were informed that the original vendors had a clear and alienable title on the subject land and that the ATS executed in favour of the original vendees had been terminated by the original vendors by issuing the notice of termination dated 10.03.2003.

The subsequent purchasers have admitted that they were made aware of the termination of the ATS by the original vendors and were handed over a copy of the notice of termination by the original vendors prior to their purchase of the subject land. It is also the case of the subsequent purchasers that they had verified the documents of title of the original vendors and had also ascertained that the Original Suit No. 30 of 2001 had been withdrawn and the status quo order has come to an end due to such withdrawal. The subsequent purchasers have further submitted that from the date of execution of sale deeds dated 20.02.2007 and 02.03.2007 executed by the original vendors in their favour, they are in physical possession of the subject land and their names have been mutated in the revenue records.

68. In such circumstances referred to above, the subsequent purchasers are seeking to bring themselves within the status of a bona fide purchaser under Section 19(b) of the Act of 1963. Section 19 provides for the categories of persons against whom specific performance of a contract may be enforced. Amidst all, Clause (b) of Section 19 states that specific performance may be enforced against 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. Thus, a transferee for value who has paid his money in good faith and without notice of the original contract is excluded from the purview of the said clause. In the case of *Ram Niwas v. Bano*, reported in (2000) 6 SCC 685, this Court had set out three factors that a subsequent transferee must show to fall within the excluded class:

(a) he has purchased for value the property, which is the subject matter of the suit for specific performance;

(b) he has paid his money to the vendor in good faith; and

(c) he had no notice of the earlier contract for sale specific performance of which is sought to be enforced against him. The court observed that "notice" can be (i) actual notice or (ii) constructive notice, or (iii) imputed notice. As per Section 3 of Transfer of Property Act, 1882, a person is said to have notice of a fact when he actually knows that fact or when but for wilful abstention from inquiry or search which he ought to have made, or gross negligence, he would have known it. The relevant observation is as under:

"3. Section 19 provides the categories of persons against whom specific performance of a contract may be enforced. Among them is included, under clause (b), any transferee claiming under the vendor by a title arising subsequently to the contract of which specific performance is sought. However, a transferee for value, who has paid his money in good faith and without notice of the original contract, is excluded from the purview of the said clause. To fall within the excluded class, a transferee must show that:

(a) he has purchased for value the property (which is the subjectmatter of the suit for specific performance of the contract);

(b) he has paid his money to the vendor in good faith; and

(c) he had no notice of the earlier contract for sale (specific performance of which is sought to be enforced against him).

4. The said provision is based on the principle of English law which fixes priority between a legal right and an equitable right. If 'A' purchases any property from 'B' and thereafter 'B' sells the same to 'C' the sale in favour of 'A', being prior in time, prevails over the sale in favour of 'C' as both 'A' and 'C' acquired legal rights. But where one is a legal right and the other is an equitable right

"a bona fide purchaser for valuable consideration who obtains a legal estate at the time of his purchase without notice of a prior equitable right is entitled to priority in equity as well as at law". (Snell's Equity - 13th Edn., p. 48.)

This principle is embodied in Section 19(b) of the Specific Relief Act.

5. It may be noted here that "notice" may be (i) actual, (ii) constructive, or (iii) imputed."

(Emphasis Supplied)

69. Similarly, in *Durg Singh v. Mahesh Singh*, reported in 2004 SCC OnLine MP 9, the Madhya Pradesh High Court had observed that there are two factors that are necessary for the adjudication of suit for specific performance of the contract where the subject matter property has been sold to a subsequent purchaser:

(i) that whether the plaintiff remained always ready and willing to perform his part of the contract to purchase the suit property and the readiness and willingness should exist till the date of the passing of the decree, and

(ii) that whether subsequent transferee was having prior knowledge of the earlier agreement executed in favour plaintiff. Both these factors need to have nexus with the facts of each case and conduct of parties. The relevant observation is as under:

"11. In a suit of specific performance of the contract where the property in dispute has been sold to the subsequent purchaser, two things are necessary for the adjudication, they are; (i) that whether the plaintiff remained always ready and willing to perform his part of the contract to purchase the suit property and the readiness and willingness should exist till the date of the passing of the decree; and (ii) whether the subsequent transferee was having prior knowledge of the earlier agreement executed in favour of plaintiff.

In other words, we may say that if plaintiff fails to plead and prove by his conduct the readiness and willingness to purchase the suit property and if the subsequent purchaser was a bona fide purchaser without prior notice of the original contract who had paid the value of the suit property to the vendor, the suit of specific performance cannot be decreed. Both these essential ingredients are having nexus with the facts of each case as well as the conduct of the parties of that case. No straightjacket formula can be framed in this regard and each case should be tested on the touchstone of its own facts and circumstances coupled with the evidence. Thus, I shall now examine the present case in that regard."

(Emphasis Supplied)

70. The expression "wilful abstention from inquiry or search" recalls the expression used by Sir James Wigram VC in the case of *Jones v. Smith*, reported in (1841) 1 Hare 43, wherein the High Court of Chancery of England & Wales had held that constructive notice is basically a manifestation of equity which treats a man who ought to have known a fact, as if he had actually known it. The court noted that:

"It is, indeed, scarcely possible to declare a priori what shall be deemed constructive notice, because, unquestionably, that which would not affect one man may be abundantly sufficient to affect another. But I believe, I may, with sufficient accuracy for my present purpose and without danger assert that the cases in which constructive notice has been established resolve themselves in two classes: First, cases in which the party charged has had actual notice that the property in dispute was in fact charged, encumbered or in some way affected, and the court has thereupon bound him with constructive notice of facts and

instruments, to a knowledge of which he would have been (sic) led by an enquiry after the charge, encumbrance or other circumstances affecting the property of which he had actual notice; and secondly, cases in which the court has been satisfied from the evidence before it that the party charged had designedly abstained from enquiry for the very purpose of avoiding notice."

(Emphasis Supplied)

71. Similar to the importance of the term "notice" used in Section 19(b) of the Act of 1963, the term "good faith" which is also used in Section 19(b) is equally important. The term "good faith" is defined in Section 3(22) of the General Clauses Act, 1897 (for short, "GC Act") as well as Section 2(11) of the Bhartiya Nyaya Sanhita, 2023 (for short, "BNS"). Section 3(22) of GC Act defines "good faith" is defined in the following terms:

"3(22). A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not."

72. Section 2(11) of the BNS defines "good faith" in the following terms:

"2(11). "Good faith - Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."

73. Therefore, in order to come to a conclusion that an act was done in good faith it must have been done with (i) due care and attention, and (ii) there should not be any dishonesty. This Court recently in case of Manjit Singh v. Darshana Devi, reported in 2024 SCC OnLine 3431, wherein one of us, J.B. Pardiwala, J., forming a part of the Bench, construed the usage of the term "good faith" under Section 19(b) of the Act of 1963 in the above sense and held that each of the abovementioned aspects is a complement to the other and not an exclusion of the other. This Court observed that the definition of the BNS emphasizes due care and attention whereas the definition of the GC Act emphasizes honesty. The relevant observation is as under:

"13. Section 3(22) of the General Clauses Act defines 'good faith' as follows:-

3(22). A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not.

14. Section 2(11) of the Bhartiya Nyaya Sanhita, 2023 defines "good faith", as follows:-

2(11). "Good faith- Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention;

15. The abovesaid definitions and the meaning of the term 'good faith' indicate that in order to come to a conclusion that an act was done in good faith it must have been done with due care and attention and there should not be any negligence or dishonesty. Each aspect is a complement to the other and not an exclusion of the other. The definition of the Penal Code, 1860 emphasises due care and attention whereas General Clauses Act emphasises honesty.

16. The effect of abstention on the part of a subsequent purchaser, to make enquiries with regard to the possession of a tenant, was considered in *Ram Niwas v. Bano*, (2000) 6 SCC 685.

17. In the case reported in *Kailas Sizing, Works v. Municipality, B. & N.*, reported in 1968 Bombay Law Reporter 554, the Bombay High Court observed as follows:- A person cannot be said to act honestly unless he acts with fairness and uprightness. A person who acts in a particular manner in the discharge of his duties in spite of the knowledge and consciousness that injury to someone or group of persons is likely to result from his act or omission or acts with wanton or wilful negligence in spite of such knowledge or consciousness cannot be said to act with fairness or uprightness and, therefore, he cannot be said to act with honesty or in good faith.

Whether in a particular case a person acted with honesty or not will depend on the facts of each case. Good faith implies upright mental attitude and clear conscience. It contemplates an honest effort to ascertain the facts upon which the exercise of the power must rest. It is an honest determination from ascertained facts. Good faith precludes pretence, deceit or lack of fairness and uprightness and also precludes wanton or wilful negligence."

(Emphasis Supplied)

74. This aspect also deserves a reference to the case of *Jammula Rama Rao v. Merla Krishnaveni*, reported in 2002 SCC OnLine AP 646, wherein the Andhra Pradesh High Court while holding that honesty is the essential condition in 'good faith' observed that when subsequent purchasers were informed about the existence of the agreement in favour of the prior vendee, then the subsequent purchasers should have made enquiries from the prior vendee to satisfy themselves whether the agreement in favour of prior vendee is only a nominal one as alleged by the vendors. The court held that the failure on the part of the subsequent purchasers in not conducting such an enquiry with the prior vendee would render them susceptible to the complaint that subsequent purchasers had not acted honestly and in good faith. The relevant observation is as under:

"7. In view of the language employed in Sec. 19(b) of Specific Relief Act, the subsequent purchaser has to establish that he paid money in good faith, without

notice of the original contract. Since 'good faith' is not defined in Specific Relief Act, its meaning has to be understood from the definition of 'good faith' in General Clauses Act, 1897, Sub-sec. 22 of Sec. 3 of General Clauses Act, defined 'good faith' as "a thing shall be deemed to be done in 'good faith' if it is done honestly".

So, honesty is the essential condition in 'good faith'. When appellants, were informed about the existence of the suit agreement in favour of the 1st respondent, appellants should have made enquiries from the 1st respondent to satisfy themselves whether the agreement in favour of 1st respondent is only a nominal one, as alleged by respondents 2 to 5. If they have not done so, it cannot be said that they acted honestly, and consequently it cannot be said that appellants acted in good faith."

(Emphasis Supplied)

75. At the outset, it must be noted that the subsequent purchasers have themselves admitted that prior to their purchase they were handed over a copy of the notice of termination dated 10.03.2003 by the original vendors and were also specifically informed that the ATS stood terminated by virtue of the said notice. This single fact is of decisive importance. The said notice of termination in the present case is not a peripheral document, rather, it is a self-contained recital of the very material terms of the contract. The said notice of termination makes a clear reference to the fact of existing ATS dated 28.04.2004 and the material terms agreed therein including but not limited to the description of subject land, area of the subject land agreed to be sold, sale consideration, payment of earnest money and payment stages thereafter, and names and residential addresses of the original vendees.

Thus, by their own admission, the subsequent purchasers were put in possession of all material particulars of the ATS. Having been confronted with a document of this character, no prudent purchaser acting in good faith could have remained passive. The subsequent purchasers had at their disposal clear and concrete means to demand from the original vendors a copy of the ATS itself or at the very least verify from the original vendees the correctness of the assertions contained in the notice of termination, however, the subsequent purchasers chose not to pursue either course.

76. Further, the operative portion of the notice of termination itself ought to have aroused curiosity in the mind of any bona fide purchaser. The said notice did not state that the ATS stood terminated on 10.03.2003. Instead, in the notice of termination, the original vendees were called upon by the original vendors to "take back" their earnest money within a period of one month from the date of the

notice of termination and upon their failure to take the earnest money back in one month the ATS would be 'deemed' cancelled.

The plain implication of this stipulation is that the ATS did not in fact stand terminated on the date of notice of termination i.e., 10.03.2003, rather any effective termination of the ATS would have arose, if at all, only a month later, that too, in the event of inaction by the original vendees. This aspect alone should have been a giveaway to the subsequent purchasers when they came to purchase the subject land in 2007 because a bona fide purchaser acting with due care and attention would necessarily have inquired whether the earnest money had in fact been refunded by the original vendors and accepted by the original vendees with or without protest, or whether the original vendees had contested the termination or what had transpired after the period of one month.

This is especially so because the date of notice of termination could not have been the date of actual termination and deemed termination would have followed only if no response was afforded by the original vendees within one month. Had the subsequent purchasers made such an inquiry, it would have been revealed to them that not only was no refund ever made by the original vendors but that the original vendees had immediately repudiated the validity of the termination by their reply dated 21.03.2003.

77. Moreover, the sequence of events in and around the notice of termination and the impleadment application filed by the original vendees in the Original Suit No. 30 of 2001 also carries considerable weight. The subsequent purchasers have admitted that they had ascertained that the original vendees had moved an application for impleadment in the Original Suit No. 30 of 2001 on 02.05.2001 which came to be dismissed only on 16.03.2005. Significantly, the alleged termination of the ATS by the original vendors was during this very interregnum i.e., on 10.03.2003.

This sequence of events was sufficient to raise a suspicion in the mind of any prudent bona fide purchaser that if the said ATS is said to have been terminated on 10.03.2003 by the original vendors then what were the original vendees trying to achieve by seeking to implead themselves in the Original Suit No. 30 of 2001 until 2005. In other words, a reasonable man, apprised of both these events, would have asked that if the ATS stood cancelled in 2003 what then were the original vendees still seeking in the Original Suit No. 30 of 2001 until 2005. This glaring inconsistency ought to have raised a suspicion. Instead, the subsequent purchasers ignored everything and confined themselves to the ipse dixit of the original vendors.

78. The language of the termination notice itself discloses the unilateral and self-serving character of the so-called termination. A bare reading of the notice of

termination shows that the original vendors had stated therein that due to the status quo order in effect and the death of one of the original vendors, they were "unable to execute a regular sale deed in respect of land in question" and that they "cannot wait for an indefinite period". Thus, the original vendors cited their own inability to execute a sale deed in view of the status quo order operating in the Original Suit No. 30 of 2001 and the death of one of the original vendors. Such grounds, as already discussed, were matters of inconvenience very much personal to the original vendors and not the breaches attributable to the original vendees.

The subsequent purchasers, upon a bare reading of the said notice of termination, ought to have made inquiries to ascertain whether the original vendees had challenged the factum of termination by any subsequent communication. This was all the more necessary because the language employed by the original vendors in the notice of termination itself clearly gave away that what was being asserted was not a termination arising out of any breach or default attributable to the original vendees but rather a unilateral act grounded in the original vendors' own inability and inconvenience.

It is a trite law that a subsequent purchaser who relies merely on the assertions of the vendor or who chooses to remain content with his own limited knowledge while consciously abstaining from making further inquiry into the subsisting interests in the property cannot escape the consequences of deemed notice. Equity ought not assist a transferee who deliberately avoids the truth that lies open to discovery. Thus, a purchaser who has before him a document which on its very face shows the termination to be unilateral and rooted in the vendors' inconvenience cannot by shutting his eyes claim the benefit of "good faith".

79. Even more significant is the fact that the subsequent purchasers had sufficient means to unearth the prudent queries as the same notice of termination that subsequent purchasers have gone through provided all means to them to contact the original vendees. This is because the notice of termination itself provided the names and addresses of all the original vendees.

Thus, the subsequent purchasers had in their hands the most direct and reliable means of verifying the truth of the assertions made by the original vendors. They could, with little effort, have contacted the original vendees to ascertain whether the ATS had indeed been terminated or whether any amount had been refunded. Their deliberate abstention from this inquiry despite having the means readily available cannot be dismissed as mere oversight. It would constitute in the words of Sir James Wigram VC "designed abstention for the very purpose of avoiding notice".

80. The law as stated above is unequivocal on this point. In *Ram Niwas* (supra), this Court laid down that to claim protection under Section 19(b) of the Act of

1963, the purchaser must show three things: (a) purchase for value, (b) payment in good faith, and (c) absence of notice of the earlier contract. "Notice", it was emphasized, includes not merely actual knowledge but also constructive and imputed knowledge. In Durg Singh (supra), the Madhya Pradesh High Court reiterated that bona fide purchase depends inter alia on the purchaser's knowledge of the prior agreement. In Jammula Rama Rao (supra), the Andhra Pradesh High Court went further and held that where subsequent purchasers were aware of the existence of a prior agreement, their failure to make inquiries from the prior vendees negated both honesty and good faith.

81. From the discussion as above, what can be deduced is that the subsequent purchasers had sufficient notice of the facts that an ATS dated 28.04.2000 existed; the names and addresses of the original vendees; that an earnest money amounting to Rs. 2,00,000/- had been paid by the original vendees to the original vendors; that the original vendors had sought to terminate the ATS due to their inability to execute the sale deed in favour of the original vendees on account of a status quo order; that the date of actual termination could not have coincided with the date of notice; and that deemed termination would have arose only if the original vendees had failed to claim the earnest money within one month; and that despite the issuance of the notice of termination in 2003, the original vendees continued to contest the impleadment application in the Original Suit No. 30 of 2001 until 2005.

These circumstances should have reasonably aroused suspicion or at the very least prompted further inquiry by any prudent bona fide purchaser. Yet the subsequent purchasers despite having ample opportunity to become aware of these facts abstained from making any such inquiries. It is therefore beyond cavil that the subsequent purchasers cannot take shelter under Section 19(b) of the Act of 1963. Far from showing honesty and due care, their conduct reveals studied indifference to facts which were staring them in the face.

(III). Readiness and willingness of the Original Vendees to perform the ATS

82. Section 16(c) of the Act of 1963 requires that a plaintiff must both plead and prove that he has either performed, or has always been ready and willing to perform, the essential terms of the contract incumbent upon him. It is now a settled law that a party seeking enforcement of a contract must establish that all conditions precedent have been satisfied, and that he has either discharged or stood prepared and willing to discharge his obligations under the contract.

The expressions "ready" and "willing" under Section 16(c) carry distinct connotations. In JP Builders v. A. Ramadas Rao, reported in (2011) 1 SCC 429, this Court clarified this distinction, holding that "readiness" relates to the plaintiff's capacity to perform the contract, including his financial ability to pay

the consideration, whereas "willingness" is demonstrated through the plaintiff's conduct, evidencing his genuine intent to perform the contract. The relevant observation is as under:

"22. The words "ready" and "willing" imply that the person was prepared to carry out the terms of the contract. The distinction between "readiness" and "willingness" is that the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance. Generally, readiness is backed by willingness.

23. In N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao at SCC para 5, this Court held: (SCC pp. 117-18) 5. Section 16(c) of the Act envisages that the plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail.

To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract."

(Emphasis Supplied)

83. Further, in the case of Satya Jain v. Anis Ahmed Rushdie, reported in (2013) 8 SCC 131, this Court had further observed that the test of readiness and willingness would depend on the overall conduct of the plaintiff both prior to and subsequent to the filing of the suit for specific performance and such conduct of the plaintiff has to be viewed in light of the conduct of the defendant. The relevant observation is as under:

"36. The principles of law on the basis of which the readiness and willingness of the plaintiff in a suit for specific performance is to be judged finds an elaborate

enumeration in a recent decision of this Court in J.P. Builders v. A. Ramadas Rao [(2011) 1 SCC 429: (2011) 1 SCC (Civ) 227]. In the said decision several earlier cases i.e. R.C. Chandiok v. Chuni Lal Sabharwal [(1970) 3 SCC 140], N.P. Thirugnanam v. R. Jagan Mohan Rao [(1995) 5 SCC 115] and P. D'Souza v. Shondrilo Naidu [(2004) 6 SCC 649] have been noticed.

To sum up, no straitjacket formula can be laid down and the test of readiness and willingness of the plaintiff would depend on his overall conduct i.e. prior and subsequent to the filing of the suit which has also to be viewed in the light of the conduct of the defendant. Having considered the matter in the above perspective we are left with no doubt whatsoever that in the present case Plaintiff 1 was, at all times, ready and willing to perform his part of the contract. On the contrary it is the defendant who had defaulted in the execution of the sale document. The insistence of the defendant on further payments by the plaintiff directly to him and not to the Income Tax Authorities as agreed upon was not at all justified and no blame can be attributed to the plaintiff for not complying with the said demand(s) of the defendant."

(Emphasis Supplied)

84. At the outset, it is significant to note that the Trial Court, upon examining the peculiar facts of the case and the evidence on record, held that the original vendees had established their continuous readiness and willingness to perform the ATS. Relying on this finding and further satisfying itself that the subsequent purchasers are not bona fide purchasers, the High Court decreed the suit for specific performance in favour of the original vendees. The Trial Court observed that the original vendees had successfully demonstrated:

- (i) that the original vendors had undertaken to execute the sale deed within one month of completing the subdivision work;
- (ii) that the original vendors failed to inform the original vendees about the completion of the subdivision, thereby preventing execution of the sale deed and payment of the balance consideration;
- (iii) that the original vendees had already paid a total sum of Rs. 8,12,500/-, inclusive of Rs. 2,00,000/- as earnest money; and
- (iv) that they had, at all material times, remained ready and willing to perform their obligations under the contract. The Trial Court's finding on this issue is as under:

"Ex. P.35 proves that defendants No.1 to 6 have admitted the contents of Ex. P.31. I perused Ex. P.31 and 35: Ex. P.35 shown that defendants No. 1 to 6 are unable to execute the sale deed on the ground that OS No. 30/2001 was pending

and prohibitory order was passed. Further proves that one Mahalaxmi (Godavari) was died. These are only two grounds shown for cancellation of agreement. In Ex. P.35 does not disclose that plaintiffs have not paid the amount as per the terms of agreement and further Ex. P.35 does not disclose that defendants No. 1 to 6 have intimated to the plaintiffs as per para No. 11 of agreement. In para No. 11 of the agreement shown defendants No. 1 to 6 agreed to intimate to the plaintiffs after measurement and fixation of boundaries. The para No.11 of agreement is very relevant to decide the facts in issue.

So, I am of the opinion that defendants have not intimated to the plaintiffs as per contents of para No. 11 of Ex. P.31. So I am of the opinion that as per the contents of Ex. P.35 there is no refusal on the part of the defendants No. 1 to 6 for execution of sale deed but only shown inability to execute sale deed on the ground of status quo order. So, I am of the opinion that plaintiffs successfully to prove that defendants No. 1, 2, 4, 6 and two others have agreed to sell suit land for Rs. 26,95,501/- and paid Rs. 2,00,000/- as earnest money on 28.4.2000. Further plaintiffs successful to prove defendants No. 1, 2, 4, 6. and others have agreed to execute sale deed within 1 month after completion of work of sub division.

The plaintiffs claim that they have paid amount of Rs. 9,45,000/-. I perused contents of Ex. P.31, 39 and 47. So documents proves that plaintiffs have paid sum of Rs. 8, 12,500/-. So plaintiffs failed to prove that they have paid amount of Rs. 9,45,000/- to the owners. So, I am of the opinion that plaintiffs successful to prove that they have paid amount of Rs. 8,12,500/- to the defendants No. 1, 2, 4, deceased Neelakanthrao and Godavari and others. So plaintiffs failed to prove that they have paid amount of Rs. 9,45,000/- and defendants failed to rebut the claim of the plaintiffs in respect of issues No. 1 to 3. Further plaintiffs successful to prove that they are ready ever ready and always ready to perform their part of contract after disposal of OS No. 30/2001.

So, I am of the opinion that defendants: No. 1 to 6 failed to perform their part of contract and plaintiffs immediately after disposal of the suit taken steps to perform of their part of contract and immediately defendants No. 1 to 6 have executed sale deed in favour of the defendants No. 9 to 16."

(Emphasis Supplied)

85. As per the terms of the ATS, the original vendees had agreed to purchase the subject land for a total sale consideration of Rs. 26,95,501/- out of which they had already paid an amount of Rs. 2,00,000/- as earnest money to the original vendors. Under Clause 7 of the ATS, the original vendees were required to pay an additional amount of Rs. 5,00,000/- to the original vendors at the time of registration of ATS or within two months from the date of execution of ATS and

the balance amount was to be paid at the time of registration of the sale deed. It was the case of the original vendors in their notice of termination that the original vendees did not come forward to pay the said amount of Rs. 5,00,000/- to the original vendors nor did the original vendees get the ATS registered.

The original vendees vehemently denied the allegation of non-payment of Rs. 5,00,000/- in its reply. In fact, the receipts of payment to the tune of Rs. 8,12,500/- were placed on record before the Trial Court and relying on the same the Trial Court reached the conclusion that payments were made to the original vendors from time to time to the tune of Rs. 8,12,500/-. No evidence was adduced by the original vendors to prove that such amount was not paid or was not accepted by them.

In fact, it appears from the record that the original vendees had assisted the original vendors in the process of conversion of land and shifting of 19 tenants to one particular place. The averments made by the original vendees in their impleadment application in the Original Suit No. 30 of 2001, and the averments before the Trial Court, the High Court and now before this Court all show that they were always ready and willing to pay the balance consideration and execute the sale deed with respect to the subject land.

The conduct of the original vendees, both prior to and subsequent to the filing of the Original Suit No. 36 of 2007, like payment of substantial sums, their active assistance to original vendors in completing the necessary formalities, their categorical refutation of the termination notice, and their continuous pursuit of legal remedies, all directs towards the conclusion that they have at all times remained compliant with the mandate of Section 16(c) of the Act of 1963. The findings of Trial Court being a finding on facts cannot be said to be perverse. 86. Accordingly, we find no infirmity in the conclusion reached by the Trial Court, which after a detailed examination of the evidence, rightly held that the original vendees had performed their part of the contract to the extent required, and had consistently been ready and willing to perform their remaining obligations under the ATS.

87. In such circumstances referred to above, we find no good reason to re-examine the question of limitation at this stage. The Trial Court, while deciding the issues as framed had specifically considered whether the suit for specific performance instituted by the original vendees was barred by limitation and upon a detailed assessment returned a finding that the suit was well within the prescribed period. Significantly, when the subsequent purchasers carried the matter in appeal before the High Court, no ground of challenge was raised against the said finding.

The subsequent purchasers, having consciously chosen not to assail the finding on limitation, must be deemed to have acquiesced therein. Once the finding of the Trial Court on the question of limitation attained finality, re-agitation of the same before this Court ought not be entertained. Accordingly, we hold that the issue of limitation raised by the subsequent purchasers is untenable and stands concluded against them.

88. In so far as the contention of the subsequent purchasers that since one of the original vendees i.e., the Respondent No. 14 (defendant no. 8) neither entered appearance before the Trial Court or appeared before this Court nor contested the relief of specific performance and that the ATS being indivisible cannot be enforced in the absence of all parties seeking enforcement is concerned, we see no force in the argument in as much as the Respondent No. 14 had released and relinquished his rights and interest under the ATS in favour of the remaining original vendees i.e., the Respondent Nos. 15 to 22 (plaintiffs) and the Respondent Nos. 1 to 5 (defendant nos. 7) respectively by executing an agreement dated 28.12.2002. In view of such relinquishment, the Respondent No. 14 ceased to have any subsisting claim or obligation under the ATS. Consequently, the right to seek enforcement validly vested in the remaining vendees, who alone pursued the remedy of specific performance.

D. CONCLUSION

89. In view of the foregoing, the appeals fail and are hereby dismissed.

90. The Appellants are hereby directed to execute a sale deed in respect of the subject land in favour of the Respondent Nos. 15 to 22, respectively & the Respondent Nos. 1 to 5, respectively, and also hand over vacant and peaceful possession of the subject land to them within six months from the date of this judgment, subject to the fulfilment of directions issued by us in paragraphs 91 and 92, respectively, of this judgment.

91. In the peculiar facts of the present case, we deem it fit to direct the Respondent Nos. 15 to 22, respectively & the Respondent Nos. 1 to 5, respectively, to pay the balance sale consideration of Rs. 18,83,001/- with an interest at the rate of 16% p.a. from the date of the execution of the ATS, to the Appellants within a period of six months from the date of this judgment.

92. Further, having regard to the fact that almost 18 years have passed by since the sale deeds in favour of the Appellants were executed, and with a view to do substantial justice, we direct the original vendees, i.e., the Respondent Nos. 15 to 22, respectively & the Respondent Nos. 1 to 5, respectively, to pay to the Appellants an additional amount of Rs. 5,00,00,000/- over and above the balance

sale consideration with interest referred to above within a period of six months from the date of this judgment.

93. It is only after the balance sale consideration of Rs. 18,83,001/- with interest at the rate of 16% p.a. from the date of the execution of the ATS and the additional amount of Rs. 5,00,00,000/- is paid to the Appellants, that they shall proceed to execute the sale deed and handover vacant and peaceful possession of the subject land to the Respondent Nos. 15 to 22, respectively & the Respondent Nos. 1 to 5, respectively.

94. In the event of any default on either side to comply with our aforesaid directions or in case of any other difficulty, the parties are at liberty to move to this Court.

95. The pending applications, if any, shall stand disposed of.

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

.....J. (R. Mahadevan)

New Delhi;

November 10, 2025

IN THE SUPREME COURT OF INDIA

Kapadam Sangalappa and Ors.

Vs.

Kamatam Sangalappa and Ors.

[Civil Appeal Nos. 281-282 of 2015]

Head Note - In execution petition, the primary onus lies on the decree-holder to show that the judgment debtor has willfully disobeyed the conditions of the decree.

JUDGMENT

Prashant Kumar Mishra, J.

1. The present Appeals arise from a long-standing and deeply rooted dispute between two sections of Kuruba community in Anantapur District of Andhra Pradesh i.e., the Kapadam families of Gungulakunta village and the Kamatam families of Yerrayapalli village. The controversy, extending over several decades, centers upon the performance of religious rituals and the custody of idols and paraphernalia associated with the deity Lord Sangalappa Swamy, who is the common deity worshipped by both the sects.

2. The litigation traces back nearly a century. The first in the series of suits was O.S. No.486 of 1927 filed before the District Munsif Court, Anantapur by members of the Kamatam (respondents herein) sect of Yerrayapalli, seeking custody of pooja articles and religious paraphernalia relating to Lord Sangalappa Swamy, which included items such as bronze horses, idols of Lord Sangalappa Swamy, and other articles of worship. Although these articles were of negligible material value, they carried immense sentimental and religious significance for the community.

3. On the other hand, the Kapadam (appellants herein) sect of Gungulakunta village resisted the claim. The suit, O.S. No. 486 of 1927, was dismissed, and an appeal, A.S. No. 114 of 1928 preferred before the District Judge, Anantapur, met with the same fate. While dismissing the appeal, the learned District Judge observed that a fresh suit could be filed in a representative capacity under Section 92 of the Code of Civil Procedure, 1908 for the proper management of the endowment, suggesting that such a proceeding would be appropriate to regulate the administration of the temple.

4. Acting upon those observations, the respondents family instituted O.S. No. 1 of 1931 before the Court of the District Judge, Anantapur, in a representative

capacity. The matter was subsequently transferred to the Court of the Subordinate Judge, Anantapur, where it was renumbered as O.S. No. 15 of 1933. The said suit sought to establish the rights of the respective sects over the religious endowment, the performance of pooja, and the custody of the idols and paraphernalia.

5. During the pendency of O.S. No. 15 of 1933, parties arrived at a compromise, which was recorded by the Subordinate Judge, Anantapur. Under Clause (1) of the compromise decree dated 01.11.1933, it was recorded that the appellants had been performing pooja to the deity till that date and meeting the associated expenses. It was agreed that the respondents would pay a sum of Rs. 2,000/- towards their half-share of the pooja expenses. If the respondents failed to pay, they will lose their right to perform pooja.

6. Under Clause (2), the compromise further provided that both the groups would appoint two trustees each to supervise the performance of pooja and other religious activities and to maintain accounts. The decree further stipulated that the idols of Lord Sangalappa Swamy should be installed alternately for six months each at Yerrayapalli and Gungulakunta village, and that the performance of pooja would rotate between the two sects every three months in sequence.

7. The 1933 compromise decree was expected to bring an end to the longstanding feud between the two villages. However, decades later, the dispute re-emerged. The appellants alleged that in 1999, the respondents refused to rotate the idols and paraphernalia as required by the terms of the 1933 decree. Consequently, the appellants family filed Execution Petition No. 59 of 2000 in O.S. No.15 of 1933 before the Court of the Principal Senior Civil Judge, Anantapur, seeking execution of the compromise decree dated 01.11.1933 passed in O.S. No. 15 of 1933.

8. The respondents, arrayed as judgment-debtors in Execution Petition No. 59 of 2000, filed a counter and subsequently sought to amend the same by filing E.A. No. 686 of 2001. Upon dismissal of that application, they preferred C.R.P. No. 2777 of 2002 before the High Court of Andhra Pradesh. The High Court allowed that revision, permitting amendment of the counter and remitting the matter to the Executing Court with a specific direction to frame and decide a preliminary issue on the maintainability of the execution petition.

9. In compliance with those directions, the Executing Court framed a preliminary issue on the maintainability and, by order dated 14.10.2003, held that the execution petition was maintainable. Aggrieved thereby, the respondents preferred C.R.P. No. 6055 of 2003. The said revision was dismissed by the High Court on 12.04.2005, holding that the execution petition was maintainable under Section 9 of CPC and that Section 42 of the Andhra Pradesh Charitable and

Hindu Religious Institutions and Endowments Act, 1987, did not oust the jurisdiction of the Executing Court. However, the High Court left open the questions of limitation and locus standi of the decree-holders to execute the decree, directing the Executing Court to decide those issues.

10. Upon remand, the Executing Court on 13.09.2005 eventually allowed E.P. No. 59 of 2000 by directing the respondents to return the idols and pooja articles to the appellants within one month, failing which a warrant under Order XXI Rule 31 CPC was to be issued for seizure of the said items.

11. Aggrieved by the said execution order, the respondents filed Civil Revision Petition No. 5224 of 2005 before the High Court of Andhra Pradesh. The High Court initially referred the matter to the Lok Adalat, Anantapur District Unit, for amicable settlement, but the attempt failed.

12. During adjudication, multiple issues were raised before the High Court, including (i) the maintainability of the revision under Section 115 of the CPC, (ii) whether the execution petition was barred by limitation, (iii) whether the appellants had locus standi to execute the decree, and (iv) whether the decree was executable on facts.

13. Vide judgment dated 06.01.2012, the High Court of Andhra Pradesh allowed the revision preferred by the respondents, holding that though the appellants had locus standi and the execution petition (E.P. No. 59 of 2000) was not barred by limitation, the execution petition could not be sustained on facts, as there was no proof presented by the appellants that the respondents had violated the terms of the compromise decree dated 01.11.1933. A review preferred against the judgment dated 06.01.2012 was also dismissed on 28.01.2013.

14. Being aggrieved, the appellants are now before us assailing the judgment(s) passed by the High Court which had set aside the execution of the compromise decree dated 01.11.1933. SUBMISSION OF PARTIES

15. Shri Gaurav Agrawal, learned senior counsel for the appellants, argued that the High Court has erred in interfering with the finding of fact returned by the Executing Court.

16. Shri Gaurav Agrawal has submitted that the High Court was not correct in inferring that the appellants have failed to establish breach of the compromise decree dated 01.11.1933 on the part of respondents. He has vehemently argued that the deity items were sacred and it is impossible to believe that the respondents made replica of those idols and were worshipping the same.

17. Furthermore, Shri Gaurav Agrawal has pointed out that had the appellants themselves were in possession of the idols, there was no point for them filing an execution petition at the first place.

18. Per contra, Shri Gagan Gupta, learned senior counsel for the respondents, argued that even if the execution petition filed by the appellants is maintainable and within limitation, the execution petition in itself lacked factual foundation as there was no evidence to show that they were in possession of the idols or pooja articles described in the execution schedule, nor was there any proof that they had violated the terms of the compromise decree.

19. Shri Gagan Gupta further submitted that under the terms of the compromise decree, the appellants had been performing the pooja and were to continue doing so, while the respondents could claim participation only upon paying Rs. 2,000/- towards their share of the expenses. Since the respondents had not fulfilled that condition and there had been no exchange of idols between the parties since the date of compromise decree till present, it was contended that there never existed any enforceable obligation upon the respondents.

20. Lastly, Shri Gagan Gupta argued that the compromise decree was never acted upon and over the time, both the parties have set up their own idols and neither of them have looked the other side to receive the idols for a period of six months in a year as was stated in the compromise decree. Therefore, according to the respondents, the High Court was right in setting aside the order of the Executing Court and ruling against the appellants.

ANALYSIS

21. We have heard the learned senior counsel for the parties and have carefully perused the material on record.

22. Considering that the respondents have not filed any appeal against the decision of the High Court holding the execution petition filed by the appellants as maintainable, the only short question that falls for our consideration is whether the compromise decree dated 01.11.1933 was capable of execution on the facts and whether the respondents had in fact violated its terms as alleged by the appellants.

23. At the outset, we must point out that the parties in E.P. No. 59 of 2000 before the Executing Court were not parties to the original suit of 1933. Before the Executing Court, the appellants had examined Kapadam Sangalappa (appellant no. 1 herein as PW-1) and the respondents had examined Kamatam Narayana (respondent no. 3 herein (now deceased) as RW-1) to support their respective cases. The Executing Court had, however, accepted the version of the appellants and had ordered the delivery of idols from the respondents.

24. On scrutiny of the judgment passed by the Executing Court, we find that there was no convincing evidence before the Executing Court to establish that the respondents were in possession of the idols or had violated the compromise decree dated 01.11.1933. The Executing Court appears to have assumed that, since no quarrel was raised for several decades, the arrangement must have been in operation and that the respondents must, therefore, be in possession.

Such inference, based merely on the absence of earlier dispute, is impermissible. Findings based on presumption cannot replace proof. A bare perusal of paragraphs 9 and 10 of the judgment passed by the Executing Court would show that the testimony of PW-1 and RW-1 were merely consisting of bare assertions, unsupported by any independent witnesses or documentary proof. Moreover, none of these witnesses were party to the original suit of 1933.

25. It is undisputed that the compromise decree between the parties was entered on 01.11.1933. A perusal of Clause (1) of the compromise decree would indicate that the appellants themselves were performing pooja and meeting the expenses in 1933. A presumption, therefore, follows that possession of the idols then was with the appellants. Learned senior counsel for the respondents has contended that the compromise decree was never acted upon and there has never been any exchange of idols between the parties after the compromise decree came into force. To bolster his submission, he further points out that the condition of payment of Rs.2,000/- (towards pooja expenses) prescribed under Clause (1) of the decree has also not been proved to be followed by the respondents.

26. It is a trite law that in execution petition, the primary onus lies on the decree-holder to show that the judgment debtor has willfully disobeyed the conditions of the decree. However, to the contrary, in the present case, no evidence has been led by the appellants to show that possession of the idols ever passed to the respondents. PW-1 examined by the appellants has made no reference of Rs.2,000/- being paid by the respondents to appellants for continuous operation of the compromise decree. It is significant to notice that PW-1, in his cross-examination, admits that there were no accounts with regard to the income of the temple and, likewise, there was no sharing of income derived from time to time.

He also admits that they got prepared the horse face, silver padigalu, silver umbrella to the deity with the income available and they used to spend the income for the repair of the ornaments of the deity and, in the past 60 years, they have purchased two or three silver padigalu, four or five silver umbrellas to the deity. Although, this witness says that these ornaments purchased after the compromise are now available with the respondents/judgment-debtors. However, in the further cross-examination, he again admits that due to wear and tear of the articles, they used to get them repaired and prepared afresh from time to time

besides purchase of new ones and, therefore, he cannot say which of the articles were in existence, out of the above, on the date of compromise.

He could not mention the details of the articles that were prepared subsequent to the compromise, although, from his own admission, he was the pujari of the temple. Thus, the case of the respondents/judgment-debtors that the compromise was never acted upon and the articles always remained with the appellants/decreed-holders upon failure of the respondents to pay Rs.2,000/- to the appellants, appears highly probable. The non-payment of Rs.2,000/- by the respondents/judgment debtors is clearly proved from the admission of PW-1 where he admits that he is not aware of the payment of Rs.2,000/- to his ancestors, if any.

27. Pertinent is also the fact that there has been no evidence of compliance of Clause (2) of the compromise decree, which required appointment of two trustees from each sect to supervise and manage rituals and maintain accounts. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him and no one else. We find that no material has been produced by the appellants to show that any trustees were ever appointed or that accounts were maintained. The High Court was right in observing that had the scheme of appointment of trustees been implemented, such a dispute between the parties might not have arisen.

28. In this regard, having reviewed the entire material on record, we are of the view that the appellants had failed to establish violation of the compromise decree by the respondents. The burden of proving violation of the decree rests squarely on the decreed-holders. In the absence of cogent proof of such violation, the execution cannot be sustained. The burden of proof, which lay upon the appellants, had not been discharged. The Executing Court fell into an error in allowing the execution of the compromise decree dated 01.11.1933 on mere presumption without any proof and the High Court rightly set aside the Executing Court's order.

29. Consequently, we find absolutely no reason to interfere with the impugned judgments passed by the High Court. Accordingly, the Appeals are dismissed.

.....J. (Prashant Kumar Mishra)

.....J. (Vipul M. Pancholi)

New Delhi;

November 11, 2025.

1 For short 'CPC'

IN THE SUPREME COURT OF INDIA

K. Subramaniam (D) through LRS. K.S. Balakrishnan & Ors.

Vs.

M/s. Krishna Mills Pvt. Ltd.

[Civil Appeal No. 2561 of 2025]

Head Note - A tenant who challenges a “fair rent” order but does not obtain a stay on it cannot rely on the pending case to avoid eviction.

Mere filing of an appeal does not operate as a stay of the decree/order under appeal is the statutory ordainment in sub-rule (1) of Rule 5 of Order XLI, CPC.

If a person does not seek stay of an order passed by a Court below, it would only indicate either of the two things viz.,

(i) that he is willing to comply with the order, or

(ii) that he has no objection to the orders of the Court below being put into execution.

JUDGMENT

Dipankar Datta, J.

THE APPEAL

1. This is an appeal by the heirs of a lessee seeking reversal of a revisional judgment and order dated 22.06.2021¹ of the High Court of Judicature at Madras². The impugned order affirmed an appellate order of eviction dated 25.02.2020 which, in turn, had reversed the original order of dismissal of the eviction petition dated 06.02.2019.

FACTUAL MATRIX

2. The basic facts giving rise to the impugned order are not in dispute. To the extent germane for disposal of the present appeal, the same are adverted to in brief hereunder:

a. The sole respondent, M/s. Krishna Mills Pvt. Ltd.³, is the owner of a godown bearing D. No. 1084, Avinashi Road, Pappanaickenpalayam, Coimbatore, Tamil Nadu, and the adjacent building⁴.

b. The three appellants are the sons and heirs of K. Subramanian (since deceased), (proprietor of M/s. Royal Agencies).⁵ The petition property consists

of three portions of buildings measuring 5000 sq. ft. each, totalling to 15000. sq. ft., and a separate shed on the western side measuring 500 sq. ft.

c. A lease agreement, dated 11.10.1999, was executed by and between M/s. Krishna and the lessee, whereby a portion of the petition property, measuring 5000 sq. ft. was leased out at a monthly rent of Rs. 15,000/- for a period of 15 years. In October 2000, another 5000 sq. ft. of land and building was taken on lease for a monthly rent of Rs. 15,000. From 01.05.2000, the separate shed of 500 sq. ft. was taken on lease for a monthly rent of Rs. 3000. Subsequently, in October 2001, another 5000 sq. ft. was taken on lease for a monthly rent of Rs. 15,000. Thus, the total extent of 15,500 sq. ft. of land and building was leased for an aggregate monthly rent of Rs. 48,000/-. However, the lessee contended that the rent payable was Rs. 33,000/- p.m.

d. In 2004, M/s. Krishna filed an application for fixation of fair rent⁶ before the Rent Controller, Coimbatore, alleging that the original rent was Rs. 48,000/- p.m. and not Rs. 33,000/- as claimed by the lessee; and consequently, fixation of Rs. 3,76,800/- p.m. as fair rent was sought. The Rent Controller allowed the application in part on 10.01.2007, and fixed the fair rent at Rs. 2,43,600/- p.m., payable from 01.02.2005.

e. M/s. Krishna then filed an application⁷ on 17.07.2007 seeking eviction of the lessee on the ground of wilful default. While it was alleged that an extent of 15,500 sq. ft. had been given on lease at a monthly rent of Rs.48,000/- p.m., the lessee contended that the rent was only Rs.33,000/- p.m. Earlier, as noted above, on M/s. Krishna's application, the Rent Controller by its order dated 10.01.2007 had fixed the fair rent at Rs.2,43,600/- p.m. and subsequently, a demand of Rs.68,87,400/- was claimed towards arrears.

f. The lessee challenged the fixation of fair rent by carrying it in an appeal⁸ before the Rent Control Appellate Authority, Coimbatore, which came to be dismissed on 20.02.2008, thereby confirming the fair rent.

g. Against such dismissal, the lessee filed a revisional application⁹ before the High Court. By an interim order, the High Court directed deposit of Rs.25,00,000/- before the Rent Controller and further payment of Rs.75,000/- p.m. without prejudice to the parties' contentions. Complying with the said order, the lessee deposited the sum, as directed, and commenced paying Rs.75,000/- p.m.

h. On 09.09.2011, the High Court partly allowed the revisional application and reduced the rent to Rs.2,37,500/- p.m.

i. A legal notice dated 01.10.2011 followed, whereby M/s. Krishna demanded arrears of Rs.1,22,22,000/- after giving credit for Rs.25,00,000/-. The lessee,

under protest, remitted Rs.2,13,750/- (after TDS) on 21.10.2011 towards rent for September, 2011 and thereafter preferred special leave petitions¹⁰ before this Court. During the pendency of these petitions, M/s. Krishna filed a revised memo of calculation on 23.12.2011.

j. By an order dated 23.03.2012, this Court dismissed the special leave petitions but directed the lessee to pay arrears in instalments of Rs.15,00,000/- by the 15th of each month, along with regular rent of Rs.2,37,500/- p.m., clarifying that such arrangement was without prejudice to the rights of the parties in the pending proceedings.

k. In compliance therewith, the lessee remitted Rs.13,50,000/- (after TDS) on 05.05.2012 and tendered two further cheques of Rs. 2,13,750/- (after TDS) and Rs. 13,50,000/- (after TDS) on 09.06.2012 towards arrears and rent.

l. The lessee sought a statement of accounts for audit purposes on 02.01.2013, and on 11.01.2013 sent a cheque of Rs.2,22,000/- (after TDS) in full settlement of arrears, asserting that all dues stood discharged. M/s. Krishna, by reply dated 05.02.2013, confirmed receipt of the arrears but stated that the same was received without prejudice to their rights in RCOP No. 134 of 2007.

m. On 06.02.2013, M/s. Krishna raised invoices claiming service tax and interest from 01.06.2007 to 31.12.2012. By letter dated 17.04.2013, the lessee reiterated that all dues had been cleared and denied wilful default, further contending that service tax liability did not fall upon him under the lease.

n. Following the demise of the lessee, M/s. Krishna filed an amended application on 23.10.2017 under Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960¹¹, impleading the appellants (i.e., the heirs of the deceased lessee). Appellants filed their additional counter in February 2018, contending that no arrears were outstanding.

o. By an order dated 06.02.2019, the Rent Controller, Coimbatore, dismissed RCOP No.134 of 2007, holding that M/s. Krishna had failed to establish that original rent was Rs.48,000/- p.m. and further that since the lessee had paid fair rent in terms of the orders of this Court, no wilful default was made out.

p. Aggrieved thereby, M/s. Krishna preferred an appeal¹². By a judgment and order dated 25.02.2020, the Principal Subordinate Judge, Coimbatore, reversed the Rent Controller's finding, observing that despite fair rent proceedings attaining finality, the lessee had failed to tender arrears promptly and that clearance in instalments, even after dismissal of the special leave petitions, amounted to wilful default. The Principal Subordinate Judge finally held that the appellants were liable to be evicted on the ground of wilful default.

q. Appellants then mounted a challenge to the judgment and order of reversal dated 25.02.2020 in a revisional application¹³. Upon hearing the parties, vide the impugned order, the High Court on 22.06.2021 dismissed such application holding that the interim direction to deposit Rs.25,00,000/- and to pay Rs.75,000/- p.m. was only for the purpose of admission of the civil revision petition and that the Court had not granted any stay of the order.

r. Although the appellants commenced paying rent as fixed by the High Court from 21.10.2011, belated payment of accumulated arrears nonetheless constituted wilful default.

ARGUMENTS ON BEHALF OF THE APPELLANTS

3. Mr. Jaideep Gupta, learned senior counsel appearing for the appellants, contended that the eviction petition as originally filed was untenable. According to him, no notice had been issued by M/s. Krishna prior to the filing of RCOP No.44 of 2005, wherein wilful default in payment of rent was alleged on the ground that the monthly rent was Rs.48,000/- p.m., whereas the lessee consistently asserted that the rent was Rs.33,000/- p.m. He further contended that until disposal of CRP (NPD) No.2511 of 2008, no notice was ever served calling upon the lessee to pay arrears based on fixation of Rs.2,43,600/- p.m. as the fair rent by the Rent Controller with effect from 01.02.2005, covering the period up to 30.06.2007.

He invited our attention to the letter dated 05.02.2013 of M/s. Krishna, wherein it acknowledged that the arrears had been received at the rate of Rs.2,37,500/- p.m., i.e., the fair rent as modified by the High Court on 09.09.2011. In such circumstances, it was urged that the belated amendment in RCOP No.134 of 2007, filed in the year 2017 after the demise of the lessee, impleading the present appellants and resurrecting the ground of wilful default for the very same arrears, was nothing but an afterthought and liable to be rejected.

4. Mr. Gupta maintained that the conduct of the lessee or the appellants was not that of a defaulter or an irregular payer of rent, since they continued to pay the originally agreed rent in compliance with the orders of various fora. Reliance was placed on the decision in *Chordia Automobiles v. S Moosa*¹⁴ to contend that when the arrear amount was in dispute and the proceedings were pending, it was reasonable for the lessee to follow the interim arrangements, and the same could not be held to be a case of wilful default.

5. It was next contended by Mr. Gupta that pursuant to the interim order dated 30.07.2008 in CRP (NPD) No.2511 of 2008, the lessee had, without delay, started remitting the rent in consonance with the directions of the High Court. While arrears were not cleared in a lump sum immediately, this was on account

of the pendency of SLP (C) Nos.6500-6501 of 2012 preferred against the order of the High Court dated 09.09.2011. The matter attained finality only upon the dismissal of the said special leave petitions by this Court on 23.03.2012 and, thereafter, the appellants' father scrupulously adhered to the directions of this Court by paying instalments of Rs.15,00,000/- towards arrears along with the monthly rent of Rs.2,37,500/-.

To address the issue of finality in the fixation of fair rent, he placed reliance on the decision in *Visalakshi Ammal v. T.B. Sathyanarayana*¹⁵, wherein it was held that the liability to pay fair rent would arise only upon the passing of the fair rent order by the Rent Controller, and that such liability would not attain finality so long as the order remained under challenge in appeal or revision. It was, therefore, submitted that the appellants cannot be branded wilful defaulters when the arrears were paid strictly in terms of the orders of this Court.

6. Mr. Gupta contended, by placing reliance on *PM Punnoose v. KM Munneruddin*¹⁶, that whenever there is a bona fide dispute on the quantum of arrears, the Controller should exercise his power under the proviso to sub-section (2) of Section 10 of the Rent Control Act, 1960 by passing an order thereunder and giving the tenant a reasonable time, not exceeding 15 days, to pay or tender the amount due to the landlord up to the date of such payment of rent. He also contended that the tenant had cleared the entire arrears and is willing to repay the outstanding arrears if any in two months, arguing against the order of eviction.

7. Reliance was further placed on *N. Velmurugan v. K.N. Govindarajan*¹⁷ to contend that once the execution petition was filed and the High Court had, by an interim order, permitted deposit and extended time for payment, there was no scope to allege wilful default. The expression "without prejudice" occurring in the order of this Court dated 23.03.2012 in SLP (C) Nos.6500-6501 of 2012, it was argued, could not be interpreted to enable M/s. Krishna, after having accepted arrears and rent pursuant to this Court's directions, to revive proceedings for wilful default in respect of the very same arrears.

8. Mr. Gupta next placed reliance on the decision of this Court in *Rupa Ashok Hurra v. Ashok Hurra*¹⁸ to urge that the principle of finality attaches only to the judgment of the Court of last resort, namely, this Court. It was argued that until the dismissal of SLP (C) Nos. 6500- 6501 of 2012 on 23.03.2012, the issue of fixation of fair rent remained sub judice and, consequently, any alleged default prior thereto could not, in law, be characterised as "wilful". According to him, it was only after the dismissal of the said special leave petitions that the determination of fair rent at Rs.2,37,500/- p.m. attained finality, and from that stage onwards the lessee continued to make regular payments without fail.

He further contended that reliance placed on the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017¹⁹ was wholly misplaced, inasmuch as Section 4 of the said enactment expressly exempts tenancies governed by written agreements, which was the case here. It was also argued by him that a unilateral termination letter issued by the landlord could not by itself oust the jurisdiction of the civil court to entertain a tenant's defence under the governing rent control legislation.

9. Furthermore, on the issue of precedents concerning Order XLI Rule 5 of the Code of Civil Procedure, 1908, Mr. Gupta submitted that such authorities were of no relevance in the present context. He contended that those decisions merely recognise the appellate court's discretion to grant conditional stay of execution pending appeal, whereas the question before the Court in the present case was whether the lessee could be held guilty of "wilful default" within the meaning of Section 10(2)(i) of the Rent Control Act, 1960. According to him, the principle governing determination of wilful default is distinct: liability of the lessee is to be assessed with reference to whether he neglected to pay rent from the date it became due despite the opportunity to do so, and not with reference to interlocutory directions issued by appellate courts while entertaining appeals.

10. Mr. Gupta then referred to the own pleadings of M/s. Krishna in RCOP No.134 of 2007, where the period of alleged default was stated to be from 01.10.2000 to 31.01.2005, quantified at Rs.7,80,000/-, computed at a monthly rent of Rs.15,000/-. He pointed out that such a claim was never substantiated by M/s. Krishna at any stage of the proceedings. In this regard, reliance was placed upon the findings recorded in the order dated 06.02.2019 in RCOP No.134 of 2007, wherein the Rent Controller itself noted the absence of evidence establishing Rs.15,000/- p.m. as the rent for the relevant period.

11. Finally, as regards the quantum of arrears claimed in the eviction petition, Mr. Gupta submitted that the figure of Rs.61,07,400/- as averred by M/s. Krishna was untenable. His submission was twofold: first, that the amount was computed on the basis of the fair rent of Rs.2,43,600/- p.m. fixed by the Rent Controller on 10.01.2007, whereas the revisional court, by its order dated 09.09.2011, had reduced the fair rent to Rs.2,37,500/- p.m.; and secondly, that the said fair rent determination reached finality only upon dismissal of the special leave petitions by this Court on 23.03.2012. Thus, it was contended that any claim predicated upon the figure of Rs.2,43,600/- p.m. or upon a demand raised prior to the finality of the proceedings was legally unsustainable.

12. Resting on the aforesaid arguments, Mr. Gupta prayed that the civil appeal be allowed by setting aside the impugned order passed by the High Court in CRP No. 2053 of 2020.

ARGUMENTS OF THE RESPONDENT (M/S. KRISHNA)

13. Per contra, Ms. V. Mohana, learned senior counsel appearing for M/s. Krishna, contended that the dispute was initially governed by the Rent Control Act, 1960, but with the enactment of the 2017 Act the jurisdiction of the civil courts stood excluded and landlord-tenant disputes could thereafter be adjudicated only by Rent Courts and Rent Tribunals. She urged that the appellants had wilfully defaulted in payment of fair rent, a finding concurrently recorded by the Appellate Authority and the High Court, since fair rent was determined on 10.01.2007, yet, the lessee cleared the arrears only on 11.01.2013. Relying on *J. Vishalakshmi Ammal v. T.B. Sathyanarayana*²⁰, Ms. Mohana contended that the expression "rent" in Section 10(2)(i) of the Rent Control Act, 1960 includes fair rent fixed by the court, and non-payment thereof amounts to wilful default.

14. Ms. Mohana next heavily relied on the decision of a learned Judge of the High Court in *Giridharilal Chandak & Bros. v. Mehdi Ispahani*²¹. On the anvil thereof, she vehemently submitted that mere filing of an appeal does not by itself operate as a stay, and unless specifically prayed, the appellate court may in its discretion either grant or refuse stay; hence, pendency of proceedings cannot excuse non-payment of rent.

She referred to the dismissal of the special leave petitions by this Court on 23.03.2012, whereby the lessee was directed to pay arrears at Rs.15,00,000/- p.m. along with the regular rent of Rs.2,37,500/- p.m. by the 15th of each succeeding month until the arrears were cleared, the said payment being directed without prejudice to the rights of the parties in the pending eviction proceedings. According to her, the appellants chose to pay only in instalments and failed to comply fully.

15. It was urged that the pendency of eviction proceedings foreclosed any plea of ignorance on the part of the appellants as to the consequences of default, and that mere deposit of arrears pursuant to interim orders could not absolve them of wilful default within the meaning of Section 10(2)(i) of the Rent Control Act, 1960.

16. Ms. Mohana submitted the details of the wilful default committed by the appellants, as follows:

a. The monthly rent agreed upon by and between the parties was Rs. 48,000/- p.m.; however, the lessee paid only Rs. 33,000/- p.m. from 01.07.2007.

b. The Rent Controller fixed the fair rent vide order dated 10.01.2007, whereas the full and final settlement of dues as per the fair rent happened only on

11.01.2013. Appellants wilfully withheld payment of rent during the pendency of the eviction petition.

c. Even in an appeal filed by the appellants against the order of the Rent Controller fixing fair rent, the Appellate Authority did not grant a stay of the order of the Rent Controller, vide order dated 20.02.2008. Even after this order refusing to stay the Rent Controller's order, the appellants did not settle the fair rent until 11.01.2013.

17. It was then brought to our notice by Ms. Mohana that M/s. Krishna had filed I.A. No.100 of 2008 under Section 11(4) of the Rent Control Act, 1960 before the Rent Controller, seeking a direction to the lessee to deposit the arrears, failing which an order of eviction be passed. Even after the High Court fixed fair rent at Rs.2,37,500/- p.m. by its order dated 09.09.2011 passed in the revisional proceedings, and despite subsequent notices issued by M/s. Krishna demanding the arrears, the appellants continued to remain in default.

18. Ms. Mohana further argued that Section 10(2) of the Rent Control Act, 1960 does not contemplate a prior notice by the landlord as a precondition for seeking eviction. Reliance was placed on Sundaram Pillai & Ors. v. V.R. Pattabiraman²² to submit that issuance of such notice is discretionary, not mandatory. In any event, the appellants neither raised the plea of want of notice in the eviction petition nor objected to the proceedings on that ground at any earlier stage, and are therefore estopped from so objecting at this belated stage.

19. In the sequence of these submissions, Ms. Mohana urged that the appellants had been persistent defaulters, and that no ground for interference was made out with the concurrent findings of the appellate court and the High Court. Accordingly, she prayed that the appeal be dismissed.

QUESTION

20. The sole question arising for decision is, whether the High Court was right in the exercise of its revisional jurisdiction in declining to reverse the appellate order of eviction obtained by M/s. Krishna against the appellants on the ground of wilful default in payment of rent initially by the lessee and then by the appellants?

REASONING

21. We consider it appropriate to first address the question of wilful default, which constitutes the principal ground on which the decree of eviction rests. It is not in dispute that by its order dated 10.01.2007, the Rent Controller, Coimbatore fixed the fair rent at Rs. 2,43,600/- p.m., payable with effect from 01.02.2005. Despite this order, the lessee continued to pay only the earlier contractual rent at

the rate of Rs. 48,000 p.m., leading to an accumulation of arrears from 01.02.2005 to 30.06.2007, amounting to Rs. 68,87,400/-, exclusive of subsequent dues.

The lessee, however, neither sought nor obtained a stay of the said order before the appellate or revisional fora. Despite the appellate authority having dismissed his appeal on 20.02.2008, thereby confirming the fair rent, the lessee persisted in paying only a fraction thereof. The situation continued even after the High Court, by order dated 09.09.2011, modified the fair rent marginally to Rs.2,37,500 p.m. A legal notice dated 01.10.2011 was thereafter issued by the landlord demanding arrears of Rs.1,22,22,000/-, after giving credit for the deposit of Rs.25,00,000/- earlier made under the interim direction of the High Court. Instead of settling the arrears, the tenant merely remitted Rs.2,13,750/- (after TDS) on 21.10.2011 towards rent for September 2011 and allowed the arrears to mount.

22. After the accumulation of arrears for over five years and the matter had traversed through multiple fora, it was only after this Court, by order dated 23.03.2012 dismissed SLP (C) Nos. 6500-6501 of 2012 that the lessee commenced remitting arrears in May and June 2012 by issuing cheques of Rs.13,50,000/- and Rs.2,13,750/-, after deduction of TDS. Even then, full and final settlement was effected belatedly on 11.01.2013, nearly six years after the fixation of fair rent and ten months after the dismissal of the special leave petitions. In our opinion, the plea that pendency of proceedings created uncertainty as to the quantum payable is of no avail to the appellants.

23. At this juncture, a profitable reference can be made to the decision in *Girdharilal Chandak and Bros. (HUF)* (supra). While considering the Rent Control Act, 1960, Justice V. Ramasubramanian (as His Lordship then was) speaking for the High Court held as follows:

14. Irrespective of whether the order passed by this Court on 28.10.2005 in CRP (NPD) Nos. 1657 & 1658 of 2005 was a conditional order or not, it is an admitted fact that the Petitioner himself did not seek a stay of the orders passed by the Rent Controller and the Appellate Authority, while challenging the same by way of Revision. If a person does not seek stay of an order passed by a Court below, it would only indicate either of the two things viz., (i) that he is willing to comply with the order, or (ii) that he has no objection to the orders of the Court below being put into execution. The failure of a person to seek from an Appellate forum, a stay of the order of a subordinate forum, cannot mean anything else than the above two factors.

15. Order 41, Rule 5(1), C.P.C, makes it clear that an Appeal shall not operate as a stay of the proceedings under a decree or order appealed from, except so far as the Appellate Court may order. It also makes it clear that the execution of a

decree need not be stayed merely by reason of an Appeal having been preferred from the decree.

21. As a matter of fact, the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, enables the Appellate Authority under Section 23(2) to grant stay of further proceedings pending decision on the Appeal. There is no similar provision under Section 25. What is worse is the fact that under Section 23(4), the decision of the Appellate Authority is final and is not liable to be called in question in any Court of Law, except as provided in Section 25. Therefore, finality is reached in every proceeding under the Act, the moment an order is passed by the Appellate Authority.

But it is made subject to the Revisional jurisdiction of this Court. Therefore, in the absence of a stay, by this Court in a Revision, the order of the Appellate Authority becomes final until it is modified or set aside by this Court. Moreover, Rule 12 of the Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974, prescribes the procedure for the disposal of the Applications. The Third Proviso to sub-rule (3) of Rule 12, states that whenever an Application for setting aside an ex parte order is received for the first time, all Execution proceedings would stand stayed till the disposal of that Application.

In other words, the Act contains one provision for stay under Section 23(2), subject to the discretion of the Appellate Authority. The Rules contain one provision for automatic stay of execution, under the Third Proviso to Rule 12(3). Therefore, the construction that the admission of a Revision, without any order of stay, would automatically take away the finality conferred under Section 23(4) to an order of the Appellate Authority, would do violence to the Act and the Rules. Hence, the second contention is also unacceptable.

24. In the present case, the lessee challenged the fixation of fair rent but did not seek a stay of its operation before the appellate or revisional fora. Mere filing of an appeal does not operate as a stay of the decree/order under appeal is the statutory ordainment in sub-rule (1) of Rule 5 of Order XLI, CPC. Payments were made belatedly and only after protracted litigation. Such conduct cannot be reconciled with bona fide doubt as to liability. Appellants, it is clear, defaulted in payment of rent and such default, on facts and in the circumstances, is undoubtedly a wilful default. The concurrent finding of the appellate authority, affirmed by the High Court, that the lessee and thereafter the appellants had been in wilful default, rests on sound appreciation of the legal position and the appellants' own admissions.

25. Furthermore, as regards the import and effect of Section 10(2)(i) of the Rent Control Act, 1960, along with its proviso and explanation, we need to refer to the decision in Sundaram Pillai (supra) relied upon by Ms. Mohana. The said

decision is by a three-Judge Bench of this Court. The majority view was authored by Hon'ble A. Varadarajan, J. (as His Lordship then was). The relevant paragraphs from it read as follows:

56. We may, therefore, extract the Explanation again to find out what it really means and to what extent does it affect the provisions of the proviso:

"Explanation.- For the purpose of this sub-section default to pay or tender rent shall be construed as wilful, if the default by the tenant in the payment or tender of rent continues after the issue of two months' notice by the landlord claiming the rent."

57. If we analyse the various concomitants of the Explanation, the position seems to be that-

(a) there should be a default to pay or tender rent,

(b) the default should continue even after the landlord has issued two months' notice claiming the arrears of rent,

(c) if, despite notice, the arrears are not paid the tenant is said to have committed a wilful default and consequently liable to be evicted forthwith.

59. Another aspect that must be stressed at this stage is that where a tenant has committed default after default without any lawful or reasonable cause and the said defaults contain all the qualities of a wilful default viz. deliberate, intentional, calculated and conscious, should he be given a further chance of locus poenitentiae? After hearing counsel for the parties at great length, we feel that although the question is a difficult one yet it is not beyond solution. If we keep the objects of the proviso and the Explanation separate, there would be no difficulty in deciding these cases.

60. To begin with, Section 10(2)(i) of the Act lays down that where the Controller is satisfied that the tenant has not paid or tendered the rent within 15 days after the expiry of the time fixed in the agreement of tenancy or in the absence of any such agreement, by the last date of the month next following that for which the rent is payable, he (tenant) undoubtedly commits a default. Two factors mentioned in Section 10(2)(i) seem to give a clear notice to a tenant as to the mode of payment as also the last date by which he is legally supposed to pay the rent.

This, however, does not put the matter beyond controversy because before passing (sic, passing) an order of eviction under the proviso, it must also be proved that the default was wilful and if the Controller is of the opinion that the default in the circumstances and facts of the case was not wilful, in the sense that it did not

contain any of the qualities or attributes of a wilful default as indicated by us above, he may give the tenant a reasonable time, not exceeding 15 days, to pay the entire rent and if this is complied with, the application for ejectment would stand rejected.

The difficulty, however, is created by the Explanation which says that once a landlord gives a two months' notice to his tenant for paying the arrears of rent but the tenant continues in default even thereafter, then he is liable to be evicted. There is a good deal of force in this argument which has its own advantages. In the first place, it protects the court from going into the intricate question as to what is a wilful default and whether or not the conditions of a wilful default have been satisfied which, if permitted would differ from case to case and court to court.

But the difficulty is that if such a blanket ban is put on the court for not examining the question of wilful default once the conditions laid down in the Explanation are satisfied then it would undoubtedly lead to serious injustice to the tenant. A subsidiary consequence of such an interpretation would be that even though the tenant, after receipt of the notice, may be wanting to pay the arrears of rent but is unable to do so because of unforeseen circumstances like, death, accident, robbery, etc., which prevent him from paying the arrears, yet under the Explanation he has to be evicted.

61. Another view which, in our opinion, is a more acceptable one and flows from the actual words used by the proviso is that where the Explanation does not apply in the sense that the landlord has not issued two months' notice, it will be for the court to determine in each case whether the default is wilful having regard to the tests laid down by us and if the court finds that the default is wilful then a decree for eviction can be passed without any difficulty.

62. *** A correct interpretation, in our opinion, would be that where-

(1) no notice, as required by the Explanation, is given to the tenant, the Controller or the court can certainly examine the question whether the default has been wilful and to such a case the Explanation would have no application,

(2) the landlord chooses to issue two months' notice and the rent is not paid then that would be a conclusive proof of the default being wilful unless the tenant proves his incapability of paying the rent due to unavoidable circumstances.

63. The argument of the counsel for landlords was that even if a notice under the Explanation is given that does not take away the jurisdiction of the proviso to determine whether or not the default has been wilful if it contains the qualities and attributes referred to above because what the Explanation does is merely to incorporate an instance of a wilful default and is not conclusive on the point and

would have to be construed by the court in conjunction with the conditions mentioned in the proviso. We are, however, unable to go to this extreme extent because that will actually thwart the object of the Explanation.

As we read the Explanation, it does not, at all take away the mandatory duty cast on the Controller in the proviso to decide if a default is wilful or not. Indeed, if the landlord chooses to give two months' notice to his tenant and he does not pay the rent, then, in the absence of substantial and compelling reasons, the Controller or the court can certainly presume that the default is wilful and order his eviction straightaway. We are unable to accept the view that whether two months' notice for payment of rent is given or not, it will always be open to the Controller under the proviso to determine the question of wilful default because that would render the very object of Explanation otiose and nugatory. We express our view in the matter in the following terms:

"(1) Where no notice is given by the landlord in terms of the Explanation, the Controller, having regard to the four conditions spelt out by us has the undoubted discretion to examine the question as to whether or not the default committed by the tenant is wilful. If he feels that any of the conditions mentioned by us is lacking or that the default was due to some unforeseen circumstances, he may give the tenant a chance of locus poenitentiae by giving a reasonable time, which the statute puts at 15 days, and if within that time the tenant pays the rent, the application for ejectment would have to be rejected.

(2) If the landlord chooses to give two months' notice to the tenant to clear up the dues and the tenant does not pay the dues within the stipulated time of the notice then the Controller would have no discretion to decide the question of wilful default because such a conduct of the tenant would itself be presumed to be wilful default unless he shows that he was prevented by sufficient cause or circumstances beyond his control in honouring the notice sent by the landlord."

26. Hon'ble Sabyasachi Mukharji, J. (as the Chief Justice then was) dissented. Although we find His Lordship's opinion expressed in paragraphs 79, 81, 83, 84, 86, 87 and 90 of the report to be logical, the same pales into insignificance in view of the same being the minority view. Having regard to the Constitution Bench decision of this Court in Trimurthi Fragrances (P) Ltd. v. Government of N.C.T. of Delhi²³, the decision in Sundaram Pillai (supra) has to be regarded as a judgment of a three-Judge Bench which binds us sitting in a combination of two.

27. Thus, on consideration of the proposition of law laid down by the majority in Sundaram Pillai (supra), this Court is not persuaded to accept the contention of the appellants that the absence of a two months' notice under the Explanation to Section 10(2)(i) of the Rent Control Act, 1960 would ipso facto disentitle the

landlord from maintaining the proceedings for eviction on the ground of wilful default.

The statute, when read as a whole, does not render such notice an indispensable condition precedent to the assumption of jurisdiction by the Rent Controller. The Explanation merely provides an additional instance where, upon service of notice and continued nonpayment, the default may be presumed to be wilful; it does not, by necessary implication, obliterate the discretion vested in the Controller under the proviso to determine wilfulness even in the absence of such notice.

28. That apart, the nature of default committed by the lessee satisfies the attributes of a wilful default as explained in Sundaram Pillai (supra) and leaves little room for us to hold that no wilful default had been committed.

29. Further, we have perused the brief order dated 23.03.2012 dismissing the special leave petitions of the lessee. This Court was careful in using the words "without prejudice". The implication of "without prejudice" used in the order of dismissal would mean, in the circumstances, that notwithstanding the liberty granted to the lessee to make payment, as per liberty granted, such payments were not to be seen as a waiver of M/s. Krishna's rights to realise unpaid rent and even to proceed for the lessee's ejectment owing to wilful default committed by him. The position seems to be absolutely clear on this front and no advantage can be derived by the appellants by contending that payments having been made in terms of this Court's order, the issue stood closed.

30. We are also not impressed by the argument of Mr. Gupta based on the principle of law laid down in Rupa Ashok Hurra (supra). Judicial proceedings attain finality upon a decision being rendered by the apex court in the hierarchy of courts. There is, as such, no quarrel with the said proposition of law. Nonetheless, proceedings do attain finality even at the level of the high courts, or the district courts or the trial courts if the immediate next superior forum is not approached by the party suffering the decree/order of the court seized of the lis.

However, the principle of finality of a judicial decision would have no applicability in a situation where a party, despite owing money (unpaid rent, here) to his adversary in terms of a judicial determination, approaches the superior forum but prefers not to seek a stay of such determination pending the proceedings leaving the other party deprived of the benefits flowing from the said judicial determination. The bogey of judicial finality cannot, thus, be pressed into service to unfairly deny a party the benefits of a judicial decision, operation of which does not suffer from any interdiction by the superior court.

31. Having bestowed anxious consideration to the rival submissions and on perusal of the materials placed on record, we find ourselves in agreement with

Ms. Mohana that the lessee, and subsequently the appellants, taking shelter of the pending appeal against the order fixing fair rent without, however, seeking a stay thereof and also in light of the parting observation made by this Court while disposing of SLP (C) Nos. 6500-6501 of 2012, had no protective umbrella over him/them so as to remain absolved from tendering payment to M/s. Krishna.

32. Having regard to the afore-canvassed factual and legal position and on acceptance of the instances of default referred to by Ms. Mohana, we answer the question arising for decision in the affirmative. We conclude that the High Court, in exercise of its revisional jurisdiction, rightly refrained from re-examining factual determinations and such an approach being reasonable and unexceptionable, it committed no error in affirming the appellate order of eviction passed against the appellants on the ground of wilful default.

33. The appeal, in our view, is unmeritorious. It is liable to be and is, accordingly, dismissed.

34. The appellants are, however, granted time of six months from the date of this order to vacate and hand over vacant possession of the decretal property to M/s. Krishna, subject to the usual undertakings being filed within a fortnight from date positively. In default, grant of time of six months shall stand vacated and M/s. Krishna would be at liberty to institute execution proceedings in accordance with law to recover possession.

35. Parties shall, however, bear their own costs.

.....J. (Dipankar Datta)

.....J. (Manmohan)

New Delhi;

November 11, 2025.

1 impugned order

2 High Court

3 M/s. Krishna, hereafter

4 petition property

5 Lessee, hereafter

6 RCOP No. 44 of 2005

- 7 RCOP No.134 of 2007
- 8 RCA No.21 of 2007
- 9 CRP (NPD) No.2511 of 2008
- 10 SLP (C) Nos.6500-6501 of 2012
- 11 Rent Control Act, 1960
- 12 RCA No.32 of 2019
- 13 CRP No.2053 of 2020
- 14 (2000) 3 SCC 282
- 15 (1997) 2 MLJ 453
- 16 (2003) 10 SCC 610
- 17 (2002) 2 SCC 500
- 18 (2002) 4 SCC 388
- 19 2017 Act
- 20 1996-2-L.W. 849
- 21 2011 (5) CTC 252
- 22 (1985) 1 SCC 591
- 23 2022 SCC OnLine SC 1247

IN THE SUPREME COURT OF INDIA

Sanjay Tiwari

Vs.

Yugal Kishore Prasad Sao & Ors.

**[Civil Appeal No. _____ of 2025
@ SLP (C) No. 11050 of 2025]**

Head Note - A counterclaim can't be filed by a defendant against co-defendants. A counterclaim can only be filed against the plaintiff on a cause of action incidental or connected with the cause of action on which the plaintiff's suit was filed.

JUDGMENT

K. Vinod Chandran, J.

1. Leave granted.

2. The appellant who is the plaintiff in a suit, is aggrieved with the order of the High Court, which affirmed the order of the Trial Court admitting a counter claim by the defendant Nos.2 and 3, who were subsequently impleaded, on their application. The counter claim was against the first defendant; against whom the plaintiff had sought a specific performance of the very same land; subject matter of the suit.

3. The High Court dismissed the application filed under Article 227 on the ground of avoiding multiplicity of litigation, reasoning that the entire issue can be decided in the suit as to whether the counter claim is maintainable or not.

4. Heard the learned counsel for the appellant and the respondents herein. While learned counsel for the appellant contends that there can be no counter claim against the codefendant in a suit filed by him, the defendants who raised the counter claim pleaded that they may be left liberty to agitate their cause in appropriate proceedings. Learned counsel for the appellant specifically relied on the decisions in Rohit Singh & Ors. v. State of Bihar¹ and Rajul Mano Shah @ Rajeshwari Rasiklal Sheth v. Kiranbhai Shakrabhai Patel & Anr.².

5. On the brief facts, it is to be noticed that the plaintiff filed a suit for specific performance on the contention that defendant No.1, who was the sole defendant had entered into an oral agreement on 02.12.2002 to sell 0.93 acres of land, more fully described in the plaint. The first defendant, was the sole defendant impleaded in the plaint filed. The entire consideration agreed upon was paid on 03.12.2002 by way of three demand drafts, upon which a receipt was issued in

favour of the plaintiff, promising transfer of the said land in favour of the plaintiff, which was witnessed by three defendants, claimed the plaintiff. The plaintiff also asserted that he was put in possession of the property on which he had built a boundary wall.

6. The original sole defendant filed a written statement contending that two others (defendant Nos.2 and 3, subsequently impleaded) were the persons in possession of part of the suit property and hence the suit is bad for nonjoinder of the necessary parties. It was claimed that on 01.12.2002, a portion of the very same land, 50 decimals, was agreed to be transferred to the 2nd and 3rd defendants, the consideration of which, Rs.2,95,000/- was required to be paid on 03.12.2002. However, it is also admitted that in the meanwhile, the 1st defendant due to his financial need sold 43 decimals of land to the father of the plaintiff for an amount of Rs.2,55,000/-. There is also an averment that the plaintiff made payment of Rs.2,55,000/- by demand drafts and 2nd and 3rd defendants made payment of Rs.2,95,000/- by deposit in a bank account.

7. As of now, the question of non-joinder of necessary parties does not arise since the 2nd and 3rd defendants themselves filed an application for impleadment, which was allowed, upon which the plaintiff had taken up a challenge before the High Court, rejected as per Annexure P11. However, the written statement filed by 2nd and 3rd defendants assert that their agreement was to purchase the entire land for Rs.5,50,000/- out of which they have paid Rs.2,95,000/-. They also raised a counter claim against 1st defendant that they are entitled to be transferred the entire land which was allowed to be taken up by the Trial Court and challenged unsuccessfully before the High Court; impugned herein.

8. Admittedly, even if the allegation of an agreement of sale with 2nd and 3rd defendants is accepted, there is no contention that the amount agreed upon was paid to the 1st defendant or that they were always ready and willing to pay the balance sale consideration. It is also pertinent that in the written statement filed, the 2nd and 3rd defendants concede that 43 decimals of land was purchased by plaintiff's father and their agreement was confined to purchase of 50 decimals of land. It is the specific case put forth that the area shown in the receipt was fraudulently changed from 43 to 93 decimals.

9. Rohit Singh (supra) was a case in which the plaintiff filed a suit for specific performance and possession, against two defendants. The suit went to trial, the evidence was closed, arguments concluded and reserved for judgment. Then the third parties filed an impleading application claiming right over the suit property by way of a counter claim, which was allowed by the Trial Court.

Though the plaintiff's claim was rejected, that of the impleaded respondents stood allowed against which the defendant Nos.1 and 2, the Divisional Forest Officer

and the State of Bihar filed an appeal unsuccessfully, which was challenged in a second appeal, successfully. The appellants before this Court contended that the counter claim was maintainable even if the cause of action put forth by the defendants in the suit did not arise out of the cause of action based on which the suit was filed by the plaintiff.

10. The counter claim was rejected by this Court for multiple reasons, one of which, that it could not have been raised after the issues are framed and the evidence was closed. Then, that though a contention was raised regarding the counter claim, there was not even a prayer seeking a declaration of title, in which event, there was no counter claim in terms of Order 8, Rule 6A of the Code of Civil Procedure, 1908.

It was also found that the Trial Court only treated the written statement as a counter claim and afforded no opportunity for the defendant Nos.1 and 2 to effectively contest the same by way of pleadings. Finally, it was held that a counter claim though can be based on different cause of action than that are put forth in the suit, it should be one incidental or connected with that cause of action and it has necessarily to be directed against the plaintiff and cannot be directed against the co-defendant.

11. Rajul Mano Shah (supra) was a case in which the plaintiff filed a suit against her sister-in-law from alienating the latter's portion of the undivided share of a joint family property in favour of a third party; the second defendant. The sister-in-law died while the suit was pending, and the second defendant sought substitution of the original defendant No.1 with a Court appointed officer which came to be allowed.

The counter claim raised was for specific performance of the agreement, allegedly executed by the first defendant and for partition, which prayer of partition was claimed to be an incidental prayer against the plaintiff in the suit. This Court found that the claim of specific performance is independent of the claim of partition, since the second defendant should first establish a right of claim over the property, which is absent till he succeeds against the estate of the first defendant; in which event only the question of setting up of a counter claim against the plaintiff by way of a prayer for partition would arise.

12. The said declaration squarely applies in the present case also. True, if the 2nd and 3rd defendants are in possession of any part of the property, their impleadment in the suit is necessary since the plaintiff would also have to claim recovery of possession in the event of a decree of specific performance. Now, the 2nd and 3rd defendants having already been impleaded, the suit does not suffer from the defect of non-joinder of necessary parties.

13. It also has to be noticed that despite raising a claim for conveyance of the entire property, the 2nd and 3rd defendants do not have a concrete case, even for a counter claim. Their first assertion in the written statement is that they had agreed to purchase the entire land for Rs.5,55,000/- against which Rs.2,95,000/- was already paid. However, they conceded that 43 decimals from the very same property was agreed to be conveyed by the first defendant to the plaintiff for consideration of Rs.2,55,000/-. Their contention is also that the plaintiff had fraudulently changed the area from 43 decimals to 93 decimals.

Their claim towards the end of the written statement is that, in any event 50 decimals of the suit property has to be conveyed to them based on the part payment made by them for which there is no agreement. The 2nd and 3rd defendants, hence, are found to have no concrete claim against the property and in any event, the impleading application in the suit was also filed only in the year 2006 after the period of limitation seeking the claim of specific performance, the cause of action for which, even according to the defendants, arose on 02.12.2002.

14. As has been held in the decisions cited, the counter claim against the co-defendant cannot survive and the same has to be rejected. Impleadment of the 2nd and 3rd defendants though voluntarily made by themselves, saves the suit from the defect of non-joinder of necessary parties, on the ground of possession, even if it is so found. We make it clear that we have not held on merits regarding the possession as such and it would be for the Trial Court to determine the same and if necessary, grant recovery of possession, if that is sought for by the plaintiff appropriately in the suit.

15. We find no reason to leave liberty to the defendants 2 & 3 to file a separate suit at this stage, when the claim would be grossly delayed, which was hit by limitation even at the time of filing of the counter claim; which in any event cannot survive against the plaintiff.

16. The Civil Appeal is hence allowed, and the parties are left to agitate their cause before the Trial Court, leaving open all contentions except - that of the counter claim of the defendants 2 & 3, which stands set aside.

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

.....J. (K. Vinod Chandran)

.....J. (N. V. Anjaria)

New Delhi;

November 12, 2025.

1 (2006) 12 SCC 734

2 (2025) 10 SCR 152

IN THE SUPREME COURT OF INDIA

Union of India
Vs.
Vigin K. Varghese

[Criminal Appeal No. _____ of 2025
@ SLP (Crl.) No(s). 7768 of 2025]

[Criminal Appeal No. _____ of 2025
@ SLP (Crl.) No(s). 11097 of 2025]

Head Note - Delay in trial or prolonged incarceration cannot, by itself, justify the grant of bail in cases involving commercial quantity of narcotic drugs when the mandatory twin conditions under Section 37 NDPS Act remain unmet.

JUDGMENT

Aravind Kumar, J.

1. Leave granted.

2. These appeals, being Special Leave Petition (Crl.) Nos. 7768 of 2025 and 11097 of 2025, are directed against the orders dated 22.01.2025 and 12.03.2025 passed by the High Court of Judicature at Bombay granting bail to the respondent accused Vigin K. Varghese on prosecutions instituted by the Directorate of Revenue Intelligence under the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act").

The first order, rendered in Criminal Bail Application No. 1416 of 2024, relates to the seizure of approximately 50.232 kilograms of Cocaine imported from South Africa in the name of M/s Yummito International Foods India Pvt. Ltd., of which the respondent is a Director. The second order, rendered in Criminal Bail Application No. 1540 of 2024, granted bail on the ground of parity in a connected prosecution arising from a seizure effected within a few days of the first. As both appeals concern the same accused, the same investigating agency, and substantially overlapping facts and legal issues, they are heard together and disposed of by this common order.

3. On 05.10.2022, Officers of the Directorate of Revenue Intelligence, Mumbai Zonal Unit, acting on specific information, identified a refrigerated shipping container bearing No. MSDU-9809038, declared to contain pallets of pears, imported from South Africa in the name of M/s Yummito International Foods India Pvt. Ltd. The respondent is stated to be a Director and the operative mind of

said concern. The container was escorted from the terminal at Jawaharlal Nehru Port to EFC Logistics CFS for examination in the presence of two independent panch witnesses and the respondent.

4. On 06.10.2022 and 07.10.2022, upon opening the said container and segregating the cartons, officers allegedly recovered fifty brick-shaped white packets concealed within cartons of green apples (pears) that were intermixed with the declared consignment of pears. On weighment, these packets were found to weigh approximately 50.232 kilograms. Field testing indicated the presence of cocaine. The contraband was seized under a panchnama dated 06.10.2022 and 07.10.2022.

5. Statements of the respondent came to be recorded under Section 67 of the NDPS Act wherein it is alleged that he admitted to ordering the consignment from a South African supplier, to having imported the goods using the Import Export Code of his firm, and for supervising the clearance and delivery operations through his logistics handlers. The Directorate further alleges that he identified one Mansoor Thachaparamban as his overseas collaborator who arranged the shipments and that the respondent described the commercial arrangement and coordination undertaken for the consignments.

6. The Directorate also asserts that the present seizure was not isolated. On 02.10.2022, in a separate operation, approximately 198.1 kilograms of Methamphetamine and 9.035 kilograms of Cocaine had been seized, allegedly traceable to the same network involving the respondent and the aforesaid Mansoor Thachaparamban. A separate complaint bearing No. 428 of 2023 in respect of that seizure stands filed before the Special Court for NDPS cases, Panvel. The Union relies on this to show antecedent involvement.

7. The respondent came to be arrested in October 2022 and has remained in custody since then. Upon completion of investigation, a complaint came to be filed before the Special Court on or about 01.04.2023, registered as DRI/MZU/C/INT-96/2022. The application for bail preferred by the respondent was rejected on 24.01.2024, inter alia holding that the material prima facie disclosed his active role and that the fetters of Section 37 were attracted.

8. The respondent thereafter approached the High Court of Judicature at Bombay by way of Criminal Bail Application No. 1416 of 2024. By order dated 22.01.2025, the High Court enlarged the respondent on bail. The High Court reasoned that although a large quantity of contraband was seized, there was prima facie no material to show that the applicant had knowledge of the cocaine concealed in the cartons of apples; that there were no antecedents; and that the trial was unlikely to conclude in the near future. On that basis, it concluded that

there existed reasonable grounds to believe that the applicant was not guilty of the alleged offence and that he was entitled to bail.

9. A subsequent order dated 12.03.2025 passed on a later bail application arising from the same chain of events proceeded on similar reasoning and extended the benefit of bail by invoking parity and reiterating absence of knowledge and prolonged custody. The Union of India has assailed both these orders in the present appeals which have been directed to be heard together.

10. Shri Raghavendra P. Shankar, Learned Additional Solicitor General appearing for the appellant submits that High Court has erred in granting bail despite the recovery of a commercial quantity of narcotic substances under Sections 21(c), 23(c), 29 and 30 read with Section 8(c) of the NDPS Act. It is urged that the statutory bar under Section 37 was not properly applied and the reasoning adopted by the High Court is contrary to settled law. It is contended that the High Court had granted bail without recording any satisfaction that the respondent was not guilty or that he would not commit any offence while on bail. The order, it is submitted, is devoid of reasons demonstrating compliance with the twin conditions prescribed under Section 37(1)(b).

11. The appellant further submits that incriminating materials such as call data records, seizure memos, and statements recorded under Section 67 of the NDPS Act clearly implicate the respondent and reveal his active participation in facilitating import and concealment of narcotic consignments. The High Court, according to the appellant, misapplied considerations such as delay of trial and health, which cannot override the statutory embargo. It is contended that offences of this magnitude undermine public interest and that a liberal approach in granting bail defeats the object of the NDPS Act. The Union accordingly prays that the impugned orders be set aside and the respondent be directed to surrender.

12. Per contra, learned senior counsel appearing for the respondent submits there is no direct material linking respondent to the possession or conscious control of the contraband seized. It is urged that the recovery was from a shipping container arriving from abroad and not from the personal custody or premises of the respondent. The statements relied upon by the prosecution, are recorded by the enforcement officers and lack independent corroboration. The respondent emphasizes that he has been in custody since October 2022 and that the trial having not commenced in real earnest, it is unlikely to happen in the near future.

13. It is contended that the High Court exercised sound discretion by harmonizing the rigour of Section 37 with the right to personal liberty under Article 21 of the Constitution. Reliance is placed on the principle that prolonged incarceration without trial cannot be justified, particularly when delay is not attributable to the accused.

The respondent submits that he has cooperated throughout the investigation; has no prior criminal antecedents; and, poses no risk of absconding or tampering with the evidence. It is argued that the impugned orders reflect a reasoned exercise of judicial discretion after examining the case diary and no interference under Article 136 of Constitution of India is warranted. It is also pointed out that appellants suffer from unexplained delay in filing.

14. We have perused the impugned orders dated 22.01.2025 and 12.03.2025. Both orders proceed essentially on four planks, absence of knowledge of the cocaine to the respondent in the imported consignment, absence of antecedents, length of custody and perceived delay in conclusion of the trial, and a consequent conclusion that there exist reasonable grounds to believe that the accused is not guilty of the offence.

15. At this stage, two features stand out. The High Court's conclusion that there is no material to show that the applicant had any knowledge of the cocaine in the consignment has been arrived at without discussion of the statements of the respondent and circumstances relied upon by the prosecution, including the assertion that the respondent had placed the orders for import, controlled the logistics chain, coordinated with the overseas supplier, and was present when the consignment was opened. The High Court has not examined whether those circumstances, taken at face value for the limited purpose of bail, could prima facie indicate conscious control or involvement sufficient to attract the presumption of culpable mental state indicated under Section 35 of the NDPS Act.

16. Further, while granting bail, the High Court recorded that there were no antecedents against the applicant. The material before this Court includes the Union's assertion that the respondent had already been apprehended in connection with an earlier seizure of approximately 198.1 kilograms of Methamphetamine and 9.035 kilograms of Cocaine allegedly imported through the same channel only days before the present seizure. That assertion is neither noticed nor answered in the impugned orders.

17. The High Court then, on the strength of those premises, recorded a finding that there exist reasonable grounds to believe that the applicant is not guilty of the alleged offence, treating prolonged incarceration and likely delay as the justification for bail. Such a finding is not a casual observation. It is the statutory threshold under Section 37(1)(b)(ii) which would disentitle the discretionary relief and grant of bail must necessarily rest on careful appraisal of the material available. A conclusion of this nature, if returned without addressing the prosecution's assertions of operative control and antecedent involvement, risks trenching upon appreciation of evidence which would be in the domain of trial court at first instance.

18. This Court ordinarily shows deference to the discretion exercised by the High Court while considering the grant of bail. However, offences involving commercial quantity of narcotic drugs stand on a distinct statutory footing. Section 37 enacts a specific embargo on the grant of bail and obligates the Court to record satisfaction on the twin requirements noticed above, in addition to the ordinary tests under the Code of Criminal Procedure.

19. In the present case, the High Court has not undertaken the analysis of those twin requirements with reference to the material placed by the prosecution. The orders dated 22.01.2025 and 12.03.2025 do not advert to the allegation regarding the respondent's prior involvement in a seizure of narcotic drugs and psychotropic substances only days prior to the seizure forming the subject matter of the present complaint, nor do they engage with the prosecution's assertion as to the respondent's role in arranging, importing, clearing and supervising the consignments. The omission to consider these factors bears directly upon the statutory satisfaction required by Section 37(1)(b).

20. We are of the view that, in the facts of this case, it would not be appropriate for this Court at the threshold stage itself to render findings on whether there are or not reasonable grounds, for believing that the respondent is not guilty, or on whether he is likely to commit any offence while on bail. That factual assessment, which the statute requires to be made and recorded with reasons, is one that the High Court must undertake upon a complete and fair appraisal of the rival contentions based on materials placed before it.

21. In our considered view, the interests of justice would be met if the impugned orders are set aside and the matter is remitted to the High Court for fresh consideration of the respondent's prayer for bail, keeping in view the parameters of Section 37 of the NDPS Act, the nature and quantity of contraband alleged to have been seized including 50.232 kilograms of Cocaine on 06.10.2022 and 07.10.2022, the role attributed to the respondent in the said import, the allegation of his involvement in an earlier seizure of 198.1 kilograms of methamphetamine and 9.035 kilograms of cocaine in early October 2022, the period of custody undergone since October 2022, and the stage of trial before the Special Court.

22. In the result, the following order is passed:

(1) The impugned orders of the High Court of Judicature at Bombay dated 22.01.2025 and 12.03.2025 are set aside.

(2) The matters are remitted to the High Court of Judicature at Bombay for fresh consideration of the respondent's prayer for bail. The High Court shall, after affording an opportunity of hearing to both the sides and upon advertent to the statutory requirements of Section 37 and to the relevant material on record, pass a

reasoned order keeping in mind the observations made hereinabove within four weeks from the date of receipt of this order.

(3) Until the High Court takes a decision, and purely as an interim arrangement, the respondent shall continue to have the benefit flowing from impugned orders including the terms and conditions of bail as presently operative. It is made clear that any infraction of the conditions of bail, including any attempt to contact witnesses or tamper with evidence, shall entitle the prosecuting agency to move for immediate cancellation before the High Court during the interregnum.

(4) We clarify that we have not expressed any opinion on the merits of the case and all contentions of both parties are left open to be urged before the High Court.

23. The Appeals are disposed of in the above terms.

.....J. [Aravind Kumar]

.....J. [N. V. Anjaria]

New Delhi;

November 13, 2025

IN THE SUPREME COURT OF INDIA

Dinesh Kumar Jaldhari

Vs.

State of Chhattisgarh

[Criminal Appeal No. 4732 of 2025]

Head Note - Consistent ocular evidence prevails over medical evidence. Upholds conviction in POCSO Act, 2012

JUDGMENT

N.V. Anjaria, J.

1. Heard learned Advocate Ms. Varnika Gupta for the Appellant and learned Advocate Ms. Ankita Sharma for the respondent who appeared through video conferencing.

2. At the instance of appellant-convict, the challenge in this present appeal is addressed to judgment and order dated 06.03.2025 of the High Court of Chhattisgarh in CRA No. 1348 of 2023. Thereby the High Court dismissed the appeal before it and confirmed judgment and order dated 18.04.2023 of learned Special Judge (POCSO), Kunkuri, District Jashpur, Chhattisgarh in Special Case No. 17 of 2021.

2.1. Trial Court convicted the appellant under Section 9(m) and Section 10 of the Protection of Children from Sexual Offences Act, 2012 and sentenced him to seven years of rigorous imprisonment and further imposed a fine of Rs. 2,000/- and in default of payment of fine, to undergo further normal imprisonment for one year.

3. Stated in nutshell, as the prosecution case goes, the incident of commission of crime took place on 15.08.2021. The mother of the victim reported that her husband returned home with one Virendra and appellant Dinesh Ram, after collecting the coal wood. It was around 4:30 p.m. when the mother of the victim went inside to give food to the appellant and at that time, she found that the appellant had wore only half short (Chadda) and was sitting near the legs of her minor daughter aged 4 years. On being questioned and confronted by the mother, the appellant fled away. The mother (PW-3) noticed that the clothing of her daughter had gone inappropriate, and that her daughter was crying in pain. The victim told her that she had pain in her private part. The mother found the private part of the daughter to be wet.

3.1. On the same day an FIR bearing Crime No. 52 of 2021 was registered with Duldula Police Station, Jashpur, Chhattisgarh by the mother of the victim Sukanti Bai (PW-3) against the appellant under Section 376, 376 AB of the Indian Penal Code, 1860 and under Section 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act'). The victim was sent for medical examination and came to be examined by Dr. Priyanka Toppo (PW-6), her statement came to be recorded under Section 164 of the Code of Criminal Procedure, 1973 by the Judicial Magistrate. The appellant came to be arrested.

3.2. The birth certificate of the victim seized by the police reflected that the date of birth of the victim was 13.02.2017, establishing that the age of the victim was between 4 to 5 years. A chargesheet was filed in respect of the offences under IPC and under the POCSO Act as mentioned above. At the end of the trial the appellant was convicted and sentenced under the POCSO Act, which conviction and sentence, was confirmed by the High Court.

4. On behalf of the appellant, assailing the impugned judgment and order convicting and sentencing the appellant, it was mainly contended that there were no eyewitnesses to fortify the occurrence of incident and the narration of the incident by the mother (PW-3) of the victim was not supported by independent evidence. Nowhere there were any marks of any external injury on the victim, nor there was bleeding on her private part as per the Medical Officer (PW-6) evidence, submitted learned advocate for the appellant. It was next submitted that the redness in the vagina seen could happen by rubbing over the clothes by the victim or due to infection. It was therefore vehemently submitted that the appellant deserved benefit of doubt and should have been acquitted.

4.1. On the other hand, learned advocate for the State of Chhattisgarh supported the conviction and sentence, to submit that they were based on clear facts, cogent circumstances and reliable evidence.

5. While examining the merits of conviction and sentence of the appellant, the material evidence may be usefully noticed which offers a detailed account of the incident. Father (PW-2) and mother (PW-3) of the victim were consistent. Their evidence offers a detailed account of the incident. Both PW-3 and PW-2 deposed that PW-2 with the appellant and his brother had gone to forest to take coal wood. They came back at 2 p.m. and had liquor at the house of PW-2 and PW-3. Thereafter, PW-3 gave food to Virendra. Dinesh was inside. After giving food, PW-3 and her husband PW-2 were sitting outside their house. Virendra came out after eating the food. The victim daughter aged 4 years was sleeping in the house.

5.1. It was further stated that at about 4:30 p.m. PW-3 went inside to give food to the appellant. At that time, she saw the appellant wearing half shorts, sitting near the legs of the minor daughter. When asked what he was doing there, the

appellant stood up and ran away. According to PW-3, the underwear of her daughter was down till her knees, and the frock was pulled up to the chest.

She also stated that she called her husband by ringing an alarm and immediately, her husband came out to catch hold the accused who was running away and, hit him near the courtyard with a stick twice, but the appellant managed to flee. The crying daughter when asked about what had happened, she told in rural language that she had pain in her private part. PW-3 stated that the appellant was from her colony and she knew him. There is no good reason not to disbelieve the details revealed and the narration given about the incident by PW-3 - mother of the victim.

5.2. It may be true that Dr. Priyanka Toppo (PW- 6) did not find external injury marks on the victim's body and stated that there was no bleeding of any kind. According to Medical Officer Dr. Nitish Anand (PW-8), the appellant was capable of having an intercourse. It is well settled that the medical evidence will take a backseat and even if do not corroborate with the ocular evidence, where the ocular evidence is consistent and cogent, the later would be allowed to prevail. In the medical evidence in the instant case, the redness in the vagina of the victim was noticed. In any way the Court is inclined to hold that the account of the incident given by PW- 3 - the mother inspires confidence and deserves to be accepted.

5.3. The victim was brought in the witness-box. In paragraph 18 of the judgment, the High Court has highlighted the sequence of events that took place in course of the evidence of the victim (PW-1). PW-1 was studying at Anganwadi. Upon being found that the PW-1 understood the questions and was capable of deposing, she was subjected to evidentiary examination.

5.4. The very account of the evidence recorded by the trial court forming part of the record is reproduced hereinbelow,

"1/ Witness was shown the Accused present in the Court, who was standing behind the curtains, after getting his mask removed as to whether she identifies that person, then Witness stated that yes, on asking about his name she stated nothing and started getting frightened and did not look at the Accused.

2/ On seeing the fright of the Victim, Accused was sent out of the Courtroom and Evidence was stopped for a while to make the Victim normal.

3/ After 15 Minutes, Victim was again enquired normally but she not give any answer and that is why this evidence is being stopped again for one hour.

Sd/-

16/11/2021

(Ajit Kumar Rajbhanu)
Special Judge Kunkuri."
"Again (At 1:45)

4/ Victim was called again for evidence with her mother, Victim is not giving any answers and is crying and even after many efforts, she is not telling anything before this Court. Hence, Examination of the Witness is closed on this point. Cross Examination by Mr. Bishnu Prasad Kuldeep, Counsel for the Accused.

5/ Nil. Statement read over to the Witness

Accepted as Correct

Typed on my instructions

Sd/
16/11/2021
(Ajit Kumar Rajbhanu)
Special Judge Kunkuri

Sd/
16/11/2021
(Ajit Kumar Rajbhanu)
Special Judge Kunkuri"

5.5. It is manifest from the above that when the accused present in court removed his mask, the victim got frightened and did not even look at the accused. The victim was required to be sent out of the courtroom, and recording of the evidence was stopped. When the victim was found to be normal after some time, the recording of evidence though commenced had to be discontinued having regard to the mental status of the victim (PW-1). It is recorded as could be noticed, that at the time when the victim was called again for tendering her evidence with her mother, she was crying and was not able to speak anything in the court as the victim PW-1 was frightened by the presence of the accused. Hence, her examination was closed.

5.6. The fact that the victim was in a frightened state upon seeing the accused is a pointer in itself. The whole sequence of events in course of recording of evidence of PW-1, was tale-telling. The shock related to the happening of the incident which continued with the victim post-incident made its statement in the trauma-filled behaviour of the victim who was a 4 year-old girl.

6. Section 7 of the POCSO Act defines sexual assault and Section 8 is the punishment for the said offence, which is imprisonment of either description for a term to be not less than three years, and which may extend to five years, with fine. The offence of aggravated sexual assault is Section 9. The punishment for the aggravated sexual offence is provided in Section 10, which is the imprisonment for a term not to be less than 5 years, and the same may extend to 7 years and shall also be liable to pay the fine. In the present case the appellant is convicted under Section 9(m), the trial court and the High Court having

concurrently found that that the appellant had committed sexual assault on a child below 12 years, which falls under Section 9 read with Section 10.

7. The evidence highlighted above go to establish the commission of offence. The appreciation of evidence of the trial court and consideration thereof by the High Court could be said to be eminently legal and proper, warranting no interference by this Court.

8. A vain attempt was made on behalf of the appellant to press the aspect that there was no suggestion of, much less evidence of penetration in the sexual assault by the appellant and therefore the conviction and sentence was not justified. The Court is not impressed with this submission, given the facts and evidence on record.

9. The conviction of the appellant recorded by the trial court and affirmed by the High Court is resultantly upheld. At the same time, the sentence imposed on the appellant is of 7 years' rigorous imprisonment which is maximum sentence prescribed under Section 10 of the POCSO Act. The appellant has so far undergone imprisonment for about 4 years and 5 months. In the totality of the facts and circumstances, the Court is inclined to reduce the sentence requiring the appellant to undergo the rigorous imprisonment for 6 years, instead. The imposition of fine of Rs. 6000/- and the simple imprisonment of one year in default of payment of fine would stand.

10. The judgment and order of the High Court is modified to above limited extent by substituting the sentence as above.

11. The appeal is partly allowed to the said extent. In view of the disposal of the appeal as above, all pending interlocutory applications would not survive and are accordingly disposed of.

.....J. [Aravind Kumar]

.....J. [N.V. Anjaria]

New Delhi;

November 13, 2025

IN THE SUPREME COURT OF INDIA

Kolanziammal (D) through LRS.

Vs.

The Revenue Divisional Officer, Perambalur District & Ors.

[Civil Appeal No. 2322 of 2013]

Head Note - Mere pendency of a writ petition does not relieve litigants of their obligation to exhaust alternative time-bound remedies provided under special laws.

JUDGMENT

Vipul M. Pancholi, J.

1. This is an appeal against the final Judgment dated 07.08.2009 passed by the High Court of Judicature at Madras in Writ Appeal No. 797 of 2008 and the final Order dated 06.01.2011 passed by the High Court of Judicature at Madras in Review Application No. 129 of 2009 by which the High Court dismissed the challenge raised by the appellant against the Public Auction Notice issued by the respondent no. 2 on the ground that the sale pursuant to the above said notice has not been challenged by the appellant.

2. The factual matrix of the present case as per the appellant is that in 1972-73, late Ramaswamy Udayar successfully bid for arrack shops in Thevaiyar and Valikandapuram villages but later defaulted on payments, leading the District Collector, Perambalur, to obtain an ex-parte decree in 1987 for Rs. 56,170.20/-. Unaware of this, his widow (the appellant) and family faced recovery proceedings years later.

After Ramaswamy's death in 1988, disputes arose among his legal heirs and while partition proceedings were pending, the authorities issued auction notices in 2005 to recover the alleged dues with interest. Karunanidhi, Ramaswamy's son and the appellant filed separate writ petitions before the High Court challenging these notices. Despite interim orders and partial deposits made as directed by the High Court, the authorities conducted the auction in July 2005 and sold the property to the respondent no. 4.

3. In the High Court, the Writ Appeals Nos. 797 and 992 of 2008, arising from Writ Petitions Nos. 25194 and 12933 of 2005, were dismissed by the impugned common judgment. The appellant challenged the auction-sale of properties under Patta Nos. 786 and 789, Mettupalayam South Village, Veppanthattai Taluk, Perambalur District, conducted by the revenue authorities under the Tamil Nadu

Revenue Recovery Act, 1864 (hereinafter referred as "the Revenue Recovery Act").

The Court noted that while the appellant had deposited various amounts during the pendency of the Writ Petitions/Writ Appeals, the appellant had not filed any petition under Sections 37-A or 38 of the Revenue Recovery Act to set aside the sale within the prescribed 30-day period. The auction, held on 29.07.2005 and confirmed on 23.07.2008, could not be challenged belatedly, as more than 4 years had passed. Consequently, the Court dismissed the Writ Appeals, denied relief to set aside the sale and directed that any amounts deposited by the appellant be refunded within 15 days, with the appellant to notify the authorities of such deposits.

4. Thereafter, the High Court, in Review Application No. 129 of 2009, dismissed the review application filed by the appellant with respect to the Division Bench's judgment dated 07.08.2009 in Writ Appeal No. 797 of 2008, which had upheld the dismissal of Writ Petition No. 25194 of 2005. The original writ petition sought to quash the auction notice dated 28.06.2005 for properties in Patta Nos. 786 and 789, Mettupalayam South Village, Veppanthattai Taluk, Perambalur District.

The Court noted that the auction took place on 29.07.2005, with the respondent no. 4 (the auction-purchaser) depositing the full amount the same day and the sale was confirmed on 23.07.2008. The appellant had not filed any application under Sections 37-A or 38 of the Revenue Recovery Act, within the 30-day statutory period to set aside the sale. Vide the impugned order, the Court held that the confirmation date does not extend the limitation period, found no error in the Division Bench's judgment and consequently dismissed the review application.

5. Aggrieved by the impugned judgment and order, the appellant has filed the present appeal.

6. Learned counsel for the appellant contended that the High Court erred in dismissing Writ Appeal and Review Application filed by the appellant without examining the legality of the Public Auction Sale Notice issued by the revenue authorities. It was argued that the auction conducted on 29.07.2005 was illegal, as it took place during the pendency of Writ Petition No. 25194 of 2005, despite an interim order staying confirmation of the sale, thereby rendering the filing of any application under Sections 37-A or 38 of the Revenue Recovery Act unnecessary. It was submitted that the appellant had already deposited a total of Rs. 3,41,900/- in compliance with various directions of the High Court, thereby satisfying the alleged dues.

7. It was further urged that the authorities improperly issued a second auction notice dated 28.06.2005 on the same demand while the earlier proceedings were still sub judice, in violation of procedural safeguards and principles of natural justice. It was also emphasized that the auction was conducted and later confirmed on 23.07.2008 in favor of the respondent No. 4, despite pending partition appeals, no prior default notice to the legal heirs and reliance on a 1987 ex-parte decree obtained without the knowledge of the appellant or her late husband.

8. Additionally, learned counsel for the appellant asserted that the arrears related to the deceased husband of the appellant and that no proper notice or account details were provided to his legal heirs. It is argued that the auction was also barred by limitation under Article 112 of the Limitation Act, 1963 and since the amount had already been determined through an ex-parte civil decree in Original Suit No. 47 of 1986, recovery should have been executed under the Civil Procedure Code, 1908 (hereinafter referred as "the CPC"), not through revenue recovery proceedings.

9. Per contra, learned counsel for the respondent Nos. 1, 2 and 3 submitted that the appellant's husband, Ramasamy Udayar, who ran arrack and toddy shops during 1972-73, defaulted on payments, causing notional loss to the Government. Despite repeated notices, neither his widow nor children cleared the dues, prompting recovery proceedings and auction of the family's properties. The appellant's writ petition (Writ Petition No. 25194 of 2005), writ appeal (Writ Appeal No. 797 of 2008) and review application (Review Application No. 129 of 2009) were all dismissed by the High Court. It is contended that the High Court's orders were correct, that the appellant failed to invoke remedies under Sections 37-A or 38 of the Revenue Recovery Act and that the auction and its confirmation were validly conducted after due process.

10. It is further argued that the amount due was quantified by a 1987 ex-parte decree, the second auction notice dated 28.06.2005 was necessary due to increased dues and the appellant's disputes with other heirs caused delays. Since the property sale has been confirmed, the appeal deserves to be rejected.

11. Learned counsel for the respondent no. 4, submitted that the auction of the appellant's property took place validly on 29.07.2005, the respondent no. 4 (the auction-purchaser) deposited the full amount the same day and the sale was later confirmed on 23.07.2008 when no stay was in force. Since the appellant never filed an application to set aside the sale under Sections 37-A or 38 of the Revenue Recovery Act within the prescribed 30 days, the High Court rightly dismissed her writ petition and writ appeal for failure to exhaust statutory remedies.

12. It is further submitted that the auction and subsequent confirmation were conducted lawfully, refunds were ordered where appropriate and the appellant's challenge is belated and an abuse of process. It is also explained that, following the High Court's final orders in 2009, the sale certificate was issued, the property was registered in the name of the respondent no. 4 and subsequently, the property was sold to bona fide purchasers, making the appellant's claims infructuous.

13. Upon a careful examination of the rival submissions, the material on record and the applicable provisions of law, the principal issue for consideration is whether the appellant, having failed to invoke the statutory remedies available under Sections 37-A and 38 of the Revenue Recovery Act, can subsequently challenge the auction proceedings through writ jurisdiction under Article 226 of the Constitution of India.

14. Sections 37-A and 38 of the Revenue Recovery Act provide a complete mechanism for setting aside a sale of immovable property conducted under the Act - either by way of deposit of the due amount (Section 37-A) or by challenging material irregularity, mistake or fraud in the conduct of the sale (Section 38). Both provisions prescribe a limitation period of 30 days from the date of sale. This statutory framework is mandatory and self-contained, leaving little room for collateral challenges once the period expires.

15. In the present case, the auction sale took place on 29.07.2005 and the confirmation of sale was made on 23.07.2008. The appellant admittedly did not file any application before the competent authority within the 30-day limitation prescribed under Sections 37- A or 38 of the Revenue Recovery Act. Therefore, the bar of limitation applies squarely and the High Court was correct in holding that belated interference with the sale, after more than four years, was impermissible.

16. The appellant has argued that the auction was conducted during the pendency of Writ Petition No. 25194 of 2005 and that the High Court's interim order staying the confirmation of sale rendered any statutory application unnecessary. This contention is misconceived. The record reveals that while the High Court had granted limited interim protection against confirmation of sale, there was no order staying the conduct of the auction itself.

Consequently, the auction held on 29.07.2005 was not in violation of any subsisting judicial restraint. Moreover, the stay on confirmation does not suspend the statutory obligation to seek redress within 30 days as per Sections 37-A or 38 of the Revenue Recovery Act. The appellant's failure to avail herself of the specific statutory mechanism cannot be excused merely because parallel proceedings were pending before the High Court.

17. In *Rajasthan Housing Board & Others v. Krishna Kumari*, (2005) 13 SCC 151, this Court, while relying on the case of *State of M.P. v. M.V. Vyavsaaya & Co.*, (1997) 1 SCC 156, cautioned against interference with lawful revenue recovery proceedings through interim orders, observing that courts should not deprive the State of legitimate revenues unless a clear case of illegality is made out. The Court emphasized that interim protection cannot be used to frustrate statutory procedures for recovery. The relevant paragraph reads as under:

"6. In *State of M.P. v. M.V. Vyavsaaya & Co.* [(1997) 1 SCC 156] this Court in paras 15 and 19 observed as follows: (SCC pp. 162 & 164)

"15. This Court has also repeatedly emphasised the inadvisability of making interim orders which have the effect of depriving the State (the people of the State) of the revenues legitimately due to it. The court should not take upon itself the responsibility of staying the recovery of amounts due to the State unless a clear case of illegality is made out and the balance of convenience is duly considered. Otherwise, the odium of unlawfully depriving the State/the people of the monies lawfully due to it/them would lie upon the court."

18. In the present case, the appellant relied upon deposits totaling approximately Rs. 3,41,900/- made pursuant to the interim orders of the High Court to contend that the alleged dues stood substantially satisfied. However, these payments were made pursuant to interim directions of the High Court and not as part of any statutory application under Section 37-A of the Revenue Recovery Act. The law under Section 37-A mandates both a deposit and a formal application to the Collector within 30 days of sale, which was admittedly not done. Therefore, these payments, though made in good faith, cannot retrospectively validate non-compliance with the statutory requirement.

19. The contention that the 1987 ex-parte decree was obtained without notice and that recovery proceedings were barred by limitation or should have proceeded under the CPC lacks merit. Once the arrears were certified as recoverable under the provisions of the Revenue Recovery Act, the authorities were empowered to proceed with recovery through revenue processes. The appellant did not take timely steps to set aside the decree or challenge its enforceability. Hence, the decree and consequent recovery action attained finality.

20. This Court in the case of *Valji Khimji and Company v. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and Others*, (2008) 9 SCC 299, held that once a sale is confirmed by the competent authority, rights accrue in favour of the auction purchaser which cannot be extinguished except in cases of proven fraud or substantial irregularity. The relevant paragraph reads as under:

"30. In the first case mentioned above i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction-purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction-purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud."

21. In the present case, the auction and its subsequent confirmation have not been shown to suffer from any material irregularity, mistake or fraud as contemplated under Section 38 of the Revenue Recovery Act. The respondent no. 4 (the auction-purchaser) paid the full purchase amount on the day of sale and the sale was confirmed only after due procedure and in the absence of any valid challenge. The issuance of the sale certificate and registration of the property in the purchaser's name, followed by subsequent transfers to bona fide purchasers, confer finality on the transaction.

22. The Division Bench of the High Court, in the impugned judgment, rightly concluded that the appellant's failure to act under Sections 37-A or 38 of the Revenue Recovery Act within the prescribed time barred any later challenge. The Review Bench of the High Court, vide the impugned order, correctly held that there was no error apparent on the face of record warranting review. The findings were consistent with the statutory scheme and supported by application of judicial mind.

23. Furthermore, it is well settled that a review proceeding cannot be treated as an appeal in disguise. As held in *Lily Thomas v. Union of India*, (2000) 6 SCC 224 and *Parsion Devi & Others v. Sumitri Devi & Others*, (1997) 8 SCC 715, a review can be entertained only when there is an error apparent on the face of the record. The findings of the High Court are based on a comprehensive appreciation of facts and law and no such error has been demonstrated by the appellant.

24. There is also no material to suggest that the High Court exceeded its jurisdiction or disregarded any principle of natural justice. The appellant was afforded multiple opportunities to present her case, first in the writ petition, then in the writ appeal, and finally in review, each of which was adjudicated on merits. The concurrent findings of the High Court, therefore, do not disclose any perversity or manifest error warranting interference.

25. In light of the above detailed analysis, it is evident that:

A. The appellant failed to invoke the statutory remedies under Sections 37-A or 38 of the Revenue Recovery Act within the prescribed time;

B. The auction held on 29.07.2005 and confirmed on 23.07.2008 was conducted in accordance with law;

C. The interim orders of the High Court did not preclude the appellant from pursuing the statutory remedy; and

D. The High Court's concurrent findings in the Writ Appeal and Review Application are well-founded and do not suffer from any legal infirmity.

26. Accordingly, the impugned judgment dated 07.08.2009 and the impugned order dated 06.01.2011 passed by the High Court of Judicature at Madras are upheld and the present appeal is hereby dismissed.

.....J. [Satish Chandra Sharma]

.....J. [Vipul M. Pancholi]

New Delhi,

November 14, 2025

IN THE SUPREME COURT OF INDIA

Raj Kumar @ Bheema

Vs.

State of NCT of Delhi

**[Criminal Appeal No(s)._____ of 2025
arising out of SLP (Crl.) No(s). 697 of 2024]**

Head Note - Where the witnesses have had an opportunity to see the accused prior to the holding of the TIP, the evidentiary worth of such proceedings stands considerably diminished. It is the duty of the prosecution to establish beyond doubt that right from the time of arrest, the accused was kept *baparda* to rule out the possibility of his face being seen before the identification proceedings are conducted. If the witnesses have had any opportunity to see the accused before the TIP – whether physically or through photographs – the credibility and sanctity of the identification proceedings would stand seriously compromised.

In all proceedings where a witness is examined via video conferencing, the trial court must facilitate the electronic transmission of the witness's prior statements to them.

JUDGMENT

Mehta, J.

1. Heard.

2. Leave granted.

3. The instant appeal is directed against the final judgment and order dated 29th September, 2022, passed by the Division Bench of the High Court of Delhi at New Delhi¹ in Criminal Appeal No. 281 of 2021, whereby the appeal preferred by the appellant Raj Kumar @ Bheema² came to be dismissed, affirming the judgment dated 12th February, 2021, rendered by the learned Additional Sessions Judge, South East, Saket Courts, New Delhi³.

By the said judgment, while the accused-appellant was acquitted of the charges under Sections 3, 3(1)(i), 3(1)(ii), 3(2), and 3(4) of the Maharashtra Control of Organised Crime Act, 1994, and Sections 396, 307, 397, 412 read with Section 34 of the Indian Penal Code, 1860, he was convicted for the offence punishable under Section 302 IPC, whereas the remaining co-accused were acquitted. The High Court further affirmed the order on sentence dated 20th February, 2021, whereby the accused-appellant was sentenced to undergo imprisonment for life

with a fine of Rs.5,000/-, and in default whereof, to further undergo simple imprisonment for a period of one month.

PROSECUTION CASE

4. On the intervening night of 2nd/3rd November, 2008, at about 1:50 a.m., an information was received at Police Station, New Friends Colony through wireless operator, regarding an incident of house breaking by night at House No. 81, Sukhdev Vihar, near Escort Hospital, where the intruders were allegedly assaulting the occupants of the premises. At about 2:00 a.m., further information was received at the said Police Station, which was reduced into writing vide DD No. 29A, as per which, Head Constable Bhagirath (PW-7) informed that SI Sanjeev Solanki (PW-17) may be sent to the spot.

5. Pursuant thereto, SI Sanjeev Solanki (PW-17), accompanied by Constable Ashok Kumar (PW-9), proceeded to the place of occurrence and apprised the Additional S.H.O., who arrived there shortly thereafter. Upon entering the premises, they found the sliding door of the drawing room broken, the side grill bent, the house ransacked, and the household articles scattered. A large pool of blood was noticed in the lobby, where the dead body of an elderly male (deceased-Madan Mohan Gulati) was lying, alongside certain articles. Bloodstains and articles in disarray were also observed in the adjoining bedroom.

6. On hearing faint cries emanating from the adjoining bedroom, the police officials rushed inside and found an elderly lady, later identified as Smt. Indra Prabha Gulati (PW-18), lying in an injured condition. She was immediately shifted to AIIMS Hospital by the PCR. Thereafter, SI Sanjeev Solanki (PW-17), accompanied by Inspector S.K. Sharma (PW-15), proceeded to the Trauma Centre, AIIMS, where Smt. Indra Prabha Gulati (PW-18) was under treatment. Medico-Legal Certificate (MLC)⁶ of the injured, Smt. Indra Prabha Gulati (PW-18) was prepared on 3rd November, 2008, by Dr. Sharwan. The MLC recorded that the injured was fit for statement and noted multiple grievous stab injuries, including blood clots around the nether region, scalpdeep wounds, and a lacerated wound near the right eyebrow. The nature of the weapon used to cause the injuries was opined to be sharp.

7. Upon being declared fit, the statement (Fard bayan)⁷ of Smt. Indra Prabha Gulati (PW-18) was recorded by SI Sanjeev Solanki (PW-17) and based on the said statement, Inspector S.K. Sharma (PW-15) prepared a rukka and handed it over to SI Sanjeev Solanki (PW-17), pursuant to which an FIR⁸ came to be registered at Police Station, New Friends Colony, for the offences punishable under Sections 394/397/302/307/34 of IPC.

8. On 5th November, 2008, body of the deceased Madan Mohan Gulati was identified by his son-Vivek Gulati, and by his nephew-Servesh Gulati (son of the deceased's younger brother). The post-mortem examination of the deceased was thereafter carried out, and the post-mortem report was issued wherein the cause of death was opined to be shock and haemorrhage on account of multiple antemortem injuries. The opinion on the weapon of offence (knife/chheni) was also obtained from the doctor.

9. The accused-appellant was apprehended on 21st November, 2008, based on the description allegedly provided by the injured eye-witness, Smt. Indra Prabha Gulati (PW-18). It is alleged that the accused-appellant gave a disclosure statement⁹, and in furtherance thereof, he led the police party to an open area near bushes situated at Pul Prahladpur, from where a blood-stained Eagle brand pant was recovered from a pit. The pant was duly seized and sealed. On the following day, while the appellant was on police remand, his disclosure led to the arrest of the co-accused persons.

10. On 25th November, 2008, pursuant to a supplementary disclosure statement¹⁰, the appellant purportedly led the police party to the bushes near the railway track behind Priyanka Camp, from where one chheni was recovered. The same was also seized and sealed. Thereafter, the accused-appellant also facilitated the recovery of the robbed articles, namely, one idol of Lord Ganesha and a Panasonic CD player, from his Jhuggi.

11. Shri Vivek Kumar Gulati, son of the deceased and Smt. Indra Prabha Gulati (PW-18) identified the case property in the Test Identification Parade¹¹ conducted on 6th December, 2008. The proceedings¹² of the TIP were conducted by Shri Devendra Kumar Jangala (PW-16), learned Additional District Judge, West, Tis Hazari Courts.

12. On 24th December, 2008, TIP was organized in respect of the accused Raj Kumar @ Bheema, Jawahar, Ranbir @ Sintu, and Naeem @ Mota; however, they refused to participate in the same. Upon comparison, the fingerprints of the accused Jawahar and Ranbir @ Sintu were found to tally with the chance prints lifted from the spot. The site inspection plan was prepared, and the material exhibits were forwarded to the Forensic Science Laboratory¹³ on 22nd January, 2009.

Upon completion of the investigation, chargesheet in connection with the said FIR came to be filed on 2nd February, 2002, against the accused, namely, Raj Kumar @ Bheema, Ramesh Kumar @ Shankar, Naeem Khan @ Mota, Jawahar, and Ranbir @ Sintu, in the Court of the learned ACMM, for offences punishable under Sections 3, 3(1)(i), 3(1)(ii), 3(2), and 3(4) of the MCOCA, and Sections 396, 307, 397, 412 read with Section 34 of IPC.

One of the accused, namely, Kastoori, could not be traced out despite best efforts, and proceedings under Sections 82 and 83 of the Code of Criminal procedure, 1973¹⁴ were initiated against him and his name was placed in Column No. 2 of the chargesheet. Since the offences were triable exclusively by the Court of Sessions, the learned ACMM, after compliance with the provisions of Section 207 CrPC, committed the case to the Court of Sessions for trial, where charges were framed against the accused. They abjured their guilt and claimed trial.

13. During the course of trial, the prosecution examined 27 witnesses and exhibited 25 documents in consolidated form to prove the guilt of the accused. The accused Ramesh @ Shankar examined one witness in defence. Upon closure of prosecution evidence, statements of the accused persons were recorded under Section 313 CrPC affording them an opportunity to explain the incriminating material appearing against them. The accused-appellant, in answer to Question No. 82, categorically stated, "I am innocent and have been falsely implicated in the present case. PW-17 Inspector Sanjeev Solanki was known to me prior to the present case, and he has falsely implicated me in this case."

FINDINGS OF THE TRIAL COURT

14. Upon consideration of the arguments advanced by the prosecution and the defence, and after appreciating the evidence available on record, the trial Court, vide judgment dated 12th February, 2021, acquitted the accused persons other than the appellant Raj Kumar @ Bheema, holding that the case against him stood proved beyond reasonable doubt only for the offence punishable under Section 302 IPC. He was acquitted of the remaining charges. The conviction was primarily based on the testimony of the eye-witness, Smt. Indra Prabha Gulati (PW-18), who identified the appellant during her testimony (recorded over video conferencing) while failing to identify the remaining accused, coupled with the purported recovery of weapon of offence at the instance of the accused-appellant.

15. Further, the trial Court, vide order dated 20th February, 2021, directed the accused-appellant to undergo sentence as mentioned hereinabove.¹⁵

FINDINGS OF THE HIGH COURT

16. In appeal by the accused-appellant, the High Court affirmed the findings of the trial Court vide judgment¹⁶ dated 22nd September, 2022, finding no infirmity in the judgment and order passed by the trial Court, holding that the prosecution case essentially rested upon the identification of the accused-appellant by the injured witness and the recoveries effected at his instance. The High Court rejected the submission advanced on behalf of the appellant that the identification of the appellant by Smt. Indra Prabha Gulati (PW-18) was doubtful as she failed to identify the other accused, on the ground that, insofar as the present accused-

appellant was concerned, she was categorical in her testimony that he was one of the assailants.

17. The High Court observed that non-recovery of the appellant's finger prints from the place of incident would not absolve him of participation in the offence, which stood established by the identification made by the injured victim, Smt. Indra Prabha Gulati (PW-18). It was further noted that pursuant to the disclosure made by the appellant, the pant allegedly worn by him at the time of incident was recovered, on which human blood was detected, and no plausible explanation was forthcoming from the appellant as to the presence of human blood on his wearing apparel.

The Court also held that merely because the son of the deceased and the injured victim, who had identified the robbed articles in TIP, did not appear in the witness box to identify the recovered articles, would not discredit the rest of the evidence led by the prosecution, which was sufficient to prove the guilt of the appellant for the offence alleged, beyond reasonable doubt.

18. Aggrieved, the accused-appellant is before us in the present appeal by way of special leave.

Submissions on behalf of accused-appellant

19. Learned counsel for the appellant, vehemently and fervently urged that the High Court fell in grave error in affirming the conviction of the accused-appellant recorded by the trial Court, which is wholly unsustainable in law. It was contended that the prosecution case rests entirely upon the testimony of the old and infirm witness Smt. Indra Prabha Gulati (PW-18), who was admittedly suffering from weak eyesight. Accordingly, her testimony is riddled with inconsistencies and is far too unconvincing so as to form the sole basis for upholding a conviction for an offence punishable with capital punishment.

20. It was further contended that Smt. Indra Prabha Gulati (PW-18) identified the appellant in Court through video conferencing on 8th May, 2017, after an inordinate delay of nearly eight and a half years from the incident dated 2nd November, 2008, while notably failing to identify any of the other accused. It was urged that in his statement under Section 313 CrPC, the accused-appellant specifically alleged that PW-18 had been tutored, as his photographs had already been shown to the witness prior to her deposition.

21. It was averred that there were material contradictions and improvements in the testimony of PW-18. In her initial statement under Section 161 CrPC, she mentioned that the assailants were armed with "knives, screwdriver, and rods," but made no reference to a "chheni." The introduction of the "chheni" for the first time during her sworn testimony recorded after a lapse of more than eight years

was a material improvement, evidently tailored to align with the alleged recovery. Moreover, she failed to identify any of the co-accused, all of whom were acquitted, rendering her solitary identification of the appellant highly doubtful.

22. Learned counsel urged that the prosecution placed reliance upon the alleged recoveries of a bloodstained pant, a "chheni," and articles such as a Ganesh idol/CD player at the instance of the accused-appellant. The first recovery attributed to the accused-appellant was allegedly made pursuant to his disclosure statement from an open area near bushes at Pul Prahladpur, wherefrom a blood-stained pant was recovered. The prosecution alleged that the said pant had been worn by the appellant at the time of the incident. However, the blood-stains detected on the garment did not test positive for the blood group lifted from the scene of occurrence. It was thus contended that the said article could not be connected with the present case, even after forensic examination¹⁷.

23. It was further urged that the said recovery cannot be read in evidence under Section 27 of the Evidence Act, 1872 inasmuch as in his disclosure statement¹⁸ dated 21st November, 2008, the accused-appellant did not state that he could get the article recovered from an open place near Pul Prahladpur, which, in any event, was accessible to all and sundry. The learned counsel urged that all the recoveries were made without any independent witness being associated to corroborate the same. It was further averred that the alleged weapon of offence, namely the "chheni," was shown to have been recovered after a lapse of 22 days from bushes near a railway track. The said article was never shown to Smt. Indra Prabha Gulati (PW-18) for identification, no photographs were taken at the time of recovery, and no independent witness was associated in the process.

24. Placing reliance on the judgment of this Court in Koppula Jagdish v. State of Andhra Pradesh¹⁹, learned counsel further urged that the High Court failed to appreciate that the appellant was wrongly convicted for the offence under Section 302 IPC simpliciter, inasmuch as no separate charge under Section 302 IPC was framed against him. It was pointed out that in the present case, all the accused were charged under Sections 394, 397, 302, 307, read with 34 IPC, and except for the appellant, all other co-accused have been acquitted.

25. It was also urged that Shri Vivek Gulati, son of the deceased, who had identified the robbed articles during the TIP, did not appear in the witness box during the trial to prove and identify the articles allegedly recovered at the instance of the accused-appellant, and hence, no adverse inference ought to be drawn against the appellant on this count.

26. He, thus, implored the Court to accept the appeal and set aside the impugned judgment(s).

Submissions on behalf of respondent-State

27. Per contra, Shri Vikramjeet Banerjee, learned Additional Solicitor General, supported the impugned judgment and urged that the appellant Raj Kumar @ Bheema was correctly identified by the injured eye witness, Smt. Indra Prabha Gulati (PW-18), in her examination-in-chief as well as in her cross-examination, as the person armed with a "chheni" and a rod, who inflicted blows upon her and her husband, resulting in the death of the latter. It was further submitted that the said weapons were recovered from the appellant pursuant to his disclosure statement, thereby corroborating the version of the injured witness Smt. Indra Prabha Gulati (PW-18).

28. It was further contended that, as per the opinion rendered by Dr. Arvind Kumar (PW-1) with regard to the weapon of offence, Exhibit V, i.e., the recovered "chheni," could be one of the weapons used in the offence and that injuries marked B, C, and D on the person of injured Smt. Indra Prabha Gulati (PW-18) were possible by the said weapon.

29. The conduct and antecedents of the appellant, including his status as a history-sheeter, repeated involvement in criminal cases, and acts of misconduct during incarceration, clearly reflect a persistent pattern of unlawful behaviour. Considering the heinous nature of the offence, being the murder (for gain) of a senior citizen, the accusedappellant does not deserve any indulgence, and the gravity of the crime and the attendant circumstances warrant dismissal of the appeal filed on his behalf.

30. He thus implored the Court to dismiss the appeal, urging that the High Court had rightly affirmed the conviction of the accused-appellant and the sentence awarded to him by the trial Court. It was further urged that upon an independent and comprehensive appraisal of the evidence on record, including the consistent testimonies of Investigating Officer Shri S.K. Sharma (PW-15) and Smt. Indra Prabha Gulati (PW-18), both the trial Court and the High Court had recorded concurrent findings that the prosecution had proved its case beyond reasonable doubt, and hence no interference is warranted in the impugned judgment.

Discussion and Analysis

31. We have given our thoughtful consideration to the submissions advanced at bar and have carefully gone through the impugned judgments, the material available on record, as well as the written submissions filed on behalf of both sides.

32. Since the appellant seeks reversal of concurrent findings of fact recorded by the trial Court as well as the High Court, this Court is required to tread with circumspection. It has been consistently held by this Court in a catena of

decisions that unless the findings are shown to be perverse or rendered in disregard of material evidence, this Court would be slow in interfering with concurrent conclusions of the Courts below. Reference in this regard may be made to the decision of this Court in the case of *Mekala Sivaiah v. State of Andhra Pradesh*²⁰, the relevant para of which is quoted hereinbelow:

"15. It is well settled by judicial pronouncements that Article 136 is worded in wide terms and powers conferred under the said Article are not hedged by any technical hurdles. This overriding and exceptional power is, however, to be exercised sparingly and only in furtherance of cause of justice. Thus, when the judgment under appeal has resulted in grave miscarriage of justice by some misapprehension or misreading of evidence or by ignoring material evidence then this Court is not only empowered but is well expected to interfere to promote the cause of justice."

(Emphasis is supplied)

33. Keeping the aforesaid principle in mind, this Court would proceed to consider the appeal at hand to examine whether there is some manifest error or illegality in the impugned judgment, and if any grave and serious miscarriage of justice has been occasioned on account of misreading or ignoring of material evidence in the present case.

34. Evidently, on a perusal of the judgments under challenge and upon considering the submissions advanced by learned Standing Counsel for the State, it emerges that primarily three circumstances have been relied upon by the prosecution to bring home its case against the appellant:

- i. The identification of the appellant in Court by the prosecution witness Smt. Indra Prabha Gulati (PW-18) during her sworn testimony.
- ii. The refusal of the appellant to participate in the TIP, leading to an adverse inference being drawn against him.
- iii. Recovery of weapon of offence stained with human blood.

A. Identification by the Sole Eye-Witness

35. It is undisputed that the fulcrum of the prosecution case is based on the testimony of Smt. Indra Prabha Gulati (PW-18). Thus, for the sake of ready reference, we quote the entire deposition of the said witness below: -

"ON S.A.

On 03.11.2008 I was present in my house at 81 Sukhdev Vihar, New Delhi. It was the intervening night of 2nd and 3rd November, 2008 and time was 11.30/11.45pm. I and my husband heard the noise of falling of utensils. My husband went to see the same. I also followed him and we saw five persons had entered into our house from the door of drawing room. Out of those, one/two persons were in the kitchen and four persons came through door of drawing room. They were having chheni, screwdriver and knives in their hands. They asked for keys from my husband. We told them to wait and the one boy who came from drawing room and was having iron rod and chheni in his hands, gave the blow from the iron blow on the head of my husband. He fell down. I was also given blow and became unconscious. I do not remember now by whom the blow was given.

I remained in the hospital for about two months. Someone called the police and I was taken by the police to the hospital. I am having an 8 inch cut on my stomach. I remained in Trauma Center. I was also having bandage on my head and it might be possible that blow was given on the head also. I made statement to the police in the hospital itself. It was given orally whatever was in my memory as I was on hospital bed. I remained in Moolchand Hospital for one month and 10 days. I never met with the police for this case after my discharge from the hospital. I have never seen those boys who came into my house thereafter.

At this stage, scanned image of signatures on statement is shown to the witness through videolink and after seeing it the witness states that the same pertains to her which are at point A. I can identify the accused if shown to me. At this stage, accused persons who are facing charges in this case, are shown through audio-video link one by one and after seeing accused the witness states that he is the same boy who was having chheni and rod and was giving blows to my husband. (The name of accused is Raj Kumar). Next accused is shown and after seeing him the witness states that she is not remembering complete and she is remembering face of only one as she became unconscious. (The name of accused is Ranbir).

Next accused is shown and after seeing him the witness states that she does not know anything about him. (The name of accused is Jawahar). Next accused is shown and after seeing him the witness states that she is remembering somehow and it was 12.00midnight and 8 years have passed she is not remembering further. She further states that she cannot say whether he was among those persons or not. (The name of accused is Naeem) Next accused is shown and after seeing him the witness states that the boy shown first be stand with him so that she may identify again. The accused Raj Kumar is shown with this accused to the witness.

After seeing the accused Raj Kumar, the witness states that he is one among those boys but she is not sure about second boy. (The name of second boy is

Ramesh Kumar). XXN by Sh. Sunil Dutt, Ld. Addl. P.P for the State. It is correct that when my husband fell down after blows given to him, I was also given rod blows and knife blows. I do not remember that I fell down in Angan as I was unconscious. I was told by the police officials that I was taken to the room by the boys dragging me. I do not know that they after breaking open the almirah in the room took away Rs.20000/- and the jewellery articles. I do not remember whether I raised noise or not or that I remained lied on the floor of the room. (Vol. I regained my consciousness in the Trauma Center).

It is wrong to suggest that the number of boys who entered into the house was 3-4. (Vol. They were five in number). I did not go to Patiala House Court on 26.12.2008. (Vol. My son went to Patiala House court as I was ill). It is wrong to suggest that in the Patiala House Court I identified four boys as Raj Kumar @ Bheema, Ranbir @ Shintu, Jawahar and Naeem @ Mota and stated to the police that they were the boys who gave blows to my husband and me in my house and took away cash and jewellery from my house. (Vol. I did not go to PHC only my son went there). XXN by Sh. Mihi Lal Chaudhary, counsel for accused Jawahar.

As far as I remember I regained consciousness after three/four days in the Trauma Center and at that time I was on ventilator. XXN by Sh. S.M. Sallauddin, counsel for accused Raj Kumar and Naeem, XXN by Sh. V.P Kaushik, counsel for Ramesh Kumar, and XXN by Sh. Sallauddin Khan, counsel for accused Ranbir. I do not remember the date when police met me for the first time and the last time. I cannot tell the name of the police official by whom my statement was recorded. It was recorded in the hospital. The signatures were taken in the hospital and I do not remember now whether it was in Trauma Center or Moolchand. At that time police officials were present and my son was also present.

My son and daughter met me in the Trauma Center. I do not remember the date when they came to me in the Trauma Center. It may be 4th or 5th. As far as I remember I left India on 27.12.2008. I do not remember whether my statement was written as I told or not. (Vol. Due to the incident I was unconscious and was not fit completely). I do not remember how many pages were got signed by me from the police. I do not remember whether I signed any blank paper or not. If my signatures were taken it might be that something was written on the papers then my signatures were taken. I do not remember whether the writing were in hindi or english language.

The witness is confronted with the statement Ex.PW17/A and is asked that in the same 'Chheni' word is not mentioned in the same. I do not remember about the colour of the screwdriver. I do not remember what was the length of the iron rod. The accused Raj Kumar was worn black shirt. I do not remember about the clothes of remaining boys. I do not remember the name of tenant of that time. He

was from Hyderabad. He was in the premises for about 2/2 1/2 years prior to incident. They vacated the premises after the incident as they were also afraid. I do not remember whether the verification of the tenant was got conducted from police or not.

We were not having permanent servant or chowkidar at that time but however, Kamla was part-time domestic helper. She was working for the last 15 years. She was residing in a room taken on rent in the Sukhdev Vihar. Her husband was residing with her occasionally. I do not know name of her village. (Vol. She had told me but due to my age I have forgotten the same). I retired on 28.02.1997. It is correct that Kamla was residing in the jhuggi of Sukhdev Vihar. It is correct that in my presence no inquiries were made from Kamla and her husband not their statement was recorded in my presence. The tenant has vacated my premises before I discharge from hospital.

I do not know whether inquiries were made by the police from my tenant in my presence. At the time of incident, I was using spectacles occasionally as I was having long sight (dur ki nazar kamzor thi). At present I use the spectacles whenever I have to do some work of near distant. At present I am not wearing contact lenses. It is correct that I did not receive injury on my head and I received injury on my right side of forehead. I cannot say whether there was any stitching on the forehead or not but there was a bandage. I do not remember the number of lenses which I was using at that time.

The Counsel wants to contradict the witness with her statement Ex.PW17/A that in the same there is no description about the clothes and physique of the boys. (it will be looked by the court during the arguments as the witness is being recorded through videoconferencing). It is wrong to suggest that police did not take any statement from me and my signatures were taken on a blank paper. I never visited police station in respect of this case. I was shifted from Trauma Center to Moolchand after 20 days. I was discharged from Moolchand hospital on 24 or 25.12.2008. I did not go to police after 25.12.2008. Police have not met me after 25.12.2008 till I left India. I do not remember how many times police met me while I was in Trauma Center. Perhaps, once or twice they met me.

During those visits inquiries were made from me about the manner of the incident and the assailants. I do not remember the date when I regained my consciousness. As far as I remember police did not come to me while I was in Moolchand Hospital. I do not know the name of chowkidar as it was kept by my son after the incident. It is wrong to suggest that the boy who has been identified by me today i.e. Raj Kumar was not involved in the incident or that I have been shown the photographs by the police. The co-assailants were calling him "Bhima aur maar, bhima aur maar to him".

It is wrong to suggest that my counsel has sent photograph of Bhima to me and after seeing him I am identifying him today. It is wrong to suggest that my counsel has tutored me on telephone and upon tutoring I am deposing today or that copy of the statements has been sent to me and after going through the same I have deposed today. It is wrong to suggest that the dosier of Bhima with the police has been sent to me by the counsel. It is wrong to suggest that Bhima was not involved in the incident occurred in the intervening night of 2nd and 3rd November, 2008 or that I am naming him at the instance of police. Dated: 8th May, 2017."

(Emphasis supplied)

36. Based upon the testimony, it is clear that the witness Smt. Indra Prabha Gulati (PW-18) had shifted to the United States of America immediately after the incident, and her statement came to be recorded through video conferencing on 8th May, 2017, i.e., after a gap of eight and a half years from the occurrence. She stated that out of the five assailants who had entered the house, one or two went towards the kitchen, while four entered through the drawing room door.

They were armed with a chheni, screwdriver, and knife, and demanded the keys from her husband. Upon his request for some time, one of the assailants, who was carrying an iron rod and a chheni, inflicted a blow on the head of her husband, who collapsed. She too was given a blow, though she could not recollect as to who had inflicted the injury. She further stated that she remained admitted in Moolchand Hospital for about one month and ten days. She categorically asserted that she never saw the assailants thereafter and that she neither met the police nor did she go to the Patiala House Courts after being discharged.

37. The Public Prosecutor requested the witness to identify the accused on the video display and from amongst the accused present in the dock, who were shown to the witness, she identified the accused appellant as the assailant who was armed with a chheni and a rod and who had inflicted blows upon her husband.

38. The witness further stated that she could remember the face of only one accused, as she had become unconscious, and thus she was unable to identify any of the other assailants who were presented for identification. The learned Public Prosecutor sought permission of the Court to cross-examine the witness on the ground that she was not narrating complete facts disclosed during investigation. However, in response to the suggestions of the Public Prosecutor, she gave discrepant answers.

39. To a material suggestion, the witness replied: "I did not go to Patiala House Court on 26.12.2008" and volunteered that her son had gone to the Court as she

was unwell. She denied the suggestion that she had identified four boys, namely Raj Kumar, Ranbir, Jawahar, and Naeem @ Mota, in the Patiala House Court and affirmed to the police that they were the assailants who inflicted blows on her husband and looted cash and jewellery from the house.

40. In her cross-examination, the witness stated that she had left India on 27th December, 2008. She admitted that she could not recollect whether her statement had been recorded in the manner she had spoken. She volunteered that owing to the assault, she became unconscious and was not fully fit. She further stated that the accused-appellant Raj Kumar was wearing a black shirt, but she could not recollect the clothes of the other assailants.

41. Learned defense counsel sought to confront and contradict the witness with reference to her previous statement²¹ under Section 161 CrPC on the aspect that there was no description of the clothes or physique of the assailants in such statement. The trial Court observed that the effect of such omission/improvement would be considered at the stage of final arguments, since the witness was being examined through video conferencing. The witness further stated that she was discharged from Moolchand Hospital on 24th/25th December, 2008, and that she did not go to the police after 25th December, 2008. She was confronted with a pertinent suggestion that the police had shown her the photographs of Raj Kumar and that her counsel had also seen the photograph and tutored her for identifying the appellant, which she denied.

42. We must take note of and resolve a very important feature being a procedural irregularity which has arisen in this case. As would be evident from the discussion made hereinabove, the evidence of the star prosecution witness Indra Prabha Gulati (PW-18) was recorded through video conferencing because she had in the intervening period shifted to Canada.

43. During the course of cross-examination, the defence tried to confront the witness (PW-18) with her previous statement so as to elicit a contradiction/highlight an omission. However, the trial Court observed that this objection would be considered at the time of final adjudication because the witness (PW-18) was not present before the Court and the document being the previous statement in writing could not be shown to her (supra).

44. However, on going through the trial Court's judgment, we do not find any discussion made regarding this pertinent objection by the defence. 45. The Evidence Act/ Bharatiya Sakshya Adhiniyam, 2023 provide the procedure for evidence as to the matters in writing and cross-examination as to previous statements in writing. Section 147 of the BSA (144 of the Indian Evidence Act and Section 148 of the BSA (Section 145 of the Indian Evidence Act) are reproduced hereinbelow for the sake of convenience: -

"147. Evidence as to matters in writing.- Any witness may be asked, while under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.- A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant fact.

148. Cross-examination as to previous statements in writing.- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

46. A plain reading of the above provisions would make it clear that wherever questions are required to be put as to the matters in writing/previous statements in writing, the attention of the witness must be drawn to the document/statement itself. Thus, a question would arise as to how this procedure would be followed in cases where the evidence of the witness is being recorded over video conferencing.

47. In this age of advancement of technology, instances are galore where, the evidence of witnesses are being recorded over video conferencing. In such circumstances, none of the parties should be put to a dis-advantage merely because the witness is not in attendance before the Court, and the document/previous statement in writing with which such witness is sought to be confronted, cannot be shown/put to him.

48. Therefore, we hereby clarify and direct that in every case where, it is proposed to record the statement of a witness over video conferencing and any previous written statement of such witness or a matter in writing is available and the party concerned is desirous of confronting the witness with such previous statement/matter in writing, the trial Court shall ensure that a copy of the statement/document is transmitted to the witness through electronic transmission mode and the procedure provided under Section 147 and Section 148 of the Bharatiya Sakshya Adhiniyam (corresponding Section 144 and Section 145 of the Evidence Act) is followed in the letter and spirit, so as to safeguard the fairness and integrity of the trial.

49. This direction is being issued with a view to avoid procedural irregularities and to prevent disadvantage to any party before the Court, and also to uphold the principles of fair trial, effective cross-examination, and proper appreciation of evidence.

50. From the statement of the witness, the following material facts emerge:

(a) She identified the accused-appellant in Court while being examined through video conferencing, nearly eight and a half years after the incident.

(b) She admitted that she had been discharged from Moolchand Hospital on 24th or 25th December, 2008.

(c) She used to wear spectacles as her distance vision was weak. At the time of dock identification, the witness was not wearing spectacles.

(d) Not even a bare suggestion was put to her by the Public Prosecutor that she had been taken to the police station or jail for TIP proceedings. Most material is the fact that the witness emphatically denied the suggestion of the Public Prosecutor that she had gone to the Court on 26th December, 2008, and identified the assailants.

Identification in Court after delay - Unsafe and Improbable

51. It is trite that the evidence of an eye-witness must be of sterling quality and unimpeachable character. It should not only inspire the confidence of the Court but must also be of such a nature that is acceptable at its face value.

52. We may note that the possibility of identification of the accused-appellant by Smt. Indra Prabha Gulati (PW-18) in Court, after a lapse of nearly eight and a half years from the incident, is extremely unlikely. In her testimony, the witness candidly admitted that her distance vision was weak and that she could not see objects at a distance without spectacles. It is also borne out from the record that even at the time of the incident, she was aged about 73 years and was infirm. She was not wearing spectacles at the time of her deposition via video conferencing. In this background, her purported identification of the assailant after such a long lapse of time, that too over video conferencing, does not inspire confidence.

53. Furthermore, when a suggestion was put to the witness by the Public Prosecutor in cross-examination as to whether she had gone to the Patiala House Courts for identifying the four assailants, the witness emphatically denied the same.

54. In her cross-examination, the witness Smt. Indra Prabha Gulati (PW-18) stated that the accused-appellant Raj Kumar @ Bheema was wearing a

blackcoloured shirt, which is an improvement introduced for the first time after nearly eight and a half years. This appears to be one of the probable reasons for her identification of the accused-appellant. No identifying feature of the assailants was disclosed in her previous statement²² recorded under Section 161 CrPC, wherein no physical description of the accused persons or clothes worn by them at the time of the incident was mentioned. Such an embellishment casts a serious doubt on the reliability of her dock identification and is suggestive of a clear attempt to fill critical lacunae in the prosecution case.

55. In assessing the credibility of a witness, the testimony must inspire confidence in the judicial mind, and omissions, improvements, or contradictions touching the core of the prosecution version inevitably undermine such assurance. This Court has consistently held that minor discrepancies are not fatal, but material improvements that go to the root of the matter essentially erode the credibility of the witness.

56. In view of the aforesaid glaring facts emerging from the testimony of Smt. Indra Prabha Gulati (PW- 18), it would be unsafe to place reliance on her evidence regarding the identification of the accused. Once her identification of the accused-appellant in Court is discarded, no substantive evidence remains on record to connect the accused with the crime.

B. Glaring Infirmities in the Test Identification Proceedings

57. The trial Court, as well as the High Court, drew an adverse inference against the accused-appellant on the ground that he declined to participate in the TIP. However, the fact remains that the very sanctity of the TIP stands under a serious cloud of doubt when it is manifest that Smt. Indra Prabha Gulati (PW-18) did not go for participating in any such identification parade.

58. In this context, it would be essential to advert to the prosecution case regarding the effort made by the Investigating Officer to get the appellant subjected to the TIP.

59. It is the case of the prosecution that the accused was arrested on 21st November, 2008. On perusal of the arrest memo²³, it is apparent that there is no mention in the document that the face of the accused was kept baparda (muffled) after his arrest. A doubt on the prosecution case on identification thus arises from this very stage.

60. The evidence of the first Investigating Officer Shri S.K. Sharma (PW-15), who effected the arrest of the accused-appellant on 21st November, 2008, has been carefully examined. The Investigating Officer (PW-15), though, stated in his deposition that at the time of the arrest of the accused-appellant Raj Kumar @

Bheema, his face was kept muffled. However, this assertion stands contradicted by the arrest memo, which contains no such recital.

61. The Investigating Officer further stated that the accused-appellant was interrogated and, in furtherance thereof, recoveries were affected vide memoranda Exh. PW-14/D, Exh. PW-14/O, Exh. PW-14/P, and Exh. PW-15/H. A careful scrutiny of these memoranda would show that there is no reference therein that the face of the accused was muffled at the time of the recovery proceedings. This significant omission lends support to the plea taken by the accused-appellant during the TIP and in his statement under Section 313 CrPC that he had already been shown to the witness, and his photographs had been taken by the Investigating Officer, which were later used for dock identification.

62. It is trite that where the witnesses have had an opportunity to see the accused prior to the holding of the TIP, the evidentiary worth of such proceedings stands considerably diminished. It is the duty of the prosecution to establish beyond doubt that right from the time of arrest, the accused was kept *baparda* to rule out the possibility of his face being seen before the identification proceedings are conducted. If the witnesses have had any opportunity to see the accused before the TIP - whether physically or through photographs - the credibility and sanctity of the identification proceedings would stand seriously compromised.

63. Another material infirmity in the prosecution case relates to the procedural aspects of the TIP. From the evidence of Smt. Indra Prabha Gulati (PW- 18), it is evident that she categorically stated that she was discharged from Moolchand Hospital on 24th/25th December, 2008. She did not utter even a single word to suggest that she had been taken to prison or any Court for participating in any such proceedings.

Further, the witness was emphatic in stating that neither did she meet the police nor did she visit the Patiala House Courts after being discharged from the hospital. It is also pertinent to note that no document pertaining to the treatment or discharge of Smt. Indra Prabha Gulati (PW-18) was proved on record by the prosecution. Consequently, a grave doubt arises regarding the very possibility of any TIP proceedings having been conducted in the presence of the witness Smt. Indra Prabha Gulati (PW-18) on 24th December, 2008.

64. This conclusion gets support from the evidence of the ACMM, Smt. Surya Malik Grover (PW-12), who, in her deposition, only stated that the Investigating Officer informed her that the identifying witness was standing outside. Significantly, there is no signature of the identifying witness Smt. Indra Prabha Gulati (PW-18) on any of the documents prepared in connection with the TIP.

65. In this view of the matter, the prosecution version that efforts made to subject the accused to TIP failed on account of their refusal, stands refuted. While the refusal of the appellant to participate in the TIP may, prima facie, invite an adverse inference, mere such inference cannot support the theory of identification when the very authenticity of the TIP is under a serious cloud of doubt. When it stands established from the record that the TIP attempted by the prosecution was fundamentally flawed, and a doubt is created that the identifying witness herself may not even have been present to participate therein, the very foundation of the identification proceedings falls flat to the ground.

66. Furthermore, in such circumstances and considering the significant improvements made by Indra Prabha Gulati (PW-18) from her previous police statement on the aspect of identifying features (black shirt), the dock identification of the accused-appellant made by the injured witness, Smt. Indra Prabha Gulati (PW-18), during the course of her evidence through video-link, recorded nearly eight and a half years after the incident would be unsafe to rely upon.

C. Recoveries and Non-identification of Articles

67. In addition to the above, the prosecution placed reliance on the alleged recoveries of looted articles at the instance of the accused. However, it is pertinent to note that Smt. Indra Prabha Gulati (PW-18) was not made to identify the said articles during her testimony. Furthermore, Vivek Gulati, son of Smt. Indra Prabha Gulati (PW-18), who is stated to have identified the articles in the TIP, was not examined during the trial. Consequently, the alleged recoveries lose their evidentiary worth and cannot be relied upon, as there is no credible proof that they are the looted articles.

68. The prosecution has tried to claim that the accused-appellant could not offer any explanation for the presence of human blood on the pant recovered at his instance,²⁴ which he had allegedly worn at the time of the incident, which circumstance is incriminating. However, indisputably, the blood stains on the pant could not be matched with the blood sample lifted from the scene of occurrence or with the blood group of the deceased or the injured victim, as the Serology report²⁵ recorded "no reaction" in respect of blood grouping for Exh. 20 (Pant). On this count alone, guilt cannot be fastened upon the appellant, as the recovery by itself is not sufficient to prove the case beyond reasonable doubt. The mere availability of human blood on an article is not sufficient unless it is further corroborated by a matching blood group with that of the deceased.

69. Once the identification of the accused by Smt. Indra Prabha Gulati (PW-18) is discarded, and the recovery of articles cannot be connected either with the

crime or with the accused, no substantive or credible evidence remains on record to link the accused with the offence.

CONCLUSION

70. In view of the discussion made hereinabove, the impugned judgments do not stand to scrutiny. The appeal is, thus, allowed.

71. The judgment dated 29th September, 2022, passed by the High Court, as well as the judgment of conviction dated 12th February, 2021, and the order of sentence dated 20th February, 2021, passed by the trial Court, are hereby set aside.

72. The accused-appellant is acquitted of the charges. He has remained in custody for almost 15 and a half years and shall be released from prison forthwith, if not wanted in any other case.

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

.....**J. (Vikram Nath)**

.....**J. (Sandeep Mehta)**

New Delhi;

November 17, 2025.

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

2 Hereinafter, referred to as the "accused-appellant".

3 Hereinafter, referred to as the "trial Court".

4 For short, 'MCOCA'.

5 For short, 'IPC'.

6 Exh. 21/A.

7 Exh. PW-17/A.

8 FIR No. 601/2018 dated 3rd November, 2008.

9 Exh. PW 14/A.

10 Exh. PW-14/N.

- 11 For short, 'TIP'.
- 12 Exh. PW16/B.
- 13 For short, 'FSL'.
- 14 For short, 'CrPC'.
- 15 Supra para 3.
- 16 CrI.A. 218/2021.
- 17 Ex. PW-24/B read with Ex. PW-24/A.
- 18 Exhibit PW 14/A.
- 19 (2005) 12 SCC 425.
- 20 (2022) 8 SCC 253.
- 21 Exh PW-17/A.
- 22 Exh. PW-17/A.
- 23 Exh. PW- 14/B.
- 24 Exh. PW-14/D.
- 25 Exh. 24/B.

IN THE SUPREME COURT OF INDIA

Prashant Prakash Ratnaparki and Ors.

Vs.

State of Maharashtra and Anr.

**[Criminal Appeal No(s)._____ of 2025
arising out of SLP (Crl.) No (s). 2628 of 2025]**

Head Note - If some offences are quashed on compromise, FIR can't be sustained for other offences from same transaction

JUDGMENT

Mehta, J.

1. Heard.

2. Leave granted.

3. The present appeal by special leave takes exception to the order dated 31st January, 2025 passed by the High Court of Judicature at Bombay, Aurangabad Bench¹ in Criminal Application No. 4528 of 2024. By the aforesaid order, the High Court partially allowed the petition filed by the appellants under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023² [Corresponding to Section 482 of Code of Criminal Procedure, 1973³] and quashed the FIR C.R. No. 270 of 2024, P.S. Nandurbar Taluka, District Nandurbar, to the extent of the offences punishable under Sections 115(2), 351(2), 351(3) and 352 of the Bharatiya Nyaya Sanhita, 2023⁴ [Corresponding Sections 326, 506 and 504 of the Indian Penal Code, 1860⁵ respectively]. However, the proceedings arising from the said FIR were permitted to be continued in respect of the offence punishable under Section 310(2) of the BNS [Section 395 of the IPC].

4. The afore-stated FIR came to be lodged by respondent No.2-complainant with the following allegations: -

"My name is Rajendra Pura Rathod aged 44 years, Occupation Service, Address AT & PO Chowpale Taluka District Nandurbar Mobile No. 8390270785.

I have personally come before the police station and narrate the facts of my complain that I am living with my family at the above mentioned address, and, since the year 2006 I am employed as Senior Clerk at P. G. Public School, Chowpale Taluka District Nandurbar. As per daily routine on 04/10/2024 at 08:00 am I attended the P. G. Public School, Chowpale, Taluka District at

Nandurbar. Thereafter (02) Zubair Khalil Shaikh, Bus Manager, (03) Khandu Chindhu Sarode, Senior Clerk and Organization Secretary, also came.

Thereafter at around 08.15 hrs a white colored Kia Sonet car of UP passing and Mehndi Green coloured Ertiga MH 04 full number not known approached near the entrance gate of our office. 2 such cars had arrived. From those cars 6 to 7 unknown persons descended from the cars and came into the office. I was waiting at the cash counter. So when I asked them what do they want so one of them asked where is your Principal Sir, I told them that I will call the Principal Sir, at the same time that person grabbed my mobile phone and pushed me when Zuber Sheikh came, they also took his mobile phone.

That person grabbed the collar of my shirt and Zubair Shaikh and asked us both where are your Engineering and B.A.M.S. files. He was threatening saying where are the files kept. After that, when we said that we don't have any files, that person slapped me on the ear and took us to the chairman's hall and forcefully asked us to remove the files from the cupboard there. When we said that we don't have the key, they abused us and opened the drawer of the table in the chairman's hall, when they saw the key of the cupboard and the organization's cheque book, they took the cheque book with them they and gave the key to me and forced me to open the cupboard. In the meanwhile, one of them was shooting a video on his mobile phone.

After I placed the file in the cupboard on the table, he checked the said file and among those files they did not see the B.A.M.S. college files. Then he opened the other drawer of the table. In it, there was the salary of the school teachers amounting to one and half lakh rupees and P. G. Public School one whole book of blank letter pads of the organization was taken out and taken into their custody. The first two pages of the pad of the said letter were signed by me and Zubair Shaikh and the seals of the said organization were also impressed thereon. After that he asked us to show them the BAMS office from us. So we took him to the BAMS office.

Where is the office he shouted loudly, so hearing him also Jagdish Khandare Sir, Rohit Mahale Sir came from the school. The accused also threatened him and took away his mobile phone. One of those persons named Girish was told to show your B.A.M.S. office. And was saying to show the office, Girish takes B.A.M.S. with him. After that the said persons came back with Girish. Then that person had B.A.M.S. 5 to 6 files with him. At the same time Principal Shri Anand Suresh Pardeshi Sir came. One of these persons questioned Anand Sir and sat with Anand Sir in the principal's hall. After that, one of those persons also went to the principal's hall.

When Anand Sir asked him about his identity, he did not give any additional identity. Also Rs. 20,000 which he kept in the cash table was also taken. After that computer of HP CBIN 1970 of P. G. Public School, Chowpale Taluka District, Computer with full data saved of Nandurbar organization were forcibly taken from us. Those persons forcibly took the files from us. They made Girish to keep it in their Kia car.

After that they took all the computers forcibly removed from our office, blank letter pad book of the organization, check book of the organization, all the stamps of the organization and cash of Rs.1,50,000/- and kept with them in their car. They forbade us to come out of the office, Principal Anand Sir went near him, they threatened to kill Anand Sir and kidnap his children and students if he told anyone about the incident. Therefore, this is my complaint against them for taking legal action them."

5. The matter was settled amicably between the accused and respondent No.2-complainant. The High Court, while partially allowing the quashing petition filed under Section 528 BNSS [Section 482 CrPC], was of the opinion that in exercise of its inherent powers, the FIR could be quashed on the basis of a compromise insofar as the offences were personal to the complainant. However, the High Court refrained from quashing the offence of dacoity punishable under Section 310(2) of the BNS [Section 395 of the IPC], on the ground that it was not an offence personal to the complainant, as the alleged act had occurred within the premises of the school and pertained to its property.

In arriving at this conclusion, the High Court took into account the objections raised on behalf of the school, which asserted that it was the victim of the alleged offending act. Accordingly, the High Court vide impugned order dated 31st January, 2025 directed that the proceedings arising out of the FIR would continue in respect of offence punishable under Section 310(2) of the BNS [Section 395 of the IPC].

6. The accused are before us questioning the legality of the aforesaid order.

Findings and Conclusion

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

8. In pursuance of the notices issued to the respondents, State of Maharashtra-respondent No.1 did not file any counter-affidavit, whereas, respondent No.2-complainant has filed an affidavit wherein, he has stated that the appellants had returned all the money, blank cheque book, letter heads, stamps, files, and other materials belonging to the school to him. He has stated that no injury was caused to him or any other person by the appellants. He has further mentioned that upon

intervention of the society members and elders, he has amicably settled all the disputes and events set out in the FIR with the accused arraigned therein, and that he was not desirous of continuing with the prosecution against the appellants.

9. On going through the entire FIR, we find that the same was initially registered against unknown persons. The thrust of the allegations, as set out in the FIR, is that the 6 to 7 unknown individuals had entered the premises of P.G. Public School in search of certain Engineering and B.A.M.S. files. During the course of this incident, these individuals allegedly took possession of a cheque book, certain blank letterheads, stamps, files, and certain amount of money that was later stated to have been returned.

The FIR itself discloses that the accused persons were primarily seeking access to specific institutional records viz. Engineering and B.A.M.S. files, and had no intention to steal cash or property belonging to the institution. There is no allegation that the accused persons were armed with weapons or that they caused any serious injury to anyone. The alleged acts appear to have arisen out of a dispute concerning possession of certain documents rather than from any intention to commit dacoity.

10. To sustain a charge of dacoity under Section 310(2) of the BNS [Section 395 of the IPC], the offence of robbery [Section 309 of the BNS/Section 392 of the IPC] must first be established. Robbery, in turn, is an aggravated form of theft or extortion. A foundational element of 'theft' as defined under Section 303 of the BNS [Section 378 of the IPC] is 'dishonest intention', i.e., the intention to cause wrongful gain to one person or wrongful loss to another. In the present case, the primary motive, as discernible from the FIR was not to permanently deprive the school of its property for wrongful gain. The alleged acts of violence i.e. slapping, pushing and intimidation were, by respondent No.2-complainant's own account, employed to compel the staff to locate and produce engineering and B.A.M.S. files.

The taking of cash, cheque books, and the computer appears incidental to this main purpose and not the primary object of the intrusion. This conclusion is significantly fortified by the voluntary affidavit filed by respondent No. 2-complainant, who confirms that all money, files, and other materials were subsequently returned to him and that there was no harm or injury caused to anyone and that an amicable settlement has been reached. This complete restitution and amicable settlement between the accused and respondent No.2-complainant completely dilutes the allegation of 'dishonest intention' required to constitute theft, and by extension, robbery or dacoity.

11. The High Court, in our considered view, erred in sustaining the objection raised by the school and in proceeding on the premise that the offence of dacoity

was not personal to respondent No.2-complainant, who had already settled the dispute with the accused persons.

12. The contents of the FIR clearly indicate that the primary motive of the accused persons was to retrieve specific institutional files/information and not to seek any wrongful gain. This, coupled with the subsequent and complete return of all property, a fact affirmed by respondent No.2-complainant in his voluntary affidavit submitted before the High Court as well as before this Court, convinces us that it is a fit case warranting quashing of the complaint/FIR as a whole.

13. Once the High Court exercised its inherent jurisdiction to quash the FIR with respect to the offences punishable under Sections 115(2), 351(2), 351(3), and 352 of the BNS [Sections 326, 506 and 504 of the IPC], on the basis of the voluntary affidavit of respondent No.2-complainant, there was no justification whatsoever to sustain the same FIR for the offence punishable under Section 310(2) of the BNS [Section 395 of the IPC]. The factual matrix forming the basis of all the offences is inseparable and arises from a single transaction. The compromise that was accepted as genuine and sufficient to quash the other offences equally dilutes the foundation of the charge of dacoity, which rests on the same set of allegations and circumstances.

14. In this background, we are of the considered view that the continued partial prosecution of the appellants for the offence of dacoity punishable under Section 310(2) of the BNS [Section 395 of the IPC] in connection with FIR C.R. No. 270 of 2024 is unjustified and deserves to be quashed.

15. Thus, in exercise of our powers under Article 142 of the Constitution of India, we hereby quash the impugned FIR and all proceedings sought to be taken in furtherance thereof in entirety.

16. The appeal is allowed accordingly.

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

.....**J. (Vikram Nath)**

.....**J. (Sandeep Mehta)**

New Delhi;

November 17, 2025.

1 Hereinafter, being referred to as 'High Court'.

2 For short, "BNSS".

3 For short, "CrPC".

4 For short, "BNS".

5 For short, "IPC".

IN THE SUPREME COURT OF INDIA

Madras Bar Association
Vs.
Union of India and Anr.

[Writ Petition (C) No. 1018 of 2021]
[Writ Petition (C) No. 626 of 2021]

Head Note - Struck down the Tribunal Reforms Act, 2021, relating to the appointments, tenure, and service conditions of the members of various Tribunals.

Act cannot be sustained as it violates the principles relating to "separation of powers and judicial independence." The Act amounts to "legislative overruling" of binding judgments without curing any defects.

The provisions of the Impugned Act cannot be sustained. They violate the constitutional principles of separation of powers and judicial independence, which are firmly embedded in the text, structure, and spirit of the Constitution. The Impugned Act directly contradicts binding judicial pronouncements that have repeatedly clarified the standards governing the appointment, tenure, and functioning of tribunal members. Instead of curing the defects identified by this Court, the Impugned Act merely reproduces, in slightly altered form, the very provisions earlier struck down. This amounts to a legislative override in the strictest sense: an attempt to nullify binding judicial directions without addressing the underlying constitutional infirmities. Such an approach is impermissible under our constitutional scheme. Because the Impugned Act fails to remove the defects identified in prior judgments and instead reenacts them under a new label, it falls afoul of the doctrine of constitutional supremacy. Accordingly, the impugned provisions are struck down as unconstitutional.

When the Court interprets the Constitution and pronounces upon the validity of a statute, that pronouncement becomes the authoritative and binding declaration of the law. Consequently, once the Court has struck down a provision or issued binding directions after identifying a constitutional defect, Parliament cannot simply override or contradict that judicial decision by reenacting the very same measure in a different form. What Parliament may legitimately do is to cure the defect identified by the Court, whether by altering the underlying conditions, removing the constitutional infirmity, or restructuring the statutory framework in a manner consistent with the Court's reasoning. A valid legislative response must therefore engage with and remedy the constitutional violation pointed out by the judiciary. It cannot merely restate or repackage the invalidated provision.

JUDGMENT

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B.R. Gavai, CJI

I. INTRODUCTION

"the provisions of the Constitution are binding upon the different organs of the State. Consequently, it is to be presumed that those who work the Constitution, those who compose the Legislature and those who compose the executive and the judiciary know their functions, their limitations and their duties. It is therefore to be expected that if the executive is honest in working the Constitution, then the executive is bound to obey the Legislature without any kind of compulsory obligation laid down in the Constitution.

Similarly, if the executive is honest in working the Constitution, it must act in accordance with the judicial decisions given by the Supreme Court. Therefore my submission is that this is a matter of one organ of the State acting within its own limitations and obeying the supremacy of the other organs of the State. In so far as the Constitution gives a supremacy to that is a matter of constitutional obligation which is implicit in the Constitution itself.

No constitutional Government can function in any country unless any particular constitutional authority remembers the fact that its authority is limited by the Constitution and that if there is any authority created by the Constitution which has to decide between that particular authority and any other authority, then the decision of that authority shall be binding upon any other organ."

**- Dr. B.R. Ambedkar in the Constituent
Assembly on 14th October 1949**

1. These observations of Dr. B.R. Ambedkar aptly encapsulate the foundational principles that must inform the adjudication of the case at hand. The issues that arise go to the heart of that constitutional design. They involve questions concerning the scope and limits of judicial review, the contours of the doctrine of separation of powers, the manner in which legislative power is exercised by Parliament, and the corresponding bounds of executive authority under the Constitution. At their core lies the principle of the rule of law, which mandates that all institutions derive their legitimacy from, and remain accountable to, the Constitution. Above all, this case deals with the delicate constitutional balance among the three organs of governance, as envisioned by the framers of the Constitution.

2. Our Constitution mandates the supremacy of the Constitution. The underlying principles embodied in it guide not only the judiciary, but also the legislature and the executive. While the function of the judiciary is to interpret, protect, and expand these foundational principles, the legislature and the executive are entrusted with the duty to give effect to them through law and governance. In their distinct spheres of action, each organ of the State remains bound by a common constitutional obligation: respect for and adherence to the supremacy of the Constitution. It is this shared responsibility that ensures the unity of purpose within the framework of the separation of powers.

3. The present case must therefore be examined against this broader constitutional backdrop, where the mutual respect and defined boundaries among the three organs of the State are tested in matters that directly concern the balance between legislative policy and judicial independence. The validity of the Tribunals Reforms Act, 2021 has been challenged. However, this challenge cannot be viewed in isolation, as we shall highlight in subsequent discussion. It

forms part of a continuing constitutional dialogue on the structure, independence, and functioning of tribunals.

II. THE CHALLENGE

4. The lead petition in this batch inter-alia challenges the vires of the Impugned Act. Let us look at the provisions of the Impugned Act. Section 3 empowers the Central Government to frame rules on the qualifications, appointments, salaries, allowances, and service conditions of the Chairperson and Members of Tribunals, notwithstanding anything in prior judgments or existing laws. These rules account for the required experience, relevant specialisation, and the scheme of the said Act. No person below fifty years of age is eligible for appointment. Appointments are to be made by the Central Government on the recommendation of a Search-cum- Selection Committee².

5. For all Tribunals other than State Administrative Tribunals, the SCSC is chaired by the Chief Justice of India or a Supreme Court Judge nominated by him, and includes two Secretaries to the Government of India, and one additional Member, who may be the outgoing or sitting Chairperson of the Tribunal. In case the sitting Chairperson seeks reappointment, a retired Supreme Court Judge or retired Chief Justice of a High Court nominated by the CJI would be a member. In certain Tribunals such as Industrial Tribunals, Debt Recovery Tribunals, and others notified by the Central Government, this additional member must always be a retired Supreme Court Judge or retired Chief Justice of a High Court.

The Secretary of the concerned Ministry or Department acts as the Member-Secretary of the Committee, without voting rights. For State Administrative Tribunals, the SCSC comprises the Chief Justice of the High Court (Chairman), the State Chief Secretary, the Chairman of the State Public Service Commission, and one additional member, subject to similar conditions, along with the Secretary/Principal Secretary of the State General Administration Department as Member- Secretary. The Chairperson of every SCSC has a casting vote. The Committee is free to determine its own procedure, and it must recommend a panel of two names for every vacancy, upon which the Central Government is expected to act preferably within three months. Any vacancy or absence within the Committee does not invalidate the appointments.

6. Section 4 of the Impugned Act provides that the Central Government may remove a Chairperson or Member of a Tribunal on the recommendation of the prescribed Committee and in the manner laid down by rules. Removal may be ordered if the individual (a) has been declared insolvent, (b) has been convicted of an offence involving moral turpitude, (c) has become physically or mentally incapable of performing the duties of the office, (d) has acquired financial or other interests that are likely to adversely affect the discharge of functions, or (e)

has abused the position in a manner prejudicial to the public interest. However, when removal is proposed on the grounds of incapacity, conflict of interest, or abuse of position, covered under clauses (c) to (e), the concerned Chairperson or Member must be informed of the charges and given an opportunity to be heard.

7. Section 5 of the Impugned Act stipulates that, despite anything contained in earlier judgments or existing laws, the Chairperson of a Tribunal shall serve for a tenure of four years or until attaining the age of seventy years, whichever occurs earlier. Similarly, a Member of a Tribunal shall hold office for a period of four years or until reaching the age of sixty-seven years, whichever is earlier. The provision includes a transitional safeguard: if a Chairperson or Member was appointed between 26 May 2017 and the notified date, and the appointment order issued by the Central Government grants a longer tenure or higher age of retirement than what is prescribed in this section, then the terms in the original appointment order will prevail, subject to an upper limit of five years as the maximum permissible tenure.

8. Section 6 of the Impugned Act provides that the Chairperson and Members of a Tribunal may be considered for re-appointment in accordance with the provisions of the said Act. When evaluating candidates for re-appointment, due preference must be given to the service already rendered by the individual. All re-appointments are required to follow the same procedure prescribed for initial appointments under Section 3(2) of the said Act, meaning they must be made on the recommendation of the SCSC.

9. Section 7 of the Impugned Act empowers the Central Government, notwithstanding any prior judgments or existing laws, to frame rules prescribing the salary of the Chairperson and Members of a Tribunal. They are entitled to receive allowances and benefits equivalent to those admissible to a Central Government officer holding an equivalent pay level. The provision also allows a higher reimbursement of house rent, beyond the standard house rent allowance, if the Chairperson or Member resides in rented accommodation, subject to limits and conditions specified by rules. Further, once appointed, neither the salary and allowances nor any other terms and conditions of service of the Chairperson or Member may be altered to their disadvantage.

10. The Impugned Act also amends multiple statutes, including the Industrial Disputes Act, Cinematograph Act, Copyright Act, Income-tax Act, Customs Act, Patents Act, SAFEMA, Administrative Tribunals Act, Railway Claims Tribunal Act, SEBI Act, Recovery of Debts and Bankruptcy Act, Airports Authority of India Act, TRAI Act, Trade Marks Act, National Green Tribunal Act, Companies Act, and Consumer Protection Act. In these Acts, references to earlier tribunal provisions under the Finance Act, 2017 are replaced with references to the Impugned Act. Several specialised Tribunals or Appellate Boards are abolished,

and their functions are shifted either to High Courts, Commercial Courts, or designated authorities.

11. Many sections establishing or regulating Appellate Boards, Tribunals, or appellate mechanisms are omitted, and related procedural provisions are updated. Sections 183 and 184 of the Finance Act, 2017, along with the Eighth Schedule, are deleted. For bodies like the National Consumer Disputes Redressal Commission, the qualifications, appointments, tenure, salaries, and removal of members appointed after the Impugned Act are now governed entirely by the Impugned Act.

12. Section 33 of the Impugned Act provides that, despite anything contained in existing laws, all persons serving as Chairpersons, Presidents, Presiding Officers, Vice- Chairpersons, Vice-Presidents, or Members of the Tribunals, Appellate Tribunals, and other authorities listed in the Second Schedule shall cease to hold office from the notified date. They are entitled to compensation of up to three months' pay and allowances for the premature termination of their tenure or contractual service.

Officers and employees serving on deputation in these bodies will automatically revert to their parent cadre, ministry, or department on the notified date. All pending appeals, applications, and proceedings, except those before the Authority for Advance Rulings under the Incometax Act, will stand transferred to the court in which they would originally have been filed had the Impugned Act been in force at the time, and the court may continue the matter from the existing stage or any earlier stage, or even conduct a de novo hearing.

13. The vires of these provisions have been challenged on various grounds.

III. SUBMISSIONS

14. We have extensively heard Shri Arvind P. Datar and Shri C.S. Vaidyanathan, learned Senior Counsel appearing for the Petitioners and Shri Sidharth Luthra, Shri P. S. Patwalia, Shri Sanjay Jain, Shri Porus F. Kaka, Shri Gopal Sankaranarayanan, Shri Balbir Singh, Shri Gagan Gupta, Shri Puneet Mittal, Shri Sachit Jolly and Shri B.M. Chatterji, learned Senior Counsel and Shri Ninad Laud, learned counsel appearing for the Applicant(s). We have also extensively heard Shri R. Venkataramani, learned Attorney General for India, and Ms. Aishwarya Bhati, learned Additional Solicitor General, appearing for the Respondent-Union of India.

15. The gist of the arguments advanced by the learned Senior Counsel/counsel appearing for the Petitioners/Applicants is that:

(i) Several provisions of the Impugned Act, particularly Sections 3(1), 3(7), 5, and 7(1), violate the constitutional principles of separation of powers and judicial independence. By diluting the judiciary's role in appointments, tenure, and service conditions of tribunal members, these provisions infringe the basic structure and contravene Articles 14, 21 and 50 of the Constitution, as well as binding decisions of the Court.

(ii) The Impugned Act amounts to an impermissible legislative overruling of judicial directions, particularly by enabling the executive, through delegated rule-making powers, to undo safeguards prescribed by the Court. The delegation of authority to the executive to frame rules regarding appointments, allowances, and conditions of service is excessive and encroaches upon core judicial functions.

(iii) The Impugned Act also nullifies judicially framed rules by reintroducing provisions previously struck down, such as the minimum age requirement, a truncated four-year tenure, and the process of recommending multiple names, thereby frustrating the Court's directions. These provisions violate the legitimate expectations and vested rights of sitting members regarding tenure, reappointment, allowances, and house rent allowances.

(iv) The Impugned Act imposes arbitrary age and tenure restrictions that discourage meritorious candidates below fifty years from joining tribunals. Section 3(7) of the said Act limits judicial oversight by requiring the SCSC to forward two names per vacancy and directing the government to act "preferably within three months."

The executive's control over allowances and house rent entitlement compromises judicial independence, while the continued failure to establish an independent National Tribunals Commission leaves tribunals under executive control, particularly within the Ministry of Finance.

16. The gist of the arguments advanced by the learned Attorney General for India appearing for the Respondents:

(i) On behalf of the Union of India, the primary contention is that courts cannot compel the legislature to enact a particular law or structure a statutory framework in a specific manner. Lawmaking is a domain reserved for the legislature, and judicial review cannot be used to prescribe the contents of legislation or to mandate how qualifications, age limits, or tenures should be framed.

(ii) The Union further argues that the power of the courts to issue mandamus arises only when there is a clear public duty imposed by law. If the statute does not create an obligation to frame rules or make appointments in a particular form or within a fixed timeline, courts cannot direct the executive to do so. Similarly, non-compliance with judicial directions that intrude into the policy-making space

of the legislature cannot attract contempt, because the authority to frame rules is vested in the executive and Parliament.

(iii) The Parliament is fully competent to redefine qualifications, eligibility, or selection processes for tribunals. These matters fall squarely within legislative policy, and courts are not expected to sit in judgment over the wisdom of these choices. Even if judicial guidelines were earlier issued regarding tribunal appointments or service conditions, Parliament can modify the underlying legal framework through a valid law, and doing so would not amount to overriding judicial authority but merely exercising its constitutional role. The independence of the judiciary is also stated to be unaffected where the tenure or service conditions of tribunal members are prescribed by statute, since tribunals are creatures of legislation. It has been added that prescribing age limits or tenures does not, by itself, compromise judicial independence.

(iv) A statute can only be invalidated for lack of legislative competence or violation of constitutional provisions. It cannot be struck down for not conforming to directions previously issued by the judiciary or because courts consider an alternative structure preferable. Ultimately, the Union seeks to assert that the Impugned Act represents a legislative policy choice. Parliament's decisions on qualifications, age criteria, tenure, and administrative arrangements for tribunals, therefore, deserve deference unless they breach explicit constitutional mandates.

IV. THE TRIBUNALS JURISPRUDENCE

17. To give a full picture of the present case, it is necessary to trace the historical trajectory to understand how the developments leading up to the Impugned Act have shaped the current dispute before the Court.

18. To ensure specialised, efficient adjudication and speedy resolution of specific categories of cases, India introduced the system of tribunals. Part XIV-A was incorporated into the Constitution through the Forty-Second Amendment Act, 1976. Under Article 323-A, Parliament is empowered to establish administrative tribunals for servicereLATED matters, while Article 323-B enables the appropriate legislature to constitute tribunals for other enumerated subjects.

(i) S.P. Sampath Kumar v. Union of India and Others

19. In pursuance of Article 323-A, Parliament enacted the Administrative Tribunals Act, 1985, providing for the establishment of administrative tribunals to adjudicate service disputes of public servants. The constitutional validity of this enactment came under challenge before a Constitution bench in S.P. Sampath Kumar v. Union of India and Others³ where the Court was called upon to consider two principal issues: first, whether the exclusion of the jurisdiction of

the High Courts under Articles 226 and 227 in service matters was constitutionally permissible, and second, whether the composition of the tribunals and the method of appointment of the Chairman, Vice-Chairman, and Members conformed to the requirements of the Constitution.

20. Writing for the Court, Justice Ranganath Misra (as his Lordship then was) held that "the Tribunal should be a real substitute of the High Court-not only in form and de jure but in content and de facto". It opined that the Chairman of the Tribunal "office should for all practical purposes be equated with the office of Chief Justice of a High Court", and that a retiring or retired Chief Justice of a High Court or when such a person is not available, a Senior Judge of proved ability either in office or retired should be appointed. The reason was that judicial discipline generated by experience and training in an adequate dose in a judicial office is a necessary qualification for the post of Chairman.

21. Regarding the selection of Vice-Chairman and members, the Court held that such selection when it is not of a sitting Judge or retired Judge of a High Court should be done by a high-powered committee with a sitting Judge of the Supreme Court to be nominated by the Chief Justice of India as its Chairman. This will ensure selection of proper and competent people to man these high offices of trust and help to build up reputation and acceptability.

22. It was further observed that prescribing a tenure of only five years for the Chairman, Vice-Chairman, and Members of the Tribunal could act as a deterrent to attracting competent candidates, particularly from younger age groups who would retire long before the usual age of superannuation. Since appointees were required to resign from their previous posts, a short tenure offered little security or continuity. The Court noted that such a limited term was neither convenient for the appointees nor conducive to the effective functioning of the tribunal system, as members would often leave just as they had gained adequate expertise in service jurisprudence.

23. The Union government was directed to make changes in the Act in line with the judgment. In his concurring opinion, Chief Justice P.N. Bhagwati observed that the position of Chairperson should not be held by an individual who has merely served as a Secretary to the Government of India, since such a role does not necessarily involve the development of a judicial temperament. As regards the appointment of Vice- Chairpersons and Members, he emphasized that District Judges and advocates qualified to be appointed as Judges of the High Court should also be considered eligible for selection.

24. In a review petition filed in the case,⁴ the Court clarified that appointments to the Central Administrative Tribunal should be made through a High-Powered Selection Committee headed by a sitting Judge of the Supreme Court nominated

by the Chief Justice of India. For State Administrative Tribunals, a similar committee should be chaired by a sitting Judge of the concerned High Court nominated by its Chief Justice. Rejecting the Attorney General's contention that advocates lacked administrative experience to serve as Vice- Chairpersons, the Court held that an advocate qualified to be a High Court Judge is inherently competent to discharge both judicial and administrative functions.

25. Insofar as the exclusion of the power of judicial review exercised by the High Court in service matters under Articles 226 and 227 of the Constitution by virtue of Section 28 of the Administrative Tribunals Act, 1985 is concerned, the Constitution Bench held that the exclusion of judicial review was not whole inasmuch as the jurisdiction of this Court under Articles 32 and 136 of the Constitution had been kept intact. Though it was held that the power of judicial review is a basic and essential feature of the Constitution but if any constitutional amendment made by the Parliament takes away from the High Court the power of judicial review, in any particular area, and vests it in any other institutional mechanism, it would not be violative of the basic structure doctrine.

(ii) R.K. Jain v. Union of India

26. In R.K. Jain v. Union of India⁵ a three-judge bench dealt with a complaint concerning the functioning of the Customs, Excise and Gold Control Appellate Tribunal, which was set up by exercising the power conferred by Article 323-B. In his leading opinion, Justice K. Ramaswamy observed that tribunals established under Articles 323-A and 323-B of the Constitution, or under any statute, are creations of the legislature and cannot claim the same status, parity, or substitution as High Courts or their Judges. Nevertheless, it was reiterated that the individuals appointed to such tribunals exercise judicial or quasi-judicial functions and must, therefore, possess a judicial approach along with adequate knowledge and expertise in relevant branches of constitutional, administrative, and tax law.

(iii) L. Chandra Kumar v. Union of India and Others

27. Subsequently, the judgment in S.P. Sampath Kumar (supra) was reconsidered by a seven-judge bench in L. Chandra Kumar v. Union of India and Others⁶. The Court held that the High Courts' power of judicial superintendence over all courts and tribunals within their jurisdiction forms part of the basic structure of the Constitution.

While tribunals cannot exercise judicial review of legislative action to the exclusion of the High Courts or the Supreme Court, they may perform a supplementary, though not a substitutive, role in this regard. The Court declared Article 323A(2)(d) and Article 323B(3)(d) unconstitutional insofar as they

exclude the jurisdiction of the High Courts under Articles 226/227 and the Supreme Court under Article 32, holding that all tribunal decisions remain subject to the writ jurisdiction of the Division Bench of the concerned High Court. It was observed that:

"99. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned."

28. The Court also examined the qualifications and competence of the individuals appointed to the tribunals, as well as the question of which authority should exercise administrative supervision over them. It was held:

"95. It must be remembered that the setting-up of these Tribunals is founded on the premise that specialist bodies comprising both trained administrators and those with judicial experience would, by virtue of their specialised knowledge, be better equipped to dispense speedy and efficient justice. It was expected that a judicious mix of judicial members and those with grass-roots experience would best serve this purpose. To hold that the Tribunal should consist only of judicial members would attack the primary basis of the theory pursuant to which they have been constituted. Since the Selection Committee is now headed by a Judge of the Supreme Court, nominated by the Chief Justice of India, we have reason to believe that the Committee would take care to ensure that administrative members are chosen from amongst those who have some background to deal with such cases."

29. Emphasizing the need for efficient running of these tribunals, the Court suggested:

"96. It has been brought to our notice that one reason why these Tribunals have been functioning inefficiently is because there is no authority charged with supervising and fulfilling their administrative requirements. The creation of a single umbrella organisation will, in our view, remove many of the ills of the present system. If the need arises, there can be separate umbrella organisations at the Central and the State levels. Such a supervisory authority must try to ensure that the independence of the members of all such Tribunals is maintained. To that extent, the procedure for the selection of the members of the Tribunals, the manner in which funds are allocated for the functioning of the Tribunals and all other consequential details will have to be clearly spelt out."

97. The suggestions that we have made in respect of appointments to Tribunals and the supervision of their administrative function need to be considered in detail by those entrusted with the duty of formulating the policy in this respect. That body will also have to take into consideration the comments of experts bodies like the LCI [Law Commission of India] and the Malimath Committee in this regard. We, therefore, recommend that the Union of India initiate action in this behalf and after consulting all concerned, place all these Tribunals under one single nodal department, preferably the Legal Department."

30. In other words, the Court stated that an independent nodal body would help secure institutional autonomy and safeguard the independence of tribunals.

(iv) Union of India v. R. Gandhi, President, Madras Bar Association

31. Independence of tribunals was then emphasized by a Constitution Bench in Union of India v. R. Gandhi, President, Madras Bar Association⁷ (hereinafter "MBA (I)"). The President of the Madras Bar Association challenged before the High Court the constitutional validity of an amendment to the Companies Act, 1956, that established the National Company Law Tribunal⁸ and the National Company Law Appellate Tribunal⁹. It was argued that the constitution of the NCLT and the transfer of the entire company jurisdiction of the High Court to the Tribunal, which is not under the control of the Judiciary, are violative of the doctrine of separation of powers and the independence of the Judiciary, which are part of the basic structure of the Constitution.

The High Court found several provisions to be defective and violative of the constitutional principles of separation of powers and judicial independence. It held that, unless these defects were rectified, the constitution of the NCLT and NCLAT would be unconstitutional. The Union Government agreed to amend the law, including fixing a five-year tenure for the Chairperson, President, and Members, restricting the post of President to a serving or retired High Court Judge, and dropping the provision for Member (Administration).

32. In appeal in relation to other provisions, this Court emphasized the lack of independence of tribunals:

"64. Only if continued judicial independence is assured, Tribunals can discharge judicial functions. In order to make such independence a reality, it is fundamental that the members of the Tribunal shall be independent persons, not civil servants. They should resemble courts and not bureaucratic Boards. Even the dependence of Tribunals on the sponsoring or parent department for infrastructural facilities or personnel may undermine the independence of the tribunal (vide Wade & Forsyth: Administrative Law, 10th Edn., pp. 774 and 777).

70. unfortunately tribunals have not achieved full independence. The Secretary of the 'sponsoring department' concerned sits in the Selection Committee for appointment. When the Tribunals are formed, they are mostly dependant on their sponsoring department for funding, infrastructure and even space for functioning. The statutes constituting Tribunals routinely provide for members of civil services from the sponsoring departments becoming members of the Tribunal and continuing their lien with their parent cadre. Unless wide ranging reforms as were implemented in United Kingdom and as were suggested by L. Chandra Kumar (1997) 3 SCC 261 are brought about, Tribunals in India will not be considered as independent."

33. MBA (I) thus underscored that without comprehensive reform, ensuring structural independence in appointments, funding, and administration, Indian tribunals will remain quasi-executive rather than quasi-judicial bodies. The Court gave a warning that, unless tribunals are institutionally independent, they cannot truly fulfil their constitutional purpose.

34. On the issue of whether the inclusion of a Technical Member alongside a Judicial Member affects the validity of the provisions establishing Tribunals, the Court observed:

"90. But when we say that Legislature has the competence to make laws, providing which disputes will be decided by courts, and which disputes will be decided by Tribunals, it is subject to constitutional limitations, without encroaching upon the independence of judiciary and keeping in view the principles of Rule of Law and separation of powers. If Tribunals are to be vested with judicial power hitherto vested in or exercised by courts, such Tribunals should possess the independence, security and capacity associated with courts.

If the Tribunals are intended to serve an area which requires specialized knowledge or expertise, no doubt there can be Technical Members in addition to Judicial Members. Where however jurisdiction to try certain category of cases are transferred from Courts to Tribunals only to expedite the hearing and disposal or relieve from the rigours of the Evidence Act and procedural laws, there is obviously no need to have any non-judicial Technical Member. In respect of such Tribunals, only members of the Judiciary should be the Presiding Officers/members.

Typical examples of such special Tribunals are Rent Tribunals, Motor Accident Claims Tribunals and Special Courts under several Enactments. Therefore, when transferring the jurisdiction exercised by Courts to Tribunals, which does not involve any specialized knowledge or expertise in any field and expediting the disposal and relaxing the procedure is the only object, a provision for technical members in addition to or in substitution of judicial members would clearly be a

case of dilution of and encroachment upon the independence of the Judiciary and Rule of Law and would be unconstitutional."

35. Thus, inclusion of technical members is justified only when specialized expertise is essential.

36. The Court held that while the Legislature may establish tribunals and set eligibility criteria for their members, such provisions are subject to judicial review to ensure that members are qualified to discharge judicial functions and uphold public confidence. It emphasized that independent and impartial adjudication of citizens' disputes, free from executive control, is an essential facet of the Rule of Law and a core element of judicial independence under the Constitution.

The Court reiterated that when judicial functions are transferred from courts to tribunals, such bodies must be proper judicial tribunals, comprising members of comparable rank, status, and independence as judges of the courts they replace, with similar security of tenure. Technical members should be appointed only where specialized expertise is essential. Indiscriminate appointment of such members undermines judicial independence. While the legislature may determine the structure and qualifications for tribunals, these provisions remain subject to judicial review to ensure they do not erode judicial standards or the separation of powers.

37. The Court also held that though "the validity of the provisions of a legislative act cannot be challenged on the ground it violates the basic structure of the constitution, it can be challenged as violative of constitutional provisions which enshrine the principles of Rule of Law, separation of power and independence of Judiciary." Applying this principle, the Court held that "if a Tribunal is packed with members who are drawn from the civil services and who continue to be employees of different Ministries or Government Departments by maintaining lien over their respective posts, it would amount to transferring judicial functions to the executive which would go against the doctrine of separation of power and independence of judiciary."

38. The Court further observed that the Legislature, presumed to act in accordance with the rule of law, must ensure that when it substitutes tribunals for courts, their standards match those of the regular judiciary. The rule of law demands an independent and impartial judiciary, manned by persons of competence, ability, and impeccable character.

Therefore, when tribunals take over the functions of High Courts, their judicial members must possess qualifications and integrity comparable to High Court judges, including a strong legal background, independent outlook, and good

reputation. Technical members, on the other hand, must be persons of recognized standing with specialized expertise in the tribunal's subject area. The Court cautioned that only long administrative experience cannot substitute for judicial temperament, which requires fairness, reasoned decisionmaking, and visible impartiality.

39. The Court held that Technical Members must be of at least Secretary or Additional Secretary rank with proven competence and integrity, otherwise lowering eligibility standards would erode public confidence in tribunals. It was further held that while civil service officers may appropriately serve as Technical Members in Administrative Tribunals due to their knowledge of government functioning, this does not qualify them for tribunals requiring specialized technical expertise, such as Company Law Tribunals. Tribunals should not become posts of convenience for civil servants lacking domain knowledge. The Court emphasized that only experts relevant to the tribunal's field, such as engineers in technical tribunals or military officers in armed forces tribunals, should serve as Technical Members.

40. The Court also noted that allowing tribunal members to retain their lien with their parent ministries undermines judicial independence, as such members would continue to think and act as civil servants. While not questioning the integrity of officers, the Court stressed that public perception of independence, impartiality, and fairness of members is crucial. The Court also held that Technical Members of Company Law Tribunals must have expertise in company law or related fields; mere civil service experience does not constitute such expertise. It rejected the assumption that judges lack the necessary skills or that civil servants or professionals from unrelated fields like science or medicine are qualified. The inclusion of technical experts is justified only in areas requiring specialized professional knowledge, not in purely legal domains like company law.

41. In addition to the changes agreed upon by the Union of India, the Court held that the Act may be made operational by making the following amendments to the Act:

"120.

(i) Only Judges and Advocates can be considered for appointment as Judicial Members of the Tribunal. Only High Court Judges, or Judges who have served in the rank of a District Judge for at least five years or a person who has practiced as a Lawyer for ten years can be considered for appointment as a Judicial Member. Persons who have held a Group A or equivalent post under the Central or State Government with experience in the Indian Company Law Service (Legal Branch) and Indian Legal Service (Grade-1) cannot be considered for appointment as judicial members as provided in sub-section 2(c) and (d) of Section 10-FD. The

expertise in Company Law service or Indian Legal service will at best enable them to be considered for appointment as technical members.

(ii) As the NCLT takes over the functions of High Court, the members should as nearly as possible have the same position and status as High Court Judges. This can be achieved, not by giving the salary and perks of a High Court Judge to the members, but by ensuring that persons who are as nearly equal in rank, experience or competence to High Court Judges are appointed as members. Therefore, only officers who are holding the ranks of Secretaries or Additional Secretaries alone can be considered for appointment as Technical members of the National Company Law Tribunal. Clauses (c) and (d) of subsection (2) and Clauses (a) and (b) of sub-section (3) of section 10-FD which provide for persons with 15 years experience in Group A post or persons holding the post of Joint Secretary or equivalent post in Central or State Government, being qualified for appointment as Members of Tribunal, are invalid.

(iii) A 'Technical Member' presupposes an experience in the field to which the Tribunal relates. A member of Indian Company Law Service who has worked with Accounts Branch or officers in other departments who might have incidentally dealt with some aspect of Company Law cannot be considered as 'experts' qualified to be appointed as Technical Members. Therefore Clauses (a) and (b) of sub-section (3) are not valid.

(iv) The first part of clause (f) of sub-section (3) providing that any person having special knowledge or professional experience of 20 years in science, technology, economics, banking, industry could be considered to be persons with expertise in company law, for being appointed as Technical Members in Company Law Tribunal, is invalid.

(v) Persons having ability, integrity, standing and special knowledge and professional experience of not less than fifteen years in industrial finance, industrial management, industrial reconstruction, investment and accountancy, may however be considered as persons having expertise in rehabilitation/revival of companies and therefore, eligible for being considered for appointment as Technical Members.

(vi) In regard to category of persons referred in clause (g) of sub-section (3) at least five years experience should be specified.

(vii) Only Clauses (c), (d), (e), (g), (h), and the latter part of clause (f) in sub-section (3) of section 10-FD and officers of civil services of the rank of the Secretary or Additional Secretary in Indian Company Law Service and Indian Legal Service can be considered for purposes of appointment as Technical Members of the Tribunal.

(viii) Instead of a five-member Selection Committee with the Chief Justice of India (or his nominee) as Chairperson and two Secretaries from the Ministry of Finance and Company Affairs and the Secretary in the Ministry of Labour and Secretary in the Ministry of Law and Justice as members mentioned in section 10-FX, the Selection Committee should broadly be on the following lines:

(a) Chief Justice of India or his nominee - Chairperson (with a casting vote);

(b) A senior Judge of the Supreme Court or Chief Justice of High Court - Member;

(c) Secretary in the Ministry of Finance and Company Affairs - Member; and

(d) Secretary in the Ministry of Law and Justice -Member.

(ix) The term of office of three years shall be changed to a term of seven or five years subject to eligibility for appointment for one more term. This is because considerable time is required to achieve expertise in the field concerned. A term of three years is very short and by the time the members achieve the required knowledge, expertise and efficiency, one term will be over. Further the said term of three years with the retirement age of 65 years is perceived as having been tailor-made for persons who have retired or shortly to retire and encourages these Tribunals to be treated as post-retirement havens. If these Tribunals are to function effectively and efficiently they should be able to attract younger members who will have a reasonable period of service.

(x) The second proviso to Section 10-FE enabling the President and members to retain lien with their parent cadre/ministry/department while holding office as President or Members will not be conducive for the independence of members. Any person appointed as members should be prepared to totally disassociate himself from the Executive. The lien cannot therefore exceed a period of one year.

(xi) To maintain independence and security in service, sub-section (3) of section 10-FJ and Section 10-FV should provide that suspension of the President/Chairman or member of a Tribunal can be only with the concurrence of the Chief Justice of India.

(xii) The administrative support for all Tribunals should be from the Ministry of Law & Justice. Neither the Tribunals nor its members shall seek or be provided with facilities from the respective sponsoring or parent Ministries or concerned Department.

(xiii) Two-Member Benches of the Tribunal should always have a judicial member. Whenever any larger or special benches are constituted, the number of Technical Members shall not exceed the Judicial Members."

(v) Madras Bar Association v. Union of India and Another

42. Subsequently, the constitutional validity of the National Tax Tribunal¹⁰ Act, 2005, was challenged in *Madras Bar Association v. Union of India and Another*¹¹ (hereinafter referred to as *MBA (II)*). The NTT Act was declared unconstitutional for diluting the independence of the judiciary and tribunals. Writing the lead opinion, Chief Justice Khehar held that allowing the Central Government to determine the jurisdiction, composition, and transfer of NTT benches compromised judicial independence, since the Government itself would be a litigant in all cases before the Tribunal.

The Court held that for the NTT Act to be valid, its Chairperson and Members must enjoy the same independence and security as High Court judges. Granting the Central Government control over the jurisdiction and posting of Members compromised that independence, exposing them to potential pressure or punitive transfers. Hence, the NTT Act failed to insulate the Tribunal from executive influence.

43. Referring to *L. Chandra Kumar (supra)* and *MBA (I)*, the Court reiterated that non-judicial or technical members can only be appointed where specialized expertise is essential, not where purely legal questions are involved. Since the NTT was constituted to decide substantial questions of law across diverse subjects such as tax, company, contract, and property law, only persons with legal qualifications and substantial experience in law could competently discharge these functions. Appointing accountant or technical members without legal expertise would dilute judicial standards and violate the independence of the judiciary. Hence, the Court held that the NTT Act failed to meet constitutional standards.

44. The Court also held that Section 7 of the NTT Act was unconstitutional as it failed to ensure judicial independence in the selection process. Unlike administrative tribunals subordinate to High Courts, the NTT was meant to replace High Courts, and therefore its Chairperson and Members had to be appointed through a process similar to that for High Court judges.¹² The Court held that the inclusion of Central Government Secretaries, whose ministries would themselves appear as litigants before the NTT, in the selection committee undermined impartiality and breached constitutional conventions meant to preserve the separation of powers.¹³

45. The Court observed that under Section 8 of the NTT Act, the Chairperson and Members were appointed for a term of five years, with eligibility for reappointment for another five years. It agreed with the petitioners therein that the possibility of reappointment would compromise the independence of the Tribunal, as members might decide cases with an eye on securing another term rather than exercising independent judgment. Since the NTT replaced the jurisdiction of High Courts, all aspects of appointment and tenure had to remain free from executive interference. For these reasons, the Court declared Section 8 of the NTT Act unconstitutional.

(vi) Madras Bar Association v. Union of India and Another

46. Another judgment to be referred here is Madras Bar Association v. Union of India and Another¹⁴ (hereinafter MBA (III)). The validity of Companies Act 2013, which replaced the earlier Act of 1956, was challenged. It was contended that the provisions governing the structure, composition, and selection process of the NCLT and NCLAT under the Companies Act, 2013, mirror those earlier provisions whose vires were declared unconstitutional by the MBA (I) judgment in 2010. The creation of NCLT and NCLAT was upheld, but several provisions were declared to be invalid for deviating from the MBA (I) judgment.

47. The Court rejected the government's justification that the shortage of officers at the Additional Secretary level warranted allowing Joint Secretaries to serve as Technical Members, holding that such reasoning was legally untenable and contrary to the binding 2010 MBA (I) judgment. It emphasized that the earlier decision had cautioned against the gradual erosion of judicial independence through dilution of qualifications and standards for those exercising judicial functions. Any deviation, the Court held, would compromise the safeguards so firmly secured in 2010. Accordingly, Sections 409(3)(a) and (c) and 411(3) of the Companies Act, 2013 were declared invalid, and the directions in paragraph 120 of the 2010 MBA (I) judgment were ordered to be followed for appointments.

48. The Court further held that the composition of the Selection Committee under Section 412(2), comprising five members with a majority from the executive, violated the 2010 MBA (I) judgment. The proper composition should be a fourmember committee chaired by the Chief Justice of India or his nominee, with a casting vote to ensure judicial primacy. Since the existing provision undermined that principle, Section 412(2) was struck down as invalid. The Court directed the government to promptly amend the provisions to bring them in line with its directions so that the NCLT and NCLAT could begin functioning with full independence and integrity.

49. After this line of judgments, Parliament enacted the Finance Act, 2017, which subsumed provisions relating to the appointment, tenure, service conditions, and

functioning of members across various tribunals under a single legislative umbrella. Part XIV of the Act introduced an extensive framework titled "Amendments to Central Acts to Provide for Merger of Tribunals and Other Authorities and Conditions of Service of Chairpersons, Members, etc." A key provision under this Part was Section 184, which authorizes the Union Government, through notification, to make rules concerning the qualifications, appointment, tenure, salary, allowances, resignation, removal, and other service conditions of the Chairperson, Vice-Chairperson, President, Vice-President, Presiding Officer, or Members of various tribunals and appellate authorities specified in Column (2) of the Eighth Schedule.

50. The first proviso to Section 184 empowered the Central Government to prescribe the term of office, subject to a maximum of five years, with eligibility for reappointment. The second proviso sets the upper age limits at seventy years for Chairpersons, Presidents, and Presiding Officers (for instance, of the Securities Appellate Tribunal) and sixty-seven years for Vice-Chairpersons, Vice-Presidents, and other Members (such as those of the Industrial Tribunal or Debts Recovery Tribunal). Sub-section (2) further guarantees that the salary, allowances, or other service conditions of a member cannot be altered to their disadvantage after appointment.

51. The Eighth Schedule lists nineteen tribunals, identifying the statutes under which each was originally constituted. Section 183 overrides those parent enactments, mandating that, from the notified "appointed date," appointments to the listed tribunals must comply with Section 184 of the Finance Act. However, the provision safeguards incumbents already in office before the appointed date, ensuring that they continue under their existing terms and conditions until completion of tenure. Pursuant to Section 184, the Central Government framed the "Tribunal, Appellate Tribunal and Other Authorities (Qualifications, Experience and Other Conditions of Service of Members) Rules, 2017".¹⁵

(vii) Rojer Mathew v. South Indian Bank Limited represented by its Chief Manager and Others

52. The constitutional validity of Part XIV and the 2017 Rules was assailed before a Constitution Bench in *Rojer Mathew v. South Indian Bank Limited represented by its Chief Manager and Others*¹⁶ on multiple grounds, including excessive delegation. Writing for the majority in the Constitution Bench, Chief Justice Gogoi upheld the validity of Section 184 of the Finance Act, 2017, observing that the power to prescribe qualifications, selection procedures, and service conditions of tribunal members need not remain exclusively with the legislature "for all times and purposes".

The majority accepted the learned Attorney General's contention that Section 184 aimed to bring uniformity and harmonization across diverse tribunals. It clarified that if any delegated legislation made under Section 184 exceeds the limits of the parent statute or violates constitutional principles, such rules can be struck down individually without affecting the constitutionality of the rule-making power. Applying this principle, the Court struck down the 2017 Rules.

53. The majority, however, found that the 2017 Rules weakened the independence of tribunals by allowing excessive executive control. It was held:

"140. Independence of the institution refers to sufficient degree of separation from other branches of the government, especially when the branch is a litigant or one of the parties before the tribunal. Functional independence would include method of selection and qualifications prescribed, as independence begins with appointment of persons of calibre, ability and integrity. Protection from interference and independence from the executive pressure, fearlessness from other power centres - economic and political, and freedom from prejudices acquired and nurtured by the class to which the adjudicator belongs, are important attributes of institutional independence."

54. It held that the composition of the Search-cum- Selection Committees under the 2017 Rules, dominated by executive nominees with minimal judicial representation, "is an attempt to keep the judiciary away from the process of selection and appointment of Members, Vice-Chairman and Chairman of Tribunals."

This violated the doctrine of separation of powers and undermined the independence of the judiciary and tribunals. It stated:

"148. Composition of a Search-cum-Selection Committee is contemplated in a manner whereby appointments of Member, Vice President and President are predominantly made by nominees of the Central Government. A perusal of the Schedule to the Rules shows that save for token representation of the Chief Justice of India or his nominee in some Committees, the role of the judiciary is virtually absent.

149. The exclusion of the Judiciary from the control and influence of the Executive is not limited to traditional Courts alone, but also includes Tribunals since they are formed as an alternative to Courts and perform judicial functions."

55. The Court further held that since the Executive is often a party to litigation before tribunals, it cannot be permitted to play a dominant role in appointing their members. Drawing from the Fourth Judges Case,¹⁷ the Court emphasized that executive control must be excluded from the appointment process of bodies performing judicial or quasijudicial functions. It concluded that the composition

of the Search-cum-Selection Committees under the 2017 Rules violated the constitutional scheme, as it diluted judicial involvement and amounted to executive encroachment on the independence of the judiciary.

56. Directions were given to the Union of India for framing of fresh set of Rules in accordance with the judgment. As an interim order, it was directed that appointments to the Tribunal/Appellate Tribunal and the terms and conditions of appointment shall be in terms of the respective statutes before the enactment of the Finance Bill, 2017.

57. In his concurring opinion, Justice D.Y. Chandrachud (as his Lordship then was) observed that vesting the executive with the power to frame rules governing tribunals has a direct bearing on their independence, as it allows the executive to influence key aspects of their functioning and composition. In his judgment, Chandrachud, J. observed thus:

"326. The basic postulate of our Constitution is that every authority is subservient to constitutional supremacy. No authority can assume to itself the ultimate power to decide the limits of its own constitutional mandate. Judicial review is intended to ensure that every constitutional authority keeps within the bounds of its constitutional functions and authority. In holding a constitutional institution within its bounds, judicial review does not trench upon the doctrine of separation of powers.

The adjudicatory power vests in the Supreme Court as a constitutional court. In adjudicating on whether there has been a violation of a constitutional mandate in passing a Bill as a Money Bill, judicial review does not traverse beyond the limit set by the separation of powers. On the contrary, the independence of judicial tribunals has been consistently recognised by this Court as an inviolable feature of the basic structure of the Constitution. Determination of the norms of eligibility, the process of selection, conditions of service, and those regulating the impartiality with which the members of the tribunals discharge their functions and their effectiveness as adjudicatory bodies is dependent on their isolation from the executive.

By leaving the rule making power to the uncharted wisdom of the executive, there has been a self-effacement by Parliament. The conferment of the power to frame rules on the executive has a direct impact on the independence of the tribunals. Allowing the executive a controlling authority over diverse facets of the tribunals would be destructive of judicial independence which constitutes a basic feature of the Constitution."

58. Justice Chandrachud endorsed the suggestion of the amicus curiae to have an independent statutory body called the "National Tribunals Commission" to

oversee the selection process of members, criteria for appointment, salaries and allowances, introduction of standard eligibility criteria, for removal of Chairpersons and Members, and meeting the requirement of infrastructural and financial resources.

59. Justice Deepak Gupta, in his opinion, held that the qualifications for appointment to tribunals must be specified in the parent legislation and cannot be delegated to the executive. While matters such as pay, allowances, and other service conditions may be delegated, the determination of qualifications is an essential legislative function. He further observed that even if one assumes qualifications could be delegated, the legislation should have contained clear guidelines governing them.

It was paradoxical, he noted, that while the Act laid down some guidance on service conditions, it provided none regarding the essential qualifications for appointment. He held that Section 184 of the Finance Act, 2017 suffered from excessive delegation, as it provided no legislative guidelines for determining qualifications or eligibility for tribunal appointments, thereby granting the executive unfettered discretion. Justice Chandrachud agreed with Justice Gupta that the qualifications of members to tribunals constitute an essential legislative function and cannot be delegated.

60. Pursuant to the judgment in *Roger Mathew (supra)*, the Union government notified the "Tribunal, Appellate Tribunal and other Authorities [Qualification, Experience and Other Conditions of Service of Members] Rules, 2020",¹⁸ which governed the qualifications and appointment of members, the procedure for inquiries into misconduct, as well as their house rent allowance and other service conditions.

(viii) Madras Bar Association v. Union of India and Another

61. The constitutional validity of the 2020 Rules was challenged in *Madras Bar Association v. Union of India and Another*¹⁹ (hereinafter "MBA (IV)"). It was contended that the composition of the Search-cum-Selection Committees under the 2020 Rules failed to ensure judicial dominance. The petitioners therein also argued that the appointment of non-judicial persons to posts meant for judicial members or presiding officers was contrary to earlier judgments of the Court.

Further, the fixed tenure of four years prescribed for members was alleged to be inconsistent with previous judicial directions mandating a longer term to secure independence. It was also pointed out that advocates had been excluded from eligibility for appointment to most tribunals. Finally, the petitioners therein submitted that the continued executive control over appointments and service

conditions reflected a clear breach of the constitutional principles of judicial independence and separation of powers.

62. At the outset, the three-judge Bench observed that:

"1. This Court is once again, within the span of a year, called upon to decide the constitutionality of various provisions concerning the selection, appointment, tenure, conditions of service, and ancillary matters relating to various tribunals, 19 in number, which act in aid of the judicial branch. That the judicial system and this Court in particular has to live these déjàvu moments, time and again (exemplified by no less than four constitution bench judgments) in the last 8 years, speaks profound volumes about the constancy of other branches of governance, in their insistence regarding these issues. At the heart of this, however, are stakes far greater: the guarantee of the rule of law to each citizen of the country, with the concomitant guarantee of equal protection of the law. This judgment is to be read as a sequel, and together with the decision of the Constitution Bench in *Rojer Mathew v. South Indian Bank Limited* (2020) 6 SCC 1."

63. The Court noted that the impugned 2020 Rules replicate the 2017 Rules in respect of the constitution of the Search-cum-Selection Committees, insofar as they do not ensure judicial dominance. The Court accepted the learned Attorney General's assurance that the Chief Justice of India or his nominee, as Chairperson of the Search-cum-Selection Committee, would be given a casting vote to ensure judicial dominance in tribunal appointments.

It also approved the submission that, ordinarily, the Chairperson of a tribunal would be a retired Supreme Court Judge or Chief Justice of a High Court. The Court also accepted the learned Attorney General's submission that the 2020 Rules would be amended to provide that whenever the reappointment of a Tribunal's Chairperson or President is under consideration, they shall be replaced on the Search-cum-Selection Committee by a retired Supreme Court Judge or retired Chief Justice of a High Court, nominated by the Chief Justice of India.

64. The Court further held that the Secretary of the sponsoring or parent Department shall act as the Member Secretary or Convener of the Search-cum-Selection Committee, but shall not have any voting rights in its proceedings. It was held:

"33. It has been repeatedly held by this Court that the Secretaries of the sponsoring departments should not be members of the Search-cum-Selection Committee. We are not in agreement with the submission of the learned Attorney General that the Secretary of the sponsoring department being a member of the Search-cum-Selection Committee was approved by this Court in *Union of India*

v. Madras Bar Association (2010) 11 SCC 1 and it would prevail over the later judgment in Madras Bar Association v. Union of India (2014) 10 SCC 1. We have already referred to the findings recorded in paragraph 70 of the judgment in Union of India v. Madras Bar Association (2010) 11 SCC 1 that the sponsoring department should not have any role to play in the matter of appointment to the posts of Chairperson and members of the Tribunals.

Though the ultimate direction of the Court was to constitute a Search-cum-Selection Committee for appointment of members to NCLT and NCLAT of which Secretary, Ministry of Finance and Company Affairs is a member, the ratio of the judgment is categorical, which is to the effect that Secretaries of the sponsoring departments cannot be members of the Search-cum-Selection Committee. We, therefore, see no conflict of opinion in the two judgments as argued by the learned Attorney General.

However, we find merit in the submission of the learned Attorney General that the presence of the Secretary of the sponsoring or parent department in the Search-cum- Selection Committee will be beneficial to the selection process. But, for reasons stated above, it is settled that the Secretary of the parent or sponsoring Department cannot have a say in the process of selection and service conditions of the members of Tribunals. Ergo, the Secretary to the sponsoring or parent Department shall serve as the Member- Secretary/Convener to the Search-cum-Selection Committee and shall function in the Search-cum- Selection Committee without a vote."

65. The Court directed the Government of India to constitute Search-cum-Selection Committees in line with earlier judgments. To summarize, the Chief Justice of India or his nominee shall act as Chairperson, joined by the Tribunal Chairperson (if a retired Supreme Court or High Court Chief Justice) and two Government Secretaries. Where the Tribunal is not headed by a judicial member, the Committee shall include a retired Supreme Court or High Court Chief Justice nominated by the CJI, along with Secretaries from the Law Ministry and another non-parent department. The Secretary of the parent department shall serve only as Member- Secretary or Convener, without voting rights.

66. The Court held that the recommendations of the Search-cum-Selection Committee must be final, and the executive should have no discretion in tribunal appointments. However, taking note of practicalities, it also held that the Search-cum-Selection Committee may recommend one additional candidate to be placed on a waiting list. It was held:

"35. Rule 4 (2) of the Rules postulates that a panel of two or three persons shall be recommended by the Search-cum-Selection Committee from which the

appointments to the posts of Chairperson or members of the Tribunal shall be made by the Central Government."

36. Accordingly, we direct that Rule 4(2) of the 2020 Rules shall be amended and till so amended, that it be read as empowering the Search-cum-Selection Committee to recommend the name of only one person for each post. However, taking note of the submissions made by the learned Attorney General regarding the requirement of the reports of the selected candidates from the Intelligence Bureau, another suitable person can be selected by the Search-cum-Selection Committee and placed in the waiting list. In case, the report of the Intelligence Bureau regarding the selected candidate is not satisfactory, then the candidate in the waiting list can be appointed."

67. The Court held that the 2020 Rules are "not in compliance" with the principles established in *MBA (I)* and *Roger Mathew (supra)*. The 2020 Rules prescribed a short tenure for tribunal members, which the Court had consistently found to be harmful to the independence and effectiveness of tribunals. It stated:

"39. This Court directed the extension of the tenure of the members of the Tribunal from three years to seven or five years subject to their eligibility in the case of *Union of India v. Madras Bar Association* (2010) 11 SCC 1. This Court was of the opinion that the term of three years is very short and by the time the members achieve the required knowledge, expertise and efficiency, the term would be over. In the said judgment it was further observed that the Tribunals would function effectively and efficiently only when they are able to attract younger members who have a reasonable period of service.

In spite of the above precedent, a tenure of three years was fixed for the members of Tribunals in the 2017 Rules. While setting aside the 2017 Rules, this Court in *Roger Mathew* (2020) 6 SCC 1 held that a short period of service of three years is anti-merit as it would have the effect of discouraging meritorious candidates to accept the posts of judicial members in the Tribunals. In addition, this Court was also convinced that the short tenure of members increases interference by the executive jeopardizing the independence of the judiciary."

68. The Court held that the four-year tenure prescribed under Rules 9(1) and 9(2) of the 2020 Rules was unjustified and contrary to earlier judgments emphasizing longer terms for tribunal independence. It directed the Government to amend the Rules, fixing the tenure of the Chairperson, President, or Chairman at five years or until the age of 70, and for Vice-Chairpersons and Members at five years or until the age of 67, whichever is earlier. It stated:

"40. Rule 9(1) of the 2020 Rules provide for a term of four years or till a Chairman or Chairperson or President attains the age of 70 years whichever is

earlier. No rationale except that four years is more than three years prescribed in the 2017 Rules (described as too short, in *Roger Mathew* (2020) 6 SCC 1) was put forward on behalf of the Union of India. In so far as the posts of Vice Chairman or Vice-Chairperson or Vice-President and members are concerned, Rule 9(2) fixes the tenure as four years or till they attain the age of 65 years whichever is earlier.

In view of the law laid down in the earlier judgments, we direct the modification of the tenure in Rules 9(1) and 9(2) of the 2020 Rules as five years in respect of Chairman or Chairperson, Vice Chairman or Vice-Chairperson and the members. Rule 9(1) permits a Chairman, Chairperson or President of the Tribunal to continue till 70 years which is in conformity with Parliamentary mandate in Section 184 of the Finance Act. However, Rule 9(2) provides that Vice Chairman and other members shall hold office till they attain 65 years.

We are in agreement with the submission made by the learned Amicus Curiae that under the 2020 Rules, the Vice Chairman, Vice-Chairperson or Vice-President or members in almost all the Tribunals will have only a short tenure of less than three years if the maximum age is 65 years. We, therefore, direct the Government to amend Rule 9 (1) of the 2020 Rules by making the term of Chairman, Chairperson or President as five years or till they attain 70 years, whichever is earlier and other members dealt with in Rule 9(2) as five years or till they attain 67 years, whichever is earlier."

69. The Court also noted that although the 2020 Rules do not expressly provide for reappointment, Section 184 of the Finance Act, 2017 permits it. Noting the learned Attorney General's submission that members of tribunals shall be eligible for reappointment, the Court held that reappointment for at least one term "shall be provided to the persons who are appointed to the Tribunals at a young age by giving preference to the service rendered by them."

70. The Court was not satisfied with the mandate of the Rule 15 of the 2020 Rules, which provided that the Chairperson and the other members of the Tribunals shall be entitled to house rent allowance at the same rate admissible to officers of the Government of India holding grade 'A' posts carrying the same pay. The Court held that the Government of India must make earnest efforts to provide suitable housing for tribunal Chairpersons and Members. It directed for the following change in the said Rule:

"43. Experience has shown that lack of housing in Delhi has been one of the reasons for retired Judges of the High Courts and the Supreme Court to not accept appointments to Tribunals. At the same time, scarcity of housing is also a factor which needs to be kept in mind. The only way to find a solution to this problem is to direct the Government of India to make serious efforts to provide

suitable housing to the Chairperson and the members of the Tribunals and in case providing housing is not possible, to enhance the house rent allowance to Rs.1,25,000/- for members of Tribunals and Rs.1,50,000/- for the Chairman or Chairperson or President and Vice Chairman or Vice Chairperson or Vice-President of Tribunals. In other words, an option should be given to the Chairperson and the members of the Tribunals to either apply for housing accommodation to be provided by the Government of India as per the existing rules or to accept the enhanced house rent allowance. This direction shall be effective from 01.01.2021."

71. It was further contended that the 2020 Rules deliberately excluded advocates from appointment as judicial members in most tribunals by imposing an arbitrary 25-year practice requirement, which was absent in earlier laws and rules. It was argued that such exclusion contradicts the Finance Act, 2017 and previous court rulings recognizing advocates (qualified to be High Court judges) as eligible judicial members. The amicus added that the 25-year threshold would discourage capable advocates from applying and lead to less competent selections, suggesting instead a 15-year practice requirement and inclusion of advocates even in single-member tribunals like Debt Recovery Tribunals.

The learned Attorney General defended the rule as a policy decision aimed at ensuring parity with Indian Legal Service officers but agreed to amend the 2020 Rules to make advocates with 25 years of experience eligible for such appointments. He further submitted that, since advocates typically attain seniority around age 45, the 25-year criterion would make them eligible around age 47-48, making tribunal appointments a viable and attractive option, especially with the possibility of reappointment. On this point, the Court held:

"46. In view of the submission of the learned Attorney General that the 2020 Rules will be amended to make Advocates eligible for appointment to the post of judicial members of the Tribunals, the only question that remains is regarding their experience at the bar. As the qualification for an advocate of a High Court for appointment as a Judge of a High Court is only 10 years, we are of the opinion that the experience at the bar should be on the same lines for being considered for appointment as a judicial member of a Tribunal.

Exclusion of Advocates in 10 out of 19 tribunals, for consideration as judicial members, is therefore, contrary to Union of India v. Madras Bar Association (2010) 11 SCC 1 and Madras Bar Association v. Union of India (2015) 8 SCC 583. However, it is left open to the Search-cum-Selection Committee to take into account in the experience of the Advocates at the bar and the specialization of the Advocates in the relevant branch of law while considering them for appointment as judicial members."

72. The Court set out its reasoning for reducing the eligibility criteria to allow younger advocates to be appointed as judicial members in tribunals in the following terms:

"50. We would wish to emphasize here that the setting up of tribunals, and the subject matters they are expected to deal with, having regard to the challenges faced by a growing modern economy, are matters of executive policy. When it comes to personnel who would operate these tribunals (given that the issues they decide would ultimately reach this Court, in appellate review or in some cases, judicial review), competence, especially in matters of law as well as procedure to be adopted by such judicial bodies, becomes matters of concern for this Court. These tribunals discharge a judicial role, and with respect to matters entrusted to them, the jurisdiction of civil courts is usually barred.

Therefore, wherever legal expertise in the particular domain is implicated, it would be natural that advocates with experience in the same, or ancillary field would provide the "catchment" for consideration for membership. This is also the case with selection of technical members, who would have expertise in the scientific or technical, or wherever required, policy background. These tribunals are expected to be independent, vibrant and efficient in their functioning. Appointment of competent lawyers and technical members is in furtherance of judicial independence. Younger advocates who are around 45 years old bring in fresh perspectives.

Many states induct lawyers just after 7 years of practice directly as District Judges. If the justice delivery system by tribunals is to be independent and vibrant, absorbing technological changes and rapid advances, it is essential that those practitioners with a certain vitality, energy and enthusiasm are inducted. 25 years of practice even with a five-year degree holder, would mean that the minimum age of induction would be 48 years: it may be more, given the time taken to process recommendations. Therefore, a tenure without assured re-engagements would not be feasible. A younger lawyer, who may not be suitable to continue after one tenure (or is reluctant to continue), can still return, to the bar, than an older one, who may not be able to piece her life together again."

73. The provision that made the members of the Indian Legal Service eligible for appointment as judicial members in certain tribunals was also under challenge. This was upheld by the Court for the following reasons:

"49. As we have already held that Advocates are entitled to be considered as judicial members of the Tribunals, we see no harm in members of the Indian Legal Service being considered as judicial members, provided they satisfy the criteria relating to the standing at the bar and specialization required. The judgment of *Union of India v. Madras Bar Association* (2010) 11 SCC 1 did not

take note of the above points relating to the experience of members of Indian Legal Service at the bar. The Indian Legal Service was considered along with the other civil services for the purpose of holding that the members of Indian Legal Service are entitled to be appointed only as technical members.

In the light of the submission made by the learned Attorney General and the Amicus Curiae, we hold that the members of Indian Legal Service shall be entitled to be considered for appointment as a judicial member subject to their fulfilling the other criteria which advocates are subjected to. In addition, the nature of work done by the members of the Indian Legal Service and their specialization in the relevant branches of law shall be considered by the Searchcum- Selection Committee while evaluating their candidature."

74. The Court noted that under Rule 8 of the 2020 Rules, the Union Government conducts a preliminary scrutiny of complaints against tribunal members before referring them to the Search-cum-Selection Committee for inquiry. The Court agreed with the learned Attorney General's clarification that the initial scrutiny is meant only to weed out frivolous complaints and that the Government shall implement the Committee's recommendations. The Court agreed with this interpretation and accepted the learned Attorney General's submission.

75. The Court also observed that the growing pendency of cases in tribunals is largely due to vacancies caused by delays in appointments. Emphasizing the need to ensure speedy justice, it directed the Government of India to complete appointments within three months of receiving the Searchcum- Selection Committee's recommendations.

76. The Court rejected the learned Attorney General's contention that the 2020 Rules should be deemed effective retrospectively from 26th May 2017, the date on which the 2017 Rules came into force. It held that, since the 2017 Rules had already been struck down in *Rojer Mathew* (supra), the 2020 Rules, notified on 12th February 2020, could operate only prospectively. The Court further clarified that subordinate legislation cannot have retrospective effect unless expressly authorized by the parent statute.

77. The Court held that appointments made before the enforcement of the 2020 Rules, including those during the pendency of *Rojer Mathew* (supra) and pursuant to its interim orders, shall be governed by the respective parent Acts and earlier Rules. However, appointments made after 12th February 2020, the date the 2020 Rules came into force, shall be governed by those Rules, subject to the modifications directed by the Court.

78. The Court also directed the Union of India to establish a National Tribunals Commission at the earliest. It was observed that creating such a body would

strengthen the credibility and independence of tribunals and build public confidence in their functioning. It emphasized that tribunals' continued dependence on their parent ministries for administrative and financial needs keeps them under executive control, undermining judicial autonomy. Judicial independence, the Court noted, can be ensured only when tribunals have access to adequate infrastructure and resources independent of the executive. As an interim measure, until the Commission is constituted, the Court directed the establishment of a separate "Tribunals Wing" within the Ministry of Finance to handle and finalize all administrative matters relating to tribunals.

79. The Court summarized its directions as follows:

"60. The upshot of the above discussion leads this court to issue the following directions:

60.1 The Union of India shall constitute a National Tribunals Commission which shall act as an independent body to supervise the appointments and functioning of Tribunals, as well as to conduct disciplinary proceedings against members of Tribunals and to take care of administrative and infrastructural needs of the Tribunals, in an appropriate manner. Till the National Tribunals Commission is constituted, a separate wing in the Ministry of Finance, Government of India shall be established to cater to the requirements of the Tribunals.

60.2 Instead of the four-member Search-cum- Selection Committees provided for in Column (4) of the Schedule to the 2020 Rules with the Chief Justice of India or his nominee, outgoing or sitting Chairman or Chairperson or President of the Tribunal and two Secretaries to the Government of India, the Searchcum-Selection Committees should comprise of the following members:

(a) The Chief Justice of India or his nominee-Chairperson (with a casting vote).

(b) The outgoing Chairman or Chairperson or President of the Tribunal in case of appointment of the Chairman or Chairperson or President of the Tribunal (or) the sitting Chairman or Chairperson or President of the Tribunal in case of appointment of other members of the Tribunal (or) a retired Judge of the Supreme Court of India or a retired Chief Justice of a High Court in case the Chairman or Chairperson or President of the Tribunal is not a Judicial member or if the Chairman or Chairperson or President of the Tribunal is seeking re-appointment- member;

(c) Secretary to the Ministry of Law and Justice, Government of India- member;

(d) Secretary to the Government of India from a department other than the parent or sponsoring department, nominated by the Cabinet Secretary- member;

(e) Secretary to the sponsoring or parent Ministry or Department- Member Secretary/Convener (without a vote). Till amendments are carried out, the 2020 Rules shall be read in the manner indicated.

60.3 Rule 4(2) of the 2020 Rules shall be amended to provide that the Search-cum-Selection Committee shall recommend the name of one person for appointment to each post instead of a panel of two or three persons for appointment to each post. Another name may be recommended to be included in the waiting list.

60.4 The Chairpersons, Vice-Chairpersons and the members of the Tribunal shall hold office for a term of five years and shall be eligible for reappointment. Rule 9(2) of the 2020 Rules shall be amended to provide that the Vice-Chairman, Vice-Chairperson and Vice President and other members shall hold office till they attain the age of sixty-seven years.

60.5 The Union of India shall make serious efforts to provide suitable housing to the Chairman or Chairperson or President and other members of the Tribunals. If providing housing is not possible, the Union of India shall pay the Chairman or Chairperson or President and Vice-Chairman, Vice-Chairperson, Vice President of the Tribunals an amount of Rs. 1,50,000/- per month as house rent allowance and Rs. 1,25,000/- per month for other members of the Tribunals. This direction shall be effective from 01.01.2021.

60.6 The 2020 Rules shall be amended to make advocates with an experience of at least 10 years eligible for appointment as judicial members in the Tribunals. While considering advocates for appointment as judicial members in the Tribunals, the Search-cum-Selection Committee shall take into account the experience of the Advocate at the bar and their specialization in the relevant branches of law. They shall be entitled for reappointment for at least one term by giving preference to the service rendered by them for the Tribunals.

60.7 The members of the Indian Legal Service shall be eligible for appointment as judicial members in the Tribunals, provided that they fulfil the criteria applicable to advocates subject to suitability to be assessed by the Search-cum-Selection Committee on the basis of their experience and knowledge in the specialized branch of law.

60.8 Rule 8 of the 2020 Rules shall be amended to reflect that the recommendations of the Searchcum- Selection Committee in matters of disciplinary actions shall be final and the recommendations of the Search-cum-Selection Committee shall be implemented by the Central Government.

60.9 The Union of India shall make appointments to Tribunals within three months from the date on which the Search-cum-Selection Committee completes

the selection process and makes its recommendations. 60.10 The 2020 Rules shall have prospective effect and will be applicable from 12.02.2020, as per Rule 1(2) of the 2020 Rules.

60.11 Appointments made prior to the 2017 Rules are governed by the parent Acts and Rules which established the Tribunals concerned. In view of the interim orders passed by the Court in Rojer Mathew (2020) 6 SCC 1, appointments made during the pendency of Rojer Mathew (2020) 6 SCC 1 were also governed by the parent Acts and Rules. Any appointments that were made after the 2020 Rules came into force i.e. on or after 12.02.2020 shall be governed by the 2020 Rules subject to the modifications directed in the preceding paragraphs of this judgment.

60.12 Appointments made under the 2020 Rules till the date of this judgment, shall not be considered invalid, insofar as they conformed to the recommendations of the Search-cum-Selection Committees in terms of the 2020 Rules. Such appointments are upheld, and shall not be called into question on the ground that the Search-cum- Selection Committees which recommended the appointment of Chairman, Chairperson, President or other members were in terms of the 2020 Rules, as they stood before the modifications directed in this judgment. They are, in other words, saved.

60.13 In case the Search-cum-Selection Committees have made recommendations after conducting selections in accordance with the 2020 Rules, appointments shall be made within three months from today and shall not be subject matter of challenge on the ground that they are not in accord with this judgment.

60.14 The terms and conditions relating to salary, benefits, allowances, house rent allowance etc. shall be in accordance with the terms indicated in, and directed by this judgment.

60.15 The Chairpersons, Vice Chairpersons and members of the Tribunals appointed prior to 12.02.2020 shall be governed by the parent statutes and Rules as per which they were appointed. The 2020 Rules shall be applicable with the modifications directed in the preceding paragraphs to those who were appointed after 12.02.2020. While reserving the matter for judgment on 09.10.2020 Central Administrative Tribunal (Principal Bench) Bar Assn. v. Union of India 2020 SCC OnLine SC 1124, we extended the term of the Chairpersons, Vice Chairpersons and members of the Tribunals till 31.12.2020. In view of the final judgment on the 2020 Rules, the retirements of the Chairpersons, Vice- Chairpersons and the members of the Tribunals shall be in accordance with the applicable Rules as mentioned above."

80. The Court also expressed concern over the Government's repeated failure to implement its directions regarding tribunals, noting that such disregard undermines judicial independence and compels repeated litigation. It emphasized that tribunals are integral to the constitutional system of justice and must function independently, effectively, and in a balanced manner between judicial and expert competence. The Court warned that continued executive noncompliance leads to inefficiency and increased court burden. Accordingly, it directed the Government to strictly implement all directions issued by it to ensure tribunal independence and to prevent further litigation by the Madras Bar Association or others on the same issue.

81. After the decision in MBA (IV), the Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance, 2021²⁰ was promulgated on 4th April 2021, introducing amendments to the Finance Act, 2017. The first proviso to Section 184(1) created a bar on individuals below 50 years of age from being appointed as Chairperson or Member of a tribunal. The second and third provisos, read together, equated the allowances and benefits of tribunal members with those of Central Government officers drawing equivalent pay.

Further, Section 184(7) mandated that the Selection Committee recommend a panel of two names for each post, with the Central Government required to decide within three months, notwithstanding any court judgment or order. Additionally, Section 184(11), deemed to have effect from 26th May 2017, limited the tenure of Chairpersons and Members to four years, with retirement ages of 70 years and 67 years, respectively. For those appointed between 26th May 2017 and 4th April 2021, if their appointment orders specify a higher tenure or retirement age, it shall prevail but be capped at five years.

(ix) Madras Bar Association v. Union of India and Another

82. The validity of these provisions of the 2021 Ordinance and Sections 184 and 186 (2) of the Finance Act, 2017 as amended by the 2021 Ordinance was challenged in Madras Bar Association v. Union of India and Another²¹ (hereinafter MBA (V)) on the ground of violating the principles of separation of powers and independence of judiciary, and being contrary to directions issued in a series of judgments issued by the Court from MBA (I) to MBA (IV).

83. In response, the learned Attorney General argued that Parliament is empowered to cure defects identified by the Court through fresh legislation and that its collective wisdom should not be overridden by judicial intervention. He maintained that determining the service conditions of tribunal members is a matter of legislative policy, warranting judicial restraint. Directions issued by the Court in the absence of legislation, he said, are merely suggestions, not binding. He argued that a subsequent law cannot be struck down for deviating from such

directions, and judicial review of the Ordinance must be confined to the standard grounds of review applicable to legislation.

84. At the outset of his analysis, Justice Nageshwar Rao, speaking for the Court, noted that the directions given by the Court in MBA (IV) are "in the nature of mandamus". He struck down the first proviso of the amended Article 184(1) of the Finance Act 2017 for being violative of its previous judgments. It was held that the minimum age limit of 50 years under the first proviso to Section 184(1) was "an attempt to circumvent" the ruling in MBA (IV), which had struck down the earlier 25- year experience requirement for advocates.

The Court found the provision unconstitutional for violating Article 14 and the doctrine of separation of powers, as it discouraged young advocates from applying and undermined judicial independence. It stated that the judgment of the Court in MBA (IV) was "frustrated by an impermissible legislative override." It was further directed that the Income-Tax Appellate Tribunal²² appointments pursuant to the 2018 advertisement be finalized by considering candidates aged 35 to 50 years as eligible.

85. The Court held that the second and third provisos to Section 184(1) were unconstitutional, as they contradicted the directions in MBA (IV) regarding the provision of adequate housing and allowances for tribunal members. It was held:

"56. By no stretch of imagination can it be said that the said provisos are a result of curative legislation. The direction issued by this Court in MBA (3)²³ for payment of HRA was to ensure that decent accommodation is provided to Tribunal Members. Such direction was issued to uphold independence of the judiciary and it cannot be subject matter of legislative response. A mandamus issued by this Court cannot be reversed by the legislature as it would amount to impermissible legislative override. Therefore, the second proviso, read with the third proviso, to Section 184(1) is declared as unconstitutional."

86. The Court, however, referred to a notification issued by the Ministry of Finance on 30th June 2021, amending the 2020 Rules through the Tribunal (Amendment) Rules, 2021. This notification substituted the previous rule to enhance the house rent allowance²⁴ for tribunal members and chairpersons. The amendment, effective retrospectively from 1st January 2021, allowed Chairpersons, Presidents, and Vice- Chairpersons to receive an HRA of ₹1,50,000 per month, and Members and Presiding Officers ₹1,25,000 per month, or to opt for government accommodation. The Court held that this amendment was consistent with its earlier directions in MBA (IV) regarding the provision of suitable housing to ensure judicial independence, and therefore, no further directions were necessary on the issue of HRA.

87. Section 184(7) mandated that the Selection Committee recommend a panel of two names for each post, with the Central Government required to decide preferably within three months, notwithstanding any court judgment or order was on similar line to Rule 4(2) of the 2020 Rules. As mentioned before, the Court in MBA (IV) had directed to amend the 2020 Rules to provide that the Search-cum-Selection Committee shall recommend one person for appointment in each post in place of a panel of two or three persons for appointment to each post, and that one more name could be recommended to be included in the waiting list. In defence of the 2021 Ordinance, the learned Attorney General argued that Court cannot direct the legislature to make law, and that the directions in MBA (IV) "can only be taken to be a suggestion". The Court rejected this argument and struck down Section 184(7) as amended by the 2021 Ordinance. It held:

"60. The Court, as a wing of the State, by itself is a source of law. The law is what the Court says it is. To clarify the position relating to Article 141 vis-à-vis Article 142, it has been held by this Court in *Ram Pravesh Singh v. State of Bihar* (2006) 8 SCC 381 that directions given under Article 142 are not law laid down by the Supreme Court under Article 141. Any order not preceded by any reason or consideration of any principle is an order under Article 142. Article 136 of the Constitution is a corrective jurisdiction that vests a discretion in the Supreme Court to settle the law clear and as forthrightly forwarded in *Union of India v. Karnail Singh* (1995) 2 SCC 728, it makes the law operational to make it a binding precedent for the future instead of keeping it vague.

In short, it declares the law, as under Article 141 of the Constitution. "Declaration of law" as contemplated in Article 141 of the Constitution is the speech express or necessarily implied by the highest Court of the land. The law declared by the Supreme Court is binding on all courts within the territory of India under Article 141, whereas, Article 142 empowers the Supreme Court to issue directions to do complete justice. Under Article 142, the Court can go to the extent of relaxing the application of law to the parties or exempting altogether the parties from the rigours of the law in view of the peculiar facts and circumstances of the case (*State of Punjab v. Rafiq Masih* (2014) 8 SCC 883).

Sufficient reasons were given in MBA (IV)25 to hold that executive influence should be avoided in matters of appointments to tribunals - therefore, the direction that only one person shall be recommended to each post. The decision of this Court in that regard is law laid down under Article 141 of the Constitution. The only way the legislature could nullify the said decision of this Court is by curing the defect in Rule 4(2). There is no such attempt made except to repeat the provision of Rule 4(2) of the 2020 Rules in the Ordinance amending the Finance Act, 2017. Ergo, Section 184(7) is unsustainable in law as it is an attempt to override the law laid down by this Court."

88. The Court held that mere repetition of the same contents of Rule 4(2) of the 2020 Rules by placing them in Section 184(7) is "an indirect method of intruding into judicial sphere which is proscribed".

89. The Court also struck down the second part of Section 184(7), which provided that the Government shall take a decision regarding the recommendations made by the Searchcum- Selection Committee, preferably within a period of three months. It was held:

"61. The tribunals which are constituted as an alternative mechanism for speedy resolution of disputes have become non-functional due to the large number of posts which are kept unfilled for a long period of time. Tribunals have become ineffective vehicles of administration of justice, resulting in complete denial of access to justice to the litigant public. The conditions of service for appointment to the posts of Chairpersons and Members have been mired in controversy for the past several years, thereby, adversely affecting the basic functioning of tribunals.

This Court is aghast to note that some tribunals are on the verge of closure due to the absence of Members. The direction given by this Court for expediting the process of appointment was in the larger interest of administration of justice and to uphold the rule of law. Section 184(7) as amended by the Ordinance permitting the Government to take a decision preferably within three months from the date of recommendation of the SCSC is invalid and unconstitutional, as this amended provision simply seeks to negate the directions of this Court."

90. The Court also struck down Section 184(11) inserted in the 2017 Act, which fixed the tenure of the Chairperson and Member of a tribunal at four years, notwithstanding anything contained in any judgment, order or decree of any court. It held:

"62. After perusing the law laid down by this Court in MBA-I (2010) 11 SCC 1 and Rojer Mathew (2020) 6 SCC 1 which held that a short stint is anti-merit, we directed the modification of tenure in Rules 9(1) and 9(2) as five years in respect of Chairpersons and Members of tribunals in MBA (IV).²⁶ This Court declared in SCC para 60.4 that the Chairperson, Vice-Chairperson and the Members of the tribunals shall hold office for a term of five years and shall be eligible for reappointment. The insertion of Section 184(11) prescribing a term of four years for the Chairpersons and Members of tribunals by giving retrospective effect to the provision from 26.05.2017 is clearly an attempt to override the declaration of law by this Court under Article 141 in MBA (IV). Therefore, clauses (i) and (ii) of Section 184(11) are declared as void and unconstitutional."

91. However, the Court upheld the retrospectivity given to the proviso to Section 184 (11), i.e., to appointments that were made to the posts of Chairperson or

Members between 26th May 2017 and the notified date of the 2021 Ordinance, 4th April 2021. It held:

"63. The proviso lays down that if the tenure of office or age of retirement specified in the order of appointment issued by the Government is greater than what is specified in Section 184(11), the term of office or the age of retirement of the Chairperson or Members shall be as specified in the order of appointment subject to a maximum term of office of five years. In other words, the term of office of Chairperson and Members of tribunals who were appointed between 26.05.2017 and 04.04.2021 shall be five years even though the order of appointment issued by the Government has a higher term of office or age of retirement which may involve the term of office being more than 5 years in practice.

64.2 It is understood that while inserting subsection (11) in Section 184 in the Finance Act, 2017 and giving it retrospective effect from 26.05.2017, the Ordinance has attempted to cure the defect as was pointed out by this Court in terms of retrospective application while considering the 2020 Rules. However, the implications are not relevant for clauses (i) and (ii) of Section 184(11) which are declared as void and unconstitutional for the reasons mentioned above."

92. In the process, interim directions given by this Court in Kudrat Sandhu v. Union of India and Another²⁷ are also nullified. It would be relevant to refer to the directions issued by this Court in Kudrat Sandhu (supra) on 9th February 2018. After taking the consent of the learned Attorney General and making modifications incorporating his suggestions, this Court held that all selections to the post of Chairperson/ Chairman, Judicial/Administrative Members shall be for a period as provided in the Act and the Rules in respect of all tribunals. On 16th July 2018, this Court directed that persons selected as Members of ITAT can continue till the age of 62 years and persons who were holding the post of President till 65 years.

By an order dated 21st August 2018, this Court clarified that a person selected as Member, Customs, Excise and Sales Tax Appellate Tribunal²⁸ shall continue till the age of 62 years while a person holding the post of President can continue till the age of 65 years. Though, there is nothing wrong with the proviso to Section 184(11) being given retrospective effect, the appointments made pursuant to the interim directions passed by this Court cannot be interfered with.

This Court in Virender Singh Hooda and Others v. State of Haryana and Another²⁹ upheld the retrospectivity of the legislation which had been challenged but the appointment of the petitioners therein pursuant to a direction of the Court were saved. It was held that the law does not permit the legislature to take back what has been granted in the implementation of the Court's decision

and such a course is impermissible. Similarly, in *S.R. Bhagwat and Others v. State of Mysore*³⁰, it was declared that a mandamus against the respondent-State giving financial benefits to the petitioners therein cannot be nullified by a legislation.

It is also relevant to point out that even interim orders passed by this Court cannot be overruled by a legislative act, as discussed above. While making it clear that the appointments that are made to the CESTAT on the basis of interim orders passed by this Court shall be governed by the relevant statute and the rules framed thereunder, as they existed prior to the Finance Act, 2017, this Court upheld the retrospectivity given to the proviso to Section 184 (11). To clarify further, all appointments after 4th April 2021 shall be governed by the 2021 Ordinance, as modified by the directions contained herein.

93. Justice Rao concluded that the first and second provisos to Section 184(1) (fixing a minimum age of 50 years and altering HRA provisions), Section 184(7) (requiring two names per post and government decision within three months), and Section 184(11) (fixing a four-year tenure) were unconstitutional as they violated the separation of powers, judicial independence, rule of law, and Article 14. He further emphasized that it is imperative for all authorities to take urgent steps to fill vacancies in tribunals without delay, stressing that access to justice and public confidence in the impartial functioning of tribunals must be restored and strengthened.

94. In his concurring opinion, Justice Ravindra Bhat dealt with the argument of the Union of India that when a legislation or legislative instrument (such as an ordinance in this case) is questioned, its validity can be scrutinized only by considering its impact on some express provision of the constitution, and not on any concept or notion such as separation of powers and judicial independence. He held:

"79. The challenges to executive or legislative measures based on violation of the twin concepts of separation of powers and independence of the judiciary have to be seen in terms of their impacts, not at one point in time, but cumulatively, over a time continuum.

81. In all these decisions, this court's scrutiny was based upon its role as the guardian of the constitution and, more specifically, independence of the judiciary. If one were asked to pinpoint any specific provision of the constitution that this court relied upon while holding the enacted provisions to be falling afoul of, there would be none. It is too late now to contend that independence of the judiciary and separation of powers are vague concepts based on which Parliamentary reenactment cannot be invalidated.

82. The Attorney General's assertion that the executive or indeed the Parliament acts within its rights in interpreting the Constitution, and therefore this court should adopt a deferential standard in matters of policy are therefore insubstantial, and also disquieting. As conceded by the Union, if a law (passed validly in exercise of its exclusive power by the Parliament on its interpretation of the Constitution) violates any express provision or principle that lies at the core of any express provision or provisions, this Court's voice is decisive and final.

83. Pertinently, in matters of independence of the judiciary or arrangement of courts or tribunals, when these provisions come up for interpretation, this court would apply a searching scrutiny standard in its judicial review to ensure that the new body, court, tribunal, commission or authority created to adjudicate (between citizens and government agencies or departments, citizens and citizens, or citizens and corporate entities) are efficient, efficacious and inspire public confidence.

86. Parliament has, over the years, created several tribunals and commissions which exercise judicial functions that would ordinarily fall within the jurisdiction of courts; they would also have been subjected to the supervisory jurisdiction of High Courts under Article 227. This gradual "hiving off" of jurisdiction from the courts, therefore, calls for a careful and searching scrutiny to ensure that those who approach these bodies are assured of the same kind and quality of justice, infused with what citizens expect from courts, i.e., independence, fairness, impartiality, professionalism and public confidence. These considerations are relevant, given that "policy" choices adopted by the executive or legislature in the 81 past, when it concerned dispensation of justice through courts, were the subject matter of scrutiny under judicial review by courts.

89. This court, therefore, as the ultimate guardian of the Constitution, and the rule of law, which it is sworn to uphold, has been asserting its role in regard to matters of appointment, and other conditions of service of judges of district and other courts. Since tribunals function within the larger ecosystem of administration of justice, and essentially discharge judicial functions, this court is equally concerned with the qualifications, eligibility for appointment, procedure for selection and appointment, conditions of service, etc of their members.

This court's concern, therefore, is unlike any other subject matter of judicial review. It cannot be gainsaid that if tenures of tribunals' members are short: say two years, or if their salaries are pegged at unrealistically low levels, or if their presiding members are given no administrative control or powers, the objective of efficient, fair, and impartial justice delivery would be defeated. It cannot then be argued that each of these are "policy" matters beyond the court's domain."

95. Justice Bhat distinguished judicial review concerning tribunals from that involving pure policy matters, explaining that the Court's active intervention is justified in ensuring the independent and efficient functioning of tribunals. He stated:

"90. Ordinarily in pure 'policy' matters falling within Parliamentary or executive domain, such as economic, commercial, financial policies, or other areas such as energy, natural resources etc, this court's standard of judicial review is deferential. In almost all subject matters over which legislative bodies enact law, the wisdom of the policy is rarely questioned; it is too well recognised that in such matters, judicial review extends to issues concerning liberties of citizens, and further, whether the particular subject matter falls within the legislative field of the legislative body concerned. In matters where the executive implements those laws, the scrutiny extends to further seeing the legality and constitutionality of such action.

Where there is no law, the court considers whether executive competence to act is traceable to the particular legislative field under the Constitution, and whether the executive action sans law, abridges people's liberties. Deference to matters executive appears to be highest, when the country faces emergencies and existential threats. However, in matters that concern administration of justice, especially where alternative adjudicatory forums are created, the court's concern is greater. This is because the Constitution does not and cannot be read so as to provide two kinds of justice: one through courts, and one through other bodies.

The quality and efficacy of these justice delivery mechanisms have to be the same, i.e., the same as that provided by courts, as increasingly, tribunals adjudicate disputes not only between state agencies and citizens, but also between citizens and citizens as well as citizens and powerful corporate entities. Therefore, it is the "equal protection" of laws (under Article 14 of the Constitution of India), guaranteed to all persons, through institutions that assure the same competence of its personnel, the same fair procedure, and the same independence of adjudicators as is available in existing courts, that stands directly implicated. Consequently, when this court scrutinizes any law or measure dealing with a new adjudicatory mechanism, it is through the equal protection of law clause under Article 14 of the Constitution."

96. Justice Bhat observed that no parent enactment governing the establishment of various tribunals prescribed any age qualification (whether as a minimum age requirement or an upper age bar) as part of the eligibility criteria for appointments. He further noted that such an age condition was neither incorporated in the provisions of the Finance Act, 2017, nor introduced in the 2017 Rules, which were subsequently struck down in *Rojer Mathew* (supra).

An indirect age restriction was, for the first time, introduced through the 2020 Rules framed under the Finance Act, 2017, by mandating that otherwise qualified advocates and chartered accountants must have a minimum of 25 years of practice. The Court in MBA (IV) found this requirement to be unsustainable and directed that it be appropriately amended. Subsequently, and seemingly in response, the impugned Ordinance amended the Finance Act, 2017 to introduce, for the first time, a direct minimum age requirement of 50 years. Justice Bhat struck down the minimum age requirement, holding:

"92. The challenge to the first proviso to Section 184, which prescribes the age qualification, has to be seen from several angles. First, the underlying parent statutes which created the tribunals (ITAT, CESTAT, TDSAT, CAT) did not prescribe, as an eligibility criterion for selection of candidates as members, any minimum age. The prescription of 50 years as a minimum eligibility criterion, in the opinion of this court, is without any rationale. The ITAT has existed for the last 79 years; no less than 33 of its members were appointed as judges of various High Courts; one of them (Ranganathan, J.) was appointed to this court. The CESTAT too has comprised advocates who have staffed the tribunal efficiently.

The absence of any explanation for the preference given to older persons, in fact leads to an absurd result- as was pointed out in MBA-III (2021) 7 SCC 369 and as has been reiterated by L. Nageswara Rao, J. in his opinion. The Constitution of India makes an advocate who has practiced for more than 10 years, eligible for consideration for appointment as a judge of the High Court and even this Court. An advocate with 7 years' practice with the Bar can be considered for appointment to the position of a District Judge. Prescribing 50 years as a minimum age limit for consideration of advocates has the devastating effect of entirely excluding successful young advocates, especially those who might be trained and competent in the particular subject (such as Indirect Taxation, Anti-Dumping, Income-Tax, International Taxation and Telecom Regulation).

The exclusion of such eligible candidates in preference to those who are more than 50 years of age is inexplicable and therefore entirely arbitrary. As this Court in its previous judgment (Rojer Mathew (2020) 6 SCC 1) has pointed out in another context, the exclusion of such young and energetic legal practitioners could result in not so efficient or competent practitioners left in a field for consideration which would have telling effects on the quality of decisions they are likely to render.

93. Prescribing 50 years' minimum age as a condition for appointment to these tribunals is arbitrary also because absolutely no reason is forthcoming about what impelled Parliament to divert from the long-established criteria of giving weightage to actual practice, reputation, integrity and subject expertise, without a minimum age criterion, in the pleadings in this case, nor in any other cases

(Madras Bar Assn. (2010) 11 SCC 1 Madras Bar Association (IV) and Roger Mathew (2020) 6 SCC 1). Such being the case, it is astonishing that in the span of a year (i.e. after the decision in Roger Mathew (2020) 6 SCC 1) "new thinking" seems to have prevailed to frame rules excluding advocates who can otherwise, based on their expertise, be considered for appointment to even High Courts.

94. This Court would also observe that the consideration of such younger advocates in the age group of 40-45 years would have long term benefits since the domain knowledge and expertise in such areas (Telecom Regulation, Taxation -both Direct and Indirect, GATT Rules, International Taxation etc.) would be useful in adjudication in these tribunals and lead to a body of jurisprudence. Depending on how such counsel/advocates fare as members of the Tribunal, having regard to their special knowledge of these laws, at a later and appropriate stage, they may even be considered for appointment to High Courts.

95. The age criteria, impugned in this case also leads to wholly anomalous and absurd results. For instance, an advocate with 18 or 20 years' practise, aged 44 years, with expertise in the field of indirect taxation, telecom, or other regulatory laws, would be conversant with the subject matter. Despite being eligible, (as she or he would fulfil the parameters of at least 10 years' practice, in the light of the decision in MBA IV) such a candidate would be excluded. On the other hand, an individual who might have practiced law for 10 years, and later served as a private or public sector executive in an entirely unrelated field, but who might be 50 years of age, would be considered eligible, and can possibly secure appointment as a member of a tribunal. Thus, the age criterion would result in filtering out candidates with more relevant experience and qualifications, in preference to those with lesser relevant experience, only on the ground of age.

98. Given that the essential educational qualifications and experience in the relevant field are fixed for all candidates, for a classification based on minimum age for appointment (like in the present case) to succeed, the Union cannot say that it should be held to be valid, irrespective of the nature and purposes of the classification or the quality and extent of the difference in experience between candidates.

As between someone with 18 years' experience but aged 42 or 43 years, and someone with only 12 years' experience, if a system of weightage for experience and qualification were to be applied, the one with greater experience would in all likelihood be selected. Then, to say that one with lesser experience, but who is more aged should be selected and appointed, not only eliminating the one with more experience, but even disqualifying her or him, would mean that better candidates have to be overlooked and those with lesser experience would be appointed, solely on the ground that the latter is over 50 years of age.

99. In the present case, the rule has the effect of excluding deserving candidates, without subserving any discernible public policy or goal. Thus, the classification is based on no justifiable rationale; nor can it be said that the age criterion has some nexus with the object sought to be achieved, such as greater efficiency or experience.

103. In the present case, therefore, the qualification of a minimum age of 50 years as essential for appointment, is discriminatory because it is neither shown to have a rational nexus with the object sought to be achieved, i.e. appointing the most meritorious candidates; nor is it shown to be based on any empirical study or data that such older candidates fare better, or that younger candidates with more relevant experience would not be as good, as members of tribunals. It is plain and simple, discrimination based on age. The criterion (of minimum 50 years of age) is virtually "picked out from a hat" (An expression used in an analogous context, while declaring a cut-off date to be arbitrary, in *D.R. Nim v. Union of India* AIR 1967 SC 1301) and wholly arbitrary."

97. Justice Bhat also held that the experience of civil servants, though broad and diverse, does not necessarily involve adjudicatory functions. In contrast, advocates, chartered accountants, and tax officers regularly engage in legal interpretation and adjudication. Hence, the "status" of tribunal members cannot be compared rigidly with that of civil servants, and the argument that service officers reach a certain rank only around the age of 50 cannot justify a minimum age requirement or determine equivalence.

98. Justice Bhat rejected the Union's contention that a minimum age of 50 years was necessary to maintain parity between members of the civil services and other eligible candidates for tribunal appointments. He held that the proposed equivalence between tribunal members and civil servants was misplaced, and the argument that such an age criterion ensured uniformity across services was without merit and therefore dismissed. It was held:

"107. There are other points of distinction too between civil servants and members of tribunals. Members of tribunals are not drawn from any civil service; they are not holders of civil posts. Civil servants, especially members of the All-India Services recruited by the Union, some of whom are deployed to different States, are governed by rules and other service conditions embodied in circulars and orders. These govern their entire universe of employment: starting with eligibility conditions, rules for recruitment and selection, pay and allowances, seniority, promotion, discipline and other matters related to misconduct, pension, terminal benefits etc.

On the other hand, such rules or similar rules do not apply to members of tribunals not drawn from public service. It is only conditions of equivalence such

as pay scale which they are assured of under the rules, which also determine their status. The manner of selection, conditions of eligibility, rules for their removal upon proven misbehaviour and so on, are entirely different from public servants. In fact, the latter category, i.e. members of tribunals not drawn from public service sources, are not even holders of civil posts or members of any encadred civil service. This has been clarified in at least two judgments of this court [State of Maharashtra v. Labour Law Practitioners' Assn., (1998) 2 SCC 688 : 1998 SCC (L&S) 657 : (SCC p. 697, para 18)

"18. Going by these tests laid down as to what constitutes judicial service under Article 236 of the Constitution, the Labour Court Judges and the Judges of the Industrial Court can be held to belong to judicial service."

In S.D. Joshi v. High Court of Bombay, (2011) 1 SCC 252, at p. 267, para 29 : (2011) 1 SCC (Civ) 106 : (2011) 1 SCC (L&S) 32 the previous decision in Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala, AIR 1961 SC 1669 : (1962) 2 SCR 339 was quoted : (Harinagar Sugar Mills case, AIR p. 1680, para 32)

"32. Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary courts of civil judicature. Their procedures may differ, but the functions are not essentially different."

In Union of India v. K.B. Khare, 1994 Supp (3) SCC 502 : 1995 SCC (L&S) 105, this Court repelled the contention that members of the Central Administrative Tribunals were government officials, subject to its rules : (SCC p. 508, para 17)

"17. On the contrary, an independent judicial service, the appointment in CAT is on tenure basis. The pension relating to such post is clearly governed by Rule 8 of the Rules quoted above and at the risk of repetition, we may state it exhaustive in nature."]. They are not governed by Article 311 of the Constitution, nor are their conditions of service laid out in rules framed under the proviso to Article 309 of the Constitution. Such being the position, the argument of parity, in the opinion of the Court, is entirely devoid of merit.

108. Nor is the argument of the Attorney General that a uniform age is necessary, merited. There is no material to show that members recruited on the technical side, such as experts in engineering, scientific or other technical fields would be suitable only after they cross the age of 50. In fact, one can complete a doctoral thesis and become a holder of a Ph.D at the time that she or he is 30 years or even below. To be a professor, one has to possess 10 years teaching experience; there is no minimum age under the relevant regulations framed by the UGC. Even non-teaching personnel, on the basis of their research, can be designated professors [UGC Regulations on Minimum Qualifications for Appointment of Teachers and

Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010:

"4.0.0 DIRECT RECRUITMENT4.1.0 PROFESSOR A. (i) An eminent scholar with PhD qualification(s) in the concerned/allied/relevant discipline and published work of high quality, actively engaged in research with evidence of published work with a minimum of 10 publications as books and/or research/policy papers.(ii) A minimum of ten years of teaching experience in university/college, and/or experience in research at the University/National level institutions/industries, including experience of guiding candidates for research at doctoral level.(iii) Contribution to educational innovation, design of new curricula and courses, and technology - mediated teaching learning process.(iv) A minimum score as stipulated in the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS), set out in this Regulation in Appendix III. Or B.

An outstanding professional, with established reputation in the relevant field, who has made significant contributions to the knowledge in the concerned/allied/relevant discipline, to be substantiated by credentials."

<https://www.ugc.ac.in/oldpdf/regulations/revised_finalugcregulationfinal10.pdf>

visited on 25-6-2021 @ 16 : 18 hours.]. As on date, there are vicechancellors in some state and national universities who had not completed 45 years at the time of appointment. Such being the position, experience in the field either in the academic, technical or scientific field for a further period of 10 or 12 years or even 15 years would not add up to the minimum threshold of the impugned criteria, i.e. 50 years of age.

109. Purely as empirical data, ITAT has a sanctioned strength of 126 members, (which includes accountant members, technical members - who are drawn from the Indian Revenue Service holding the rank of Commissioner of Appeals, for 3 years, and advocates). 66 members presently are in office, appointed since the year 1999 [<<https://itat.gov.in/page/content/members>> (last accessed on 21-6-2021).]. Of these, 10 members were below the age of 40 at the time of their appointment; 20 members were between the ages of 40-45, and 15 members were between the ages of 46-50 at the time of their respective appointments. Cumulatively, 44 members out of 66 were appointed below the age of 50. Only 17 members were 50 or above at the time of their appointment. Data is not provided in respect of 5 members.

This data as indeed similar data from other tribunals, shows that past appointment to these positions was amongst younger, and competent persons. The Union has not shown why this past history requires departure, and why that longstanding basis for appointing younger professionals, now needs to be departed from, in

public interest. Significantly, commissioners of appeals (of income tax) - in the respective service rules, typically are appointed after 18 or so years of service; if one adds 3 years, an incumbent Commissioner could be well below 50 years. She or he would be completely familiar with the adjudicatory process in tax laws. Exclusion of such otherwise qualified and suited personnel, too, is irrational."

99. Justice Bhat held that MBA (IV) had conclusively settled the law, making advocates eligible for appointment to all tribunals, and this mandate cannot now be ignored or diluted. The Union of India has, however, failed to take steps to implement the said direction.

100. Justice Bhat declared that all candidates who are otherwise qualified and experienced must be considered for appointment without reference to this age restriction. Further, to the extent that the 2021 Ordinance sought to curtail or interfere with the tenure of members appointed under interim orders, it was also declared invalid, and such members were held entitled to continue their full term under the pre-amended law and rules. He held:

"116. the curtailment of tenure to five years, of these few individuals appointed as members of tribunals, who were entitled to continue in office in terms of the preexisting enactments (upto the age of 62 years etc.) is arbitrary. Apart from the fact that the Union wishes to curtail their tenure despite the finality of directions of this court in Roger Mathew (2020) 6 SCC 1 and MBA (IV), there is no conceivable rationale. Nor has any overriding public interest been espoused as a justification for this. The divesting of judicial office by legislative fiat, in this court's opinion, directly affects the independence of the judiciary. It also amounts to naked discrimination, because all other members of the same tribunals would enjoy longer tenure, in terms of the preexisting conditions of service, which prevailed at the time of their appointment."

101. Justice Bhat observed that the large volume of pending cases before tribunals reflects the significant judicial work they perform, making it essential that these bodies be staffed with competent and qualified judicial and technical members. He emphasized that the Union of India must urgently complete the appointment process to ensure timely and effective delivery of justice.

102. Justice Bhat expressed hope that this judgment in MBA (V), in a line of decisions beginning with MBA (I), would finally put an end to all issues on the subject. He concluded that the Court's intervention should not be seen as opposing parliamentary or executive wisdom. Instead, each judgment on tribunals contributes to the constitutional dialogue among the three branches of governance. He emphasized that the Court intervenes only to uphold citizens' rights and ensure that adjudicatory bodies remain independent, competent, and fair.

103. Justice Hemant Gupta dissented from the majority. He emphasized that judicial directions under Articles 141 and 142 of the Constitution bind courts and authorities, but not the legislature, which has exclusive competence to enact laws. He stated that "the judiciary in exercise of power of judicial review can strike down any legislation which violates fundamental rights or if it is beyond the legislative competence, but the courts cannot direct the legislature to frame or enact a law and in a particular manner." He added that even "if it is contravening to any such direction, the legislature is within its jurisdiction to determine the minimum eligibility age for the purpose of appointment".

104. The jurisprudence on tribunals that has evolved through this long line of decisions forms the binding framework within which this Bench must operate. As a Bench of two Judges, we are constitutionally and judicially bound by the law declared in the decisions of larger Benches. The principles laid down by Constitution Benches and three-Judge Benches must be given full effect. Accordingly, the settled jurisprudence of larger Benches not only informs but compels the conclusions we reach. It provides the normative standards against which the Impugned Act must be assessed, and we remain duty-bound to enforce those standards as part of the constitutional discipline that governs judicial decisionmaking.

V. ATTORNEY GENERAL'S PLEA TO REFER THE ISSUE TO A LARGER BENCH

105. During the course of the hearing on 4th November 2025, the learned Attorney General for India submitted that the Union of India has filed an application requesting that the present matter be placed before a larger bench, instead of the Bench presently seized of it. In principle, there can be no quarrel with the proposition that this Court may, in an appropriate case, constitute a larger Bench where issues of grave or substantial constitutional significance arise. However, in the present proceedings, the learned Attorney General has been unable to indicate any cogent or compelling reason that would justify such a reference at this stage.

106. Article 145(3) of the Constitution mandates the constitution of a Bench of at least five Judges only where a "substantial question of law as to the interpretation of this Constitution" is involved. The questions which arise in this case concerning the constitution, composition, qualifications, conditions of service and functioning of tribunals have already been examined in detail by Constitution Benches of this Court in earlier decisions, including MBA (I) and Rojer Mathew (*supra*).

Those pronouncements have, in turn, been consistently applied and elaborated upon in subsequent decisions in MBA (II), MBA (III), MBA (IV) and MBA (V).

The present case does not present any new or unresolved constitutional question that would require reconsideration of those precedents or departure from them. A reference to a larger Bench would, in these circumstances, serve no meaningful jurisprudential purpose and would instead result in avoidable consumption of judicial time.

107. There is an additional consideration of procedural fairness. The request for reference has been made at a stage when the hearing before this Bench has progressed substantially and one side has already been fully heard. A prayer of this nature ought properly to be raised at an earlier point in the proceedings so that the Court and the parties may structure their submissions accordingly. Entertaining such a plea belatedly would risk undermining fairness in the conduct of the hearing.

108. Finally, we cannot lose sight of the fact that the controversy before us directly affects the tenure, service conditions and legitimate expectations of a large number of individuals presently serving, or aspiring to serve, in tribunals across the country. More importantly, the persistent vacancies and uncertainty in the tribunal system have a direct bearing on access to justice for citizens whose disputes lie within their jurisdiction. Deferring adjudication, by now embarking on a reference to a larger Bench, would only prolong this state of uncertainty, to the detriment of litigants and the administration of justice.

109. For all these reasons, we are of the considered view that no case has been made out for a reference under Article 145(3). The application seeking reference to a larger Bench is, accordingly, rejected.

VI. ANALYSIS OF THE SUBMISSIONS

110. The first issue that arises for consideration is whether Parliament possesses the authority to disregard a judicial pronouncement and to enact a statute in any manner it deems appropriate. This contention goes to the core of the present debate. At its foundation lies an appeal to the doctrine of parliamentary supremacy, a principle recognised in several jurisdictions where the legislature is the supreme law-making body, unconstrained by judicial review. However, the Indian constitutional framework does not subscribe to parliamentary sovereignty, nor does it vest unqualified supremacy in the judiciary. The architecture of our Constitution is firmly rooted in the principle of constitutional supremacy.

111. In this regard, reference is drawn to in Special Reference No. 1 of 1964³¹ where Chief Justice Gajendragadkar, speaking for six Judges of the Court held:

"40. In a democratic country governed by a written Constitution, it is the Constitution which is supreme and sovereign. It is no doubt true that the Constitution itself can be amended by the Parliament, but that is possible because

Article 368 of the Constitution itself makes a provision in that behalf, and the amendment of the Constitution can be validly made only by following the procedure prescribed by the said article.

That shows that even when the Parliament purports to amend the Constitution, it has to comply with the relevant mandate of the Constitution itself. Legislators, Ministers, and Judges all take oath of allegiance to the Constitution, for it is by the relevant provisions of the Constitution that they derive their authority and jurisdiction and it is to the provisions of the Constitution that they owe allegiance. Therefore, there can be no doubt that the sovereignty which can be claimed by the Parliament in England cannot be claimed by any legislature in India in the literal absolute sense."

112. Furthermore, in *His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Another*³² in his opinion, Chief Justice SM Sikri stated that "supremacy of the Constitution" is one of the features of the basic structure of the Constitution. Later, in *State of Rajasthan and Others v. Union of India and Others*³³ Justice Bhagwati (as his Lordship then was), in his concurring opinion, summarized the principle as well:

"149. It is necessary to assert in the clearest terms, particularly in the context of recent history, that the Constitution is *Suprema lex*, the paramount law of the land, and there is no department or branch of government above or beyond it. Every organ of government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority. No one howsoever highly placed and no authority howsoever lofty can claim that it shall be the sole judge of the extent of its power under the Constitution or whether its action is within the confines of such power laid down the Constitution."

113. This was reiterated in *Kalpna Mehta and Others v. Union of India and Others*³⁴ It was held by Chief Justice Deepak Mishra that:

"20. The Constitution is the fundamental document that provides for constitutionalism, constitutional governance and also sets out morality, norms and values which are inhered in various articles and sometimes are decipherable from the constitutional silence. Its inherent dynamism makes it organic and, therefore, the concept of 'constitutional sovereignty' is sacrosanct. It is extremely sacred and, as stated earlier, the authorities get their powers from the Constitution. It is the source. Sometimes, the constitutional sovereignty is described as the supremacy of the Constitution.

23. Thus, the three wings of the State are bound by the doctrine of constitutional sovereignty and all are governed by the framework of the Constitution. The

Constitution does not accept transgression of constitutional supremacy and that is how the boundary is set."

114. In his concurring opinion, Justice Chandrachud (as his Lordship then was) stated as follows:

"227. The Constitution does not allow for the existence of absolute power in the institutions which it creates. Judicial review as a part of the basic features of the Constitution is intended to ensure that every institution acts within its bounds and limits."

115. Thus, under the model of constitutional supremacy, every organ of the State derives its authority from the Constitution and remains bound by the limitations it prescribes. Parliament, though entrusted with wide legislative powers, must enact laws within the contours of its legislative competence and in conformity with constitutional rights, values, and structural principles. The power to assess whether a law comports with these limitations is expressly vested in the courts.

When the Court interprets the Constitution and pronounces upon the validity of a statute, that pronouncement becomes the authoritative and binding declaration of the law. As has long been recognised, the Constitution is what the Court says it is, not in the sense of aggrandising judicial authority, but as a necessary corollary of the Court's role as the final arbiter of constitutional meaning. It would be apt to quote the words of Justice Bhagwati (as his Lordship then was) in *Minerva Mills Ltd. and Others v. Union of India and Others*³⁵ that:

"87. the question arises as to which authority must decide what are the limits on the power conferred upon each organ or instrumentality of the State and whether such limits are transgressed or exceeded The Constitution has, therefore, created an independent machinery for resolving these disputes and this independent Machinery is the judiciary which is vested with the power of judicial review."

116. Consequently, once the Court has struck down a provision or issued binding directions after identifying a constitutional defect, Parliament cannot simply override or contradict that judicial decision by reenacting the very same measure in a different form. What Parliament may legitimately do is to cure the defect identified by the Court, whether by altering the underlying conditions, removing the constitutional infirmity, or restructuring the statutory framework in a manner consistent with the Court's reasoning. A valid legislative response must therefore engage with and remedy the constitutional violation pointed out by the judiciary. It cannot merely restate or repackage the invalidated provision.

117. Parliament, like every other institution under our constitutional scheme, must operate within the bounds of the Constitution. Its discretion is broad but not absolute. It must respect the principles of separation of powers, the guarantees of

fundamental rights, and the structural values (such as judicial independence) that are part of the basic framework of our constitutional order.

118. Where a legislative measure attempts to nullify or circumvent a binding constitutional judgment without curing the underlying defect, it not only exceeds Parliament's authority but also violates the doctrine of constitutional supremacy itself. This has been aptly discussed in the decision in *NHPC LTD. v. State of Himachal Pradesh Secretary and Others*³⁶ The case arose out of a long-standing dispute concerning the imposition of water cess/royalty by the State of Himachal Pradesh on hydroelectric projects operated by NHPC (a Central Government undertaking).

Earlier, certain notifications issued by the State were set aside by the Himachal Pradesh High Court, holding that the State lacked legislative competence under the Constitution to levy such cess on hydroelectric projects which were under the control of the Union Government. In response, the State legislature enacted the Himachal Pradesh Water Cess on Hydro Power Generation Act, 2023, which purported to retrospectively validate the earlier imposts and revive the collections that had been invalidated by the court's judgment. NHPC challenged this new legislation before the Supreme Court, contending that it amounted to a legislative overruling of a judicial decision and violated the doctrine of separation of powers. The Court held:

"11. What follows from the aforesaid judicial precedent is, a legislature cannot directly set aside a judicial decision. However, when a competent legislature retrospectively removes the substratum or foundation of a judgment to make the decision ineffective, the same is a valid legislative exercise provided it does not transgress on any other constitutional limitation.

Such a legislative device which removes the vice in the previous legislation which has been declared unconstitutional is not considered to be an encroachment on judicial power but an instance of abrogation recognised under the Constitution of India. The decisions referred to above, manifestly show that it is open to the legislature to alter the law retrospectively, provided the alteration is made in such a manner that it would no more be possible for the Court to arrive at the same verdict. In other words, the very premise of the earlier judgment should be removed, thereby resulting in a fundamental change of the circumstances upon which it was founded.

12. The power of a legislature to legislate within its field, both prospectively and to a permissible extent, retrospectively, cannot be interfered with by Courts provided it is in accordance with the Constitution. It would be permissible for the legislature to remove a defect in an earlier legislation, as pointed out by a constitutional court in exercise of its powers by way of judicial review.

This defect can be removed both prospectively and retrospectively by a legislative process and previous actions can also be validated. However, where a legislature merely seeks to validate the acts carried out under a previous legislation which has been struck down or rendered inoperative by a Court, by a subsequent legislation without curing the defects in such legislation, the subsequent legislation would also be ultra-vires. Such instances would amount to an attempt to 'legislatively overrule' a Court's judgment by a legislative fiat, and would therefore be illegal and a colourable legislation.

13. The role of the judiciary in galvanising our constitutional machinery characterised by institutional checks and balances, lies in recognising that while due deference must be shown to the powers and actions of the other two branches of the government, the power of judicial review may be exercised to restrain unconstitutional and arbitrary exercise of power by the legislature and executive organs. The power of judicial review is a part of the basic feature of our Constitution which is premised on the rule of law. Unless a judgment has been set aside by a competent court in an appropriate proceeding, finality and binding nature of a judgment are essential facets of the rule of law informing the power of judicial review.

In that context, we observe that while it may be open to the legislature to alter the law retrospectively, so as to remove the basis of a judgment declaring such law to be invalid, it is essential that the alteration is made only so as to bring the law in line with the decision of the Court. Simply setting at naught a decision of a court without removing the defects pointed out in the said decision, would sound the death knell for the rule of law. The rule of law would cease to have any meaning if the legislature is at liberty to defy a judgment of a court by simply passing a validating legislation, without removing the defects forming the substratum of the judgment by use of a non-obstante clause as a technique to do so.

14. The legislative device of abrogation by enacting retrospective amendments to a legislation, as a means to remove the basis of a judgment and validate the legislation set aside or declared inoperative by a Court, must be employed only with a view to bring the law in line with the judicial pronouncement. Abrogation is not a device to circumvent any and all unfavourable judicial decisions. If enacted solely with the intention to defy judicial pronouncement, such an amendment Act may be declared to be ultra-vires and as a piece of 'colourable legislation.'

The device of abrogation, by way of introducing retrospective amendments to remove the basis of a judgment, may be employed when a legislature is under the bonafide belief that a defect that crept into the legislation as it initially stood, may be remedied by abrogation. An act of abrogation is permissible only in the

interests of justice, effectiveness and good governance, and not to serve the oblique agenda of defying a court's order, or stripping it of its binding nature.

15. The Constitution of India precludes any interference by the legislature with the administration of justice and judicial determination of the validity of a legislation. The power of abrogation is to be exercised in the light of the said Constitutional mandate. The legislative device of abrogation must be in accordance with the following principles which are not exhaustive:

(i) There is no legal impediment to enacting a law to validate a legislation which has been held by a court to be invalid, provided, such a law removes the basis of the judgment of the court, by curing the defects of the legislation as it stood before the amendment.

(ii) The validating legislation may be retrospective. It must have the effect that the judgment pointing out the defect would not have been passed, if the altered position as sought to be brought in by the validating statute existed before the court at the time of rendering its judgment.

(iii) Retrospective amendment should be reasonable and not arbitrary and must not be violative of any Constitutional limitations.

(iv) Setting at naught a decision of a court without removing the defect pointed out in the said decision is opposed to the rule of law and the scheme of separation of powers under the Constitution of India.

(v) Abrogation is not a device to circumvent an unfavourable judicial decision. If enacted solely with the intention to defy a judicial pronouncement, an Amendment and Validation Act of 1997 may be declared as ultra-vires."

[Emphasis supplied]

119. In a judgment of this Court in the case of Dr. Jaya Thakur v. Union of India and Others³⁷ (to which one of us Gavai, J. as he then was a party) this Court held that a writ of mandamus could not be nullified by a subsequent legislation made by the legislator. That a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance simply overrules a judgment unless the foundation of the judgment is removed. Referring to several judgments of this Court, the following principles as to the manner in which the device of abrogation could be employed, were identified as under:

"114. It could, thus, clearly be seen that this Court has held that the effect of the judgments of this Court can nullified by a legislative act removing the basis of the judgment. It has further been held that such law can be retrospective. It has,

however, been held that retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. It has been held that the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed. This Court has, however, clearly held that nullification of mandamus by an enactment would be impermissible legislative exercise. This Court has further held that transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the rule of law and of Article 14 of the Constitution of India."

120. Therefore, we do not find merit in the argument of the learned Attorney General that Parliament has discretion to ignore the decisions of this Court.

121. The second central contention advanced by the Union is that the Court cannot compel Parliament to legislate in a particular manner. This principle is undoubtedly correct. This Court has repeatedly acknowledged the institutional limits of judicial power and has cautioned against intruding into the prerogative of the legislature by dictating the precise contents of a statute. The constitutional scheme does not permit the judiciary to prescribe the text of a law or to mandate that Parliament adopt a specific policy choice.

122. However, this proposition does not carry the matter very far. While the Court cannot require Parliament to enact a law in a particular form, it unquestionably retains the authority, and indeed the constitutional obligation, to examine the validity of any law that Parliament enacts. Judicial review is a basic feature of the Constitution. If a legislative measure infringes fundamental rights, violates structural principles such as separation of powers or judicial independence, exceeds legislative competence, or frustrates binding constitutional directions, the Court may strike it down. The inability to compel Parliament to legislate in a specific manner does not translate into an obligation to blindly accept any law that Parliament enacts.

123. Thus, a clear distinction must be maintained between directing legislation and reviewing legislation. The former is forbidden, because the Court cannot function as a law-maker. The latter is indispensable to preserving the supremacy of the Constitution. Where the Court identifies constitutional infirmities and issues mandatory directions to ensure compliance with constitutional principles, such as those concerning the independence, composition, or tenure of adjudicatory bodies, those directions are binding. Parliament may respond by removing the basis of the judgment through curative legislation, but it cannot simply enact a statute that reproduces or perpetuates the very defects the Court has critiqued. Thus, while the judiciary cannot dictate policy, it can and must ensure that legislative choices conform to the Constitution. Judicial restraint in law-making does not imply judicial abdication in constitutional adjudication.

124. The next submission is that the constitutionality of legislation cannot be tested on the touchstone of what the Union describes as "abstract principles," such as separation of powers or judicial independence. This argument, however, has already been examined in depth, particularly in the concurring opinion of Justice Ravindra Bhat in *MBA (V)*, and has been categorically rejected. As this Court has repeatedly clarified, the principles of separation of powers and judicial independence are not vague, free-floating ideals. They are structural pillars of our constitutional order and integral components of constitutionalism worldwide.

125. Far from being abstract, these principles are firmly embedded in the text, scheme, and spirit of the Constitution. Judicial independence is inseparable from the guarantee of judicial review, and judicial review itself is the mechanism that ensures that all State action (legislative, executive, or judicial) conforms to the Constitution. Similarly, the doctrine of separation of powers is not merely philosophical. It underwrites the very distribution of authority among the three branches of government. It is reflected in Articles 32, 136, 141, 226, and 227 of the Constitution, which vest the judiciary with the power to interpret the law, enforce fundamental rights, and supervise subordinate courts and tribunals. It is also embedded in provisions relating to appointment, tenure, and removal of judges, all of which insulate the courts from executive dominance.

126. Legislative measures concerning the structure, composition, and functioning of tribunals necessarily implicate these constitutional principles because tribunals discharge judicial functions and form part of the larger system of justice administration. When Parliament designs or alters the tribunal system, it must do so in a manner consistent with the constitutional requirements of independence, impartiality, and effective adjudication. A law that undermines these foundational values, such as by enabling executive control over appointments, curtailing tenure arbitrarily, or weakening institutional autonomy, does not merely offend an "abstract principle". It strikes at the core of the constitutional arrangement.

127. Furthermore, through the long line of decisions from *Sampath Kumar (supra)* to *MBA (V)*, this Court has consistently interpreted Articles 323-A and 323-B in a manner that firmly anchors the principles of separation of powers and judicial independence within the constitutional framework governing tribunals. These structural principles are not external additions but flow directly from the constitutional scheme embodied in these articles, which permit the creation of adjudicatory bodies exercising judicial power.

Because tribunals perform functions that were traditionally within the domain of courts, the standards applicable to judicial institutions necessarily inform the conditions of their appointments, qualifications, tenure, and service conditions. Over time, therefore, this Court's jurisprudence has evolved a set of constitutional benchmarks, guiding norms that define what an independent and effective

tribunal must look like. These benchmarks constitute the operative test for evaluating the constitutional validity of laws pertaining to tribunals.

128. Therefore, when this Court scrutinises legislation affecting tribunals through the lens of separation of powers, judicial independence, and Article 14, it is not invoking amorphous notions but enforcing strict constitutional mandates. These structural principles provide the normative boundaries within which Parliament must legislate. To treat them as abstract or unenforceable would be to ignore decades of constitutional jurisprudence and to hollow out the very safeguards that ensure the rule of law.

129. The Court's interpretative authority to expand upon and define the scope of constitutional provisions is neither novel nor exceptional. It has consistently exercised this function in diverse contexts. For instance, by broadening the ambit of fundamental rights under Articles 19 and 21, and by elaborating the process of judicial appointments under Articles 124 and 217. Once the Court interprets the content and purpose of a constitutional provision, that interpretation becomes binding and normative upon all branches of government, including the legislature and the executive.

130. Another example is *M. Nagaraj and Others v. Union of India and Others*³⁸, where the Court upheld the constitutional amendments enabling reservation in promotions but simultaneously laid down mandatory preconditions, such as the collection of quantifiable data on backwardness, inadequacy of representation, and administrative efficiency, without which any implementing legislation would be unconstitutional. This was not treated as judicial legislation but as a constitutional framework within which Parliament and the States were required to operate. In the years that followed, various statutes and executive actions providing for reservation in promotions were invalidated because they failed to satisfy the *Nagaraj* (supra) requirements. The constitutional principles articulated by the Court became the standard against which legislative validity was tested.

131. Similarly, the right to privacy upheld in *K.S. Puttaswamy and Another v. Union of India and Others*³⁹ is not expressly stated in any single constitutional provision. Yet the Court traced its existence to the penumbra of various guarantees, Articles 19, 21, and 25, and to the broader constitutional commitment to dignity, autonomy, and liberty. Once articulated, the privacy framework became a guiding doctrine for assessing the validity of a wide range of laws and State actions, including those relating to personal autonomy.

132. In the same way, the norms laid down in the tribunal cases, regarding tenure, age limits, selection processes, qualifications, and independence from executive control, are not abstract judicial preferences. They are constitutional requirements distilled from Articles 323-A and 323-B read with the doctrines of separation of

powers, independence of the judiciary, and the guarantee of equality under Article 14. These principles therefore furnish the constitutional tests that any legislation on tribunals must satisfy. Where Parliament re-enacts provisions previously struck down without curing the underlying defect, the resulting legislation remains vulnerable to invalidation, not because the Court is imposing its own policy, but because the Constitution itself demands adherence to these structural safeguards.

133. When the Court examines the validity of a statutory provision governing tribunals, it does not issue legislative directions in the strict sense. Instead, it tests the law against these constitutionally entrenched standards. In doing so, the Court reinforces the idea that the tribunal system derives its constitutional legitimacy from adherence to the same principles that safeguard judicial independence and the rule of law.

134. Seen in this light, the Union's argument does not stand. The validity of legislation may, and must, be tested against structural principles such as separation of powers and judicial independence when the legislation in question directly implicates the constitutional design of the justice system. Judicial enforcement of these principles is an essential feature of constitutional adjudication, not an overreach.

VII. THE VALIDITY OF THE IMPUGNED ACT

135. We shall now consider whether the Impugned Act merely repackages what was struck down in MBA (V), without curing its defects. On a comparison of the provisions of the 2021 Ordinance with the Impugned Act, it is found that several provisions are verbatim repeated. The following table captures this:

Tribunal Reforms Ordinance 2021	Tribunal Reforms Act 2021
Chapter XI	Chapter II
Section 12: In the Finance Act, 2017 (hereinafter referred to as the Finance Act),-	Section 3:
(i) for section 184, the following section shall be substituted, namely:-	(1) ... Provided that a person who has not completed the age of fifty years shall not be eligible for appointment as a Chairperson or Member.
"184. (1) ... Provided that a person who has not completed the age of fifty years shall not be eligible for appointment as a Chairperson or Member:	
184 (2) The Chairperson and Members	3 (2) The Chairperson and the Member

of a Tribunal shall be appointed by the Central Government on the recommendation of a Searchcum-Selection Committee (hereinafter referred to as the Committee) constituted under sub-section (3), in such manner as the Central Government may, by rules, provide.	of a Tribunal shall be appointed by the Central Government on the recommendation of a Searchcum-Selection Committee constituted under sub-section (3), in such manner as the Central Government may, by rules, provide.
184 (3) The Search-cum- Selection Committee shall consist of- (a) the Chief Justice of India or a Judge of Supreme Court nominated by him- Chairperson of the Committee; (b) two Secretaries nominated by the Government of India - Members; (c) one Member, who- (i) in case of appointment of a Chairperson of a Tribunal, shall be the outgoing Chairperson of the Tribunal; or (ii) in case of appointment of a Member of a Tribunal, shall be the sitting Chairperson of the Tribunal; or (iii) in case of the Chairperson of the Tribunal seeking reappointment, shall be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court nominated by the Chief Justice of India: Provided that, in the following cases, such Member shall always be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court nominated by the Chief Justice of India, namely:- (i) Industrial Tribunal constituted by the Central Government under the Industrial Disputes Act, 1947; (ii) Tribunals and Appellate Tribunals constituted under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993; (iii) Tribunals where the Chairperson or the outgoing Chairperson, as the case	3 (3) The Search-cum-Selection Committee, except for the State Administrative Tribunal, shall consist of- (a) a Chairperson, who shall be the Chief Justice of India or a Judge of Supreme Court nominated by him; (b) two Members, who are Secretaries to the Government of India to be nominated by that Government; (c) one Member, who - (i) in case of appointment of a Chairperson of a Tribunal, shall be the outgoing Chairperson of that Tribunal; or (ii) in case of appointment of a Member of a Tribunal, shall be the sitting Chairperson of that Tribunal; or (iii) in case of the Chairperson of the Tribunal seeking reappointment, shall be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court, to be nominated by the Chief Justice of India: Provided that in the following cases, such Member shall always be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court, to be nominated by the Chief Justice of India, namely:- (i) Industrial Tribunal constituted by the Central Government under the Industrial Disputes Act, 1947 (14 of 1947); (ii) Debt Recovery Tribunal and Debt Recovery Appellate Tribunal

may be, of the Tribunal is not a retired Judge of the Supreme Court or a retired Chief Justice or Judge of a High Court; and

(iv) such other Tribunals as may be notified by the Central Government in consultation with the Chairperson of the Search-cum-Selection Committee of that Tribunal; and

(d) the Secretary to the Government of India in the Ministry or Department under which the Tribunal is constituted or established - Member Secretary.

established under the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993);

(iii) where the Chairperson or the outgoing Chairperson, as the case may be, of a Tribunal is not a retired Judge of the Supreme Court or a retired Chief Justice or Judge of a High Court; and

(iv) such other Tribunals as may be notified by the Central Government, in consultation with the Chairperson of the Search-cum Selection Committee of that Tribunal; and

(d) the Secretary to the Government of India in the Ministry or Department under which the Tribunal is constituted or established- Member-Secretary:

Provided that the Search-cum-Selection Committee for a State Administrative Tribunal shall consist of-

(a) the Chief Justice of the High Court of the concerned State-Chairman;

(b) the Chief Secretary of the concerned State Government- Member;

(c) the Chairman of the Public Service Commission of the concerned State-Member;

(d) one Member, who-

(i) in case of appointment of a Chairman of the Tribunal, shall be the outgoing Chairman of the Tribunal; or

(ii) in case of appointment of a Member of the Tribunal, shall be the sitting Chairman of the Tribunal; or

(iii) in case of the Chairman of the Tribunal seeking reappointment, shall be a retired Judge of a High Court nominated by the Chief Justice of the High Court of the concerned State:

Provided that such Member shall always be a retired Judge of a High Court nominated by the Chief Justice of the High Court of the concerned State,

if the Chairperson or the outgoing

	Chairperson of the State Administrative Tribunal, as the case may be, is not a retired Chief Justice or Judge of a High Court; (e) the Secretary or the Principal Secretary of the General Administrative Department of the concerned State-Member-Secretary.
184 (4) The Chairperson of the Committee shall have the casting vote.	3 (4) The Chairperson of the Search-cum-Selection Committee shall have the casting vote.
184 (5) The Member-Secretary of the Committee shall not have any vote.	3 (5) The Member-Secretary of the Search-cum-Selection Committee shall not have any vote.
184 (6) The Committee shall determine its procedure for making its recommendations.	3 (6) The Search-cum-Selection Committee shall determine the procedure for making its recommendations.
184 (7) Notwithstanding anything contained in any judgment, order or decree of any court or in any law for the time being in force, the Committee shall recommend a panel of two names for appointment to the post of Chairperson or Member, as the case may be, and the Central Government shall take a decision on the recommendations of the Committee preferably within three months from the date on which the Committee makes its recommendations to the Government.	3 (7) Notwithstanding anything contained in any judgment, order or decree of any court, or in any law for the time being in force, the Search-cum- Selection Committee shall recommend a panel of two names for appointment to the post of Chairperson or Member, as the case may be, and the Central Government shall take a decision on the recommendations made by that Committee, preferably within three months from the date of such recommendation.
184 (8) No appointment shall be invalid merely by reason of any vacancy or absence in the Committee.	3 (8) No appointment shall be invalid merely by reason of any vacancy or absence of a Member in the Search-cum- Selection Committee.
184 (9) The Chairperson and Member of a Tribunal shall be eligible for re-appointment in accordance with the provisions of this section: Provided that in making such re-appointment, preference shall be given to the service rendered by such person.	6. Eligibility for reappointment.-(1) The Chairperson and Member of a Tribunal shall be eligible for reappointment in accordance with the provisions of this Act: Provided that, in making such re-appointment, preference shall be given

	to the service rendered by such person.
184 (10) The Central Government shall, on the recommendation of the Committee, remove from office, in such manner as may be provided by rules, any Member, who- (a) has been adjudged as an insolvent; or (b) has been convicted of an offence which involves moral turpitude; or (c) has become physically or mentally incapable of acting as such a Member; or (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest: Provided that where a Member is proposed to be removed on any ground specified in clauses (b) to (e), he shall be informed of the charges against him and given an opportunity of being heard in respect of those charges.	4. Removal of Chairperson or Member of Tribunal.-The Central Government shall, on the recommendation of the Committee, remove from office, in such manner as may be provided by rules, any Chairperson or a Member, who- (a) has been adjudged as an insolvent; or (b) has been convicted of an offence which involves moral turpitude; or (c) has become physically or mentally incapable of acting as such Chairperson or Member; or (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest: Note: The Explanation Clauses mentioned in the Ordinance have been removed from the Act.
184 (11) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force,- (i) the Chairperson of a Tribunal shall hold office for a term of four years or till he attains the age of seventy years, whichever is earlier; (ii) the Member of a Tribunal shall hold office for a term of four years or till he attains the age of sixtyseven years, whichever is earlier: Provided that where a Chairperson or Member is appointed between the 26th day of May, 2017 and the notified date and the term of his office or the age of retirement specified in the order of appointment issued by the Central	5. Term of office of Chairperson and Member of Tribunal.- Notwithstanding anything contained in any judgment, order or decree of any court, or in any law for the time being in force,- (i) the Chairperson of a Tribunal shall hold office for a term of four years or till he attains the age of seventy years, whichever is earlier; (ii) the Member of a Tribunal shall hold office for a term of four years or till he attains the age of sixtyseven years, whichever is earlier: Provided that where a Chairperson or Member is appointed between the 26th day of May, 2017 and the notified date, and the term of his office or the age of retirement specified in the order of

Government is greater than that which is specified in this section, then, notwithstanding anything contained in this section, the term of office or age of retirement or both, as the case may be, of the Chairperson or Member shall be as specified in his order of appointment subject to a maximum term of office of five years."	appointment issued by the Central Government is greater than that which is specified in this section, then, notwithstanding anything contained in this section, the term of office or age of retirement or both, as the case may be, of the Chairperson or Member shall be as specified in his order of appointment, subject to a maximum term of office of five years.
13 "(2) Subject to the provisions of sections 184 and 185, neither the salary and allowances nor the other terms and conditions of service of Chairperson, Vice Chairperson, Chairman, Vice-Chairman, President, VicePresident, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other Authority may be varied to his disadvantage after his appointment."	7 (2) Neither the salary and allowances nor the other terms and conditions of service of the Chairperson or Member of the Tribunal may be varied to his disadvantage after his appointment.
184. (1) The Central Government may, by notification, make rules to provide for the qualifications, appointment, salaries and allowances, resignation, removal and the other conditions of service of the Chairperson and Members of the Tribunal as specified in the Eighth Schedule: Provided further that the allowances and benefits so payable shall be to the extent as are admissible to a Central Government officer holding the post carrying the same pay: Provided also that where the Chairperson or Member takes a house on rent, he may be reimbursed a house rent subject to such limits and conditions as may be provided by rules.	7. (1) Salary and allowances.- (1) Notwithstanding anything contained in any judgment, order or decree of any court, or in any law for the time being in force, and without prejudice to the generality of the foregoing power, the Central Government may make rules to provide for the salary of the Chairperson and Member of a Tribunal and they shall be paid allowances and benefits to the extent as are admissible to a Central Government officer holding the post carrying the same pay: Provided that, if the Chairperson or Member takes a house on rent, he may be reimbursed a house rent higher than the house rent allowance as are admissible to a Central Government officer holding the post carrying the same pay, subject to such limitations and conditions as may be provided by rules.

136. Furthermore, across the Copyright Act, Customs Act, Patents Act, and Airports Authority of India Act, the paired provisions reproduced in the Impugned Act are substantively identical to those found in the earlier Ordinance. Each set abolishes existing tribunal or appellate structures, such as the Appellate Board, Appellate Authority, or other specialised tribunals, and transfers their jurisdiction to High Courts or Commercial Courts. The wording, structure, and legal effect remain the same in both versions, with only minor formatting or clarificatory differences. In essence, the Impugned Act simply carries forward, almost verbatim, the amendments earlier introduced through the 2021 Ordinance, reaffirming the same statutory shift from tribunal-based adjudication to court-based adjudication.

137. Similarly, the amendments made through the 2021 Ordinance to the Trade Marks Act, 1999, the Geographical Indications of Goods (Registration and Protection) Act, 1999, the Protection of Plant Varieties and Farmers' Rights Act, 2001, and the Control of National Highways (Land and Traffic) Act, 2002 are retained in full within the Impugned Act. These provisions continue the same policy direction, removing specialised tribunals and reallocating their functions to High Courts or other judicial bodies, without introducing any substantive changes from the 2021 Ordinance.

138. Further, the Impugned Act extends this pattern by amending several additional statutes. The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, the Administrative Tribunals Act, 1985, the Railway Claims Tribunal Act, 1987, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts and Bankruptcy Act, 1993, and the Telecom Regulatory Authority of India Act, 1997 are all modified in the same manner. In each of these statutes, the Act replaces references to the earlier framework under Part XIV of Chapter VI of the Finance Act, 2017 with references to the Impugned Act, specifying that the appointment, tenure, and service conditions of tribunal members will now be governed by Chapter II of the new Act.

139. Thus, it can be seen that what the 2021 Ordinance did through amendments to Section 184 of the Finance Act, 2017, the Impugned Act now does through Sections 3, 5, and 7. The minimum age bar of fifty years for all appointments, the truncated four-year tenure with upper age caps of 70/67, the requirement that the Search-cum-Selection Committee forward a panel of two names for each vacancy, and the fixing of allowances and benefits to those of equivalent civil servants are all provisions, which have already been judicially tested and struck down. The Court has expressly held that these measures are arbitrary, destructive of judicial independence, and amount to an impermissible legislative override of binding directions.

140. Merely shifting the same content from the amended Section 184 of the Finance Act into Sections 3, 5 and 7 of a stand-alone statute, while using the non obstante formula "notwithstanding anything contained in any judgment or order", does not cure the constitutional defects. It simply reenacts them in another avatar. The Impugned Act, therefore, does not "cure" the law declared earlier, but consciously defies it.

141. Equally, the learned Attorney General's present defence of the Impugned Act is a verbatim reprise of arguments that have already been considered and rejected. In the earlier round, the Union had contended that directions regarding age, tenure, HRA and the recommendation of a single name were mere "suggestions", that Parliament is free to depart from them in exercise of its policy-making power, and that judicial review must be confined to testing explicit textual violations of the Constitution. The decision in *MBA (V)* rejected this argument on multiple grounds. First, it held that the directions on composition, tenure and conditions of service were in the nature of mandamus flowing from adjudication on separation of powers, independence of the judiciary and Article 14, and therefore constitute "law declared" under Article

141. Second, it held that while the legislature may neutralise a judgment by curing the underlying defect, it cannot simply re-enact the very provision or rule that was struck down and declare the Court's view to be non-binding. Such repetition was described as an "impermissible legislative override" and an "indirect intrusion into the judicial sphere". Third, it emphasised that separation of powers and judicial independence are justiciable constitutional principles, and that in matters affecting the structure and functioning of adjudicatory bodies, the Court must apply a searching standard of review and cannot defer to "policy" in the same way as in economic or commercial regulation. The Impugned Act thus stands on two identical, already rejected premises: it reproduces the substance of provisions invalidated in the earlier litigations without curing the defects, and it rests on constitutional arguments that the Court has already expressly disapproved.

142. Therefore, the provisions of the Impugned Act cannot be sustained. They violate the constitutional principles of separation of powers and judicial independence, which are firmly embedded in the text, structure, and spirit of the Constitution. The Impugned Act directly contradicts binding judicial pronouncements that have repeatedly clarified the standards governing the appointment, tenure, and functioning of tribunal members.

Instead of curing the defects identified by this Court, the Impugned Act merely reproduces, in slightly altered form, the very provisions earlier struck down. This amounts to a legislative override in the strictest sense: an attempt to nullify binding judicial directions without addressing the underlying constitutional

infirmities. Such an approach is impermissible under our constitutional scheme. Because the Impugned Act fails to remove the defects identified in prior judgments and instead reenacts them under a new label, it falls afoul of the doctrine of constitutional supremacy. Accordingly, the impugned provisions are struck down as unconstitutional.

VIII. PROTECTION EXTENDED

143. We also clarify that in MBA (IV) and MBA (V), the learned Attorney General for India had expressly submitted before this Court that the appointments of Members and Chairpersons made prior to the enactment of the impugned framework would stand protected. Although no such assurance has been offered in the present proceedings, the underlying principle remains the same. Stability of tenure and protection of vested rights are essential components of judicial independence, and the Court's earlier directions on this subject cannot be lightly departed from.

144. It will be relevant to note that in the case of Kudrat Sandhu (supra), while dealing with the aspect as to whether an interim order be passed in respect of the Members of the Central Administrative Tribunal, this Court vide order dated 9th February 2018 recorded the statement of the then learned Attorney General for India appearing in the said matter, which reads thus:

"Mr. Venugopal, learned Attorney General has submitted that he has no objection if the suggestions, barring suggestion nos.4 and 5, are presently followed as an interim measure. On a query being made whether the said suggestions shall be made applicable to all tribunals, learned Attorney General answered in the affirmative.

He would, however, suggest that suggestions nos.4 and 5 should be recast as follows:

4. All appointments to be made in pursuance to the selection made by the interim Search-cum-Selection Committee shall abide by the conditions of service as per the old Acts and the Rules.

5. A further direction to the effect that all the selections made by the aforementioned interim selection committee and the consequential appointment of all the selectees as Chairman/Judicial/Administrative members shall be for a period as has been provided in the old Acts and the Rules. In view of the aforesaid, we accept the suggestions and direct that the same shall be made applicable for selection of the Chairpersons and the Judicial/Administrative/Technical/Expert Members for all tribunals."

145. Subsequently, vide order dated 16th July 2018, while dealing with the age of superannuation of the ITAT Members, this Court observed thus:

"At this juncture, we may note that there is some confusion with regard to the Income Tax Appellate Tribunal (ITAT) as regards the age of superannuation. We make it clear that the person selected as Member of the ITAT will continue till the age of 62 years and the person holding the post of President, shall continue till the age of 65 years."

146. Thereafter, vide order dated 21st August 2018, while dealing with the age of superannuation of the CESTAT Members, this Court observed thus:

"2. We, accordingly, are of the view that the clarification issued for the ITAT in the order dated 20 March 2018 needs to be reiterated in the case of the members of the CESTAT, which we do. We clarify that a person selected as Member of the CESTAT will continue until the age of 62 years while a person holding the post of President shall continue until the age of 65 years."

147. It is not in dispute that in respect of some of the Members of the ITAT, the recommendations were made by the SCSC on 21st September 2019. The same was put up before the Appointment Committee of the Cabinet⁴⁰ on 16th October 2019. In the meantime, the judgment in the case of Rojer Mathew (*supra*) was delivered by this Court on 13th November 2019. As such, appointments of all persons whose recommendations were made on 21st September 2019 and whose names were approved by the ACC ought to have been made immediately after the judgment in the case of Rojer Mathew (*supra*) was delivered.

This would have been consistent with the statement made by the then learned Attorney General on 9th February 2018. However, for the reasons best known to the Union of India, the appointment orders were issued only on 11th September 2021 and 1st October 2021. According to the appointment order, the said appointments, including their tenure, are in terms of the new provisions. We are, therefore, of the considered view that the said appointments by the Central Government are totally inconsistent with the statement made by the learned Attorney General on 9th February 2018.

148. We are giving these details with regard to ITAT Members only as an example. There may be such cases in respect of other Tribunals also.

IX. CONCLUSION

"The form of the administration must be appropriate to and in the same sense as the form of the Constitution. The other is that it is perfectly possible to pervert the Constitution, without changing its form by merely changing the form of the

administration and to make it inconsistent and opposed to the spirit of the Constitution."

**- Dr. B.R. Ambedkar in Constituent Assembly
(4 November 1948)**

149. The foresighted constitutional vision of Dr. Ambedkar is strikingly evident in the present series of litigations concerning the tribunal system. The repeated reenactment of the same provisions, which have been struck down by the judiciary, shows that the "form of the administration" is being made "inconsistent" with the spirit of the Constitution, as Dr. Ambedkar had highlighted. The issues raised in the present petitions are not new to constitutional adjudication. They have engaged the attention of this Court on several earlier occasions, spanning more than three decades.

We must express our disapproval of the manner in which the Union of India has repeatedly chosen to not accept the directions of this Court on the very issues that have already been conclusively settled through a series of judgments. It is indeed unfortunate that instead of giving effect to the well-established principles laid down by this Court on the question of the independence and functioning of tribunals, the legislature has chosen to reenact or re-introduce provisions that reopen the same constitutional debates under different enactments and rules.

150. In a judicial system already burdened with a staggering pendency across the Supreme Court, High Courts, and district courts, the continued recurrence of such issues consumes valuable judicial time that could otherwise be devoted to adjudicating matters of pressing public and constitutional importance. The responsibility of reducing pendency in courts does not rest only on the judiciary. It is a shared institutional duty. While the judiciary must strive to enhance efficiency in case management and decision-making, the other branches of government must exercise their legislative and executive powers with due regard to constitutional principles and judicial precedent. Respect for settled law is as essential to good governance as it is to judicial discipline. It ensures that institutional time is spent in advancing justice rather than revisiting questions long resolved.

151. We direct that unless the constitutional concerns repeatedly highlighted by this Court in the series of tribunal-related judgments are fully addressed and cured, and unless Parliament enacts an appropriate legislation that faithfully gives effect to those principles, the principles and directions laid down in *MBA (IV)* and *MBA (V)* shall continue to govern all matters relating to the appointment, qualifications, tenure, service conditions, and allied aspects concerning tribunal members and chairpersons. These judgments represent the binding constitutional standards necessary to preserve judicial independence and to ensure that tribunals

function as effective and impartial adjudicatory bodies. Accordingly, they shall operate as the controlling framework.

152. As consistently directed in the earlier judgments of this Court, the executive bears a constitutional obligation to establish a National Tribunals Commission in accordance with the principles and framework articulated therein. The creation of such a commission is an essential structural safeguard designed to ensure independence, transparency, and uniformity in the appointment, administration, and functioning of tribunals across the country. The repeated judicial insistence on this body reflects the Court's recognition that piecemeal reforms cannot remedy the systemic deficiencies that have persisted for decades.

153. We grant the Union of India a period of four months from the date of this judgment to establish a National Tribunals Commission. The commission so constituted must adhere to the principles articulated by this Court, particularly concerning independence from executive control, professional expertise, transparent processes, and oversight mechanisms that reinforce public confidence in the system.

154. We, further, clarify and direct that the service conditions of all such Members of ITAT who were appointed by orders dated 11th September 2021 and 1st October 2021 shall be governed by the old Act and the old Rules.

155. We also clarify that all appointments of Members and Chairpersons whose selection or recommendation by the Search-cum-Selection Committee was completed before the commencement of the Tribunal Reforms Act, 2021, but whose formal appointment notifications were issued after the Act came into force, shall be protected. Such appointments will continue to be governed by the parent statutes and by the conditions of service as laid down in MBA (IV) and MBA (V), rather than by the truncated tenure and altered service conditions introduced by the Tribunal Reforms Act, 2021.

156. The Writ Petitions are disposed of in the above terms.

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

158. We place on record our deep appreciation for Shri Arvind P. Datar, Shri C.S. Vaidyanathan, Shri Sidharth Luthra, Shri P. S. Patwalia, Shri Sanjay Jain, Shri Porus F. Kaka, Shri Gopal Sankaranarayanan, Shri Balbir Singh, Shri Gagan Gupta, Shri Puneet Mittal, Shri Sachit Jolly, Shri B.M. Chatterji, Shri Ninad Laud, learned Senior Counsel/counsel. We also place on record our appreciation for Shri R. Venkataramani, learned Attorney General for India, and Ms. Aishwarya Bhati, learned Additional Solicitor General.

.....CJI. (B.R. Gavai)

I respectfully concur with the reasoning and directions.

The Tribunal Reforms Act, 2021 is a replica of the struck down Ordinance; old wine in a new bottle, the wine whets not the judicial palette, but the bottle merely dazzle.

.....J. (K. Vinod Chandran)

New Delhi;

November 19, 2025.

1 Hereinafter, "Impugned Act".

2 Hereinafter, "SCSC".

3 (1987) 1 SCC 124

4 S.P. Sampath Kumar and Others v. Union of India and Others (1987) Supp SCC 734

5 (1993) 4 SCC 119

6 (1997) 3 SCC 261

7 (2010) 11 SCC 1

8 Hereinafter, "NCLT".

9 Hereinafter, "NCLAT".

10 Hereinafter, "NTT".

11 (2014) 10 SCC 1

12 It was held: "130. The manner of appointment of Chairperson/Members to the NTT will have to be, by the same procedure (or by a similar procedure), to that which is prevalent for appointment of judges of High Courts. Insofar as the instant aspect of the matter is concerned, the above proposition was declared by this Court in Union of India v. Madras Bar Association (2010) 11 SCC 1, wherein it was held, that the stature of the Members who would constitute the tribunal, would depend on the jurisdiction which was being transferred to the tribunal. Accordingly, if the jurisdiction of the High Courts is being transferred to the NTT, the stature of the Members of the tribunal had to be akin to that of the judges of High Courts. So also the conditions of service of its

Chairperson/Members. And the manner of their appointment and removal, including transfers. Including, the tenure of their appointments."

13 It was held: "131. Section 7 cannot even otherwise, be considered to be constitutionally valid, since it includes in the process of selection and appointment of the Chairperson and Members of the NTT, Secretaries of Departments of the Central Government. In this behalf, it would also be pertinent to mention, that the interests of the Central Government would be represented on one side, in every litigation before the NTT. It is not possible to accept a party to a litigation, can participate in the selection process, whereby the Chairperson and Members of the adjudicatory body are selected. This would also be violative of the recognized constitutional convention recorded by Lord Diplock in *Hinds v. R.*, 1977 AC 195, namely, that it would make a mockery of the constitution, if the legislature could transfer the jurisdiction previously exercisable by holders of judicial offices, to holders of a new court/tribunal (to which some different name was attached) and to provide that persons holding the new judicial offices, should not be appointed in the manner and on the terms prescribed for appointment of Members of the judicature. For all the reasons recorded hereinabove, we hereby declare Section 7 of the NTT Act, as unconstitutional."

14 (2015) 8 SCC 583

15 Hereinafter, "2017 Rules"

16 (2020) 6 SCC 1

17 Supreme Court Advocates-on-Record Association and Another v. Union of India (Recusal Matter) (2015) 5 SCC 808

18 Hereinafter, "2020 Rules"

19 (2021) 7 SCC 369

20 Hereinafter, "2021 Ordinance"

21 (2022) 12 SCC 455

22 Hereinafter, "ITAT".

23 In the judgment, it is referred to as "MBA (III)", as the judgment did not discuss the decision of *Madras Bar Association v. Union of India* in 2015, which dealt with the provisions of the Companies Act, 2013

24 Hereinafter, "HRA"

25 In the judgment, it is referred to as "MBA (III)", as the judgment did not discuss the decision of Madras Bar Association v. Union of India in 2015, which dealt with the provisions of the Companies Act, 2013

26 In the judgment, it is referred to as "MBA (III)", as the judgment did not discuss the decision of Madras Bar Association v. Union of India in 2015, which dealt with the provisions of the Companies Act, 2013

27 Writ Petition (C) No.279 of 2017 With Connected Matters

28 Hereinafter, "CESTAT".

29 (2004) 12 SCC 588

30 (1995) 6 SCC 16

31 1964 SCC OnLine SC 21

32 (1973) 4 SCC 225

33 (1977) 3 SCC 592

34 (2018) 7 SCC 1

35 (1980) 3 SCC 625

36 2023 INSC 810

37 2023 SCC OnLine SC 813

38 (2006) 8 SCC 212

39 (2017) 10 SCC 1

40 Hereinafter, "ACC".

IN THE SUPREME COURT OF INDIA

All India Judges Association and Ors.

Vs.

Union of India and Ors.

[I.A. No. 230675/2025]

[Writ Petition (Civil) No. 1022 of 1989]

Head Note - Ruled out any special quota/weightage for promotee judges in the posts of District Judges, observing that there is no nationwide pattern of disproportionate representation of direct recruits in the Higher Judicial Service.

A perceived feeling of "heartburn" among judicial officers cannot justify the creation of any artificial classification within the cadre Higher Judicial Service(HJS). On the entry into a common cadre from different sources (Regular Promotion, Limited Departmental Competitive Exam and Direct Recruitment) and assignment of seniority as per the annual roster, the incumbents lose their 'birthmark' of the source from which they are recruited.

Fixation in the Selection Grade and Super Time Scale within the HJS is based on the merit-cum-seniority within the cadre and cannot depend upon the length of service or performance in the lower rungs of the Judiciary. The service as Civil Judges loses its significance after Regular Promotees and LDCEs advance into the HJS. "The length and performance as a Civil Judge does not constitute an intelligible differentia to classify incumbents in the common cadre of District Judge.

Guidelines on Seniority

The Court issued certain guidelines for the filling up of the DJ posts invoking powers under Article 142 of the Constitution.

1. The seniority of officers within the HJS shall be determined through an annual 4-point roster, filled by all officers appointed in the particular year in the repeating sequence of 2 Regular Promotees, 1 LDCE, and 1 DR.
2. Only if the recruitment process is completed within the year after which it was initiated and no other appointments, from any of the three sources, have already taken place in respect of the recruitment initiated for that subsequent year, shall the officers belatedly so appointed be entitled to seniority as per the roster of the year in which recruitment was initiated.
3. If the recruitment process is not initiated for vacancies arising in a given year in the same year, the candidate filling such vacancy, in subsequent recruitment, shall be granted seniority within the annual roster of the year

in which the recruitment process is finally concluded and appointment is made.

4. After the recruitment of DRs and LDCs is complete for a particular year, the positions falling in their quota that remain unfilled due to lack of suitable candidates shall be filled through RPs, subject to such RPs being placed only on subsequent RP positions in the annual roster; and the vacancies in the subsequent year shall be computed so as to apply the proportion of 50:25:25 to the entire cadre.
5. The statutory rules governing the HJS in the respective States, in consultation with the High Courts, shall prescribe the exact modalities of the Annual Roster and how the directions of this judgement shall be implemented.

These guidelines are not intended to resolve any inter-se dispute. The guidelines are general and mandatory to be incorporated into the regulations governing inter-se seniority of higher judicial services. The guidelines will not reopen any decided issues related to inter-se seniority disputes.

The guidelines are being issued considering the present situation on the date and could be revisited or modified in future

JUDGMENT

INTRODUCTION

1. The instant Interlocutory Application seeks to revisit the principles governing the determination of seniority within the cadre of Higher Judicial Services (HJS) of all the States. This controversy is neither novel nor transient; rather, it represents a recurring dilemma that has, from time to time, engaged the attention of this Court.

2. To briefly outline the factual context herein, the HJS, across the country, is comprised of officers recruited through three sources: (i) Regular Promotees (RP); (ii) those promoted through the Limited Departmental Competitive Examinations (LDCE); and (iii) Direct Recruits (DR). These three sources for recruitment and appointment to the position of District Judge were crystallised through various directions issued in the successive All India Judges Association (AIJA) proceedings. It is amongst these three sources that the dispute of inter se seniority has arisen.

3. Over the course of many decades, divergent approaches have been adopted in an endeavour to reconcile competing claims between different streams of appointment, reflecting this Court's continued attempt to bring coherence and uniformity to this enduring issue.

4. This question has once again fallen before us for consideration in light of an interlocutory application, being I.A. No. 230675 of 2025, filed by learned Amicus Curiae (Mr Siddharth Bhatnagar, Senior Advocate) in the lead case. Notice was accordingly issued in respect of this application on 17.09.2025.

5. Having regard to the fact that the aforesaid application brought to light an 'anomalous situation' pertaining to the inter se seniority between District Judges (Direct Recruits) and District Judges (Promotees), this Court, vide order dated 07.10.2025, was pleased to record as follows:

"2. This Court, vide order dated 17th September, 2025, had considered an application filed by Shri. Siddharth Bhatnagar, learned amicus curiae, who had pointed out an anomalous situation viz., in most of the states, judicial officers recruited as Civil Judge ('CJ') often do not reach the level of Principal District Judge ('PDJ'), leave aside reaching the position of a High Court Judge. This has resulted in many bright young lawyers being dissuaded from joining the service at the level of CJ.

10. It cannot be disputed that the judges who were initially appointed as CJ gain rich experience since they have been serving in the judiciary for a number of decades. Furthermore, every judicial officer, be it one who was initially recruited as CJ or one who was directly recruited as a District Judge, has an aspiration to reach at least up to the position of a High Court Judge.

11. We are, therefore, of the view that a proper balance has to be struck between the competing claims. However, this issue would involve consideration of some of the judgments and orders passed by Benches comprising of three learned judges of this Court. Therefore, in order to put the entire controversy at rest and provide a meaningful and long-lasting solution, we are of the considered view that it will be appropriate if the issue is considered by a Constitution Bench consisting of five learned Judges of this Court.

12. We, therefore, direct the Registrar (Judicial) to place the matter before the Chief Justice of India, on the administrative side for obtaining appropriate orders."

6. Hon'ble the Chief Justice of India thereafter directed that the matter be placed before a 5-Judge Bench. The matter was accordingly taken up on 14.10.2025, whereupon the limited question requiring consideration was delineated as follows:

"What should be the criteria for determining seniority in the cadre of Higher Judicial Services"

COMPETING VIEWS AND SUGGESTIONS

7. As already mentioned heretofore, the learned Amicus, through the captioned application, underscored certain issues pervading inter se seniority in the HJS.

8. Although the objective of the application was initially to embellish, enliven, and enrich the District Judiciary by balancing both merit and practical experience, it has presently been prompted by a perceived discontentment and heartburn amongst those recruited to the lower rungs of the judiciary.

9. The malady of disproportionate progression within the HJS has been observed by this Court in previous AIJA proceedings and was also noted with concern by the First National Judicial Pay Commission under the Chairmanship of Justice K.J. Shetty, a former Judge of this Court (Shetty Commission).

10. In this vein, as a workable outcome to improve the position of the RPs and LDCEs and considering the recommendations of the Shetty Commission, the Amicus put forth four proposals:

i. A 1:1 quota should be prescribed for appointment to Selection Grade and Super Time Scale within the HJS;

ii. The zone of consideration for upgradation to Selection Grade and Super Time Scale should comprise equal numbers of DRs and promotees (RPs and LDCEs combined), without any prescription regarding the actual selections;

iii. Providing one year seniority for every five years of completed service within the lower rungs of the judicial service, subject to a maximum of three years, which is an attempt to revive the recommendation of the Shetty Commission; or

iv. Creating three separate seniority lists within the HJS, on the basis of source of recruitment, in the ratio of 50:25:25, as recommended by the High Court of Andhra Pradesh.

11. Thereupon, responses were filed by States / Union Territories Administrations, as well as the Registrar Generals of various High Courts and other stakeholders comprising detailed submissions regarding the rules existing in their respective States for the career progression of Judicial Officers appointed or promoted from the aforementioned three sources.

12. On the one hand, the RPs through their learned counsels, raised cudgels against DRs on the grounds of an advantage being conferred upon them by virtue of their relatively younger age at the time of entering into the HJS. Their contentions have been briefly summarized hereinbelow:

i. The age advantage enjoyed by DRs enables their progress to the Selection Grade and the Super Time Scale, as well as taking on administrative roles in Districts, and ultimately, being elevated to the High Court;

ii. Experience in judicial service is superior to experience at the Bar, and there should be recognition of prior judicial service in the posts of Civil Judge-Junior Division (Munsiff/Magistrates) and Civil Judge-Senior Division (Sub Judge/Chief Judicial Magistrates), whether they are promoted to the HJS from the RP or LDCE cadres. Reliance was placed in this regard on the decision in *Rejanish K.V. v K. Deepa*¹;

iii. 'Heartburn' is caused by the induction of younger candidates as DRs and their consequential career progression, which diminishes the consideration of the efforts of judicial officers who have toiled endlessly in their judicial work for long years.

13. Similarly, those representing the LDCEs, while largely adopting the arguments raised by the RPs, also sought to bring forward certain issues distinct to them:

i. Earlier judicial service ought to be reckoned in the same manner for both RPs and LDCEs;

ii. If sufficient candidates are not found through LDCE in a recruitment year, the vacancies should not be filled by RPs but should be carried forward. In such a scenario, the passed-over seniority ought to be conferred in the successive selection;

iii. The position on the roster should be preserved even if there aren't sufficient vacancies available in any given year.

14. On the contrary, the learned counsels representing DRs argued that there is no pressing need for this Court to create any favourable systems so as to promote RPs and LDCEs. In this regard, the following submissions were adduced:

i. The available data clearly shows that the situation pertaining to inter se seniority varies across different States, with some States where the DRs hold more prominent positions, while in others, the RPs have an advantage over the DRs;

ii. The High Courts, being conferred with the power to regulate, inter alia, the inter se seniority within the Judicial Services, are better equipped to determine the issue on the basis of the statistics and features intrinsic to a particular State Judicial Service, as well as to determine the inter se seniority within the cadre of District Judges;

iii. Upon entry into the HJS, the source of recruitment becomes inconsequential, and the service rendered in the feeder category pales into insignificance. When seniority of the incumbents in a particular recruitment year is adjusted as per the roster system providing proportional representation to RPs, LDCs and DRs, such seniority on entry continues and the birthmark of the source from which they were recruited is no more relevant for further career advancement within the cadre by way of fixation in the higher grades or designation for the discharge of administrative duties.

iv. The position on the roster should be preserved even if there are not sufficient vacancies available in any given year.

15. Additionally, several High Courts were represented before this Court by learned senior counsel, whose submissions broadly aligned with one or the other set of arguments addressed. As these submissions have already been duly adverted to hereinabove, we do not consider it necessary to reiterate them.

16. What is of greater significance, however, is that the said counsel extended valuable assistance by placing before us relevant statistics and prevailing circumstances, thereby illuminating the range of possible approaches available to this Court for resolving the present issue.

ANALYSIS

17. As we turn to scrutinizing and appraising the singular issue at hand, we deem it appropriate to clarify at the very outset that there can be no separate quota insofar as the recommendations for elevation to the High Court are concerned. We say so, being especially mindful of the truism that such processes are neither promotions nor a fixation for financial upgradation or career advancement.

I. Power of this Court re: seniority within the HJS

THE SUCCESSIVE AIJA PROCEEDINGS

18. At this juncture, it is imperative to address the specific plea raised by various parties before us that this Court, in view of the powers granted to the High Court under Articles 233 to 235, should restrain itself from issuing mandatory guidelines on the rules governing the service of judicial officers.

19. In consideration thereof, we must first trace the trajectory of the AIJA proceedings before this Court.

20. The captioned Writ Petition was filed in the year 1989 and has been retained in this Court as a measure of ongoing mandamus, to safeguard the independence

of the judiciary-a basic structure of the Constitution as held by this Court-and to effectively serve the efficient administration of justice.

21. In the All India Judges' Association v. Union of India² (First AIJA), this Court addressed:

- (i) the establishment of an All India Judicial Service;
- (ii) uniformity in the designation of judicial officers, both on the criminal and civil side, across the Country;
- (iii) retirement age of judicial officers to be stipulated as 60 years;
- (iv) consideration of appropriate pay scales;
- (v) a working library and provision for sumptuary allowance;
- (vi) residential accommodation to be provided by the State Government;
- (vii) adequate transport facilities; and
- (viii) establishment of institutions for in-service training.

22. All of these aspects were articulated to establish a status for the judicial service that aligns with the assigned judicial duties, maintaining the principle of separation of powers and safeguarding the independence of the judiciary. This idea was further supported by creating a supportive working environment free from the burdens of mundane routines and the challenges of maintaining a work-life balance.

23. Although directions were issued on all these aspects, a review was filed, leading to the judgment in All India Judges' Association v. Union of India³ (Second AIJA), where some modifications were made; the most significant being the requirement of three years' practice as a mandatory and essential qualification for recruitment to judicial posts at the lower rungs in the judicial hierarchy, and the weeding out of dead wood at an age prior to the stipulation of 60 years as the common age of superannuation.

24. The directions put forth in the First AIJA² were essentially affirmed in all respects in the Second AIJA³, except for the direction for grant of sumptuary as well as residence-cum-library allowances, which stood withdrawn subject to fulfilment of certain conditions. Essentially, the directions issued, as already highlighted, aimed to accord a special status to judicial officers who, in their role of dispensing justice, occupy a position that is both demanding and unique; and

stands in contrast to other State services, given that their independence is a fundamental aspect of the Constitution, as held by this Court.

25. Thereafter, in the All India Judges' Association v. Union of India⁴ (Third AIJA), this Court specifically examined the clarification sought by the State of Kerala and found that the five years of legal practice prescribed as the minimum qualification for appointment to the lower rung of the judicial service in that State, to be perfectly in order, since the direction in the Second AIJA³ aimed to establish a minimum essential qualification of three years' practice.

26. While reaffirming the requirement of at least three years' practice for recruitment to the lowest rung of judicial office, it was also determined that a by-transfer appointment to the cadre of Munsif-Magistrates from the ministerial and gazetted staff of the district judiciary and the High Court was bad because it did not meet the minimum requirement of three years' practice at the bar.

27. In All India Judges' Association v. Union of India⁵ (Fourth AIJA), the requirement of a minimum experience at the Bar was dispensed with, finding fresh graduates also eligible to offer themselves for recruitment to the lower rungs of the judiciary, especially in the context of a mandatory training period of one year having been provided. Further, a faster promotional opportunity was provided for the judicial officers in the lower rungs by prescribing an LDCE. It was also directed that for proportional representation of the RPs, LDCEs and DRs, a ratio of 50:25:25 would be applied to the cadre of District Judges; the seniority at the entry point in the HJS being determined on a 40- point roster as approved by this Court in R.K. Sabharwal & Ors. v. State of Punjab & Ors.⁶

28. Later, in the year 2010, in All India Judges Assn. v. Union of India⁷ (Fifth AIJA), having realised that a large number of vacancies in the 25% LDCE category remained unfilled, the said quota itself was reduced to 10%. A ratio of 65:10:25, respectively, for the RPs, LDCEs and DRs, was thus prescribed for recruitment to the cadre of District Judges.

29. This ratio has, however, been once again modified this year itself in 2025 in the All India Judges Association v. Union of India⁸ (Sixth AIJA) to 50:25:25, also revamping and expanding the framework for accelerated promotion from Junior Division to Senior Division and thereafter to the HJS. As of date, the decision of this Court in Rejanish K.V¹ has further enabled the service of judicial officers to be reckoned for the purpose of direct recruitment to the HJS through participation in the direct recruitment examinations.

30. The series of AIJA decisions thus acknowledges and recognises the fact that in a democracy, the role of the judiciary is truly indispensable. For the efficient

functioning of the Rule of Law and to ensure that our democracy prospers, it is de reiguer that we nurture an efficient, strong, and enlightened judiciary.

HIGH COURT AS A REPOSITORY OF POWERS

31. At the same time, we are also cognizant of the wideranging powers and general superintendence vested with each High Court regarding the judicial services, within the respective States / Union Territories.

32. To understand the width of these powers, one need not look beyond the decisions of two Constitution Benches of this Court in B.S. Yadav v. State of Haryana⁹ and State of Bihar v. Bal Mukund Sah¹⁰.

33. To explicate, B.S. Yadav⁹ was a case in which the judicial officers promoted to the higher judicial service of Punjab and Haryana, two different States with a unified High Court, challenged the determination of seniority inter se promotees and direct recruits based on two different sets of rules. A Constitution bench of this Court held that although the State Legislature or the Governor has the authority to pass laws regulating the recruitment of Judicial Officers of the State under Article 309, the extent of these powers is to be regulated by Article 235, ensuring that the Rules and Regulations made do not impinge upon or detrimentally affect the control vested in the High Court by Article 235.

34. Similarly, in Bal Mukund Sah¹⁰, this Court considered the application of reservation of vacancies, as enacted by the State of Bihar in the direct recruitment to the posts in the judiciary of the State, both to the Higher Judicial Services of District Judges and the grassroots level in the lower rungs of the judiciary. The Constitution Bench therein held that the appropriate Legislature or the Governor can regulate the recruitment and conditions of services of the persons appointed to public services and posts, only subject to other provisions of the Constitution, including the power of superintendence conferred on the High Court under Article 235.

35. It is therefore quite clear that both the Constitution Bench decisions definitively state that, whether it concerns recruitment or the determination of seniority, the State Legislature empowered under Article 309 or the Governor, exercising the power to make rules under the proviso to Article 309, ought to consult the High Court. This is especially so when Article 309 is subject to other provisions of the Constitution, giving primacy to Articles 233 to 235, wherein the control of the entire District Judiciary is conceded to the High Court.

36. Having said that, we consider it necessary to observe that there can be no doubt that this Court faces no constitutional impediment in exercising its unique power of judicial review under Article 32, read with other relevant provisions of the Constitution, including Articles 141 and 142, to lay down uniform guidelines

governing the structure and functioning of the judicial services across the country.

It is imperative to note that this very function has been carried out by this Court through a series of judgments passed in the instant Writ Petition as well as in other cases, including in *Rejanish K.V.1 and Malik Mazhar Sultan (3) v. U.P. Public Service Commission*¹¹, with the consistent goal of strengthening the judiciary by fostering uniformity in the structure of judicial services, enabling judicial institutions to be more effective, and ensuring that excellence and merit continue to remain the hallmark of judicial officers.

37. There is no gainsaying that Articles 233 to 235 assign policy decisions, such as the specific manner of implementing the directions of this Court, to the domain of the High Court. However, at the same time, it is also essential that overarching guidelines, which would apply across all States, be framed to ensure the development of unified and robust judicial services, with the ultimate goal of cultivating an independent judiciary. These guidelines do not foreclose the powers of the High Court; instead, they establish a homogenous framework within which each High Court, as a Constitutional Court, can exercise superintendence over the judicial services.

II. The curious case of 'Heartburn'

38. Having addressed the initial concern about this Court's propriety to enter into the domain of seniority within the judicial services, we turn our attention to the issue of 'heartburn'.

39. The RPs in this regard vehemently urged that a separate quota be created in their favour within the HJS for career advancement. They pointed out their service in the judicial service in the Senior Division and the Junior Division, which, according to them, has been recognised by this Court in *Rejanish K.V.1* as being far superior to experience at the Bar. They further contended that the 'heartburn' caused by the induction of younger candidates as DRs and their consequential career progression diminishes the efforts of officers who have toiled endlessly in their judicial work.

40. It may be noticed that the Constitution Bench in *Rejanish K.V.1*, while permitting judicial officers to compete along with the Members of the Bar for direct recruitment to HJS, did not observe that the experience in judicial service is superior to that of a practising advocate, but only noticed that it is in no manner inferior.

41. It merits emphasis that in prescribing the minimum years of practice for recruitment to the lower rungs of the judiciary, this Court on earlier occasions specifically laid stress upon the experience at the Bar as an essential requirement

for entry into judicial service. The three-judge Bench in the Sixth AIJA8 merely equated judicial service and experience at the Bar and did not confer any supremacy on one as against the other.

42. In this context, it must be noted that the discontentment of the RPs within the HJS cadre has been mitigated to a large extent by increasing the ratio for the HJS cadre for LDCs, and by enabling judicial officers who have completed a minimum period of service and reached an age, at par with that prescribed for bar members are also being considered for direct recruitment to the HJS.

43. We also need to note that the DRs, especially the members from the Bar, are now at a disadvantage due to the decision in *R. Poornima v. Union of India*¹². This dictum provides that consideration for recommendation to the High Court will be possible only after they have completed ten years as a judicial officer. In sharp contrast, an RP or LDCE would face an advantage in this scenario since such a requirement would also take into consideration their service at the lower rungs of the judiciary and the HJS.

44. The data supplied by various High Courts, hence, has to be looked at in the above perspective. The last three decades have witnessed substantial changes in the minimum required experience for recruitment to the lower rungs in the judiciary. In 1993, three years' experience at the Bar was prescribed by this Court. Although this minimum requirement was dispensed with in the year 2002, this position has occupied the field for the last two decades.

45. Presently, State Judiciaries are in the cusp of a major change with the reintroduction of the minimum three years' experience at the Bar for recruitment to junior division and the further directions issued by this Court in Sixth AIJA8 enabling accelerated career progression to the judicial officers recruited and continuing in the lower rungs of judiciary, with an additional provision for participating in direct recruitment to HJS, as provided in *Rejanish K.V*¹. The data supplied concerns persons continuing in the State Judiciary, which also varies from State to State.

46. As has been noticed earlier, some of the States have more RPs occupying positions of significance, while in others the DRs are more prominent. High Courts across the country are also not ad idem on the issue raised, with most of them exhorting before this Court to neither enter into the question of a further seniority determination in the HJS, different from that assigned on entry thereat, nor to tweak the assignment of seniority based on roster points applied to the ratio of recruitment from the three sources.

47. Even within the HJS, the fixation in the Selection Grade and the Super Time Scale is regulated by meritcum- seniority; seniority being assigned from the date

of entry into the HJS in proportion with the ratio based on the roster points assigned to each source. As in any selection based on merit-cum-seniority, merit remains the dominant consideration, and seniority is applied only when the merit or suitability stands equal. The consideration of merit is performance-based within the cadre of HJS, relatable to various periods spent in that cadre and not those spent earlier in the lower rungs of the judiciary.

48. This is also the position with respect to the assignment of administrative duties in a District, which falls upon the senior-most within the HJS, in a given District, designated as District Judge or Principal District Judge.

49. The fixation in higher grades and designations for the purpose of discharging administrative duties is never dependent solely on seniority; merit and suitability are the norm, which must be evaluated based on service in that cadre, rather than prior service in the lower rungs.

50. In bringing this issue to a close, we consider it appropriate to employ an analogy to illustrate the relative modes of entry into the Higher Judicial Service. If entry into the HJS is viewed as a common destination, one may conceive of DRs as reaching that destination by flight, LDCs as travelling by train, and RPs as traversing the distance on foot. At first blush, it may indeed appear that the RPs experience a greater degree of heartburn when compared to the relative swiftness with which the other categories are able to enter the HJS.

51. However, this perceived difficulty stands sufficiently addressed by the fact that this Court has ensured the availability of multiple avenues to Promotees for career advancement-whether through the LDCE, or, as recognised in *Rejanish K.V.1*, through the option of participating in the Direct Recruitment process.

52. When such opportunities exist, the mere inability of certain officers to succeed in these examinations on the basis of merit, or the contention that their promotional channel is slower or numerically larger, cannot furnish a valid basis for seeking preferential treatment within the HJS merely on account of a sense of grievance. It is well settled that career progression to the higher echelons of the judiciary is neither a matter of right nor of entitlement.

III. Non-retention of 'Birthmark'

53. The issue of determining seniority, inter se RPs and DRs has vexed public offices from the very inception, and there is a wealth of precedents to rely upon.

54. For instance, in *Mervyn Coutindo v. Collector of Customs*¹³, this court considered the rotational system for granting seniority between DRs and RPs upon entering a cadre, as well as maintaining that seniority upon promotion to higher posts. In the context of promotion from the post of Appraisers to the

Principal Appraisers, the Constitution Bench ruled that when there is only one recruitment source, the normal rule applies, i.e. a person promoted to a higher grade gains seniority in that grade based on the date of promotion, provided they are found fit and confirmed in the higher grade after the probation period. In such cases, continuous appointment in the higher grade determines seniority, since the source of recruitment is the same.

55. This principle straightforwardly applies to the fixation of seniority in the Selection Grade and Super Time Scale within the HJS in the cadre of District Judges, recruited or promoted from the three different sources. Further career advancement in the HJS thus depends on seniority within that cadre, not the feeder category.

56. This principle was followed by another Constitution Bench in *Roshan Lal Tandon v. Union of India*¹⁴, which was concerned with the promotion from Train Examiners 'D' Grade, which was a common cadre formed by separate sources, to Train Examiners 'C' Grade.

57. The decision in *State of Jammu & Kashmir v. Sh. Triloki Nath Khosa & Ors.*¹⁵ also stands out in this context, where a Constitution Bench of this Court had the opportunity to expand the principle laid out in *Mervyn Coutindo*¹³ and *Roshan Lal Tandon*¹⁴. Judicial scrutiny in that case was limited to considering whether a classification based on educational qualification had a reasonable basis and bore a nexus with the object in view. When approving the classification, the Court noted that the rules did not discriminate among graduates on the basis of source, thereby undermining any claim of a 'birthmark' in the cadre influencing the classification.

58. Article 16, ensuring equality of opportunities in matters relating to employment, was held to be an instance of the guarantee of equality enshrined in Article 14. The concept of equality, it was held, has an inherent limitation arising from the very nature of the constitutional guarantee, mandating 'equality for equals' and not for 'unequals'. The classification on the basis of educational qualification, made with a view to achieving administrative efficiency, was held to be not resting on any fortuitous circumstances and, in the facts and circumstances of the case, justified the validity of such classification.

59. The ratio in *Roshan Lal Tandon*¹⁴ insofar as it held that the direct recruits and promotees lost their birthmarks on fusion into a common stream of service, prohibiting their classification on the basis of the source from which they were recruited, was found to be not applicable in the facts and circumstances of *Triloki Nath Khosa*¹⁵. The Constitution Bench in *Triloki Nath Khosa*¹⁵ held that "The ratio of *Roshan Lal*'s case can at best be an impediment in favouring persons drawn from one source as against those drawn from another for the reason merely

that they are drawn from different sources" (sic para 47). This impediment is in the teeth of the answer to the question posed by the Amicus in this case.

60. The dictum of Roshan Lal Tandon¹⁴ as succinctly stated in Triloki Nath Khosa¹⁵ however, squarely applies in the case of District Judges appointed from three different sources, being further classified on the basis of their length of service in the lower rungs of the judiciary, prejudicing the DRs, who do not have the advantage of such service in the lower cadre.

61. In this light, the theory of classification, as proposed by the Amicus, subverts and submerges the precious guarantee of equality as available to the members of the common cadre, who, on appointment and determination of their inter se seniority, at the time of appointment into the HJS, lose the 'birthmark' of the source from which they are appointed.

62. Reference must also be made in this regard to the decision in Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and Ors.¹⁶, which was inter alia concerned with the inter se seniority of direct recruits and promotees, as also the determination of seniority of ad-hoc appointees. While deciding the issues, including that of implementation of a quota and the consequence of its breakdown, it was unequivocally held that, on appointment to a post in accordance with the rules, seniority ought to be conferred from the date of initial appointment; the departure being possible only when the initial appointment is ad-hoc and not in accordance with the rules, with which issues we are not concerned.

63. The appointment made by way of a stopgap arrangement without considering the claims of the eligible available persons and without following the rules of appointment was held to be not comparable with the experience of a regular appointee, because of the sheer qualitative difference in the appointment itself. It was reiterated that otherwise there would be treatment of unequals as equals, which would violate the principle of equality spelt out in Articles 14 and 16 of the Constitution. These principles were further reiterated in the cases of State of West Bengal v. Aghore Nath Dey¹⁷ and Ram Janam Singh v. State of Uttar Pradesh¹⁸.

64. Hence, if at all the experience in the lower rungs of the judiciary is to be reckoned for determining seniority in HJS, there should be some compelling reason which stands the test of reasonableness, not being vitiated by the foul of arbitrariness, which again has to be provided by means of statutory rules. In our view, there is no basis to consider the previous experience as a Civil Judge as an intelligible differentia creating a reasonable classification to favour RPs or LDCs in the selection for higher grade scales or appointment as Principal District Judges.

65. However, it goes without saying that this does not preclude the High Courts, which are capable of deciding on compelling reasons based on the particular facts and circumstances of each State, along with available data and statistics, from providing preferential treatment to any group within the HJS. Provided that such preferential treatment does not go contrary to the principles enunciated in Triloki Nath Khosa¹⁵, and is incorporated within the statutory rules.

IV. The Roster and its implementation

66. As previously observed, this Court, in the Fourth AIJA⁵, had found that preparation of a Roster is the most suitable method of determining seniority within the HJS, and we see no reason to deviate therefrom. However, hindsight, experience, and subsequent developments have necessitated that this Court take a fresh look at some aspects of the roster system of seniority and address the issues and gaps that have emerged therein.

67. Submissions were made from both sides on the efficacy of a 40-point roster as stipulated in the Fourth AIJA⁵, where the quota for RP, LDCE, and DR was set in a 50:25:25 ratio. Although this ratio for the composition of the cadre was later modified to 65:10:25, the earlier ratio was reinstated by the Constitution Bench in the Sixth AIJA⁸. Whereas, though the stipulation for a 40- point seniority roster has remained a common feature across different States, its exact formulations remain varied.

68. At present, the sequence of seniority and the specific roster points assigned to each source are decided by the respective State Governments in consultation with the High Court and stipulated in the relevant service rules. Most of the States / Union Territories / High Courts have supplied this Court with the details of the roster points prescribed in their respective rules. A majority of the States have allocated the first three positions to the RPs, followed by one to the DRs and one to LDCE, with the roster points repeated in the said sequence. However, insofar as the Northeastern States, Chhattisgarh, and Gujarat, are concerned, LDCE is given preference in seniority over the DRs, with the first positions going to the RPs.

69. In three other States, the situation is different, as the LDCEs have been given the first preference in seniority, followed by the RPs and then the DRs. Clearly, the determination of the roster points has created divergent service rules for the same cadre of officers. In our considered opinion, this situation is an affront to the ideal of uniformity within the judicial services that is sought to be preserved through these proceedings.

70. With these observations and having considered the suggestions made across the Bar on this matter, it appears to us that the most appropriate mechanism to

harmonise the system of seniority across the HJS is a 4- point roster system, wherein the first two points shall be allocated to RPs, the third to LDCE(s), and the fourth to DR(s). This roster would, it goes without saying, repeat thereafter, till all the appointees are placed within the roster.

71. In this backdrop, we may also clarify that the roster is an annual creation. The timeline for recruitment to HJS, as well as the lower judicial services, is prescribed in the operative portions of Malik Mazhar Sultan¹¹. If the judgment is followed by the letter, it would result in all appointments, from all three sources, being achieved within the same year.

The annual roster is envisaged as a complementary component to manage the intake from all three sources and assign inter se seniority thereto. In this situation, the fixation of seniority among RPs, LDCEs, and DRs shall be determined according to the roster points for that particular year, de hors the exact date of appointment. To put it tersely, as long as the appointment takes place within the same year as that in which the recruitment is initiated, there are no qualms in placing all such appointees within the same roster of that year.

72. The above clarification, as an obvious consequence, then begs the question: what would happen when the recruitment does not conclude within the same year as when it was initiated? Experience indicates that, especially since the process of evaluation for promotion is based on merit-cum-seniority, with merit being the predominant factor, delays are likely in selecting LDCE candidates and even more so in the case of DRs, where merit is the sole consideration- complications in the evaluation process, unexpected administrative holdups, and lengthy litigation are just a list of examples that delay the procedure.

73. That, however, is only one side of the coin. On the flip side, this Court must also uphold and enforce the ideal of seniority as per continuous service within the cadre to prevent the anomalies that many States are faced with today. The aforementioned question has remained one of the significant gaps in the existing directions regarding the seniority roster in the HJS, and this Court must now strike a balance between these two concerns.

74. This is not the first occasion that this Court has had to consider the impact of selection delays on a seniority roster of a government service. Union of India. v. N.R. Parmar¹⁹ considered the inter se seniority between direct recruits and the promotees. Therein, the direct recruitment process, though substantially commenced in the same recruitment year, could not be completed within that recruitment year, so the promotees were appointed substantially before the direct recruits, who finally joined two years later. In such a situation, this Court permitted the placement of such direct recruits within the same roster as the

timely appointed promotees, since the delay was attributable to the rigmaroles of a direct recruitment.

75. In *K. Meghachandra Singh v. Ningam Siro*²⁰, a three-Judge Bench overruled the decision in *N.R. Parmar*¹⁹ to hold that the general principle of law is that a direct recruit cannot get a back-dated notional seniority, earlier than the date when he joined in service. A Two-Judge Bench in *Hariharan v. Harsh Vardhan Singh Rao*²¹ doubted the correctness of *K. Meghachandra Singh*²⁰ especially since the attention of the three Judge Bench was not invited to the decision of a Co-ordinate Bench in *M. Subba Reddy v. A.P. SRTC*²².

76. In *Hariharan*²¹, attention was drawn to the anomaly arising when the process of recruitment of direct recruits is completed within the same recruitment year, yet an adequate number of candidates could not be selected. It was observed that in such circumstances, the shortfall must be carried forward to the succeeding recruitment year. Consequently, candidates selected against such carried-forward vacancies are required to be placed en bloc below the Promotees of the earlier years. Unless this procedure is adhered to, the rotation of the quota system stands frustrated.

77. The reference was thus only with respect to the selections made from different sources, based on a ratio applied to the cadre, to vacancies arising in a recruitment year.

78. While this particular issue remains pending in the abovementioned reference, in our view, keeping in mind the most celebrated principle of assigning seniority on the basis of the period of continuous service while also acknowledging the almost inevitable incidence of speedbumps, the model delineated hereinafter for the purposes of HJS would be most appropriate.

79. If the recruitment process from any source is not completed in the year in which it began, but appointments are made before the end of the following year, those appointees shall be placed at their respective roster points for the year of initiation. Provided that no appointments from any source are made for the next recruitment year before these appointments are effected.

80. To illustrate, let us consider that the recruitment process from all three sources is initiated in Year A. The procedures for appointment of LDCEs and RPs are completed within the same Year A, and they are placed in the Annual Roster for Year A. However, a variety of issues cause the appointments of DRs to happen only in Year A+1. Now, these DRs, although appointed in Year A+1, would be permitted to also take their positions within the roster for Year A, as long as they were appointed prior to the LDCEs, RPs, and DRs whose recruitment is initiated in Year A+1.

81. Barring the above exception, we affirm that the continuous length of service ought to be the criterion for determining inter se seniority in the HJS, subject to the further condition that all appointees in a single recruitment year are placed against their respective annual roster points, regardless of the actual date of appointment.

82. The above mechanism, in our opinion, serves to mitigate the grievances and preserve the seniority of an appointee who was subsequently borne in service only due to the vagaries of the recruitment process. In the same vein, the officers appointed earlier also cannot be aggrieved, as they would be adjusted within the roster only along with their relative contemporaries in the service and would be put on notice regarding the seniority determination once the other selections are concluded.

83. If the High Court, for any valid reason, decides not to initiate the recruitment process from any of the three sources in a given year, the person subsequently appointed from those sources shall not be eligible to be placed within the roster for that year in which recruitment from the source did not take place.

84. We are at the same time also cognizant of the necessity of ensuring that vacancies in the judicial services do not remain unfilled, the negative consequences of which have been very cogently addressed by this Court in *Mazhar Malik Sultan*¹¹. To this end, this Court in the Sixth AIJA⁸, has already provided that unfilled vacancies within the LDCE quota may be diverted and filled by RPs.

85. In our considered opinion, the above system can also be extended to the vacancies that remain unfilled after the process of direct recruitment is completed. To explicate, when some of the vacancies pertaining to DRs or LDCEs in a particular year are not filled up due to non-availability of suitable candidates from these sources, despite the recruitment process being taken to its conclusion, the positions which remain vacant for want of candidates shall be filled up in the same recruitment year through regular promotion from the cadre of Civil Judge (Senior Division) as per the applicable rules.

86. In such a scenario, the candidates who are ordinarily selected from the three sources are assigned seniority on induction to the HJS as per the Annual Roster in the regular manner. The remaining RPs, who are promoted in the vacancies from the other sources, would also be entitled to be placed in the same roster, but they would only occupy the subsequent positions for RPs, i.e., this diversion does not grant the roster position of LDCEs or DRs to these RPs. In the subsequent recruitment year, the ratio of 50:25:25 should guide the computation of vacancies to be filled from each source. This would be a continuing exercise of applying the

roster points on the candidates selected in each recruitment year, while the ratio is applied to the cadre, for determining the vacancies arising in a subsequent year.

V. Data - an unreliable guide

87. Despite the data presented by the Amicus Curiae as to the constitution of the HJS in various States, specifically the number of posts occupied by the RPs and the DRs, a reality check on facts is not possible due to the rather amorphous and fluid situation that has existed in the past three decades.

88. As was found, it was in 1992 that this Court in the Second AIJA3 prescribed a minimum requirement of three years' practice at the Bar for recruitment to the lower rungs of the judiciary. Before that, it was not uniform and different periods were prescribed in different States; as we saw from Kerala, which prescribed a minimum five years' practice at the Bar for recruitment to the entry point at the lower rung of the judiciary, which stood approved in 1994 by the Third AIJA4.

89. Be it the three-year course or the five-year course in LL.B, the latter of which commenced only in 1988-89, that too initially confined to National Law Universities, the average age of recruitment as Munsiff/Magistrate would have been 26 to 28. The age limit would further increase in the case of reservations, wherever it was enabled with a relaxation in the maximum age. There would be minimal representation of those who were recruited at the commencement of the three decades just past.

90. With the Fourth AIJA5, in 2002, the requirement of practice was fully dispensed with, in which context, the age of recruitment could be anything above 23 years; who would be the present incumbents in the post of District Judges, having been promoted from the Senior Division. Even then, the time spent in Junior Division and Senior Division, before promotion to the HJS varied considerably in the different States and there could be no common malady ferreted out which requires mitigation.

91. We are constrained to observe that the suggestions as placed on record by the learned Amicus would be counter-productive and would run against established norms of service jurisprudence, if the service in the lower cadre is reckoned for determining the seniority in the higher cadre, especially when, in addition to regular promotions, there is a merit based promotion opportunity through LDCE and DR, participation in which is now permitted to both the existing Judicial Officers and the Members of the Bar.

92. The ratio of 1:1, as suggested by the Amicus and the zone of consideration of 50% officers from the two categories of promotion and direct recruitment, would only create further disparities and lead to discontentment of those promoted on merit and would create a disadvantage to those Judicial Officers who are directly

recruited to the HJS. A three-year seniority would also cause injustice insofar as direct recruitment is concerned, providing no such incentive to a Judicial Officer who had earlier been in the Junior Division or the Senior Division.

93. The separate seniority list in respect of the three different sources would also result in inequalities. We have no reason to doubt that creating quotas for fixation in the Selection Grade and Super Time Scale within the cadre of District Judges based on the prior service in the lower rungs of the Judiciary would be iniquitous and would result in sacrificing merit.

94. As was observed, the disparities in the data and statistics presented, coupled with the anticipated change in the constitution of the HJS prompted by the Sixth AIJA8 and Rejanish K.V1 make today a wholly inopportune moment to bring in any weightage to RPs in the HJS, on the basis of their service in the Junior Division and the Senior Division. This is, especially so, when the merit, suitability and seniority determined for fixation in the higher grades of Selection Grade and Super Time Scale have to be factored and evaluated on the basis of the service in the HJS and not that in the lower feeder cadre.

The earlier service in the lower rungs of the judiciary can only enable a meritorious promotion to the HJS, and the incumbents in the HJS having lost their 'genetic blemish' or so to say the 'genetic adornment' of experience in the lower cadre, will have to prove their merit in the HJS for further career advancement. It would also dampen the spirit of those who avail the chances of accelerated promotion, since then, there would be no incentive in taking that opportunity.

95. Ambition is a ladder, the last rung of which is always elusive to the one pursuing it, who endlessly searches for it; based on which, seniority cannot be fixed. For all these reasons, we are compelled to note that the questions raised and the reliefs sought by the learned Amicus through this Interlocutory Application must be declined, save for the mechanisms envisaged and enumerated through this judgment.

96. Perhaps at this juncture and milieu, prior to solidifying our conclusions and directions, it would be fitting to quote a passage from the First AIJA2: "Judges do not have an easy job. They repeatedly do what the rest of us seek to avoid; make decisions."

CONCLUSIONS AND DIRECTIONS

97. Before proceeding any further, we consider it apposite to record a caveat that the guidelines issued herein are not intended to adjudicate or resolve any inter se seniority dispute among RPs, LDCs and DRs. What we seek to lay down are general and mandatory guidelines which shall, henceforth, be incorporated into

the respective statutory service rules governing the determination of inter se seniority among officers appointed from different sources to the Higher Judicial Services.

98. Likewise, the directions issued herein shall not be construed as an avenue to reopen or unsettle inter se seniorities that have already been determined between officers appointed from the different sources of recruitment.

99. It is further clarified that such directions, as well as this judgment in toto, are being issued considering the issues as on date and may require reconsideration upon observing the ultimate impact and effect of the decisions rendered by the Constitution Bench in Rejanish K.V.1 and the Sixth AIJA8. We say so, being mindful of the fact that the inter se position amongst RPs, LDCs and DRs is likely to undergo substantial change in due course, in light of the aforesaid decisions. Such altered circumstances may necessitate a review, modification, or recall of the present directions.

100. In this vein, we deem it appropriate to invoke our powers under Article 142 of the Constitution to record the following conclusions and issue the ensuing directions:

(i) That, perceived discontentment and heartburn without something more in the form of a legal claim, illegal denial, or at least a legitimate expectation cannot result in creating an artificial classification of members within a cadre.

(ii) That, the statistical data is disparate and does not provide a substantial basis to find such discontentment and heartburn of RPs in the HJS, to be justified.

(iii) That, there is no common malady of disproportionate representation of DRs in the HJS such that it is diminishing the prospects of financial upgradation or designation as Principal District Judges to the promotees, which afflict the Country as a whole or make it imperative for this Court to resolve it, by giving a preference to RPs or LDCs.

(iv) That, the data put forth in many States indicates a prevalence or equivalence of RPs in the HJS and key positions, which is natural since their ratio is 3/4th of the total posts in the cadre.

(v) That, on the entry into a common cadre from different sources (RP, LDCE and DR) and assignment of seniority as per the annual roster, the incumbents lose their 'birthmark' of the source from which they are recruited.

(vi) That fixation in the Selection Grade and Super Time Scale within the HJS is based on the merit-cum-seniority within the cadre and cannot depend upon the length of service or performance in the lower rungs of the Judiciary; the latter

loses its significance after RPs and LDCs, by its virtue, are propelled into the HJS. Reliance on it does not serve the object of efficient administration of justice and is counterproductive.

(vii) That, the length and performance as a Civil Judge also does not constitute an intelligible differentia to classify incumbents in the common cadre of District Judge and the classification made in *Triloki Nath Khosa*¹⁵ by a Constitution Bench of this Court on the basis of educational qualifications stands on a different footing.

(viii) That, individual career aspirations are a normal incidence of service, accentuated only by better performance; they are not connected to the objective of an independent and strengthened judiciary and cannot guide the shape of the rules of seniority.

(ix) That, sufficient accelerated opportunities are provided for Members of the Judicial Service entering into the lower rungs, for career advancement as provided by the Constitution Bench in *Rejanish K.V.*¹; enabling the reckoning of their service for direct recruitment to HJS and by the Sixth AJA⁸; facilitating fast-track promotions to Civil Judge (Senior Division) and the HJS through reduction in the minimum period of service.

(x) That, the seniority of officers within the HJS shall be determined through an annual 4-point roster, filled by all officers appointed in the particular year in the repeating sequence of 2 RPs, 1 LDCE, and 1 DR.

(xi) That, only if the recruitment process is completed within the year after which it was initiated and no other appointments, from any of the three sources, have already taken place in respect of the recruitment initiated for that subsequent year, shall the officers belatedly so appointed be entitled to seniority as per the roster of the year in which recruitment was initiated.

(xii) That, if the recruitment process is not initiated for vacancies arising in a given year in the same year, the candidate filling such vacancy, in subsequent recruitment, shall be granted seniority within the annual roster of the year in which the recruitment process is finally concluded and appointment is made.

(xiii) That, after the recruitment of DRs and LDCs is complete for a particular year, the positions falling in their quota that remain unfilled due to lack of suitable candidates shall be filled through RPs, subject to such RPs being placed only on subsequent RP positions in the annual roster; and the vacancies in the subsequent year shall be computed so as to apply the proportion of 50:25:25 to the entire cadre.

(xiv) That, the statutory rules governing the HJS in the respective States, in consultation with the High Courts, shall prescribe the exact modalities of the Annual Roster and how the directions of this judgement shall be implemented.

101. The respective States / Union Territory Administrations are hereby also directed to undertake appropriate amendments in their respective statutory rules, in consultation with the High Court, to bring them in consonance with the guidelines laid down in this judgment, within a period of three months.

102. The question framed by us is thus answered in the above terms. The instant Interlocutory Application stands disposed of.

103. I.A. Nos. 269261 and 270515/2025 also stand disposed of.

104. Ordered accordingly.

.....CJI. (B.R. Gavai)

.....J. (Surya Kant)

.....J. (Vikram Nath)

.....J. (K. Vinod Chandran)

.....J. (Joymalya Bagchi)

New Delhi;

November 19, 2025

IN THE SUPREME COURT OF INDIA

In Re: Assent, Withholding or Reservation of Bills by The Governor and the President of India.

[Special Reference No. 1 of 2025]

Head Note – The Court cannot impose any timelines for decisions of the President and the Governor on granting assent to Bills under Articles 200/201 of the Constitution.

The concept of Courts declaring "deemed assent" to the Bills if the timelines are breached was antithetical to the spirit of the Constitution and against the doctrine of separation of powers. The concept of Courts declaring "deemed assent" is virtually a take over of the functions reserved for the Governor.

In Presidential Reference, 14 questions were answered by the Court as follows –

1. What are the constitutional options before a Governor when a Bill is presented to him under Article 200 of the Constitution of India?

Answer -Upon presentation of the bill, the Governor can assent to the bill, withhold assent or reserve for the President's assent. Withholding of the assent must be accompanied by the returning of the Bill to the Assembly as per the first proviso to Article 200. First proviso(which says Bill be returned to the Assembly) is not a fourth option, but qualifies the option of withholding assent. Thus, if assent to the Bill is withheld, then it must necessarily be returned to the Assembly. To permit the Governor to withhold the Bill without returning it to the house will derogate the principle of federalism. The Court rejected the Union's argument that the Governor can simply withhold the Bill without returning to the House.

2. Is the Governor bound by the aid & advice tendered by the Council of Ministers while exercising all the options available with him when a Bill is presented before him under Article 200 of the Constitution of India?

Answer - Ordinarily, the Governor exercises functions under the aid and advice of the Council of Ministers. But in Article 200, the Governor exercises discretion. The Governor enjoys discretion under Article 200, as indicated by the use of the words "in his opinion" in the second proviso of Article 200. The Governor has discretion either to return the bill or to reserve the Bill for the President.

3. Is the exercise of constitutional discretion by the Governor under Article 200 of the Constitution of India justiciable?

Answer - The discharge of Governor's functions under Article 200 is not justiciable. The Court cannot enter into a merit-review of the decision so taken. However, in a glaring circumstance of inaction, that is prolonged, unexplained and indefinite, the Court can issue a limited mandamus for the Governor to discharge his functions under Article 200 within a reasonable time period without making any observation on the merits of the exercise of the discretion.

4. Is Article 361 of the Constitution of India an absolute bar to the judicial review in relation to the actions of a Governor under Article 200 of the Constitution of India?

Answer : Article 361 is an absolute bar on judicial review. However, it cannot be used to negate the limited scope of judicial review that this Court is empowered to exercise in cases of prolonged inaction by the Governor under Article 200. While the Governor enjoys personal immunity, the office of the Governor is subject to this Court's jurisdiction.

5. In the absence of a constitutionally prescribed time limit, and the manner of exercise of powers by the Governor, can timelines be imposed and the manner of exercise be prescribed through judicial orders for the exercise of all powers under Article 200 of the Constitution of India by the Governor?

6. Is the exercise of constitutional discretion by the President under Article 201 of the Constitution of India justiciable?

7. In the absence of a constitutionally prescribed timeline and the manner of exercise of powers by the President, can timelines be imposed and the manner of exercise be prescribed through judicial orders for the exercise of discretion by the President under Article 201 of the Constitution of India?

Answers - Questions 5, 6 and 7 answered together -

The text of Articles 200 and 201, has been framed in such a manner, so as to provide a sense of elasticity, for constitutional authorities to perform their functions, keeping in mind the diverse contexts and situations, and by consequence the need for balancing that might arise in the process of law-making in a federal, and democratic country like ours. The imposition of timelines would be strictly contrary to this elasticity that the Constitution so carefully preserves.

In the absence of a Constitutionally prescribed time limit, it would not be appropriate for this Court to judicially prescribe a timeline for the exercise of powers under Article 200. For similar reasoning as held for the Governor, the President's assent under Article 201 is not justiciable. For the same reason, the

President too cannot be bound by judicially prescribed timelines for the exercise of powers under Article 201.

8. In light of the constitutional scheme governing the powers of the President, is the President required to seek advice of the Supreme Court by way of a reference under Article 143 of the Constitution of India and take the opinion of the Supreme Court when the Governor reserves a Bill for the President's assent or otherwise?

Answer : President is not required to seek the advice of the Court every time a Bill is reserved by the Governor. The subjective satisfaction of the President is sufficient. If there is a lack of clarity or need for advice, the President may refer.

9. Are the decisions of the Governor and the President under Article 200 and Article 201 of the Constitution of India, respectively, justiciable at a stage anterior into the law coming into force? Is it permissible for the Courts to undertake judicial adjudication over the contents of a Bill, in any manner, before it becomes law?

Answer . No. The decisions of the Governor and the President under Article 200 and Article 201 of the Constitution of India, respectively, are not justiciable at a stage anterior into the law coming into force. Bills can be challenged only if they become the law.

10. Can the exercise of constitutional powers and the orders of/by the President / Governor be substituted in any manner under Article 142 of the Constitution of India?

Answer . No. The exercise of constitutional powers and the orders of/by the President / Governor cannot be substituted by this Court in any manner under Article 142 of the Constitution of India. We clarify that the Constitution, specifically Article 142, does not allow the concept of "deemed assent" of Bills.

11. Is a law made by the State legislature a law in force without the assent of the Governor granted under Article 200 of the Constitution of India?

Answer- Answered in terms of Question 10's answer. There is no question of a law made by the State Legislature coming into force without the assent of the Governor under Article 200. Governor's legislative role under Article 200 cannot be supplanted by another Constitutional authority.

12. In view of the proviso to Article 145(3) of the Constitution of India, is it not mandatory for any bench of this Hon'ble Court to first decide as to whether the question involved in the proceedings before it is of such a nature

which involves substantial questions of law as to the interpretation of constitution and to refer it to a bench of minimum five Judges?

Answer - Returned unanswered as the question is not relevant to the functional nature of this reference.

13. Do the powers of the Supreme Court under Article 142 of the Constitution of India limited to matters of procedural law or Article 142 of the Constitution of India extends to issuing directions /passing orders which are contrary to or inconsistent with existing substantive or procedural provisions of the Constitution or law in force?

Answer - Answered as part of Question 10.

14. Does the Constitution bar any other jurisdiction of the Supreme Court to resolve disputes between the Union Government and the State Governments except by way of a suit under Article 131 of the Constitution of India?

Not answered as it is found irrelevant.

JUDGMENT

Opinion of The Court

For clarity and coherent exposition of the issues under consideration, the opinion of the Court on the Presidential Reference is set out in the following parts:-

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I. Presidential Reference No. 1 of 2025.

1. In exercise of powers conferred under Article 143(1) of the Constitution of India, the President of India has on 13th May, 2025 referred fourteen questions relating to interpretation of powers of the Governor under Articles 200 and 201 along with certain ancillary questions for opinion of the Supreme Court. The context that occasioned the reference, followed by the questions are as follows;

"PRESIDENT REPUBLIC OF INDIA

WHEREAS Article 200 of the Constitution of India prescribes the powers of the Governor and the procedure to be followed while assenting to Bills, withholding assent to Bills and reserving a Bill for the consideration of the President;

WHEREAS Article 200 of the Constitution of India does not stipulate any time frame upon the Governor for the exercise of constitutional options under Article 200;

WHEREAS Article 201 of the Constitution of India prescribes the powers of the President and the procedure to be followed while assenting to Bills or withholding assent therefrom;

WHEREAS Article 201 of the Constitution of India does not stipulate any time frame or procedure to be followed by the President for the exercise of constitutional options under Article 201;

WHEREAS the Constitution of India enlists numerous instances where the assent of the President has to be obtained before a legislation can take effect in the State;

WHEREAS the exercise of constitutional discretion by the Governor and the President under Article 200 and Article 201 of the Constitution of India, respectively are essentially governed by polycentric considerations, inter alia being federalism, uniformity of laws, integrity and security of the nation, doctrine of separation of powers;

WHEREAS there are conflicting judgments of the Supreme Court as to whether the assent of the President of India under Article 201 of the Constitution of India is justiciable or, not;

WHEREAS the States are frequently approaching the Supreme Court of India invoking Article 32 [and not Article 131] of the Constitution of India raising issues which by their very nature are federal issues involving interpretation of, inter alia, the Constitution of India;

WHEREAS the contours and scope of provisions contained in Article 142 of the Constitution of India in context of issues which are occupied by either constitutional provisions or statutory provisions also needs an opinion of the Supreme Court of India;

WHEREAS the concept of a deemed assent of the President and the Governor is alien to the constitutional scheme and fundamentally circumscribes the power of the President and the Governor;

WHEREAS in view of what is herein before stated and the present prevailing circumstances, it appears to me that the following questions of the law have arisen and are of such nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court of India thereon,

NOW, THEREFORE, in exercise of the powers conferred upon me by clause (1) of Article 143 of the Constitution of India, I, Droupadi Murmu President of India, hereby refer the following questions to the Supreme Court of India for consideration and to report its opinion thereon, namely:-

1. What are the constitutional options before a Governor when a Bill is presented to him under Article 200 of the Constitution of India?
2. Is the Governor bound by the aid & advice tendered by the Council of Ministers while exercising all the options available with him when a Bill is presented before him under Article 200 of the Constitution of India?
3. Is the exercise of constitutional discretion by the Governor under Article 200 of the Constitution of India justiciable?
4. Is Article 361 of the Constitution of India an absolute bar to the judicial review in relation to the actions of a Governor under Article 200 of the Constitution of India?
5. In the absence of a constitutionally prescribed time limit, and the manner of exercise of powers by the Governor, can timelines be imposed and the manner of exercise be prescribed through judicial orders for the exercise of all powers under Article 200 of the Constitution of India by the Governor?
6. Is the exercise of constitutional discretion by the President under Article 201 of the Constitution of India justiciable?
7. In the absence of a constitutionally prescribed timeline and the manner of exercise of powers by the President, can timelines be imposed and the manner of exercise be prescribed through judicial orders for the exercise of discretion by the President under Article 201 of the Constitution of India?
8. In light of the constitutional scheme governing the powers of the President, is the President required to seek advice of the Supreme Court by way of a reference under Article 143 of the Constitution of India and take the opinion of the Supreme Court when the Governor reserves a Bill for the President's assent or otherwise?
9. Are the decisions of the Governor and the President under Article 200 and Article 201 of the Constitution of India, respectively, justiciable at a stage anterior into the law coming into force? Is it permissible for the Courts to undertake judicial adjudication over the contents of a Bill, in any manner, before it becomes law?

10. Can the exercise of constitutional powers and the orders of/by the President/Governor be substituted in any manner under Article 142 of the Constitution of India?

11. Is a law made by the State legislature a law in force without the assent of the Governor granted under Article 200 of the Constitution of India?

12. In view of the proviso to Article 145(3) of the Constitution of India, is it not mandatory for any bench of this Hon'ble Court to first decide as to whether the question involved in the proceedings before it is of such a nature which involves substantial questions of law as to the interpretation of constitution and to refer it to a bench of minimum five Judges?

13. Do the powers of the Supreme Court under Article 142 of the Constitution of India limited to matters of procedural law or Article 142 of the Constitution of India extends to issuing directions /passing orders which are contrary to or inconsistent with existing substantive or procedural provisions of the Constitution or law in force?

14. Does the Constitution bar any other jurisdiction of the Supreme Court to resolve disputes between the Union Government and the State Governments except by way of a suit under Article 131 of the Constitution of India?"

II. Proceedings Before This Court.

2. As per the orders of the Chief Justice of India, the reference was placed before the Constitution Bench following the procedure prescribed under Order XXXVII of the Supreme Court Rules on 22.07.2025. Learned Solicitor General appeared for the Union of India, and we requested the Attorney General to assist the Court.

3. Formal notices were issued to States and Union Territories and they were asked to file written submissions. Pursuant to the filing of these submissions, hearing commenced on 19.08.2025 with the Attorney General addressed this Court on the scope of the reference. The Solicitor General who made exhaustive submissions on behalf of the Union of India. He was followed by Mr. Neeraj Kishan Kaul for the State of M.P., Mr. Harish Salve for the State of Maharashtra, Mr. Maninder Singh for the State of Rajasthan, Mr. K.M. Nataraj, ASG for the States of Orissa and Uttar Pradesh, Mr. Vikramjit Banerjee, ASG for the State of Goa, Mr. Vinay Navare for the Union Territory of Puducherry and Mr. Guru Krishna Kumar for the State of Haryana.

4. Dr. Abhishek Manu Singhvi, Sr. Advocate made comprehensive submissions on behalf of the State of Tamil Nadu. He was followed by Mr. K.K. Venugopal for the State of Kerala, Mr. Kapil Sibal for the State of West Bengal, Mr. Gopal Subramaniam for the State of Karnataka, Mr. Anand Sharma for the State of

Himachal Pradesh, Mr. Arvind Datar for the State of Punjab, and Mr. S. Niranjan Reddy for the State of Telangana. Advocate General for the State of Meghalaya, Mr. Amit Kumar assisted us. Mr. Gopal Sankaranarayanan, Sr. Advocate, Ms. Avani Bansal, Dr. Vivek Sharma, Mr. Sudiep Shrivastava appeared on behalf of the intervenors.

III. Preliminary submissions on the maintainability.

5. Many of the parties opposing the present reference advanced distinct and nuanced submissions on the substantive questions referred but were unanimous in their opposition to the maintainability of the present reference itself. It was argued that the reference was not maintainable, and ought to be declined and returned unanswered in entirety.

6. The main thrust of the argument on maintainability was that the powers of the President to refer questions under Article 143 is contingent on the fact that a 'question of law or fact has arisen, or is likely to arise', which is not the case presently, as these issues have been answered conclusively by the Division Bench in *State of Tamil Nadu v. Governor of Tamil Nadu*¹(hereinafter '*State of Tamil Nadu*'), which in turn is binding under Article 141 of the Constitution (unlike an opinion tendered under Article 143 in exercise of advisory jurisdiction). Counsel appearing for the parties opposing the reference laboured extensively on the submission that the Presidential Reference was an appeal, or review in disguise.

They submitted that the reference seeks to raise such questions which are already decided by this Court in earlier decisions (not limited to *State of Tamil Nadu*) and thus, is an attempt to disturb the findings, and nullify the effect of the judgment already rendered in *State of Tamil Nadu* (supra). It was argued therefore, that this presidential reference was a malafide attempt by the Central Government to sidestep the decision of this Court, by invoking Article 143 jurisdiction to essentially seek an appeal of the binding decision already passed, without the Governor in fact filing a review, or curative petition, in relation to the *State of Tamil Nadu* (supra) decision.

7. Extensive reliance was placed on the decision of this Court in *Cauvery Water Disputes Tribunal, in Re*:² (hereinafter '*Cauvery (2)*'). It was also suggested that in exercise of advisory jurisdiction, earlier decisions of this court cannot be overruled. It was further argued that the present reference seeks formulation of general and omnibus standards for constitutional authorities to follow, in the absence of any factual matrix warranting the same. Reliance was placed on *In Re: Special Courts Bill 1978*³, wherein this Court had held that a reference must be refused when it is vague, hypothetical, speculative, general and omnibus.

8. In view of these submissions, we find that the preliminary objections on maintainability raised by these parties warrant the careful consideration of this Court before any discussion on the questions referred by the Hon'ble President. In doing so, it is necessary to first lay out the scope of advisory jurisdiction of this Court under Article 143, and the effect of an opinion tendered while exercising such jurisdiction.

A. Significance of this Reference

9. There have previously been 15 presidential references made under Article 143(1) of the Constitution of India. Each reference was made in a specific factual matrix, that had arisen and necessitated the advice of the Supreme Court. Pertinently, almost each of these references under Article 143(1) was the subject of challenge on the ground of maintainability. However, barring the Special Reference of 1993 which was returned unanswered on the ground that it did not serve any constitutional purpose⁴, all references have been duly answered - in part, or in full - by this Court. An illustrative list of the references made so far under Article 143(1), and the subject matter they dealt with, are mentioned below:

(i) Delhi Laws Act, 1912, In Re⁵ - on the power to delegate legislative power to other organs of the state machinery.

(ii) Kerala Education Bill, 1957, In Re⁶ - constitutional validity of a Bill in relation to Articles 29 and 30 of the Constitution.

(iii) Berubari Union (I), In Re⁷ - whether an Act under Article 3 by Parliament was sufficient to implement a bilateral agreement between India and Pakistan concerning cession of some parts of territory.

(iv) Sea Customs Act, S. 20(2), In Re⁸ - validity of a draft Bill concerning imposition and authorisation of taxes by the Central Government, and whether it was exempted under Article 289.

(v) Powers, Privileges and Immunities of State Legislatures, In Re⁹ (hereinafter referred to as 'Keshav Singh') - a peculiar situation between the State Legislature in Uttar Pradesh and the High Court of Allahabad, which gave rise to questions relating to the validity of initiation of contempt by the State Legislature against High Court judges.

(vi) Presidential Poll, In Re¹⁰ - interpretation of Articles 56, 62, 70, and 71 with regards to the election of the President.

(vii) Special Courts Bill, 1978, In Re¹¹ - consideration of a Bill for constitution of special courts to entertain cases relating to offences committed by individuals holding high political officers, during Emergency.

(viii) Cauvery Water Disputes Tribunal, In Re¹² - whether one party could override implementation of an interim order passed by the Water Dispute Tribunal, by way of an ordinance.

(ix) Special Reference No. 1 of 1993 (Ram Janma Bhumi-Babri Masjid matter)¹³ - advice sought on the factual issue of whether there existed a Hindu temple or Babri Masjid on the disputed land (this was returned unanswered) - see M. Ismail Faruqui (Dr) v. Union of India¹⁴.

(x) Special Reference No. 1 of 1998, Re¹⁵ - issue of appointment of judges, and the binding effect of the recommendation of the Chief Justice which was not agreeable to the Government, at that time.

(xi) Jammu and Kashmir Grant of Permit for Resettlement in (or Permanent Return to) the State Bill, 1980, In Re¹⁶ - relating to return and permanent resettlement of people who left Jammu and Kashmir between 1947-1954, which was returned unanswered due to efflux of time.

(xii) Special Reference No. 1 of 2001, In Re¹⁷ - validity of a State law regulating use and distribution of natural gas and liquefied petroleum gas, when the subject matter fell within the Union List.

(xiii) Special Reference No. 1 of 2002, In Re (Gujarat Assembly Election matter)¹⁸ - obligation of the Election Commission to conduct elections, when the state assembly is dissolved in haste and the interplay of Articles 174 and 324, if any.

(xiv) Natural Resources Allocation, In Re, Special Reference No. 1 of 2012¹⁹ - in relation to the judgment in the 2G spectrum case [Centre for Public Interest Litigation v. Union of India (2012) 3 SCC 1].

(xv) Punjab Termination of Agreement Act, 2004, In Re²⁰ - the constitutional validity of the Punjab Termination of Agreement Act, which sought to overcome the judicially directed implementation of sharing of natural resources between Punjab, Haryana and Rajasthan, in light of their water dispute.

10. None of these references have related to constitutional mechanics - the day to day functioning of constitutional functionaries and the interplay between various functionaries (the State Legislature, Governor, and the President), with regards to enactment of legislation. This is, therefore, a 'functional reference', which is fundamentally of a different nature as compared to the earlier references under

Article 143 - as it strikes at the root of the continuation of our republican and democratic way, and the Constitution's federal character. The nature of this reference, therefore, places a duty on this Court, to answer some, if not all, the questions so referred.

11. It is but apparent that the issues raised in the present reference have arisen in the aftermath of the decision rendered by a 2-judge bench of this Court in State of Tamil Nadu (supra) on 08.04.2025. A state of doubt, or confusion, has arisen in relation to various issues concluded by this Court in State of Tamil Nadu (supra), some of which were considered and decided in other decisions prior to it (many of which by benches of larger strength), including: the options before a Governor under Article 200²¹, the prescription of time limits under Articles 200 and 201²², whether the Governor is bound by the aid and advice of the Council of Ministers when exercising such decision under Article 200²³, the justiciability²⁴ of the decision made by the Governor and President under these Articles, whether Bills can be passed and enacted as law by way of 'deemed assent', to name a few.

A perusal of the decision of this Court in State of Tamil Nadu (supra), would reveal that at least some of the conclusions are in variance with earlier decisions, although the decision in State of Tamil Nadu (supra), seeks to reconcile this departure from earlier precedents. In this context, this Court finds that an authoritative opinion of this Court is mandated since the law on the functions of the Governor and the President under Article 200 and Article 201, cannot be left in a state of confusion, as it would impede smooth functioning of the Constitution.

It is clear that in the present circumstances, there exists substantial satisfaction of the Hon'ble President, that these are questions of law that have arisen, or are likely to arise, which are of public importance, which necessitate that an opinion be sought from this Court- as she is empowered to do so, under Article 143(1) of the Constitution. This Court finds that it is an institutional responsibility, to tender its opinion on this functional reference sought by the highest constitutional functionary of the country.

12. The unique nature of the advisory jurisdiction of this Court lies in its institutional character. The power to interpret the Constitution, nay, the duty to interpret it for the benefit of the Republic and its constituents, is exclusively vested with the judiciary. This Court is endowed with the institutional capacity and the constitutional duty to answer references that will ensure that the Constitution is nurtured and worked for the benefit of the people.

The exercise of this advisory function is a constitutional dialogue between the Executive and the Judiciary. The Court cannot shirk away from its responsibility to iron out constitutional creases, to authoritatively clarify the roles of

constitutional institutions, when doubts as to their roles and powers are raised. However, as stated above, this Court is well within its constitutional duty to refuse to answer questions that are purely speculative, over broad, vague, purely political in nature and beyond its institutional capacities.

B. Objections on malafide and form of reference

13. On the preliminary objection on form - that the Presidential Reference does not disclose the State of Tamil Nadu (supra) decision, which it indirectly seeks to impugn, and which answers 11 of the 14 questions, as per the parties opposing the reference - we find that the law is settled.

14. This Court has held that there is neither a particular format prescribed, nor a specific pattern while framing a reference. A reference is certainly not to be returned unanswered, on either of these counts, and rather require "appropriate analysis, understanding and appreciation of the content or the issue on which doubt is expressed, keeping in view the concept of constitutional responsibility, juridical propriety and judicial discretion"²⁵.

15. Furthermore, Order XLII of the Supreme Court Rules, 2013 prescribes that the Attorney General, and the parties to whom notice is issued in terms of Rules 1 and 2, are the parties to bring out the relevant facts and law to the attention of this Court. It was also specifically held in Natural Resources Allocation (supra) that the written briefs and arguments advanced can be relied on to discern the legal controversies before this Court under Article 143 itself²⁶. Admittedly, the decision in State of Tamil Nadu (supra) forms the bulk of the submissions advanced before this Court, and there is no question of it having eluded us in our consideration of the matter.

16. The allegation that the non-disclosure of the judgment in itself, reflects mala fides, is certainly a leap in logic, and one which does not behove this Court to entertain, against the highest constitutional functionary, i.e., the President. Given the constitutional significance of the questions so referred, we deem it appropriate to reject the preliminary objection made in this regard. In any event, a challenge to the maintainability of the reference on the grounds of malafide is no longer available in view of the pronouncement of this Court in Natural Resources Allocation (supra).

17. The questions referred by the Hon'ble President pertain to the very core, and foundational modalities of our constitutional machinery, that ensures the continuation of our republican democracy, and governance by elected representatives. That they are constitutionally significant, cannot by any measure, be overstated. This Court is empowered, and entrusted under Article 143, with the duty to answer such questions in service of the Constitution, and the people

that have so adopted it. Judicial propriety, and institutional integrity requires that this Court answer the questions referred to it in the present proceedings.

C. Objections on the basis of the Judgment in Cauvery (2)

18. The parties opposing the reference rely on Cauvery (2) (supra) to argue that the substantial overlap in issues between the questions referred, and the findings of this Court in State of Tamil Nadu (supra), result in an appeal in disguise. They also argue that it is impermissible to overrule an earlier precedent of this Court while exercising jurisdiction under Article 143.

19. On the latter aspect, we find it appropriate to refer to the opinion of Y.V. Chandrachud, J. in In Re: Special Courts Bill 1978 (supra) where the binding effect of an opinion rendered under Article 143 jurisdiction, is discussed at length:

"101. We are inclined to the view that though it is always open to this Court to re-examine the question already decided by it and to overrule, if necessary, the view earlier taken by it, insofar as all other courts in the territory of India are concerned they ought to be bound by the view expressed by this Court even in the exercise of its advisory jurisdiction under Article 143(1) of the Constitution."

(emphasis supplied)

20. We find that the reasoning of Chandrachud, J. (speaking for the majority) in the 7-judge bench decision of In Re: Special Courts Bill is compelling, insofar as it holds that our opinion may even go so far as to "overrule, if necessary", the view taken earlier by this very Court. Pertinently, the Court in Natural Resources Allocation (supra), relying on the same paragraph (para 101) reiterated that this Court has the power to overrule a previous view.²⁷

21. The argument that this reference amounts to an appeal in disguise, is also sufficiently answered in Natural Resources Allocation (supra), in which case this Court was considering a Reference that had been occasioned by an earlier decision of the Court in Centre for Public Interest Litigation v. Union of India²⁸ ["2G case"]. In this case too, maintainability of the Reference was challenged on the ground that it was an "indirect endeavour to unsettle and overturn the verdict in 2G Case"²⁹ and reliance was placed heavily on the decision in Cauvery (2) (supra), especially paragraphs 83 and 85 (as was done by parties opposing the present reference as well) which read as follows:

"83. Although this Court by the said decision has kept open the question viz. whether the Tribunal has incidental, ancillary, inherent or implied power to grant the interim relief when no reference for grant of such relief is made to it, it has in terms concluded the second part of the question. We cannot, therefore,

countenance a situation whereby question 3 and for that matter questions 1 and 2 may be so construed as to invite our opinion on the said decision of this Court. That would obviously be tantamount to our sitting in appeal on the said decision which it is impermissible for us to do even in adjudicatory jurisdiction. Nor is it competent for the President to invest us with an appellate jurisdiction over the said decision through a Reference under Article 143 of the Constitution.

84. Shri Nariman, however, contended that the President can refer any question of law under Article 143 and, therefore, also ask this Court to reconsider any of its decisions. For this purpose, he relied upon the language of clause (1) of Article 143 which is as follows.

85. In support of his contention he also referred us to the opinion expressed by this Court in The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950, Re [1951 SCC 568: 1951 SCR 747: AIR 1951 SC 332]. For the reasons which follow, we are unable to accept this contention. In the first instance, the language of clause (1) of Article 143 far from supporting Shri Nariman's contention is opposed to it. The said clause empowers the President to refer for this Court's opinion a question of law or fact which has arisen or is likely to arise. When this Court in its adjudicatory jurisdiction pronounces its authoritative opinion on a question of law, it cannot be said that there is any doubt about the question of law or the same is *res integra* so as to require the President to know what the true position of law on the question is.

The decision of this Court on a question of law is binding on all courts and authorities. Hence under the said clause the President can refer a question of law only when this Court has not decided it. Secondly, a decision given by this Court can be reviewed only under Article 137 read with Rule 1 of Order 40 of the Supreme Court Rules, 1966 and on the conditions mentioned therein. When, further, this Court overrules the view of law expressed by it in an earlier case, it does not do so sitting in appeal and exercising an appellate jurisdiction over the earlier decision.

It does so in exercise of its inherent power and only in exceptional circumstances such as when the earlier decision is *per incuriam* or is delivered in the absence of relevant or material facts or if it is manifestly wrong and productive of public mischief. [See: *Bengal Immunity Company Ltd. v. State of Bihar* [(1955) 2 SCR 603: AIR 1955 SC 661 : (1955) 6 STC 446]]. Under the Constitution such appellate jurisdiction does not vest in this Court, nor can it be vested in it by the President under Article 143. To accept Shri Nariman's contention would mean that the advisory jurisdiction under Article 143 is also an appellate jurisdiction of this Court over its own decision between the same parties and the executive has a

power to ask this Court to revise its decision. If such power is read in Article 143 it would be a serious inroad into the independence of judiciary."

(emphasis supplied)

22. While extrapolating the true ratio of Cauvery (2) (supra), this Court in Natural Resources Allocation (supra) held as follows:

"47. Therefore, references in para 85 of Cauvery (2) [1993 Supp (1) SCC 96 (2)] to "decision" and "view of law" must be severed from each other. The learned Judge observes that in case of a decision, the appellate structure is exhausted after a pronouncement by the Supreme Court. Therefore, the only option left to the parties is of review or curative jurisdiction (a remedy carved out in the judgment in Rupa Ashok Hurra v. Ashok Hurra [(2002) 4 SCC 388].

After the exercise of those limited options, the parties concerned have absolutely no relief with regard to the dispute: it is considered settled for eternity in the eye of the law. However, what is not eternal and still malleable in the eye of the law is the opinion or "view of law" pronounced in the course of reaching the decision. Sawant, J. in Cauvery (2) [1993 Supp (1) SCC 96 (2)] clarifies that unlike this Court's appellate power, its power to overrule a previous precedent is an outcome of its inherent power when he says: (SCC p. 145, para 85)"

(emphasis supplied)

23. The Court concluded, as follows:

"48. Therefore, there are two limitations-one jurisdictional and the other self-imposed:

48.1. The first limitation is that a decision of this Court can be reviewed only under Article 137 or a curative petition and in no other way. It was in this context that in para 85 of Cauvery (2) [1993 Supp (1) SCC 96 (2)], this Court had stated that the President can refer a question of law when this Court has not decided it. Mr Harish Salve, learned Senior Counsel, is right when he argues that once a lis between parties is decided, the operative decree can only be opened in review. Overruling the judgment-as a precedent-does not reopen the decree.

48.2. The second limitation, a self-imposed rule of judicial discipline, was that overruling the opinion of the Court on a legal issue does not constitute sitting in appeal, but is done only in exceptional circumstances, such as when the earlier decision is per incuriam or is delivered in the absence of relevant or material facts or if it is manifestly wrong and capable of causing public mischief."

(emphasis supplied)

24. The Court in Natural Resources Allocation (supra) further noted that in various judgments, this Court had either explained, clarified or read down the ratio of previous judgments. Reference was made to this Court's decision in Keshav Singh (supra) and the pronouncements it had considered, and clarified by way of the 7-judge opinion rendered under Article 143(1), and it was held:

"56. From the aforesaid decision in Keshav Singh case [AIR 1965 SC 745: (1965) 1 SCR 413] it is clear that while exercising jurisdiction under Article 143(1) of the Constitution this Court can look into an earlier decision for the purpose of whether the contentions urged in the previous decision did raise a general issue or not; whether it was necessary to consider the larger issue that did not arise; and whether a general proposition had been laid down. It has also been stated that where no controversy arose with regard to applicability of a particular facet of constitutional law, the comments made in a decision could be treated as not accurate; and further it could be opined that in an earlier judgment there are certain obiter observations.

57. Thus, in Keshav Singh [AIR 1965 SC 745 : (1965) 1 SCR 413] , a seven-Judge Bench, while entertaining a reference under Article 143(1), dealt with a previous decision in respect of its interpretation involving a constitutional principle in respect of certain articles, and proceeded to opine that the view expressed in Sharma case [AIR 1959 SC 395 : 1959 Supp (1) SCR 806] , in relation to a proposition laid down in Keshavram Reddy case [(1952) 1 SCC 343 : AIR 1954 SC 636 : 1954 Cri LJ 1704] , was inaccurate.

61. From the aforesaid, it is demonstrable that while entertaining the reference under Article 143(1), this Court had analysed the principles enunciated in the earlier judgment and also made certain modifications. The said modifications may be stated as one of the modes or methods of inclusion by way of modification without changing the ratio decidendi. For the purpose of the validity of a reference, suffice it to say, dwelling upon an earlier judgment is permissible."

(emphasis supplied)

25. Similarly, in Special Reference No. 1 of 1998, Re, (supra) too, the reference was decided despite there being two judgments of this Court of larger benches (First and Second Judges cases)³⁰. Though, in that case, the Attorney General had specifically submitted that the Union of India was not seeking a review or reconsideration of the previous judgments, which would be considered to be binding.³¹

26. The range of questions referred by the Hon'ble President do not require this Court to sit in appeal over the decision in State of Tamil Nadu (supra) but may

require us to consider the view of law expressed, differently. The reference raises pertinent questions of constitutional law, that hold significant public importance, relating to the interpretation of the Articles 200, 201, 142, 143, 145(3) and 361. The questions do not require this Court to vacate, amend, or modify the final relief granted by this Court in State of Tamil Nadu (supra), and instead, at the most, seek clarification on the propositions of law laid down in it, which have ramifications for the governance of all States, i.e., beyond the parties that were before it in that lis.

27. The discussion of the ratio of Cauvery (2) (supra) has already clarified that "sitting in appeal" would mean the variation, or vacation of the operative order in a concluded lis. It was held that Article 143 cannot be invoked to overturn a concluded adjudication inter-se parties, but this cannot be conflated with the authority of this Court to answer general questions of law referred to it by the Hon'ble President, that hold constitutional importance. In this regard, the submission made by the Attorney General, and Solicitor General - that the present reference seeks clarification of constitutional principles for future governance, and not the setting aside of an already awarded decree, or the relief granted therein - is hereby, duly accepted.

28. In light of the findings elaborated hereinabove, we find that the preliminary objections made in relation to similarity with the findings, or issues raised in State of Tamil Nadu (supra) ought to be dismissed at the threshold, and the various questions of constitutional significance referred by the Hon'ble President merit our comprehensive consideration, within the contours and scope of jurisdiction already laid out by this Court in a catena of judgments, in relation to Article 143.

D. Re: The Court's power to decline answering a question referred

29. Maintainability of a reference under Article 143 cannot be conflated with the discretion that always lies with this Court, to decline answering a question referred. A reference can be found to be maintainable, yet, this Court, upon analysing the issues and after careful consideration, may still conclude that it would be in the larger interest, to decline to answer a question (or questions). The discretion that is exercisable to decline answering a question when it is over broad, superfluous, political, or not serving any constitutional purpose - undoubtedly remains.

30. Having emphasized the functional nature of the present reference, this Court finds that at least some of the questions do not concern with functional aspects of the institutions of the Governor and the President. Question 12 concerns itself with Article 145(3) and the composition of benches in the Supreme Court which

should hear cases concerning substantial questions of law involving the interpretation of the Constitution.

Whether a dispute raises such a question or not is within the province of judicial enquiry and it is also within the power and jurisdiction of the Chief Justice of India to determine the strength of a Bench. This query is irrelevant to the functional nature of the reference, and this Court declines to answer this question. Question 14 concerning the jurisdiction of this Court to resolve disputes between the Union and the States is also irrelevant to functional nature of the reference, and this Court declines to answer this question.

31. Question 13 concerning the power of this Court under Article 142 is worded in such broad terms that it is not possible to answer it in a comprehensive and definitive manner. However, Question 10 which also concerns the use of Article 142, but raised in the context of the functions of the Governor and the President, will be answered in the course of this opinion.

IV. Values that should govern and guide Constitutional Interpretation

32. Before this Court proceeds to render its opinion on the queries raised, a few, yet significant prefatory observations on the use of comparative law and precedents are in order. Copious written submissions and extensive arguments have been employed by counsel to underscore the functioning of the Westminster parliamentary model and its workings in the United Kingdom. They sought to draw parallels on the discretionary powers of the Crown and the limitations thereon.

On the other hand, arguments were advanced on the Presidential system prevalent in the United States of America, and the strict separation of powers practiced there. This Court believes that our constitutional truth does not lay in either of these extremes but is grounded in the way we have successfully, and if we may add, proudly, worked our Constitution over three quarters of a century. While our Constitutional text may have been inspired by comparative outlook, its interpretation and working, we believe is truly swadeshi.

33. Unlike the English experience of an unwritten constitution, we have a written text. English constitutional law did not have to grapple with vital questions of federalism and an inherently diverse country. It did not have to deal with distribution of legislative powers between the Union and the States, questions of shared natural resources, inter State trade, commerce and taxation, Union control over foreign relations and the not so infrequent, yet healthy contestations of constitutional spaces between the Union and States.

The American experience is vastly different due to the strict separation of powers between Executive and Legislature, necessitating the Presidential veto. Indian

constitutionalism on the other hand has evolved over years to a parliamentary model where legislative agenda, business and enactment is overwhelmingly executed at the behest of the Executive, and the introduction of the Tenth Schedule to the Constitution has left very little, if no, room for legislation without the support of government in power. The point that is being made is this- the Indian Constitution is not just transformative in its adoption, it has been and continues to be transformative in its practice and interpretation, shedding its colonial vestiges for a vibrant and evolving swadeshi foundation.

V. Constitutional options before the Governor upon the presentation of a Bill

A. Role of the Governor under Chapter III, Part VI of the Constitution

34. The focal point of the present Reference is the interpretation of Article 200 of the Constitution of India. This provision is nestled in Chapter III of Part VI of the Constitution of India. Chapter III entitled "the State Legislature", contains some unique provisions concerning the Governor and the State Legislature. It must be recalled here, that unlike the President, the Governor is not elected but is appointed by the President of India under Article 155³². The constitutional scheme in Chapter II of Part VI vests the Executive power of the State with the Governor and provides detailed machinery as to how the executive functions shall be discharged. And yet, an unelected Governor is constitutionally engrafted as part of the State legislature under Article 168³³.

The Governor's constitutional functions vis-à-vis the State legislature are to be found in Chapter III whereas the Governor's legislative powers are situated in Chapter IV of Part VI, which, uniquely, contains only a single provision- Article 213, which is the power of the Governor to promulgate ordinances. The wide variety of legislative functions of the Governor in Chapter III include the power to summon the House (or each House), prorogue, dissolve the House³⁴, the right of the Governor to address the House³⁵, the right to send messages to the House³⁶, special address by the Governor³⁷, and the duty to give oath to members³⁸.

In respect of legislative business in the House, the Governor is tasked with the responsibility of laying before the House the annual financial statement³⁹ and statement for supplementary, excess and additional grant⁴⁰. The Governor's recommendation is constitutionally made a prerequisite for demand of grant under Article 203(3)⁴¹ and for introducing, moving and passing a Money Bill under Article 207⁴². It can thus be discerned that the Constitution enjoins several legislative functions upon the Governor and crucial legislative functions of the State legislature, including the entire ambit of financial statements, appropriations and money bills are constitutionally triggered only upon the

recommendation of the Governor. It is against this backdrop that Article 200 of the Constitution needs to be interpreted.

35. Article 200 reads as follows:

"200. Assent to Bills.- When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill."

(emphasis supplied)

B. Article 200: the "what" and "how" of Governor's options

36. We note that previous decisions of this Court as well the elaborate submissions addressed before us conflate two important aspects of Article 200. The first aspect is the range of options before the Governor when a Bill is presented to the Governor- which is the "what" of the Article 200. The second aspect relates to whether the Governor exercises these options in his discretion or upon the aid and advice of the Council of Ministers - what we describe as the "how". Although it is tempting to address these issues together, in our considered opinion, the constitutional options before the Governor under Article 200 stand independently of how it is exercised. In other words, the existence of options is de-hors the manner in which they are to be exercised. In this section we intend to only discuss and opine as to the first, and not the second.

37. During the arguments, our attention was drawn to the precursor provisions in the Government of India Act, 1919⁴³, the Government of India Act, 1935⁴⁴ and

the various draft provisions in the constitution making process. The drafting process and Constituent Assembly Debates do not provide clear insights as to the exact nature of the different options available and are of limited assistance in this regard. But the aspects regarding the insertion and deletion of the words "in his discretion" to the proviso of Article 175 (precursor to Article 200) in the Constituent Assembly Debates merit some consideration, which it will receive in the following section of this opinion.

C. Competing arguments on the options available to the Governor under Articles 200 and 201

38. The submission made on behalf of the Union of India, and some of the States that have supported the reference, is that the text of Article 200 is explicit- upon presentation of the Bill, the Governor can assent to the Bill, or he can withhold assent therefrom or he can reserve the Bill for the consideration of the President. The first proviso to Article 200 regarding return of a Bill to the Legislature, according to these submissions, is an additional option available to the Governor, making it a total of four alternatives that the Governor can choose from. They place reliance on the decisions in *State of Bihar v. Kameshwar Singh*⁴⁵ (hereinafter *Kameshwar*), *Union of India v. Valluri Basavaiah Chowdhary*⁴⁶ (hereinafter *Valluri*), and *Hoechst Pharmaceuticals Ltd. v. State of Bihar*⁴⁷ (hereinafter *Hoechst*).

39. In opposition, it has been argued that Article 200 provides the Governor with three options only - assent to the Bill, reserve it for the consideration of the President or return the Bill with message to the House requesting it to reconsider the Bill or a part of it, and after such reconsideration, if the House passes the Bill again, with or without amendment, the Governor is bound to give assent. Reliance in this regard is placed on the decisions in *State of Punjab v. Governor of Punjab*⁴⁸ (hereinafter *State of Punjab*) and *State of Tamil Nadu (supra)*⁴⁹.

D. Analysis of the decisions of this Court in *State of Punjab*, *Kameshwar*, *Valluri* and *Hoechst*

40. Before analyzing the text of Article 200, a note on the precedents cited above is necessary. The decision in *State of Punjab (supra)*, does not cite the decisions *Kameshwar (supra)*, *Valluri (supra)*, and *Hoechst (supra)*. On that count it fails to engage with the logic in those judgments, and since each one of them was rendered by larger Benches, it is our considered opinion that the precedential value of *State of Punjab (supra)* is dented on this count. The Court in *State of Tamil Nadu (supra)*, engages with the logic of these larger Bench decisions but pits that logic against the decision in *State of Punjab (supra)*. Both the decisions

in State of Punjab (supra) and State of Tamil Nadu (supra), with due respect, could not have deviated from the binding precedents of larger Bench decisions.

41. Be that as it may, none of the factual scenarios in Kameshwar (supra), Valluri (supra), and Hoechst (supra), called for an analysis of the powers and options of the Governor under Article 200. The context in which Kameshwar (supra), was delivered, was a challenge to land reform enactments and compliance with Article 31(3) of the Constitution as it then existed. Article 31(3) mandated that certain laws referred to clause (2) of Article 31 shall not have effect until they are reserved for the assent of the President and received it. The Court was called upon to decide whether the assent of the Governor was a prerequisite for the reservation of the 'law' for the assent of the President.

The mechanics of Article 200 and options before the Governor were never in issue. In Valluri (supra), yet again, the question posed was far stranger to the substance of Article 200. The Court therein was engaged with the question as to whether a resolution passed under Article 252 by the State legislature must also contain the signatures of the Governor and whether the Governor was part of the legislature for the purpose of Article 252. Hoechst (supra) pertained to challenge to certain provisions of the Bihar Finance Act, 1981 on the ground that it was repugnant to laws made by the Union. The Court had no occasion to consider the options before the Governor under Article 200.

E. Construction of the plain text of the Constitution to determine the options available for the Governor under Article 200

42. The foregoing discussion brings us to the plain text of Article 200. A literal reading of the substantive provision of Article 200, a simple and attractive method, presents to the Governor three options - each distinct and separated using the word "or". The President shall declare either, (i) that he assents to the Bill, or (ii) that he withholds assent therefrom, or (iii) that he reserves the Bill for the consideration of the President. In this suggested reading of Article 200, the first proviso carves out an exception and permits the fourth option where he can return the Bill to the House with comments, unless it is a Money Bill. In this suggested interpretation, there is an independent power to withhold the Bill simpliciter, in which case the Bill falls through. The proviso provides an additional option, a fourth option, to return the Bill to the House(s) with a message for its reconsideration.

43. The second interpretative choice on Article 200, is to bind the first proviso to the substantive part of Article 200, to qualify the power of the Governor to withhold the Bill, in which case the Governor is provided with a total of three options between the substantive part of Article 200 and the first proviso thereto. First, the Governor may assent to the Bill. Second, he may reserve the Bill for the

consideration of the President. Third, he may withhold assent therefrom and return the Bill to the legislature with comments, and if it is passed with or without amendment, he shall not withhold assent therefrom. The third option, in such a reading of Article 200 can be exercised only if the Bill is not a Money Bill.

44. For the reasons indicated hereinbelow, this Court is of the opinion that the latter interpretation of Article 200 is aligned with the constitutional ethos, constitutional structure and is to be preferred over an interpretation that empowers the Governor to withhold a Bill simpliciter.

45. The substantive part of Article 200 employs three verbs that indicate the options of the Governor- assent, withhold, and reserve. Each of these actions are qualitatively different from one another. However, the first proviso which repeats the verb 'withhold' indicates that the word "withholds" in the substantive part is not without qualification. The first proviso in our considered opinion qualifies the verb "withholds" in the substantive part and obliges the Governor to "return" the Bill in accordance with the first proviso, except, in case of a Money Bill. In that sense, the first proviso is not an exception that creates a fourth option, it is rather a qualification to the substantive part of Article 200, limiting the full play of the word "withholds" employed therein.

46. The manner in which the phrase "shall not withhold assent therefrom" is employed in the first proviso to Article 200 and conspicuously absent from a similarly worded proviso to Article 201, is a clear indication that the first proviso was indeed limiting the full import of the term "withholds" in the substantive part of Article 200.

47. Such a reading of the first proviso is also consistent with the constitutional import of the second proviso to Article 200. The second proviso mandates that a Governor shall not assent to, but reserve for the consideration of the President, any Bill which, in the opinion of the Governor, derogates from the powers conferred on the High Court by the Constitution. Akin to the first proviso, the second proviso too does not create an exception, but qualifies the full width of the verb - "assent" and limits its operation upon satisfaction of the conditions specified therein.

It impliedly limits the option of the Governor to even withhold and return the Bill but obliges the Governor to mandatorily reserve the Bill for consideration of the President in case the Bill derogates from the power of the High Court. Both the provisos in Article 200 are to be read as restricting the options of the Governor and not creating a further option. The provisos, in our opinion, do not create additional options, but restrict existing ones. In other words, the provisos do not create exceptions but only limit the options before the Governor in the substantive part of Article 200.

48. There is significant reason why there cannot exist a simpliciter power of withholding, de hors the mandate to return the Bill to the House with comments. The first proviso disentitles the Governor from returning the Bill to the House in case it is a Money Bill. Therefore, in case of a Money Bill the Governor's option is limited to either assenting to the Bill or reserving it to the President. However, if the option to withhold a Bill simpliciter is read into the substantive part of Article 200, then, even a Money Bill can be withheld simpliciter, which reading, in our opinion, defies constitutional logic.

49. The Constitution employs a certain grammar, a different structure and has devised a specific procedure for the introduction and passing of a Money Bill. The framers were cautious enough to provide a detailed and exhaustive definition of a Money Bill in Article 199⁵⁰. A Money Bill cannot be introduced or moved except on the recommendation of the Governor, and it cannot be introduced in the Legislative Council in case the State has a bicameral legislature, in terms of Article 198(1)⁵¹ read with Article 207⁵².

The Constitution framers also took care to ensure that a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council, is returned by the Legislative Council with its recommendations within 14 days, or else the Bill is deemed to have been passed by both the Houses on the expiration of the said period⁵³. A reading of Article 198(3) and 198(4) also reveals that the recommendations suggested by the Legislative Council are not binding on the Legislative Assembly in the case of a Money Bill.⁵⁴ In such circumstances, in our opinion, it would be contrary to the structure of Constitution, that the Governor has the option to simpliciter withhold even a Money Bill when the Legislative Council, an elected body, cannot mandate changes to a Money Bill. Though Mr. Salve submitted that even a Money Bill could be withheld simpliciter, we find that such submission ought to be squarely rejected.

50. Even in the case of a Bill, which is not a Money Bill, the first proviso disempowers the Governor from withholding the Bill when it is presented again to the Governor. What is impermissible to withhold through a dialogic process in the first proviso, cannot be permitted to be withheld abruptly or simpliciter by the Governor alone, employing the "withholds" option in the substantive part. This fortifies our reasoning that term "withholds" in the substantive part of Article 200 is conditioned and qualified by the first proviso.

51. We are of the firm opinion that if two interpretations are possible, then an interpretation that favors a dialogic process, which encourages institutional comity and deliberation between constitutional institutions - in this case that of the Governor and the House(s) - must be preferred over an interpretation that limits or eschews such a dialogue. Such an interpretation prevents institutional redundancy. We observe a deliberate constitutional design in incorporating the

Governor within the definition of Legislature in Article 168. The institution of the Governor and the House(s) are coupled together in this process under Article 201. One institution sends a message (suggestions) initiating this dialogic process and the other deliberates upon this message. We find that this dialogic process is in consonance with the functional roles assigned to both these institutions.

52. It is this very same dialogic process that prompted the framers of the Constitution to engrave Article 201 and the proviso thereto. Upon reservation under Article 200, the President is empowered to exercise his options under Article 201, and the proviso also provides for an option to return the Bill to the House with a message. What is important is that the words "shall not withhold therefrom" which is present in the first proviso to Article 200 is conspicuously absent from the proviso to Article 201. Since the Presidential reference has not sought our opinion as regards the options under Article 201, we say no further.

53. As an additional reason, we take a textual cue from Section 12 of the Government of India Act, 1919, the first sub-section of which reads as under:

"Sec. 12. (1) Where a Bill has been passed by a local Legislative council, the Governor, Lieutenant-Governor or Chief Commissioner may instead of declaring that he assents to or withholds his assent from the Bill, return the Bill to the Council for reconsideration, either in whole or in part, together with any amendments which he may recommend, or, in cases prescribed by rules under the Principal Act may, and if the rules so require shall, reserve the Bill for the consideration of the Governor-General".

(emphasis supplied)

The deployment of the phrase "instead of" in relation of assent and withhold, clearly postulates that the succeeding option of returning the Bill was an option divorced from the option of withhold and a completely different option. Such a phraseology was available and not put to deliberate use in the text of the Constitution. This adds an additional reason to our interpretative choice of Article 200.

54. Submissions were also advanced that the language of Article 200 is consistent with Section 75 of the Government of India Act, 1935 and that the Governor thereunder, was empowered to withhold a Bill simpliciter. This argument must be noted only to be rejected. A colonial appointee's (the office of the Governor then) power to withhold a Bill passed by a legislature (which was not elected based on universal adult suffrage), cannot and must not inform the interpretation of a democratic, republican, and an emancipatory Constitution like ours.

55. It was also urged by the counsel supporting the reference that the term "may" employed in the first proviso to Article 200 indicates the power to withhold and

the power to return the Bill to the House(s) are divorced, and the Governor "may" exercise the option to return the Bill only in some cases. We are of the opinion, that the use of the phrase "may" (and not "shall") in the first proviso is only to indicate that the Governor need not return every Bill to the House(s), and that he still can exercise the option of assenting to the Bill, or to reserve it for the consideration of the President.

F. Interpretation and Construction of Article 200 in the context of Federalism as a basic feature of the Constitution

56. At this stage, it is apposite to refer to the federal nature of our Constitution. We are quite conscious that our law reports are replete with enough judgments on this count and our opinion in a Presidential reference is not the ideal occasion for an exhaustive analysis. There is no gainsaying that federalism is part of the basic structure or that it is a basic feature of the Constitution of India.⁵⁵ As to the nature of Indian federalism, judicial pronouncements of this Court have employed divergent yardsticks and deployed varying terminology to distill the true nature of the federalism. We do not have any hesitation in recalling the observations made by this Court in *State of Rajasthan v. Union of India*⁵⁶, while categorizing our constitution as 'amphibian':

"60. Although Dr Ambedkar thought that our Constitution is federal "inasmuch as it establishes what may be called a Dual Polity", he also said, in the Constituent Assembly, that our Constitution-makers had avoided the 'tight mould of federalism' in which the American Constitution was forged. Dr Ambedkar, one of the principal architects of our Constitution, considered our Constitution to be "both unitary as well as federal according to the requirements of time and circumstances".

61. If then our Constitution creates a Central Government which is "amphibian", in the sense that it can move either on the federal or unitary plane, according to the needs of the situation and circumstances of a case, the question which we are driven back to consider is whether an assessment of the "situation" in which the Union Government should move either on the federal or unitary plane are matters for the Union Government itself or for this Court to consider and determine. Each organ of the Republic is expected to know the limits of its own powers. The Judiciary comes in generally only when any question of ultra vires action is involved, because questions relating to vires appertain to its domain."

57. In *State of West Bengal v. Union of India*⁵⁷, the Court opined that our Constitution adopted a federal structure with a strong bias towards the Centre and the Centre remains strong to prevent fissiparous tendencies.⁵⁸ The Court stated that "The exercise of powers, legislative and executive, in the allotted fields is

hedged in by the numerous restrictions, so that the powers of the States are not co-ordinate with the Union and are not in many respects independent."⁵⁹

58. In *S. R. Bommai v. Union of India*⁶⁰, this Court described the nature of the Indian polity as that of pragmatic federalism and cautioned against an approach that affixes a theoretical label to the Constitution. After an exhaustive survey of the constitutional provisions and case law, the Court concluded that (B.P. Jeevan Reddy, J.) -

"276. The fact that under the scheme of our Constitution, greater power is conferred upon the Centre vis-à-vis the States does not mean that States are mere appendages of the Centre. Within the sphere allotted to them, States are supreme. The Centre cannot tamper with their powers. More particularly, the courts should not adopt an approach, an interpretation, which has the effect of or tends to have the effect of whittling down the powers reserved to the States. must put the court on guard against any conscious whittling down of the powers of the States.

Let it be said that the federalism in the Indian Constitution is not a matter of administrative convenience, but one of principle - the outcome of our own historical process and a recognition of the ground realities. It is enough to note that our Constitution has certainly a bias towards Centre vis-à-vis the States (*Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan* [(1963) 1 SCR 491: AIR 1962 SC 1406], SCR at p. 540). It is equally necessary to emphasise that courts should be careful not to upset the delicately crafted constitutional scheme by a process of interpretation."

(emphasis supplied)

Whereas Sawant, J. opined:

"99. the States have an independent constitutional existence and they have as important a role to play in the political, social, educational and cultural life of the people as the Union. They are neither satellites nor agents of the Centre. The fact that during emergency and in certain other eventualities their powers are overridden or invaded by the Centre is not destructive of the essential federal nature of our Constitution. The invasion of power in such circumstances is not a normal feature of the Constitution. They are exceptions and have to be resorted to only occasionally to meet the exigencies of the special situations. The exceptions are not a rule."

(emphasis supplied)

59. In the context of State legislations, this Court in *ITC Ltd. v. Agricultural Produce Market Committee*⁶¹ held:

"58. True, the parliamentary legislation has supremacy as provided under Articles 246(1) and (2). This is of relevance when the field of legislation is on the Concurrent List. While maintaining parliamentary supremacy, one cannot give a go-by to the federalism which has been held to be a basic feature of the Constitution (see *S.R. Bommai v. Union of India* [(1994) 3 SCC 1]).

59. The Constitution of India deserves to be interpreted, language permitting, in a manner that it does not whittle down the powers of the State Legislature and preserves the federalism while also upholding the Central supremacy as contemplated by some of its articles."

(emphasis supplied)

60. This Court in *Kuldip Nayar v. Union of India*⁶² held as follows:

"63. True, the federal principle is dominant in our Constitution and that principle is one of its basic features, but, it is also equally true that federalism under the Indian Constitution leans in favour of a strong Centre, a feature that militates against the concept of strong federalism.

65. The concept of federalism in our Constitution, it has been held, is vis-à-vis the legislative power as would be evident by various articles of the Constitution. In fact, it has come into focus in the context of distribution of legislative powers under Article 246⁶³."

(emphasis supplied)

61. In *Government (NCT of Delhi) v. Union of India*⁶⁴ this Court characterized federalism in India, to be 'collaborative' or 'cooperative' federalism [taking forward the description in *State of Rajasthan* (supra) - this is where the term cooperative federalism from Austin's work,⁶⁵ is recognized by this Court]:

"111. The aforesaid idea, in turn, calls for coordination amongst the Union and the State Governments. The Union and the States need to embrace a collaborative/cooperative federal architecture for achieving this coordination.

116. Thus, the Union and the State Governments should always work in harmony avoiding constitutional discord. In such a collaboration, the national vision as set out in the Preamble to our Constitution gets realised. The methods and approach for the Governments of the Union and the States may sometimes be different but the ultimate goal and objective always remain the same and the governments at different levels should not lose sight of the ultimate objective. This constitutional objective as enshrined in the Constitution should be the guiding star to them to move on the path of harmonious coexistence and interdependence. They are the

basic tenets of collaborative federalism to sustain the strength of constitutional functionalism in a Welfare State.

119. Thus, the idea behind the concept of collaborative federalism is negotiation and coordination so as to iron out the differences which may arise between the Union and the State Governments in their respective pursuits of development. The Union Government and the State Governments should endeavour to address the common problems with the intention to arrive at a solution by showing statesmanship, combined action and sincere cooperation. In collaborative federalism, the Union and the State Governments should express their readiness to achieve the common objective and work together for achieving it. In a functional Constitution, the authorities should exhibit sincere concern to avoid any conflict.

This concept has to be borne in mind when both intend to rely on the constitutional provision as the source of authority. We are absolutely unequivocal that both the Centre and the States must work within their spheres and not think of any encroachment. But in the context of exercise of authority within their spheres, there should be perception of mature statesmanship so that the constitutionally bestowed responsibilities are shared by them. Such an approach requires continuous and seamless interaction between the Union and the State Governments."

(emphasis supplied)

62. While considering the abrogation of Article 370, this Court in Article 370 of the Constitution, *In Re*⁶⁶, held that the said Article, was an instance of feature of 'asymmetric federalism'. This was explained as follows:

"167. The Constitution accommodates concerns specific to a particular State by providing for arrangements which are specific to that State. Articles 371-A to 371-J are examples of special arrangements for different States. This is nothing but a feature of asymmetric federalism, [*State (NCT of Delhi) v. Union of India*, (2023) 9 SCC 1] which Jammu and Kashmir too benefits from by virtue of Article 370. The State of Jammu and Kashmir does not have "internal sovereignty" which is distinguishable from the powers and privileges enjoyed by other States in the country. In asymmetric federalism, a particular State may enjoy a degree of autonomy which another State does not. The difference, however, remains one of degree and not of kind. Different States may enjoy different benefits under the federal set-up but the common thread is federalism."

(emphasis supplied)

63. What then emerges from this brief discussion on the nature of Indian federalism, is that the States are entitled to determine the legislative policy within

the legislative spheres constitutionally allotted to them subject to the constitutional provisions and framework. What can be observed is that this Court's understanding of the nature of Indian federalism is not unidimensional. Rather, the court has consciously adapted its view of the nature of federalism under the Constitution and tailored its judgments to suit the organic needs of the Constitution.

It would be an error to conclude that the Court has shifted away from earlier approaches on federalism and adopted new ones. It has only analyzed the varied constitutional questions posed before it from different perspectives and commented on aspects of Indian federalism. No one description - federal, quasi federal, federalism with unitary bias, pragmatic federalism, cooperative federalism or asymmetrical federalism, captures the nature of Indian federalism in its entirety, but each contributes to a unique perspective of understanding the nature of Indian federalism.

64. Whatever be the description of Indian federalism, we think that it would be against the principle of federalism and a derogation of the powers of the State legislatures, to permit the Governor to withhold a Bill without following the dialogic process in the first proviso to Article 200. In our opinion, the first proviso initiating a constitutional conversation between the institution of the Governor and the House (or Houses), and the option to reserve the Bill for the consideration of the President under the substantive part of Article 200, exemplify the cooperative spirit of Indian federalism, and also bring out different facets of the checks-and-balances model that the Constitution has envisaged.

We are accustomed to the traditional view of checks-and-balances, where the decision taken by one institution or branch is set at naught by the other. In our considered opinion, this understanding must give way to a more nuanced one. A dialogic process, which has the potential to understand and reflect on conflicting or opposing perspectives, to reconcile and to move forward in a constructive manner, is an equally potent check-and-balance system that the Constitution has prescribed. Once this perspective is grasped, the persons who occupy various constitutional offices or institutions will also do well to ingrain in themselves that dialogue, reconciliation and balance, and not obstructionism is the essence of constitutionalism that we practice in this Republic.

VI. Whether the Governor is bound by the aid and advice tendered by the Council of Ministers while exercising all the options available with him when a Bill is presented before him under Article 200 of the Constitution of India

65. Parties supporting the reference submitted that Article 200(1) was an instance of the exception to the general rule of 'aid and advice' as under Article 163, and consequently, to limit the Governor's power of exercising discretion, would be to

render Article 163(2) redundant. It was further argued that the deletion of "in his discretion" from the proviso to Article 175 (precursor of Article 200) during the Constituent Assembly Debates, only related to the option of returning a Bill with comments to the Legislature under the first proviso, and not to the substantive provision, wherein the Governor still retained discretion.

66. Parties opposing the reference argued that the Governor is a formal head, and the sole repository of executive power but is incapable of acting, except on, and according to the advice of their Council of Ministers. Reference was made to Section 75 of the Government of India Act, 1935 and the Constituent Assembly Debates, to submit that all residual discretion contemplated under Section 75, had been intentionally eliminated in draft Article 175 (i.e., Article 200), by dropping "in his discretion" from the substantive part and first proviso.

It was their submission that the constitutional scheme evolved beyond the Government of India Act, and that discretion, was only retained by the use of "in the opinion of the Governor" in the second proviso (i.e., to refer a Bill that could amount to derogation of the authority of the High Court, to the President). Pointing to a mandatory obligation upon the Governor to grant assent when a Bill has been passed a second time as per the second half of the first proviso to Article 200, it was argued that the same proviso could not be construed to confer discretion upon the Governor, in the first half.

67. The text of Article 163 is of relevance to note:

"163. Council of Ministers to aid and advise Governor.-

(1) There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court."

(emphasis supplied)

68. Before we opine on this aspect on whether the Governor is bound by the aid and advice of the Council of Ministers in exercise of his functions under Article

200, it is relevant to note the judgments of this Court that have taken a view on the discretion of the Governor and Article 200. Peculiarly, both sides rely on the same judgments but offer differing readings, or interpretations of them:

(i) *Samsher Singh v. State of Punjab and Anr.*⁶⁷, and

(ii) *MP Special Police Establishment v. State of M.P. & Ors.*⁶⁸, and

(iii) *Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly and Ors*⁶⁹. Though the aforementioned three judgments arose from facts not relating to the discretion of the Governor vis-à-vis Article 200, their observations as Constitution Benches of this Court, are still of relevance in interpreting the provisions.

69. The judgment in *Samsher Singh* (supra) arose from appeals relating to the appointment of persons other than district judges to the State Judicial Services under Article 234. On the discretion exercised by the Governor, it was held that:

"54. The provisions of the Constitution which expressly require the Governor to exercise his powers in his discretion are contained in articles to which reference has been made. To illustrate, Article 239(2) states that where a Governor is appointed an administrator of an adjoining Union territory he shall exercise his functions as such administrator independently of his Council of Ministers. The other articles which speak of the discretion of the Governor are paragraphs 9(2) and 18(3) of the Sixth Schedule and Articles 371- A(1)(b), 371-A(1)(d) and 371-A(2)(b) and 371-A(2)(f).

The discretion conferred on the Governor means that as the constitutional or formal head of the State the power is vested in him. In this connection, reference may be made to Article 356 which states that the Governor can send a report to the President that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution. Again Article 200 requires the Governor to reserve for consideration any Bill which in his opinion if it became law, would so derogate from the powers of the High Court as to endanger the position which the High Court is designed to fill under the Constitution.

55. In making a report under Article 356 the Governor will be justified in exercising his discretion even against the aid and advice of his Council of Ministers. The reason is that the failure of the constitutional machinery may be because of the conduct of the Council of Ministers. This discretionary power is given to the Governor to enable him to report to the President who, however, must act on the advice of his Council of Ministers in all matters.

In this context Article 163(2) is explicable that the decision of the Governor in his discretion shall be final and the validity shall not be called in question. The action taken by the President on such a report is a different matter. The President acts on the advice of his Council of Ministers. In all other matters where the Governor acts in his discretion he will act in harmony with his Council of Ministers. The Constitution does not aim at providing a parallel administration within the State by allowing the Governor to go against the advice of the Council of Ministers.

56. Similarly Article 200 indicates another instance where the Governor may act irrespective of any advice from the Council of Ministers. In such matters where the Governor is to exercise his discretion he must discharge his duties to the best of his judgment. The Governor is required to pursue such courses which are not detrimental to the State.

57. For the foregoing reasons we hold that the President or the Governor acts on the aid and advice of the Council of Ministers with the Prime Minister at the head in the case of the Union and the Chief Minister at the head in the case of State in all matters which vests in the Executive whether those functions are executive or legislative in character.

Neither the President nor the Governor is to exercise the executive functions personally. The present appeals concern the appointment of persons other than District Judges to the Judicial Services of the State which is to be made by the Governor as contemplated in Article 234 of the Constitution after consultation with the State Public Service Commission and the High Court. Appointment or dismissal or removal of persons belonging to the Judicial Service of the State is not a personal function but is an executive function of the Governor exercised in accordance with the rules in that behalf under the Constitution."

(emphasis supplied)

70. In *M.P. Special Police Establishment* (supra), this Court was considering the legality of grant of sanction by the Governor under Section 197 of the Criminal Procedure Code, for the prosecution of two ministers accused under the Prevention of Corruption Act, 1988, after the Council of Ministers had refused sanction on the ground that no prima facie case had been made out in the Lokayukta report. On the discretion that is exercisable by the Governor under the Constitution, this Court held that:

"11. Mr Sorabjee submits that even though normally the Governor acts on the aid and advice of the Council of Ministers, but there can be cases where the Governor is, by or under the Constitution, required to exercise his function or any of them in his discretion. The Constitution of India expressly provides for

contingencies/cases where the Governor is to act in his discretion. Articles 239(2), 371-A(1)(b), 371-A(2)(b), 371-A(2)(f) and paras 9(2) and 18(3) of the Sixth Schedule are some of the provisions. However, merely because the Constitution of India expressly provides, in some cases, for the Governor to act in his discretion, can it be inferred that the Governor can so act only where the Constitution expressly so provides?

If that were so then sub-clause (2) of Article 163 would be redundant. A question whether a matter is or is not a matter in which the Governor is required to act in his discretion can only arise in cases where the Constitution has not expressly provided that the Governor can act in his discretion. Such a question cannot arise in respect of a matter where the Constitution expressly provides that the Governor is to act in his discretion. Article 163(2), therefore, postulates that there can be matters where the Governor can act in his discretion even though the Constitution has not expressly so provided.

12. Thus, as rightly pointed out by Mr Sorabjee, a seven-Judge Bench of this Court has already held that the normal rule is that the Governor acts on the aid and advice of the Council of Ministers and not independently or contrary to it. But there are exceptions under which the Governor can act in his own discretion. Some of the exceptions are as set out hereinabove. It is, however, clarified that the exceptions mentioned in the judgment are not exhaustive. It is also recognised that the concept of the Governor acting in his discretion or exercising independent judgment is not alien to the Constitution. It is recognised that there may be situations where by reason of peril to democracy or democratic principles, an action may be compelled which from its nature is not amenable to Ministerial advice. Such a situation may be where bias is inherent and/or manifest in the advice of the Council of Ministers."

(emphasis supplied)

71. In *Nabam Rebia* (supra), this Court referred, and adopted, the observations of the Report of the Commission on Centre-State Relations (Punchhi Commission⁷⁰) relating to the Governor's discretionary power. Parties on both sides before us, referred to various paragraphs⁷¹ in *Nabam Rebia*. In that case, the majority (through Khehar, J.) opined on the dual nature of legislative and executive functions of the Governor, with specific reference to Article 154, 161, 163, and 166 on the executive nature of power, and Article 168, 158, 200, 201, 213 and 174 in relation to the legislative role.

Though the case was particularly on the responsibility under Article 163, this Court undertook a comprehensive review of the Governor's role and powers under the Constitution. On the issue of Article 200, and the discretion of the Governor, the majority opinion extracted the Justice M.M. Punchhi Commission

Report on "Constitutional Governance and the Management of Centre-State Relations" and specifically affirmed:

"151. The important observations in the Justice M.M. Punchhi Commission Report, with reference to Article 163(2), are contained in Para 4.5. Relevant extract of the same is reproduced below:

"4.5. Article 163(2) gives an impression that the Governor has a wide, undefined area of discretionary powers even outside situations where the Constitution has expressly provided for it. Such an impression needs to be dispelled. The Commission is of the view that the scope of discretionary powers under Article 163(2) has to be narrowly construed, effectively dispelling the apprehension, if any, that the so-called discretionary powers extends to all the functions that the Governor is empowered under the Constitution. Article 163 does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers.

In fact, the area for the exercise of discretion is limited and even in this limited area, his choice of action should not be nor appear to be arbitrary or fanciful. It must be a choice dictated by reason, activated by good faith and tempered by caution. The Governor's discretionary powers are the following : to give assent or withhold or refer a Bill for Presidential assent under Article 200; the appointment of the Chief Minister under Article 164; dismissal of a Government which has lost confidence but refuses to quit, since the Chief Minister holds office during the pleasure of the Governor; dissolution of the House under Article 174; Governor's report under Article 356; Governor's responsibility for certain regions under Articles 371-A, 371-C, 371-E, 371-H, etc. These aspects are now considered below:"

(emphasis supplied)

152. We are of the considered view that the inferences drawn in the Justice M.M. Punchhi Commission Report extracted hereinabove, are in consonance with the scheme of the functions and powers assigned to the Governor, with reference to the executive and legislative functioning of the State, and more particularly with reference to the interpretation of Article 163. We endorse and adopt the same, as a correct expression of the constitutional interpretation, with reference to the issue under consideration."

(emphasis supplied)

72. The Court went on to conclude:

"154. We are, therefore, of the considered view that insofar as the exercise of discretionary powers vested with the Governor is concerned, the same is limited

to situations, wherein a constitutional provision expressly so provides that the Governor should act in his own discretion. Additionally, a Governor can exercise his functions in his own discretion, in situations where an interpretation of the constitutional provision concerned, could not be construed otherwise.

(emphasis supplied)

73. Madan Lokur, J., in his concurring opinion recognises that the Governor has powers that are either specifically delineated, or implied in the Constitution:

"375. The Governor is expected to function in accordance with the provisions of the Constitution (and the history behind the enactment of its provisions), the law and the rules regulating his functions. It is easy to forget that the Governor is a constitutional or formal head-nevertheless like everybody else, he has to play the game in accordance with the rules of the game-whether it is in relation to the Executive (aid and advice of the Council of Ministers) or the Legislature (Rules of Procedure and Conduct of Business of the Arunachal Pradesh Legislative Assembly). This is not to say that the Governor has no powers-he does, but these too are delineated by the Constitution either specifically or by necessary implication. Failure to adhere to these basic principles is an invitation to enter the highway to the danger zone."

(emphasis supplied)

We are of in agreement with the view affirmed in Nabam Rebia that Article 200 of the Constitution confers discretionary powers on the Governor. We find no compelling reason to deviate from this position.

74. The view expressed in this judgment has been duly followed by this Court, thereafter, in B.K. Pavitra v. Union of India⁷². Having noted these precedents, we need to analyze as to how these precedents inform the present debate and also as to how the judgment in State of Tamil Nadu (supra) reflects on these precedents.

75. In State of Tamil Nadu (supra), this Court appears to notice paragraph 54 to 56 from the opinion of Ray, J. speaking for the majority in Samsher Singh (supra), and reads it as follows:

"307. It is pertinent to observe the observations made by the Court in paras 54, 55 and 56 of Samsher Singh [Samsher Singh v. State of Punjab, (1974) 2 SCC 831: 1974 SCC (L&S) 550] which are reproduced above. In para 54, while giving illustrations of the provisions where the Governor is expressly required by the Constitution to act in his discretion, the Court made reference to Articles 356 and 200, respectively. In the context of Article 200, the Court observed that the limited area where express discretion has been conferred upon the Governor falls

under the second proviso. Thereafter, in para 55, the Court elaborated upon the exercise of discretion by the Governor under Article 356.

In para 56, the Court elaborated upon the exercise of discretion under Article 200 and observed that Article 200 "indicates another instance where the Governor may act irrespective of any advice from the Council of Ministers". It is important to read the observations made in para 56 along with para 54 of the judgment. A conjoint reading of these two paragraphs, it becomes clear, without a cavil of doubt, that the second proviso to Article 200 is an instance under the Constitution where the Governor has been conferred with the power to act in his discretion and even against the advice of the Council of Ministers. However, the logical sequitur to this is that under Article 200, there is no scope for the Governor acting in his discretion other than the second proviso."

76. The judgment further heavily relies on paragraphs 100, 113, 139 and 154 from the opinion of Iyer, J. (speaking for himself and Bhagwati, J.), where it was observed:

"139. These discretionary powers exist only where expressly spelt out and even these are not left to the sweet will of the Governor but are remote-controlled by the Union Ministry which is answerable to Parliament for those actions."⁷³

77. The Court in *State of Tamil Nadu (supra)*, cites this view on the "limited nature of the scope of exercise of discretion by the President and the Governor"⁷⁴ with approval. Pertinently, the view propounded by Iyer, J, does not form the majority in *Samsher Singh (supra)*, and is in fact contrary to the provisions discussed in the majority opinion. In light of this Court's judgment in *Nabam Rebia (supra)* - specifically the majority opinion authored by Khehar, J., and Lokur, J.'s concurring opinion, such a view cannot be held to be the correct position of law.

78. Therefore, the conclusion⁷⁵ arrived at in *State of Tamil Nadu (supra)* that the 7-judge bench in *Samsher Singh (supra)* held that the second proviso to Article 200, is the only instance that contemplates discretion of the Governor, cannot be relied upon as good law. We are respectfully unable to countenance such a reading of *Samsher Singh (supra)* and find that the decision in *State of Tamil Nadu (supra)* is based on a partial reading of these three judgments.

79. We must also take cognisance of the fact that the Constitution does not explicitly state in which provisions, discretion is contemplated for the Governor to exercise. In fact, in the Constitution as it originally stood, the word 'discretion' is conspicuously absent in relation to the Governor. Any provision that contemplates discretion explicitly in the Constitution as on date, is a result of subsequent amendment to the Constitution. These amended or newly inserted

provisions do not relate to matters of power to be exercised across the country, but rather in special circumstances in relation to specific States and Areas - namely, Articles 239(2), 371-A(1)(b), 371-A(2)(b), 371-A(2)(f) and paras 9(2) and 18(3) of the Sixth Schedule.

80. This Court has read discretion into the function of the Governor under the Constitution by way of its judgments⁷⁶. Our usage of the word 'function' is done so deliberately, in contradistinction to 'power' because a function carries with it, implicitly, a constitutional obligation. Thus, we are of the considered opinion that the Constitution requires the Governor, in exercise of his 'function' use 'discretion' in certain circumstances, given the manner in which our constitutionalism is practiced, or worked. This has been influenced by numerous instances. In *M.P. Special Police Establishment (supra)*, this Court in fact, held that the Governor is entitled to use his discretion, in a situation beyond what is explicitly mentioned in the text of the Constitution itself, because of the context in which the Governor's function to grant sanction for prosecution arises.

81. We are of the opinion that from the above discussion, the following position of law clearly emerges: Firstly, ordinarily, the Governor exercises his functions in accordance with the aid and advice tendered by the Council of Ministers. Secondly, the Constitution itself provides that the Governor may discharge certain functions upon his discretion, and without being bound by the aid and advice tendered by the Council of Ministers. Thirdly, the circumstances or occasions where the Governor is to discharge his functions without being bound by the aid and advice of the Council of Ministers, are either expressly provided, or through necessary implication where the constitutional context requires exercise of this discretion.

82. In such circumstances, it is for this Court to determine from the spirit and text of the Constitution, and from the manner in which the Constitution has been practiced, to see whether the Governor requires to be conferred discretion in exercise of his function under Article 200. We are of the firm view, that the Governor must be given this constitutional option, i.e., to exercise his discretion under Article 200, for the reasons enumerated herein.

83. The Constitution itself provides in as many as five provisions - on lawmaking relating to acquisition of estates⁷⁷, giving effect to certain directive principles⁷⁸, where there is inconsistency between law made by Parliament and State Legislatures⁷⁹, exemption from taxation by States in respect of water or electricity in certain cases⁸⁰, and during financial emergency⁸¹ - that such law, having been reserved for the assent of the President, will not take effect until such assent is granted (as prescribed under Article 201). The act of 'having been reserved'⁸², is a function that can be performed by the Governor alone, to the exclusion of others. It is neither in the hands of the Legislature nor the Executive.

The Governor is the sole authority to reserve a Bill for the consideration of the President under Article 200. For a moment, if it is assumed that there is no discretion, then even if advice is tendered contrary to the written text of the Constitution, the Governor will be bound by such advice. If that be so, the Governor and the President ultimately fail in their duty⁸³ to protect and defend the Constitution because the President's power of assent is hinged on the Governor's power to reserve the Bill for the consideration of the President. Viewed from both angles, the Constitution must be read as conferring on the Governor this discretion.

84. The Indian Constitution is replete with examples that demonstrate the carefully balancing of functions and powers between constitutional functionaries, to preserve India's federal character. Consider, for instance, the proviso to Article 304⁸⁴ which stipulates that no Bill or amendment imposing reasonable restrictions on the freedom of trade, commerce or intercourse, with or within a State, can be introduced or moved in the said State Legislature, without the "previous sanction of the President".

This provision, thus, contemplates presidential approval by way of intervention, before the law is introduced in the State Legislature and demonstrates the unique manner in which Indian federalism plays out, and is preserved, in our Constitutional scheme. Yet another provision which can demonstrate the federal feature of the Indian Constitution qua the President's functions and the Legislature (both Union and States), is Article 364⁸⁵ which preserves a specific power with the President to exempt major ports and aerodromes from the application of a law (whether made by the Parliament, or State Legislature), or be subject to certain modifications or exceptions as notified by the President.

85. The provisions which make the law subject to the President's assent, if so reserved for his consideration, are in no manner an exhaustive list. Given the manner in which our Constitution functions and must be read in our federal system, there are numerous other circumstances involving sharing of resources, taxation, etc. where a Governor may seek the President's consideration.

As pointed out earlier in this opinion as well, it is reiterated that the Indian Constitution is unique, insofar as it must deal with distribution of legislative powers between the Union and the State on various counts, including natural resources, trade, commerce, and taxation. Our constitutional history itself contains examples wherein the State government has passed a law, contrary to decisions of this Court, and further impinging on the rights of other States, in the sharing of natural resources. Reference may be made to the case in Punjab Termination of Agreement Act, 2004, In Re⁸⁶ and Cauvery Water Disputes Tribunal, In Re⁸⁷.

86. In such a context, the role of the President in protecting and defending the Constitution - in binding the Union as a cohesive unit - is crucial. It is reiterated, that the President will be unable to exercise his functions, until the Governor a priori reserves the Bill for his assent. It is unlikely that the Council of Ministers - without whose support the Bill could not have been passed by the Legislature - will advise the Governor, to return a Bill to the Legislature, or refer it to the President, under Article 200, thus frustrating the operation of numerous provisions of this Constitution, including the President's powers. In such a scenario, it is unfathomable to hold that the Governor is not conferred with discretion, under Article 200.

87. We are also of the considered opinion that the inclusion of the phrase "in the opinion of the Governor" in the second proviso to Article 200 is but a definitive expression of the fact that Governor does enjoy discretion in discharging his functions under Article 200. Either the Governor enjoys discretion, or he does not. There is no interpretative space for discretion while exercising some options of Article 200, and no discretion in others. A limited application of this phrase to only the second proviso is neither logical, nor in accord with the Constitutional scheme. We find it difficult to agree with the submission canvassed by the parties opposing the reference that a limited interpretation must be placed on the aforesaid phrase. This second proviso is clearly a qualification, or condition of, and not an exception to the exercise of discretion contemplated under the substantive part of Article 200.

88. For these same reasons, the conclusion in State of Tamil Nadu (supra) at paragraph 334.1⁸⁸ where it was held that the only situation in which discretion has been explicitly laid down in the second proviso to Article 200, is erroneous. Further, in paragraph 334.2 and sub-paragraph (i)⁸⁹, the characterisation that the Governor's act of reserving a Bill pertaining to the Articles identified above [namely, Article 31A, 31C, 254(2), 288(2), etc.] is one where exercise of discretion is by "necessary implication", is on the face of it, textually untenable.

89. It is but obvious, that any Bill that has been reserved by the Governor for the consideration of the President, cannot become law until such assent is given. Therefore, the deliberate inclusion of the phrasing "provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent" in Articles 31A proviso, 31C proviso, Article 254(2), Article 288(2) and Article 360, is significant.

The framers of the Constitution cannot be presumed to have employed this wording superfluously, to simply mean that the President's assent was a precondition only if and when the Bill is reserved for his consideration. Rather, the deliberate use of this phrasing indicates that these are instances where the Governor must reserve the Bill for the President's consideration, and without

whose assent, these Bills cannot become law. The clear intent behind the explicit phrasing in these provisions, is to demonstrate that the Governor is obliged to exercise his discretion and reserve such Bills for the assent of the President.

90. In light of the reasoning elaborated hereinabove, we are of the considered opinion that contrary to the articulation in State of Tamil Nadu (supra) (that of 'necessary implication') these provisions are instances where the Governor, is explicitly, obligated and required to discharge his function of reserving the said Bill for the consideration of the President, without whose assent, such Bill cannot become law.

91. On the issue of discretion of the Governor, it is also relevant to point out that prior to the insertion of the Tenth Schedule to the Constitution, it was a realistic possibility that Bills could be passed without the support of the Council of Ministers. Such a situation is virtually impossible now. Thus, a scenario wherein the Council of Ministers would tender aid and advice to the effect that the Governor must return a Bill for reconsideration, or reserve it for the President's assent, is not conceivable; rather, the converse, is inevitable, i.e., if the Governor was bound by the aid and advice of the Council of Minister, all Bills would be granted assent, rendering the option of referring to the President, or returning with comments, nugatory.

92. We are acutely aware, that in the Constituent Assembly Debates on 30.07.1949, Dr. B.R. Ambedkar, while introducing an amendment to the proviso to Article 175 (now Article 200) made the remark that:

"it was felt then that in a responsible government there can be no room for the Governor acting on discretion. Therefore, the new proviso deletes the word 'in his discretion'.⁹⁰

Shri T. T. Krishnamachari also responded stating that the Governor should not be conferred any discretionary power.⁹¹

93. It is noteworthy that merely days prior, on 01.06.1949, B. R. Ambedkar while discussing the draft Article 143 (precursor to Article 163 now) stated that responsible government in no way deviates from conferral of discretion on the Governor:

"Therefore, as I said, having stated that there is nothing incompatible with the retention of the discretionary power in the Governor in specified cases with the system of responsible Government, the only question that arises is, how should we provide for the mention of this discretionary power? It seems to me that there are three ways by which this could be done. One way is to omit the words from article 143 as my honourable Friend, Pandit Kunzru, and others desire and to add to such articles as 175, or 188 or such other provisions which the House may

hereafter introduce, vesting the Governor with the discretionary power, saying notwithstanding article 143, the Governor shall have this or that power. The other way would be to say in article 143, "that except as provided in articles so and so specifically mentioned- article 175, 188, 200 or whatever they are". But the point I am trying to submit to the House is that the House cannot escape from mentioning in some manner that the Governor shall have discretion."⁹²

(emphasis supplied)

It was recognised that an illustrative list was not possible at that stage, since discussion on various articles (including Article 200) that contemplated discretion of the Governor, had not yet transpired. In any event, the Constituent Assembly Debates in relation to Article 200 (draft Article 175) do not reflect the crucial aspect that the President, under the text of the Constitution, exercises powers over granting assent to Bills passed by the State Legislature, at least in certain situations enumerated above⁹³. We do not think that the observations in the Constituent Assembly Debates can bind us to the interpretation suggested by the parties opposing the reference.

94. We are conscious that a government run within the four corners of a written Constitution, must be responsible. Having already held that the Governor does not have powers simpliciter to withhold, we find that the Governor has discretion in the context of referring a Bill for the consideration of the President, or for returning the Bill to the Legislature with his comments. We do not think that this interpretation confers any unfettered powers on the Governor. In fact, it does not in any way deviate from the concept of a responsible constitutional government.

95. We have already held that the dialogic process either contemplated under Article 200, or the act of referral under Article 201, are both parts of the federal scheme of the Constitution, and also a part of the system of checks and balances. In that view of the matter, the conferral of discretion on the Governor to not be bound by the aid and advice of the Council of Ministers, and to reserve the matter for the consideration of the President, or return it to the Legislature with comments, is in no way antithetical to the fundamental premise of the Constitution.

96. Much has been argued on the role of Governors and the President, and the Cabinet form of governance that 'Parliamentary democracy' consists of, by parties opposing the reference. They argue that this system of governance abhors conferral of discretion on the Governor. We are in agreement that it is the elected government (the Cabinet) that should be in the driver's seat, and that there cannot be two executive power centres in the State, as held in *Ram Jawaya Kapur & Ors. v. State of Punjab*⁹⁴.

However, we find that these arguments relegating the Governor and President to a perfunctory role, i.e., merely the formal head comparable to the Crown in England, oversimplifies the complex scheme of our written Constitution. The constitutional vision is of a responsible government which is not merely synonymous with the Cabinet but is one where the Governors and the President have been bound by specific functions and roles in our written Constitution, unlike the Crown.

97. We clarify, as we have already held, that the Governor has no option to withhold a Bill simpliciter. Therefore, it is not that the discretion so conferred, allows a situation wherein the Governor could frustrate a Bill in perpetuity. The three clear options that he has, is to grant assent, withhold assent and return the Bill to the legislature for reconsideration, or reserve the Bill for consideration of the President, and he can exercise his discretion in choosing any of these three options, having given due regard to the aid and advice tendered by the Council of Ministers, and keeping in mind his duty - to protect and defend, the Constitution.

VII. Options of the Governor under Article 200 after the Legislative Assembly presents the Bill to the Governor after reconsideration under the first proviso

98. As we have reasoned earlier, as per the substantive provision, and first proviso of Article 200, the Governor at the first instance has three options - to assent, reserve the Bill for the consideration of the President, or withhold and return the Bill with a message for reconsideration of the State Legislature. The exercise of discretion in discharging his function at this first stage, is essential to initiate the dialogic process between the constitutional functionaries.

The second proviso reaffirms this exercise of discretion, and specifically lays out a situation wherein if "in his opinion" the Governor finds that the Bill proposed may derogate from the powers of the High Court or endanger its position as per the Constitutional scheme, assent should not be granted, and the same shall be reserved for the President's consideration. However, another aspect of interpretation of Article 200 that arises for our consideration, is the options that are available to the Governor after he has, at the first instance, exercised his discretion and chosen to withhold a Bill and return it to the State Legislature with a message, as prescribed under the first half of the first proviso to Article 200. We find that a discussion on this aspect, is warranted.

99. The text of the first proviso to Article 200 through its phrasing "shall not withhold assent therefrom" clearly indicates that what was sought to be curtailed among the three options, was only the option to 'withhold'. We have already held that the first proviso conditions the verb 'withhold', to mean withhold and return to the Legislature. The first proviso cannot be read in a manner so as to condition

the option of the Governor to reserve the Bill for President's consideration as well. Therefore, when the Bill is returned to the Governor, he is still left with two options - either to grant his assent, or to refer it to the President for his consideration. This power to reserve a Bill for the President's consideration, is irrespective of whether the Bill is returned by the Legislature in its amended or unamended form.

100. An additional reason for deliberately providing this play in the joints in Article 200 is to safeguard against the tagging of amendments, or material changes, that the Legislature may insert, upon receiving a Bill back from the Governor with comments. Since it is the Governor who considers the Bill in its amended form, and is able to compare it to the earlier version passed by the Legislature, it is his constitutional function to decide whether the Bill ought to be assented to, or if its amended form affects such inter-state, or federal aspect of the country, requiring the attention of the President.

Such a reading is fortified by the second proviso, and the various provisions referred to earlier [Article 31A, 31C, Article 228(2), etc.], which require the Governor to reserve the Bill for the President's consideration. This is irrespective of whether the Governor finds these provisions are attracted when the Bill is presented for the first time, or when it is returned from the Legislature after having considered his comments, for the second time.

101. The reading of the first proviso as canvassed by parties opposing the reference - that the Governor is left with only one option, i.e., to grant assent, upon receiving a Bill back from the Legislature the second time is textually untenable. This would further militate against the content of the second proviso, which contemplates the President's consideration specifically when a Bill may potentially affect the powers of the High Court, and its position or function, within the constitutional scheme. Therefore, we are of the firm opinion that the reading of Article 200, which recognises both options - to grant assent, or reserve the Bill for the President - further strengthens, and increases the potential for the dialogic and consultative process that our Constitution values at its core, rather than retracting from it.

102. As per parties opposing the reference, a Bill can be returned only once at the option of the Governor, or the President (under the first provisos to Articles 200 and 201, respectively). This would imply that the first proviso to Article 200 is of the same nature as the proviso to Article 201. This is textually incorrect for two reasons: (1) "shall not withhold therefrom" is absent in Article 201; and (2) the stipulation of six months period on the Legislature to reconsider the Bill, is absent in Article 200. This demonstrates that although the return of the Bill by the President under the first proviso of Article 201 is routed through the Governor, the return of the Bill by the two constitutional functionaries are

qualitatively distinct. This difference is not just in the institutions involved in the dialogic process, but also in the response of the Legislature, and the effect thereupon.

VIII. Re: Questions 5, 7, 10 and 11 relating to the prescription of time limits on the Governor and the President for exercising their discretion under Articles 200 and 201, and the issue of deemed assent

103. Question 5 and Question 7 in the Presidential Reference, pertain to prescription of timelines for the Governor (under Article 200), and the President (under Article 201) to exercise their functions. A natural consequence of the reasoning pertaining to those questions, will be the answer to Question 10 on 'deemed assent'. Hence, we find it appropriate to take up these three questions together.

104. Parties in favour of the reference argued that, in the absence of any explicitly prescribed time limit in the provision, it would not be open to the Court to impliedly read in a timeline. Reliance was placed primarily on the decision in *Purushothaman Nambudiri v. State of Kerala*⁹⁵. A distinction was made between the various provisions⁹⁶ of the Constitution which do in fact prescribe a timeline on one hand, and Articles 200 and 201 on the other, to submit that the absence of timelines in the latter was by way of deliberate constitutional design. Counsel laboured extensively to establish that the prescription of timelines in *State of Tamil Nadu* (supra) was erroneous in light of earlier case law.

105. On the other hand, the parties opposing the reference submitted that this was no longer an issue that required consideration, given the reasoning and decision in *State of Tamil Nadu* (supra). They argued that this Court in *State of Telangana v. Governor of Telangana*⁹⁷, and *State of Punjab* (supra) had interpreted "as soon as possible" in Article 200 to convey a constitutional imperative of expedition, which necessarily had to mean that a Bill could not be kept pending indefinitely without any action - which the prescription of timelines, suitably addressed.

They extensively argued that such timelines were not akin to amending the text of the Constitution, because no consequences emanate on the non-compliance of these timelines by the Governor - such as automatic assent, and rather, it only opens the door for judicial review. Reliance was placed on the findings of the Sarkaria Commission (Chapter V), and Punchhi Committee Report which prescribed a maximum period of six months after a Bill was presented, as a time limit on the Governor under Article 200.

106. The consideration of prescribing timelines to actions by the President under Article 111 (draft Article 91), fell before the Constituent Assembly as well. The Assembly specifically rejected the concept of a timeline wherein Dr. B.R.

Ambedkar's amendment to delete "six weeks" from the draft clause of Article 91, was accepted⁹⁸. Despite H.V. Kamath's remarks in support of a fixed timeline to encourage prompt action, there is conspicuous absence of any timeline in Article 111 of the Constitution, as adopted in 1950⁹⁹. A similar logic would apply to Article 200, in relation to the Governor's function.

107. A reading of the text of Articles 200 and 201 clarifies that the only temporal aspect tied to the constitutional functionaries so referred, in these provisions are as follows: firstly, that if the Governor finds reason to withhold and therefore, return the Bill with his comments for the consideration of the State Legislature, he is required to do so "as soon as possible"¹⁰⁰ as per the first proviso to Article 200; secondly, that once the President instructs the Governor to return a Bill to the State Legislature with the former's comments, it is incumbent upon the Legislature, in fact, to "reconsider it accordingly within a period of six months from the date of receipt of such message"¹⁰¹.

108. We have already held that the proviso to Article 200 - which contains the phrase "as soon as possible" - is a condition, or a qualification, on the substantive part of the Article 200, which relates to the Governor's option to withhold. Consequently, the afore-stated phrase cannot condition or qualify the other two options. In any event, the said phrase cannot translate into the strict imposition of timelines on the Governor, for the exercise of his discretion and carrying out his functions, under Article 200.

109. That the Constituent Assembly chose, at one place (i.e., the proviso to Article 201) to explicitly impose a definite timeline (for the Legislature to reconsider the Bill so returned), but no such imposition is made on the other functionaries of the Governor or the President, is significant. Implicit in this distinction, is also the institutional respect that the Constitution contemplates, and affords, to the constitutional functionaries of the Governor, and President.

110. Furthermore, judicial precedent on the aspect of timelines is clear, and merits reference. In Nambudiri (supra), a Constitution Bench of this Court held the absence of an explicit timeline in Articles 200 and 201 for the Governor and President to exercise their function to be significant:

"15. It is clear that if a Bill pending the assent of the Governor or the President is held to lapse on the dissolution of the Assembly it is not unlikely that a fair number of Bills which may have been passed by the Assembly, say during the last six months of its existence, may be exposed to the risk of lapse consequent on the dissolution of the Assembly, unless assent is either withheld or granted before the date of the dissolution.

If we look at the relevant provisions of Articles 200 and 201 from this point of view it would be significant that neither Article provides for a time limit within which the Governor or the President, should come to a decision on the Bill referred to him for his assent. Where it appeared necessary and expedient to prescribe a time limit the Constitution has made appropriate provisions in that behalf (vide : Article 197(1)(b) and (2)(b)). In fact the proviso to Article 201 requires that the House to which the Bill is remitted with a message from the President shall reconsider it accordingly within a period of six months from the date of the receipt of such message.

Therefore, the failure to make any provision as to the time within which the Governor or the President should reach a decision may suggest that the Constitution-makers knew that a Bill which was pending the assent of the Governor or the President did not stand the risk of lapse on the dissolution of the Assembly. That is why no time limit was prescribed by Articles 200 and 201. Therefore, in our opinion, the scheme of Articles 200 and 201 supports the conclusion that a Bill pending the assent of the Governor or the President does not lapse as a result of the dissolution of the Assembly, and that incidentally shows that the provisions of Article 196(5) are exhaustive."

(emphasis supplied)

111. In State of Tamil Nadu (supra), the Court arrived at certain timelines for the Governor and President, wherein failure to comply with them, would render the Governor's inaction, amenable to judicial review:

"260. Keeping in mind the constitutional significance of Article 200 and the role it plays in the federal polity of the country, the following timelines are being prescribed. Failure to comply with these timelines would make the inaction of the Governors subject to judicial review by the courts:

260.1. In case of either withholding of assent or reservation of the Bill for the consideration of the President upon the aid and advice of the State Council of Ministers, the Governor is expected to take such an action forthwith subject to a maximum period of one month;

260.2. In case of withholding of assent contrary to the advice of the State Council of Ministers, the Governor must return the Bill together with a message within a maximum period of three months;

260.3. In case of reservation of Bills for the consideration of the President contrary to the advice of the State Council of Ministers, the Governor shall make such reservation within a maximum period of three months;

260.4. In case of presentation of Bill after reconsideration in accordance with the first proviso, the Governor must grant assent forthwith, subject to a maximum period of one month."

Reliance was placed on certain decisions of this Court, to arrive at its conclusion, which are necessary to address. The decision in Nambudiri (supra), is considered and read such that this Court's observation (in Purushothaman Nambudiri) where no timeline was prescribed in Article 200, would not be reason in itself, to conclude that the exercise of power by the Governor under Article 200 was not urgent or of expedient character, and thus could be exercised even beyond a reasonable time.¹⁰² While such a reading of Nambudiri (supra) is on the face of it justified, it must be pointed out that the Court in State of Tamil Nadu (supra) erroneously translated this reasoning to justify the prescription of absolute, universal time limits on the Governor and President, on the expiry of which their action, or inaction, would be amenable to judicial review.

112. The Court in State of Tamil Nadu (supra), also relied on Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly¹⁰³. In that case, the Court was considering whether the Speaker could be directed to decide disqualification petitions within a 'reasonable period' of time. The prescription of reasonable timeline in that case, was in the context of the Speaker's quasi-judicial function, of taking a decision on disqualification petitions, as under the Tenth Schedule. The prescription of a reasonable period of time for a quasi-judicial function, wherein the Speaker acts as a Tribunal, cannot be equated with the gubernatorial function and the Governor's exercise of discretion in that regard under Article 200.

Thus, this precedent too offers no assistance. Reliance on State of Telangana (supra), wherein this Court merely held that the phrase "as soon as possible" in the first proviso to Article 200, carried "significant constitutional content and must be borne in mind by constitutional authorities"¹⁰⁴, too, offers no assistance. The decision in Durga Pada Ghosh v. State of W.B.¹⁰⁵ was also referred to - where the Court interpreted "as soon as may be" in Article 22(5) of the Constitution, while dealing with a habeas corpus petition. By no means, can these judgments be contemplated as translating to a judicial prescription of a timeline, on the text of Constitution, binding constitutional functionaries.

113. The Court further relied on Circulars issued by the Ministry of Home Affairs, to hold that there were applicable timelines on both the Governor under Article 200, and the President under Article 201.¹⁰⁶ We are of the considered view that the Ministry's circulars cannot be incorporated by way of judicial interpretation in such a manner, so as to apply as a constitutional fetter, on the Governor and the President. Such an exercise of judicial construction would not be appropriate.

114. In view of the above reasoning, we are required to clarify that the paragraphs 260-261 of the judgment in *State of Tamil Nadu (supra)*, pertaining to the imposition of timelines on the Governor under Article 200 are erroneous.¹⁰⁷ It must also be pointed out that there was no occasion for the issue of setting a timeline for disposal of Bills referred to the President under Article 201, to arise before this Court, while considering *State of Tamil Nadu (supra)*. Thus, it is clarified that any observations¹⁰⁸ on the aspect of timelines applicable to the President under Article 201, or conclusions¹⁰⁹ thereof on this aspect, are merely obiter, and ought to be treated as such.

115. The text of Articles 200 and 201, has been framed in such a manner, so as to provide a sense of elasticity, for constitutional authorities to perform their functions, keeping in mind the diverse contexts and situations, and by consequence the need for balancing that might arise in the process of lawmaking in a federal, and democratic country like ours. The imposition of timelines would be strictly contrary to this elasticity that the Constitution so carefully preserves.

116. A logical corollary of this reasoning is that if there are no prescribed timelines under Articles 200 and 201, then expiry of them too, cannot amount to 'deemed consent'. Though, in the background of the aforesaid findings on timelines, the issue of 'deemed assent' has been rendered almost academic, we deem it appropriate to briefly state certain observations, given that Question 10 specifically enquires regarding the scope of Article 142 in the context of 'deemed consent' and is of some constitutional importance.

117. We find that the Constitution framers were categorical as to when deeming provisions were to operate in the context of legislative functions. Article 109(4) and 109(5), deem a Money Bill to be passed by Council of States either when the House of the People do not accept the suggestions given by the Council of States or if the Council of States does not return the Money Bill to the House within fourteen days. Similar provisions can be found in Article 198(4) and (5). Similarly, Articles 107, 108, 196, 197, 213 and 239B also contemplate a form of deeming, as a consequence. Such deeming clauses are absent in the case of Articles 200 and 201, therefore, we find that by judicial intervention such assent cannot be deemed.

118. The concept of 'deemed assent' in the context of Articles 200 and 201 presupposes that one constitutional authority (herein, the Court), could play a 'substitutional role' for another constitutional functionary (herein, the Governor, or President). Such a usurpation of the gubernatorial function of the Governor, and similarly of the President's functions, is antithetical not only to the spirit of the Constitution, but also specifically, the doctrine of separation of powers - which is a part of the basic structure¹¹⁰ of the Indian Constitution. The Constitution Bench of this Court in *Bhim Singh v. Union of India*¹¹¹ explains the

distinction between overlap, and wresting away a function, within the separation of powers doctrine:

"77. The concept of separation of powers, even though not found in any particular constitutional provision, is inherent in the polity the Constitution has adopted. The aim of separation of powers is to achieve the maximum extent of accountability of each branch of the Government.

78. While understanding this concept, two aspects must be borne in mind. One, that separation of powers is an essential feature of the Constitution. Two, that in modern governance, a strict separation is neither possible, nor desirable. Nevertheless, till this principle of accountability is preserved, there is no violation of separation of powers. We arrive at the same conclusion when we assess the position within the constitutional text. The Constitution does not prohibit overlap of functions, but in fact provides for some overlap as a parliamentary democracy. But what it prohibits is such exercise of function of the other branch which results in wresting away of the regime of constitutional accountability."

(emphasis supplied)

We have no hesitation in concluding that the concept of deemed assent of pending Bills by the Court in exercise of jurisdiction under Article 142, is virtually a takeover of the role, and function, of a separate constitutional authority. The reliance on Article 142, cannot lead to supplanting constitutional provisions itself.

119. The judicial creation of specific timelines and the effect of the expiry of those timelines on the actions of the Governor and the President, as prescribed in State of Tamil Nadu (supra), does not employ Article 142 to merely fill the gaps. We have already held that the effect of this judgment insofar as 'deemed assent' is concerned is that it undertakes a substitutional role. The constitutional effect is such that it is not merely a gap-filling exercise, or a procedural exercise that the Court undertook, but a substantive one which finds no basis in the text of the Constitution. In this view of the matter, we are of the considered opinion that Article 142 cannot be employed to arrive at a conclusion contrary to the express provisions of the Constitution.

120. We find that the summation of case law on Article 142 is uncalled for, but we only refer to the observations made by this Court in the following judgments, which fortify our conclusions. It is a matter of settled law, that jurisdiction under Article 142¹¹² cannot be invoked to achieve results that are contrary to the Constitution, or statutory provisions. Dealing with the powers of this Court under

Article 142, in Prem Chand Garg v. Excise Commissioner, U.P.¹¹³, a Constitution Bench of this Court held:

"14. we ought to bear in mind that though the powers conferred on this Court by Article 142(1) are very wide, and the same can be exercised for doing complete justice in any case, as we have already observed, this Court cannot even under Article 142(1) make an order plainly inconsistent with the express statutory provisions of substantive law, much less, inconsistent with any constitutional provisions."¹¹⁴

(emphasis supplied)

121. In Supreme Court Bar Assn. v. Union of India¹¹⁵, a Constitution Bench of this Court held that a contemnor advocate cannot be punished by invoking Article 142, while dealing with a contempt of court case, when such power is statutorily available with the Bar Council of India. On the scope of Article 142, it was held:

"47. This power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. The construction of Article 142 must be functionally informed by the salutary purposes of the article viz. to do complete justice between the parties.

(emphasis supplied)

122. This Court in a recent Constitution Bench decision Shilpa Sailesh v. Varun Sreenivasan¹¹⁶, concluded the position of law on Article 142 as follows:

"(i) The scope and ambit of power and jurisdiction of this Court under Article 142(1) of the Constitution of India 74. This question as to the power and jurisdiction of this Court under Article 142(1) of the Constitution of India is answered in terms of paras 9 to 21, inter alia, holding that this Court can depart from the procedure as well as the substantive laws, as long as the decision is exercised based on considerations of fundamental general and specific public policy. While deciding whether to exercise discretion, this Court must consider the substantive provisions as enacted and not ignore the same, albeit this Court acts as a problem solver by balancing out equities between the conflicting claims. This power is to be exercised in a 'cause or matter'."

(emphasis supplied)

123. Much emphasis has been placed on A.G. Perarivalan v. State of T.N.¹¹⁷ in the judgment of State of Tamil Nadu (supra) to arrive at the conclusion that

inexplicable delay on the count of the Governor in exercising his function under Article 200, is both justiciable and that on account of such unexplained delay, the power under Article 142 can be deployed to substitute the Governor's actions with a judicial order. This line of reasoning has also been adopted by the Counsel opposing the reference.

We find this approach to be erroneous for the following reasons: Firstly, the decision in A.G. Perarivalan (supra) was tendered in the context of Article 161 of the Constitution, dealing with the executive power of pardon. Secondly, this Court came to the conclusion that the Governor is bound by the aid and advice of the Council of Ministers in this regard, and advice having been so tendered after an inexplicable delay of over 2 years, is subject to judicial review. The conclusions of this Court in A.G. Perarivalan (supra) at paragraphs 38.1 to 38.3, and 38.6 are to be noticed in this regard:

"38.1. The law laid down by a catena of judgments of this Court is well settled that the advice of the State Cabinet is binding on the Governor in the exercise of his powers under Article 161 of the Constitution.

38.2. Non-exercise of the power under Article 161 or inexplicable delay in exercise of such power not attributable to the prisoner is subject to judicial review by this Court, especially when the State Cabinet has taken a decision to release the prisoner and made recommendations to the Governor to this effect.

38.3. The reference of the recommendation of the Tamil Nadu Cabinet by the Governor to the President of India two-and-a-half years after such recommendation had been made is without any constitutional backing and is inimical to the scheme of our Constitution, whereby "the Governor is but a shorthand expression for the State Government" as observed by this Court [Maru Ram v. Union of India, (1981) 1 SCC 107 : 1981 SCC (Cri) 112].

38.6. Taking into account the appellant's prolonged period of incarceration, his satisfactory conduct in jail as well as during parole, chronic ailments from his medical records, his educational qualifications acquired during incarceration and the pendency of his petition under Article 161 for two-and-a-half years after the recommendation of the State Cabinet, we do not consider it fit to remand the matter for the Governor's consideration. In exercise of our power under Article 142 of the Constitution, we direct that the appellant is deemed to have served the sentence in connection with Crime No. 329 of 1991. The appellant, who is already on bail, is set at liberty forthwith. His bail bonds are cancelled."

The relief that the Court in effect moulded is evident from the conclusion in paragraph 38.6 where it neither deemed a pardon, nor did it direct a pardon. It did, however, deem that the appellant had served his sentence towards Crime No.

329/1991. What is significant is that this Court did not deem to pardon at the expiry of a timeline, nor did it fix any uniform, rigid and absolute timelines.

124. In our consideration, it is quite a leap of constitutional logic to use the decision in *A.G. Perarivalan (supra)*, as a springboard for prescribing universal and absolute timelines on Governors and the President for the exercise of their functions under Articles 200 and 201 respectively. Even more so given that the expiry of such timelines, was used as the path that paved the way to judicial review of functions under Articles 200 and 201.

125. Moreover, when we have already held that the Governor is not bound by the aid and advice of the Council of Ministers in exercise of his functions under Article 200, the prescription of the timelines as is delineated in paragraphs 260-261 of *State of Tamil Nadu (supra)* apart from being a functional and absolute restraint on the Governor and President, also suffers from legal infirmities. Firstly, it prescribes a one-size-fits-all timeline, deforms the nature of the Bill and complexity of the issue. Secondly, at the expiry of this one-size-fits all timeline, it creates a right for judicial redressal, *prima facie* rendering the act of the Governor or President suspect upon the expiry of such timeline. Both these consequences, in our considered view, were uncalled for as they were neither envisioned when we adopted the Constitution, nor they are borne out of our constitutional practice.

126. The judgment in *State of Tamil Nadu (supra)*, arrives at the conclusion that the timelines devised by it are not being incorporated into the Constitution, but are only tools¹¹⁸ of judicial review for evaluating the exercise or non-exercise of functions of the Governor and the President. In other words, the Court comes to the conclusion that these specific timelines will only be used as a yardstick for judicial review and no further. It draws a distinction between incorporation of timelines into the Constitution, at the expiry of which, the natural consequence would have been 'deemed assent'. However, the Court in *State of Tamil Nadu (supra)*, stated that the usage of timelines devised by it as merely tools of judicial review, would not result in 'deemed assent'. The following paragraphs from *State of Tamil Nadu (supra)*, demonstrate how the Court sought to bring about this difference:

"250. Thus, it is important to take note of this very fine but pertinent distinction that the prescription of a time-limit by this Court into Article 200 of the Constitution does not fundamentally change the procedure which has been envisaged. While the reading in of a time-limit under Article 200 would have meant that there would be deemed assent upon failure of the Governor to comply with the said timeline, the prescription of a reasonable time period does not introduce any such mechanism or deeming fiction in Article 200.

251. What emerges from the above is that the fine but pertinent distinction between the time-limits that are expressly prescribed and those that are judicially evolved is only that in the former the consequence of deemed assent emanates from the provision itself whereas in the latter there could be no such consequence except to the extent that the courts judicially reviewing the action or inaction can direct a decision to be taken within a time-bound manner, or in exceptional cases like the one at hand, deem the assent to have been granted under Article 142 of the Constitution, which we shall again discuss in the later parts of this judgment."

127. We are of the considered opinion that this is an artificial distinction without a difference. Although the Court attempted to draw a distinction between the two methods quoted above, what the Court in fact went ahead and did by invoking Article 142 of the Constitution, was to grant deemed assent, upon the expiry of the timelines so prescribed by it. In effect, this has erroneously opened the doors to a judicial remedy, purportedly under Article 142, that is contrary to the text of the Constitution.

128. We have no hesitation in concluding that deemed consent of the Governor, or President, under Article 200 or 201 at the expiry of a judicially set timeline, is virtually a takeover, and substitution, of the executive functions by the Judiciary, through judicial pronouncement, which is impermissible within the contours of our written Constitution.

IX. Justiciability of the functions exercised by the Governor and the President under Article 200 and Article 201 respectively

129. The present reference seeks categorical opinions as to the justiciability of the functions exercised by the Governor under Article 200 and that of the President under Article 201.

130. The judgment of this Court in *State of Tamil Nadu (supra)* is the first to hold that the exercise of functions under Articles 200 and 201 are justiciable. It, thereafter, prescribes an elaborate regime delineating the nature and grounds for justiciability¹¹⁹, which are not being extracted herein for the sake of brevity.

131. *State of Tamil Nadu (supra)* discusses the cases of *Kameshwar (supra)*, *Hoechst (supra)*, *Bharat Sevashram Sangh v. State of Gujarat*¹²⁰, *Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd.*¹²¹, and *B.K. Pavitra (supra)* wherein specific arguments were raised on the question of whether the assent of the President and/or Governor, was justiciable. Despite the explicit ratio in these cases (discussed further below), the Court in *State of Tamil Nadu (supra)* distinguished their findings or explained them on different counts¹²², to conclude that the assent of the Governor or President, is, in fact, justiciable. Holding the grant or withholding of such assent to be legislative procedure, and a part of the

legislative process, it was held to be amenable to judicial scrutiny.¹²³ We find that an interpretive exercise and discussion of these precedents is warranted.

132. In *Kameshwar* (supra), a Constitution Bench concluded that the assent of the President on a Bill reserved for his consideration in the context of Article 31-A, was not justiciable (M.C. Mahajan, J.):

"266. The difference is that persons whose properties fall within the definition of the expression "estate" in Article 31-A are deprived of their remedy under Article 32 of the Constitution and the President has been constituted the sole judge of deciding whether a State law acquiring estates under compulsory power has or has not complied with the provisions of Article 31(2). The validity of the law in those cases depends on the subjective opinion of the President and is not justiciable. Once the assent is given, the law is taken to have complied with the provisions of Article 31(2)."

(emphasis supplied)

133. In *Hoechst* (supra), a 3-Judge Bench of this Court was considering a challenge to a legislation on the ground that despite its subject matter being in List II, the Governor had no opportunity to reserve the said Bill for the President's consideration. In this context, the President's assent granted had been challenged, and this Court held:

"86. There is no provision in the Constitution which lays down that a Bill which has been assented to by the President would be ineffective as an Act if there was no compelling necessity for the Governor to reserve it for the assent of the President. A Bill which attracts Article 254(2) or Article 304(b) where it is introduced or moved in the Legislative Assembly of a State without the previous sanction of the President or which attracted Article 31(3) as it was then in force, or falling under the second proviso to Article 200 has necessarily to be reserved for the consideration of the President.

There may also be a Bill passed by the State Legislature where there may be a genuine doubt about the applicability of any of the provisions of the Constitution which require the assent of the President to be given to it in order that it may be effective as an Act. In such a case, it is for the Governor to exercise his discretion and to decide whether he should assent to the Bill or should reserve it for consideration of the President to avoid any future complication. Even if it ultimately turns out that there was no necessity for the Governor to have reserved a Bill for the consideration of the President, still he having done so and obtained the assent of the President, the Act so passed cannot be held to be unconstitutional on the ground of want of proper assent.

This aspect of the matter, as the law now stands, is not open to scrutiny by the courts. In the instant case, the Finance Bill which ultimately became the Act in question was a consolidating Act relating to different subjects and perhaps the Governor felt that it was necessary to reserve it for the assent of the President. We have no hesitation in holding that the assent of the President is not justiciable, and we cannot spell out any infirmity arising out of his decision to give such assent."

(emphasis supplied)

134. In *Bharat Sevashram Sangh* (supra), this Court faced a challenge to the validity of a legislation on the ground that the President had tendered partial or conditional assent, and for this purpose, the material on record before the President was also looked into. The Court observed as follows:

"6. The contention relating to the alleged invalidity of the assent given by the President is formulated by the learned counsel for the petitioners/appellants thus. The Bill was passed by the legislature of the State on February 15, 1973 and it was immediately thereafter forwarded to the Governor for his assent. The Governor reserved the Bill for the consideration of the President under Article 200 of the Constitution and the subsequent events according to the learned counsel showed that the President did not either give his assent or withhold his assent as contemplated under Article 201 of the Constitution but he gave a qualified or conditional assent which was not contemplated under Article 201 of the Constitution.

It is argued that since the President did not give absolute assent but only a qualified or conditional assent the Bill in question had not become a law. In reply to these averments in the petitions the Under Secretary to the Government of Gujarat, Education Department has stated in his counter-affidavit that the Bill was presented to the Governor of Gujarat after it was passed by the Assembly. The Governor of Gujarat reserved the Bill for the consideration of the President under Article 200 of the Constitution since he felt that in view of clause 33 of the Bill which provided for taking over of the management of a school for a limited period in public interest it was necessary to reserve the Bill for the consideration of the President. Accordingly the Bill was referred to the President.

At the meeting held in the Ministry of Home Affairs, Government of India on August 3, 1973 to discuss the Bill it was suggested by the representatives of the Central Government that the provisions of the Bill which did not exclude institutions established or administered by the minorities from their scope were repugnant to Article 30 of the Constitution and therefore the Bill should be suitably amended. It was also suggested to the representatives of the State Government that it would be better to carry out the requisite amendments by

promulgating an ordinance. Accordingly the draft of the ordinance which was ultimately promulgated as Ordinance 6 of 1973 was forwarded for the instructions of the President under Article 213(1) of the Constitution.

Thereafter the draft of the Ordinance and the Bill were both considered by the President and he assented to the said Bill and issued instructions as required by the proviso to Article 213 of the Constitution for the promulgation of the said Ordinance on September 28, 1973. Accordingly the said Bill became law on its publication on the very same day. The Ordinance was issued on September 29, 1973. In the circumstances it cannot be said that the assent which was given by the President was conditional. The records relating to the above proceedings were also made available to the court.

On going through the material placed before us we are satisfied that the President had given assent to the Act and it is not correct to say that it was a qualified assent. The Act which was duly published in the official Gazette contains the recital that the said Act had received the assent of the President on September 28, 1973. Moreover questions relating to the fact whether assent is given by the Governor or the President cannot be agitated also in this manner. In *Hoechst Pharmaceuticals Ltd. v. State of Bihar* [(1983) 4 SCC 45: 1983 SCC (Tax) 248 : AIR 1983 SC 1019 : (1983) 3 SCR 130] this Court has observed at page 194 thus : (SCC p. 101, para 86)

"We have no hesitation in holding that the assent of the President is not justiciable, and we cannot spell out any infirmity arising out of his decision to give such assent."

The above contention relating to the assent given by the President is, therefore, rejected."

(emphasis supplied)

It is significant to point out that this Court in *State of Tamil Nadu* (supra) read the same extract of the judgment in *Bharat Sevashram Sangh* (supra) and observed that the case in *Bharat Sevashram Sangh* (supra) had not arrived at its conclusions on account of non-justiciability, but rather had been decided on the facts and circumstances of that case, based on the material on record.¹²⁴ We are unable to read this precedent in the manner so indicated. The reference to and approval of the extract from *Hoechst* (supra) (emphasis supplied above) clearly demonstrates that there was no deviation from its reasoning. Conspicuously, the cross-reference to *Hoechst* (supra) at the end of paragraph 6 of *Bharat Sevashram Sangh* (supra), does not form a part of the extract included in *State of Tamil Nadu* (supra).¹²⁵

135. In *B. K. Pavitra* (supra), a Bill¹²⁶ had been reserved for the consideration of the President, who had thereafter granted assent. It was held that this assent granted by the President, was not justiciable as the requirements of Article 201 had been met. Following the decision in *Hoechst* (supra), it was held by a Division Bench of this Court that judicial scrutiny over the Governor's discharge of his function under Article 200, was not justiciable:

"71. By its very nature, it would not be possible for this Court to reflect upon the situations in which the power under Article 200 can be exercised. This was noticed in the judgment of this Court in *Hoechst* [*Hoechst Pharmaceuticals Ltd. v. State of Bihar*, (1983) 4 SCC 45 : 1983 SCC (Tax) 248] . Excluding it from judicial scrutiny, the Court held: (SCC pp. 100-101, para 86) 72.*Hoechst* [*Hoechst Pharmaceuticals Ltd. v. State of Bihar*, (1983) 4 SCC 45 : 1983 SCC (Tax) 248] is an authority for the proposition that the assent of the President is nonjusticiable. *Hoechst* [*Hoechst Pharmaceuticals Ltd. v. State of Bihar*, (1983) 4 SCC 45 : 1983 SCC (Tax) 248] also lays down that even if, as it turns out, it was not necessary for the Governor to reserve a Bill for the consideration of the President, yet if it was reserved for and received the assent of the President, the law as enacted cannot be regarded as unconstitutional for want of "proper" assent.

73. The above decisions essentially answer the submissions which were urged by Dr Dhavan. The law as propounded in the line of precedents adverted to above must negate the submissions which were urged on behalf of the petitioners. Once the Bill (which led to the Reservation Act, 2018) was reserved by the Governor for the consideration of the President, it was for the President to either grant or withhold assent to the Bill. The President having assented to the Bill, the requirements of Article 201 were fulfilled. The validity of the assent by the President is non-justiciable."

(emphasis supplied)

136. In *Kaiser-e-Hind* (supra), a Constitution Bench of this Court considered the scope of Presidential assent to a Bill that was reserved for his consideration under Article 254(2) on the ground of repugnancy. Concluding that such assent was limited to the aspect as proposed by the State Government, and not a blanket assent for all earlier laws, the Court still held that the merits or correctness of such assent granted, could not be subjected to judicial review:

"25. In our view, for finding out whether the assent was given qua the repugnancy between the State legislation and the earlier law made by Parliament, there is no question of deciding validity of such assent nor the assent is subjected to any judicial review. That is to say, merely looking at the record, for which assent was sought, would not mean that the Court is deciding whether the assent is rightly, wrongly or erroneously granted. The consideration by the Court is

limited to the extent that whether the State has sought assent qua particular earlier law or laws made by Parliament prevailing in the State or it has sought general assent.

In such case, the Court is not required to decide the validity of the "assent" granted by the President. In the present case, the assent was given after considering the extent and nature of repugnancy between the Bombay Rent Act and the Transfer of Property Act as well as the Presidency Small Cause Courts Act. Therefore, it would be totally unjustified to hold that once the assent is granted by the President, the State law would prevail qua earlier other law enacted by Parliament for which no assent was sought for nor which was reserved for the consideration of the President.

27. In this case, we have made it clear that we are not considering the question that the assent of the President was rightly or wrongly given. We are also not considering the question that - whether "assent" given without considering the extent and the nature of the repugnancy should be taken as no assent at all.

29. We further make it clear that granting of assent under Article 254(2) is not exercise of legislative power of the President such as contemplated under Article 123 but is part of the legislative procedure. Whether procedure prescribed by the Constitution before enacting the law is followed or not can always be looked into by the Court."

(emphasis supplied)

Notably, paragraph 27 of *Kaiser-i-Hind* (supra) does not find mention in the reasoning of *State of Tamil Nadu* (supra).

137. The decisions in *Hoechst Pharmaceuticals* (supra), and *B.K. Pavitra* (supra) both arose from a situation wherein grant of assent was specifically challenged, unlike the case in *State of Tamil Nadu* (supra) where in fact, this question did not arise. Pertinently, the various decisions discussed in the foregoing paragraphs were of larger bench strength (*B.K. Pavitra* being a coordinate bench) as compared to in *State of Tamil Nadu* (supra) and explicitly held that a merits-review or the correctness of the assent granted by the President was not within the purview of permissible judicial scrutiny.

The decision in *Kaiser-i-Hind* (supra), holds that the President must be informed of the grounds on which the Governor is reserving the Bill for his consideration on the issue of repugnancy. It further comes to a definite conclusion in paragraphs 25 and 27, that this was not to mean that the discharge of powers of the President under Article 201 is justiciable. The ratio in this case has been turned on its head in *State of Tamil Nadu* (supra) to arrive at its conclusion. We are of the considered opinion that the Court in *State of Tamil Nadu* (supra) was

bound by these earlier decisions, and the discharge of function by the Governor and President under Articles 200 and 201 respectively is thus, non-justiciable.

138. Beyond judicial precedent as well, we are unable to endorse the view advanced in *State of Tamil Nadu (supra)*. In light of the opinion that we have tendered in the other questions above, since the Governor cannot withhold assent simpliciter, the only options he has are to initiate the dialogic process under Article 200 - either through returning the Bill to the Legislature for reconsideration or reserving it for the President's assent, who in turn under Article 201, may choose to return the Bill with a message to the Legislature as well. The initiation of a dialogic process where other constitutional functionaries are consulted before the Governor or President takes a decision on whether the Bill must be assented to or not, is not a justiciable act in itself.

139. We have emphasized that the dialogic process is a part of the system of checks and balances, and the federal system that our Constitution envisages. The nature of the dialogic process contemplated under Articles 200 and 201 is such that it is advisory, persuasive, deliberative, mediative, and consultative. It stands at a markedly different position from the discharge of an adjudicatory function, or a definitive exercise of executive power - both of which are subject to judicial review. The discharge of functions under Articles 200 and 201, however, is simply the initiation of a dialogic process, which cannot be the subject of judicial review.

140. Under the Court's formulation in *State of Tamil Nadu (supra)*, each of the three options - assent, reservation and return of the Bill - become justiciable. We find that such a conclusion belies logic. Taking this line of reasoning further, if the reservation of a Bill, or withholding and returning it to the Legislature, is justiciable, then the grant of assent too, would necessarily have to be subject to judicial review. This opens another front to challenge a Bill, and the resulting legislation.

Suppose for instance, that the Legislature passes a Bill, and the Governor accords assent under Article 200. Apart from the grounds taken to impugn the validity of the resulting Act, the grant of assent by the Governor itself, can become a ground for challenge. Those who bring such a challenge to Court, can effectively challenge the substantive grant of the Governor's assent on merits, arguing instead that it ought to have been reserved for the President's consideration, or sent back with certain comments. This also throws up the question of who can make such a challenge to the assent granted by the Governor.

141. The most drastic consequence of accepting that assent, reservation or return can be challenged, is that in any of the formulations of this Court in *State of Tamil Nadu (supra)*, it is not the enactment which will be brought for review of

the Court, but the Bill which will be subjected to judicial review. In other words, to determine whether a Bill has been correctly accorded assent or not, the primary document brought before the Court's consideration will be the text of the Bill, anterior to the stage of it becoming a law.

142. To appreciate this line of logic, few illustrative examples will provide clarity. Consider for instance, if the Bill has been reserved for the President's consideration on account of repugnancy, the Court will have to tender a finding specifically on whether the Bill is repugnant to any law so indicated by the Governor, and consequently whether the Governor had rightly reserved the same.

Similarly, in a situation where the Governor was to reserve a Bill under the second proviso of Article 200, and such action of the Governor is challenged in Court - the said Court will have to scrutinize specific provisions of the Bill to ascertain whether they affect the powers of the High Court, and therefore, whether such reservation of the Bill for the President's consideration is justified. In this manner, the Court's jurisdiction would be invoked to render a finding and specifically adjudicate upon whether various provisions of Bills in question merit consideration of the President, or reconsideration by the Legislature.

143. The People's will expressed through the Legislative Branch is only definitive and conclusive, upon receiving the assent of the Governor, or President, as the case may be. This is not an empty formality. It is only such a definitive expression of legislative will, that is subject to judicial review. When Article 13, 245, and 246 employ the word 'law' - in all these cases law means legislation that is enacted in accordance with the Constitution.

144. Therefore, the judicial review of a Bill, that is anterior to its enactment as law, is unheard of and unfathomable in our constitutional practice and history. Judicial review of a legislation is premised on the fact that it will be considered by the Court, only after it has been made into law - i.e., assented by the Governor or President as the case may be, and brought into force. It is this judicial review over legislation that our constitutionalism envisages, and this particular form is an essential feature of our basic structure.

145. The Court in sub-para (1) and (2) of paragraph 456.24 of State of Tamil Nadu (supra) lays out five categories of instances wherein the Governor's act of reserving a Bill for consideration of the President can be assailed by the State Government before the High Court, and three grounds wherein the President's choice to withhold assent, can be similarly challenged before this Court.

These grounds include - when a Bill is reserved under the second proviso to Article 200, when the Bill attracts any provision that requires the President's assent as a pre-requisite for proper enactment and enforcement of the law, where

the Bill imperils democracy or democratic principles, when the Governor is personally dissatisfied or for political expediency, or to challenge the Governor's inaction upon being presented a Bill under Article 200. With regards to the President, the grounds identified include withholding assent in an arbitrary or mala fide manner, when the Bill is reserved as being patently unconstitutional, or challenging the President's inaction. As per the framework contained in the judgment, specific redressal is possible through court intervention in each of these scenarios.

146. The fundamental flaw in this line of reasoning that culminates in these categories of 'permissible grounds' for challenge, is the erroneous presumption that the Courts may sit in review over Bills, that are not yet enacted as law. This would have the effect of Courts supplanting the wisdom, and considerations of the Governor and President - who are constitutional authorities vested with constitutional obligations, in exercise of the court's power of judicial review. We are of the considered opinion that to permit such a reading of the Constitution, would be to destroy the doctrine of separation of powers - which as elaborated above in our discussion on 'deemed assent'- is an essential feature of our Constitution.

Designed with a system of checks and balances at its core, the constitutional text equally preserves against overreach and supplanting of the powers and functions that are carefully distributed across the three organs - the Executive, Legislature and Judiciary. There is no denying, that judicial review too, is a part of the basic structure of the Constitution of India. This judicial review, however, is not an unbridled scope that can negate or destroy the separation of powers doctrine. Allowing the judiciary to meddle in the legislative procedure (as so termed in Kaiser-i-Hind), at the stage of the Governor initiating a dialogic process as contained in Articles 200 and 201, would be to shatter the permeable walls that maintain this separation of powers.

147. Looked at from another perspective, the sanctity of the legislative process afforded by the Constitution must be protected and allowed to operate in its entirety. The Court cannot interfere, in the midst of that process before it is even concluded, and especially at the stage where the Governor is empowered to initiate a dialogic process. The provisions of Articles 200 and 201 offer a complete Code, for how Bills are to be dealt with, upon being passed by the House(s). The way we practice our constitutionalism does not allow for judicial consideration of Bills at this preliminary stage. It is reiterated that to allow this would be to effectively supplant the role of the Legislature, and the checks and balances placed squarely within its responsibility.

148. In view of the above discussion, we find no reason to deviate from the binding decisions of this Court and for the additional reasoning stated above, are

of the considered view that the discharge of the Governor's or President's functions under Articles 200 and 201 respectively, is not justiciable.

149. Further, we are of the firm view that judicial review scrutiny and the jurisdiction of courts can be invoked only once the Bill becomes law. It is unfathomable, keeping in mind the way in which we practice our constitutionalism in India, to suggest that Bills can be brought to Court and adjudicated upon (rather than opined upon under Article 143). The only limited scope and known constitutional route through which the Judiciary can look into a Bill, is if the President, in exercise of Article 143, referred such a Bill to the Supreme Court to opine on, in discharge of its advisory jurisdiction. Under Article 143, it is the Executive through the President, that seeks an opinion of this Court. This is markedly different from examining a challenge on merits whether the Governor has reserved or withheld and returned the said Bill justifiably so.

150. The same logic applies to the President's assent under Article 201 as well. Consider for instance, a Bill that is reserved for the President's consideration, which is thereafter assented to by him. Grounds for challenge of such an Act, would effectively include whether the President had rightly considered the entire conspectus of issues or concerns involved, thus allowing the judiciary to supplant the wisdom, and functions of the President.

151. For the above reasons, the second part of Question 9¹²⁷ of the present Presidential Reference, is answered accordingly, in the negative, i.e., it is impermissible for the Courts to undertake judicial adjudication over the contents of a Bill, in any manner, before it becomes law - wherein discharge of its role under Article 143, is not 'judicial adjudication'.

152. It is also clarified that the President is not required to seek advice of this Court by way of reference under Article 143 on every occasion that a Bill is reserved for his consideration by the Governor, under Article 200. The President's subjective satisfaction is sufficient under Article 201. If for any extraneous reasons, the President so requires this Court to tender an opinion on a Bill, or specific aspects of it, a reference invoking the advisory jurisdiction under Article 143 always lies. The judgment in State of Tamil Nadu (supra) does not mandate reference under Article 143 but suggests it as a mechanism that the President can employ and must be read as so. It is clarified, however, that no such pre-requisite exists, when considering Bills reserved for the President's assent, whose subjective satisfaction is the only requirement. This in turn, should answer Question 8 of this Presidential Reference.

A. Limits of judicial intervention

153. The Courts cannot interfere in the procedure of a Bill's passage and embark on its merit review, as already observed earlier in this opinion. However, the consequent question that arises - as it did before this Court in State of Tamil Nadu (supra) - is what redressal lies, when no decision is forthcoming from the Governor, under Article 200? In other words, what relief is constitutionally permissible, when faced with inaction of the Governor under Article 200, thus frustrating the legislative process and the will of the people, expressed through such a Bill that is left pending?

154. We have given the submissions on such a situation, our anxious consideration. To permit a reading of the Constitution that enables or even allows, unchecked discretion to potentially bring Bills passed in furtherance of the peoples' will, to a procedural impasse and frustrate lawmaking would be antithetical to the values and spirit of the Constitution. That the Governor enjoys discretion under various provisions, is no longer res integra. However, the question we are confronted with is whether the constitutional breadth of discretion extends to protecting an indefinite or prolonged inaction of the Governor under Article 200. We are of the considered opinion that while the merits of action taken by the Governor under Article 200 cannot be looked into by Courts - inaction that is prolonged, unexplained and indefinite, will certainly invite limited judicial scrutiny.

155. Each constitutional organ, or authority, cannot function by itself. The working of our constitutional scheme is premised on constitutional authorities - who are each assigned specific but inter-dependent roles - performing their duties, akin to cogs that keep a clock ticking. They depend on each other, to keep the Constitution humming, and thus, working. They are also constitutionally obligated, to offer checks-and-balances, for the other. Such a constitutional scheme, thus, abhors inaction. In other words, our constitutional scheme works, only if it is worked. It is one thing to say that one constitutional organ will not substitute or supplant the wisdom or role of another constitutional authority, but completely another - to shy away from checks and balances on this pretext, when there is deliberate inaction.

156. The concept of accountability, and checks and balances, courses through the provisions of the Constitution. Thus, the Legislature which represents the people's will, is only effective, if the Governor acts, under Article 200. This is not to say that the Governor is merely a rubber stamp, between a Bill becoming an Act. There is value, in his consideration, and thus, choice exercised between the three options before him under Article 200. Thus, it is correct that the Court cannot supplant the wisdom of the Governor and enter a merits-review of this decision so taken. However, where the Governor chooses to not act under Article 200, resulting in prolonged pendency in Bills without initiating the dialogic process that the Constitution envisions, thus frustrating the outcome of the

Legislature's functions and efforts - Constitutional Courts can exercise limited judicial review.

157. In *Aeltemesh Rein v. Union of India*¹²⁸, this Court was considering a writ petition that alleged inaction by the Union Government in bringing into force Section 30 of the Advocates Act, 1961, despite 25 years having elapsed since the Act had been passed. The principal defense of the Union was based on the decision in *A.K. Roy v. Union of India*¹²⁹, which held that no mandamus could be issued to bring into force a Constitutional amendment. In that context, the Court observed as follows:

"6. But, we are of the view that this decision does not come in the way of this Court issuing a writ in the nature of mandamus to the Central Government to consider whether the time for bringing Section 30 of the Act into force has arrived or not. Every discretionary power vested in the executive should be exercised in a just, reasonable and fair way. That is the essence of the rule of law. The Act was passed in 1961 and nearly 27 years have elapsed since it received the assent of the President of India.

In several conferences and meetings of lawyers resolutions have been passed in the past requesting the Central Government to bring into force Section 30 of the Act. It is not clear whether the Central Government has applied its mind at all to the question whether Section 30 of the Act should be brought into force. In these circumstances, we are of the view that the Central Government should be directed to consider within a reasonable time the question whether it should bring Section 30 of the Act into force or not. If on such consideration the Central Government feels that the prevailing circumstances are such that Section 30 of the Act should not be brought into force immediately it is a different matter.

But it cannot be allowed to leave the matter to lie over without applying its mind to the said question. Even though the power under Section 30 [sic Section 1(3)] of the Act is discretionary, the Central Government should be called upon in this case to consider the question whether it should exercise the discretion one way or the other having regard to the fact that more than a quarter of century has elapsed from the date on which the Act received the assent of the President of India. The learned Attorney-General of India did not seriously dispute the jurisdiction of this Court to issue the writ in the manner indicated above.

7. We, therefore, issue a writ in the nature of mandamus to the Central Government to consider within a period of six months whether Section 30 of the Act should be brought into force or not."

(emphasis supplied)

We find that this approach, to mitigate inaction within the Constitutional scheme, is fair and balanced.

158. The Courts are empowered to grant a form of a limited direction, to the Governor, to take action. The Court can after being satisfied from a perusal of records on what has transpired can issue a limited direction to the Governor to act under Article 200, within a reasonable time limit, without making any observations on the merits of the exercise of discretion. It would thus, serve the purpose of asking the Governor to exercise his function under Article 200, rather than substituting his role.

159. The complexity of the Bill presented, emergent nature of the enactment, nature of consultative process undertaken, are a few illustrative factors that the Court will take into consideration while issuing a limited mandamus to take an appropriate step under Article 200. We clarify that this does not extend to the Court directing that one particular course of action will be employed by the Governor. There is no formulaic manner, or timeline, that the Courts by judicial order can establish. Not every case would lead the Court to issue an automatic direction to 'act', rather this limited direction would have to be measured based on appropriate circumstances. In this manner, this limited direction that the Court can issue, serves as a form of institutional accountability.

X. Article 361 and its interplay with judicial review of actions under Article 200

160. Another question specifically referred to this Court for opinion, is whether Article 361¹³⁰ serves as an absolute bar to judicial review in relation to the actions of a Governor under Article 200 of the Constitution.

161. Counsels appearing in support of the reference, argued that Article 361 was already a narrower version of Section 306¹³¹ of the Government of India Act, 1935, as the former only applies to the President and Governor, while they remain in office. Counsel submitted that the Governor's decision to exercise options under Article 200 was an official act of a high constitutional functionary who enjoys absolute personal immunity from being "answerable to any court" for acts "done or purported to be done" in the exercise of office.

Article 361 was characterized as a 'constitutional insulation' against judicial intervention of any kind - manner, reasons, or timing of the choice so exercised under Article 200, thus precluding coercive relief or process that would require the Governor to explain or modify any such choice made. Heavy reliance was placed on this Court's Constitution Bench decision in *Rameshwar Prasad (VI) v. Union of India*¹³². Counsel also referred to *Nabam Rebia v. Deputy Speaker*,

Arunachal Pradesh Legislative Assembly (order¹³³ dated 01.02.2016), B. R. Kapur v. State of T.N.¹³⁴ and Anindita v. Pranab Kumar Mukherjee¹³⁵.

162. Counsel opposing the reference, too, relied on the decision in Rameshwar Prasad (VI) (supra) and submitted that the President and Governor, are both personally immune and the Courts are restrained from issuing any direction for even filing an affidavit, to assist the Court. This immunity under Article 361, however, does not preclude the Court from examining the validity of actions (as most are done under aid and advice of the Council of Ministers), including on the ground of mala fides.

Further, even where personal mala fides are alleged and established, it was argued that the Government could not shield itself from answering, on account of immunity under Article 361. Reference was also made to State of Tamil Nadu (supra) where it was held that the decision in Rameshwar Prasad (supra) clarified that "the immunity enshrined in Article 361 of the Constitution does not preclude or prohibit the courts in any manner from looking into the actions of the Governor which by necessary implication would include his actions under Article 200 as well".

163. We have considered these submissions and are of the firm view that the Constitution Bench in Rameshwar Prasad (supra) offers a complete answer to the question referred to this Court. In that case, it was held that Article 361 affords to the Governor complete immunity, such that on the one hand is not answerable to any court for exercise and performance of powers and duties of his office, or for any act done or purporting to be done in exercise of his powers and duties, but on the other hand does not preclude the Court from examining the validity of the action, including on the ground of mala fides.¹³⁶ The relevant extracts are as follows:

"What is the scope of Article 361 granting immunity to the Governor?

170. We accepted the submissions made on behalf of the respondents that in view of this article, notice could not be issued to the Governor, at the same time, further noticing that the immunity granted does not affect the power of this Court to judicially scrutinise attack made on the proclamation issued under Article 356(1) of the Constitution on the ground of mala fides or it being ultra vires and that it would be for the Government to satisfy the Court and adequately meet such ground of challenge. A mala fide act is wholly outside the scope of the power and has no existence in the eye of the law. We further held that the expression "purported to be done" in Article 361 does not cover acts which are mala fide or ultra vires and thus, the Government supporting the proclamation under Article 356(1) shall have to meet the challenge. The immunity granted

under Article 361 does not mean that in the absence of the Governor, the grounds of mala fide or being ultra vires would not be examined by the Court.

173. A plain reading of the aforesaid article shows that there is a complete bar to the impleading and issue of notice to the President or the Governor inasmuch as they are not answerable to any court for the exercise and performance of their powers and duties. Most of the actions are taken on the aid and advice of the Council of Ministers. The personal immunity from answerability provided in Article 361 does not bar the challenge that may be made to their actions. Under law, such actions including those actions where the challenge may be based on the allegations of mala fides are required to be defended by the Union of India or the State, as the case may be.

Even in cases where personal mala fides are alleged and established, it would not be open to the Governments to urge that the same cannot be satisfactorily answered because of the immunity granted. In such an eventuality, it is for the respondent defending the action to satisfy the Court either on the basis of the material on record or even filing the affidavit of the person against whom such allegation of personal mala fides are made.

Article 361 does not bar filing of an affidavit if one wants to file on his own. The bar is only against the power of the Court to issue notice or making the President or the Governor answerable. In view of the bar, the Court cannot issue direction to the President or the Governor for even filing of affidavit to assist the Court. Filing of an affidavit on one's own volition is one thing than the issue of direction by the Court to file an affidavit. The personal immunity under Article 361(1) is complete and, therefore, there is no question of the President or the Governor being made answerable to the Court in respect of even charges of mala fides.

179. The position in law, therefore, is that the Governor enjoys complete immunity. The Governor is not answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties. The immunity granted by Article 361(1) does not, however, take away the power of the Court to examine the validity of the action including on the ground of mala fides."

(emphasis supplied)

164. The decision in Rameshwar Prasad (supra) was in the context of invocation of Presidential Rule, which was held to be a justiciable act. In the context of Article 200, however, the constitutional choice made by the Governor is not justiciable and a merit review is unavailable in judicial proceedings. However, as we have held above, this Court can always take cognizance of inaction and for

that limited purpose, a direction can be issued asking the Governor to exercise his constitutional choice within a reasonable period of time. This limited judicial review, cannot be overcome on the pretext of Article 361, which offers personal immunity to the Governor. The constitutional office of the Governor is definitely subject to the jurisdiction of the court, to prevent prolonged and evasive constitutional inaction. XI. Opinion of the Court on the Presidential Reference.

165. In light of our findings and observations above, we deem it appropriate to summarise our conclusions on this Presidential Reference:

165.1 The Governor has three constitutional options before him, under Article 200, namely - to assent, reserve the Bill for the consideration of the President, or withhold assent and return the Bill to the Legislature with comments. The first proviso to Article 200 is bound to the substantive part of the provision, and restricts the existing options, rather than offering a fourth option. Pertinently, the third option - to withhold assent and return with comments - is only available to the Governor when it is not a Money Bill.

165.2 The Governor enjoys discretion in choosing from these three constitutional options and is not bound by the aid and advice of the Council of Ministers, while exercising his function under Article 200.

165.3 The discharge of the Governor's function under Article 200, is not justiciable. The Court cannot enter into a merits review of the decision so taken. However, in glaring circumstances of inaction that is prolonged, unexplained, and indefinite - the Court can issue a limited mandamus for the Governor to discharge his function under Article 200 within a reasonable time period, without making any observations on the merits of the exercise of his discretion.

165.4 Article 361 of the Constitution is an absolute bar on judicial review in relation to personally subjecting the Governor to judicial proceedings. However, it cannot be relied upon to negate the limited scope of judicial review that this Court is empowered to exercise in situations of prolonged inaction by the Governor under Article 200. It is clarified that while the Governor continues to enjoy personal immunity, the constitutional office of the Governor is subject to the jurisdiction of this court.

165.5 In the absence of constitutionally prescribed time limits, and the manner of exercise of power by the Governor, it would not be appropriate for this Court to judicially prescribe timelines for the exercise of powers under Article 200.

165.6 For similar reasoning as held with respect to the Governor, the President's assent under Article 201 too, is not justiciable.

165.7 For the same reasons as indicated in the context of the Governor under Article 200, it is clarified that the President, too, cannot be bound by judicially prescribed timelines in the discharge of functions under Article 201.

165.8 In our constitutional scheme, the President is not required to seek advice of this Court by way of reference under Article 143, every time a Governor reserves a Bill for the President's assent. The subjective satisfaction of the President is sufficient. If there is a lack of clarity, or the President so requires advice of this Court on a Bill, it may be referred under Article 143, as it has been done on numerous previous occasions.

165.9 The decisions of the Governor and President under Articles 200 and 201 respectively, are not justiciable at a stage anterior into the law coming into force. It is impermissible for the Courts to undertake judicial adjudication over the contents of a Bill, in any manner, before it becomes law. Pertinently, discharge of its role under Article 143, does not constitute 'judicial adjudication'.

165.10 The exercise of constitutional powers and the orders of the President/Governor cannot be substituted in any manner under Article 142, and we hereby clarify that the Constitution, specifically Article 142 even, does not allow for the concept of 'deemed assent' of Bills.

165.11 Question 11 is answered in accordance with our opinion tendered on Question 10, i.e., there is no question of a law made by the State Legislature coming into force without assent of the Governor under Article 200. The Governor's legislative role under Article 200 cannot be supplanted by another constitutional authority.

165.12 We have already indicated in our opinion, that Question 12 relating to the Article 145(3) and the composition of benches in this Court that hear cases of constitutional importance is irrelevant to the functional nature of this reference, and is returned unanswered.

165.13 We have also indicated in our opinion that Question 13 concerning the power under Article 142 is overly broad, and not possible to answer in a definitive manner. Our opinion on the scope of Article 142 in the context of the functions of the Governor and President has already been answered as a part of Question 10.

165.14 Question 14 - pertaining to this Court's jurisdiction to resolve disputes between the Union and State Governments outside of Article 131 - is also found to be irrelevant to the functional nature of the reference and hence returned unanswered.

.....CJI. [B.R. Gavai]

.....J. [Surya Kant]

.....J. [Vikram Nath]

.....J. [Pamidighantam Sri Narasimha]

.....J. [Atul S. Chandurkar]

New Delhi;

November 20, 2025

1 2025 INSC 481; (2025) 8 SCC 1.

2 1991 INSC 304; 1993 Supp. (1) SCC 96 (2) [5JB].

3 1978 INSC 249; (1979) 1 SCC 380, paragraphs 21-26.

4 Natural Resources Allocation, In re, Special Reference No. 1 of 2012, 2012 INSC 428; (2012) 10 SCC 1, paragraph 62.

5 1951 INSC 36; 1951 SCC 568.

6 1958 INSC 64; 1959 SCR 995.

7 1960 INSC 49; (1960) 3 SCR 250.

8 1963 INSC 147; (1964) 3 SCR 787.

9 1964 INSC 203; (1965) 1 SCR 413.

10 1974 INSC 123; (1974) 2 SCC 33.

11 1978 INSC 249; (1979) 1 SCC 380.

12 1991 INSC 304; 1993 Supp (1) SCC 96(2).

13 1994 INSC 479; (1993) 1 SCC 642.

14 1994 INSC 479; (1994) 6 SCC 360.

15 1998 INSC 402; (1998) 7 SCC 739.

16 2001 SCC OnLine SC 1493.

17 2004 INSC 209; (2004) 4 SCC 489.

18 2002 INSC 445; (2002) 8 SCC 237.

19 2012 INSC 428; (2012) 10 SCC 1.

20 2016 INSC 1018; (2017) 1 SCC 121.

21 Earlier considered in a catena of judgments, including - State of Bihar v. Kameshwar Singh, 1952 INSC 28; (1952) 1 SCC 528 [5-Judge bench]; Union of India v. Valluri Basavaiah Chowdhary, 1979 INSC 93; (1979) 3 SCC 324 [5-Judge bench]; Purushothaman Nambudiri v. State of Kerala, 1961 INSC 331; 1961 SCC OnLine SC 361 [5-Judge bench]; Hoechst Pharmaceuticals Ltd. v. State of Bihar, 1983 INSC 61; (1983) 4 SCC 45 [3-Judge Bench]; State of Punjab v. Governor of Punjab, 2023 INSC 1017; (2024) 1 SCC 384 [3-Judge Bench].

22 Purushothaman Nambudiri v. State of Kerala, 1961 INSC 331; 1961 SCC OnLine SC 361 [5JB].

23 Nabam Rebia & Bamang Felix v. Arunachal Pradesh Legislative Assembly, 2016 INSC 526; (2016) 8 SCC 1; Samsher Singh v. State of Punjab, 1974 INSC 154; (1974) 2 SCC 831; etc.

24 Hoechst Pharmaceuticals Ltd. v. State of Bihar, 1983 INSC 61; (1983) 4 SCC 45; Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd., 2002 INSC 406; (2002) 8 SCC 182.

25 Natural Resources Allocation (supra), paragraph 33.

26 Natural Resources Allocation (supra), see paragraph 31.2.

27 Natural Resources Allocation, In re, Special Reference No. 1 of 2012, paragraph 50.

28 2012 INSC 68; (2012) 3 SCC 1.

29 Natural Resources Allocation, In re, Special Reference No. 1 of 2012, paragraph 37.

30 S.P. Gupta v. Union of India, 1981 INSC 209; 1981 SCC OnLine SC 494 ("the First Judges case"); Supreme Court Advocates-on- Record Assn. v. Union of India, (1993) INSC 318; (1993) 4 SCC 441 ("the Second Judges case").

31 Special Reference No. 1 of 1998, Re, 1998 INSC 402; (1998) 7 SCC 739, paragraph 11.

32

"155. Appointment of Governor.- The Governor of a State shall be appointed by the President by warrant under his hand and seal."

33

"168. Constitution of Legislatures in States.- (1) For every State there shall be a Legislature which shall consist of the Governor, and-(a) in the States of Andhra Pradesh, Bihar, Madhya Pradesh, Maharashtra, Karnataka, Tamil Nadu, Telangana, and Uttar Pradesh, two Houses; (b) in other States, one House. (2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly."

34

"174. Sessions of the State Legislature, prorogation and dissolution.- (1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. (2) The Governor may from time to time-(a) prorogue the House or either House; (b) dissolve the Legislative Assembly."

35

"175. Right of Governor to address and send messages to the House or Houses.- (1) The Governor may address the Legislative Assembly or, in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members."

36

"175. Right of Governor to address and send messages to the House or Houses.- (2) The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration."

37

"176. Special address by the Governor.- (1) At the commencement of 2 [the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year], the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons. (2) Provision shall be made by the rules regulating the procedure of

the House or either House for the allotment of time for discussion of the matters referred to in such address."

38

"188. Oath or affirmation by members.- Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule."

39

"202. Annual financial statement.- (1) The Governor shall in respect of every financial year cause to be laid before the House or Houses of the Legislature of the State a statement of the estimated receipts and expenditure of the State for that year, in this Part referred to as the "annual financial statement".

40

"205. Supplementary, additional or excess grants.- (1) The Governor shall-

(a) if the amount authorised by any law made in accordance with the provisions of article 204 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year; or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before the House or the Houses of the Legislature of the State another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly of the State a demand for such excess, as the case may be."

41

"203. Procedure in Legislature with respect to estimates.- (3) No demand for a grant shall be made except on the recommendation of the Governor."

42

"207. Special provisions as to financial Bills.- (1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 199 shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council:

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid 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.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of a State shall not be passed by a House of the Legislature of the State unless the Governor has recommended to that House the consideration of the Bill."

43 Section 12, Government of India Act, 1919, which reads as follows:

"12. Return and reservation of Bills. (1) Where a Bill has been passed by a local Legislative council, the Governor, Lieutenant-Governor or Chief Commissioner may instead of declaring that he assents to or withholds his assent from the Bill, return the Bill to the Council for reconsideration, either in whole or in part, together with any amendments which he may recommend, or, in cases prescribed by rules under the Principal Act may, and if the rules so require shall, reserve the Bill for the consideration of the Governor-General."

44 Section 75, Government of India Act, 1935, which reads as follows:

"75. Assent to Bills. A Bill which has been passed by the Provincial Legislative Assembly or, in the case of a Province having a Legislative Council, has been passed by both Chambers of the Provincial Legislature, shall be presented to the Governor, and the Governor in his discretion shall declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the consideration of the Governor-General:

Provided that the Governor may in his discretion return the Bill together with a message requesting that the Chamber or Chambers will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the Chamber or Chambers shall reconsider it accordingly."

45 1952 INSC 28; (1952) 1 SCC 528 [5JB]. Reference to paragraph 235:

"235. The procedure to be followed after a Bill is passed by the State Assembly is laid down in Article 200. Under that article the Governor can do one of three things, namely, he may declare that he assents to it, in which case the Bill becomes a law, or he may declare that he withholds assent therefrom, in which case the Bill falls through unless the procedure indicated in the proviso is followed, or he may declare that he reserves the Bill for the consideration of the President, in which case the President will adopt the procedure laid down in Article 201. Under that article the President shall declare either that he assents to the Bill in which case the Bill will become law or that he withholds assent therefrom, in which case the Bill falls through unless the procedure indicated in the proviso is followed."

46 1979 INSC 93; (1979) 3 SCC 324 [5JB]. Reference to paragraph 19:

"19. The Governor is, however, made a component part of the legislature of a State under Article 168, because every Bill passed by the State legislature has to be reserved for the assent under Article 200. Under that article, the Governor can adopt one of the three courses, namely (i) he may give his assent to it, in which case the Bill becomes a law; or (ii) he may, except in the case of a "Money Bill", withhold his assent therefrom, in which case the Bill falls through unless the procedure indicated in the first proviso is followed i.e. return the Bill to the Assembly for reconsideration with a message, or (iii) he may (subject to Ministerial advice) reserve the Bill for the consideration of the President, in which case the President will adopt the procedure laid down in Article 201."

47 1983 INSC 61; (1983) 4 SCC 45 [3JB]. Reference to paragraph 85:

"85. The constitutional position of a Governor is clearly defined. The Governor is made a component part of the legislature of a State under Article 168 because every Bill passed by the State legislature has to be reserved for the assent of the Governor under Article 200. Under that Article, the Governor can adopt one of the three courses, namely: (1) He may give his assent to it, in which case the Bill becomes a law; or (2) He may except in the case of a 'Money Bill' withhold his assent therefrom, in which case the Bill falls through unless the procedure indicated in the first proviso is followed i.e. return the Bill to the Assembly for consideration with a message; or (3) He may "on the advice of the Council of Ministers" reserve the Bill for the consideration of the President, in which case the President will adopt the procedure laid down in Article 201."

48 2023 INSC 1017; (2024) 1 SCC 384 [3JB]. See paragraphs 19, 20, 22, 24 and 25.

49 2025 INSC 481; (2025) 8 SCC 1 [2JB]. See paragraphs 194, 198, 199, 203 and 204.

"199. Definition of "Money Bills".-

(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:-

- (a) the imposition, abolition, remission, alteration or regulation of any tax;
- (b) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;
- (c) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of moneys from any such Fund;
- (d) the appropriation of moneys out of the Consolidated Fund of the State;
- (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure;
- (f) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money; or
- (g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

(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.

(3) If any question arises whether a Bill introduced in the Legislature of a State which has a Legislative Council is a Money Bill or not, the decision of the Speaker of the Legislative Assembly of such State thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under article 198, and when it is presented to the Governor for assent under article 200, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill."

"198. Special procedure in respect of Money Bills.-

(1) A Money Bill shall not be introduced in a Legislative Council."

52

"207. Special provisions as to financial Bills.-

(1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 199 shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council:

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid 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.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of a State shall not be passed by a House of the Legislature of the State unless the Governor has recommended to that House the consideration of the Bill." (emphasis supplied)

53 In terms of (2) and (5) of Article 198, which reads as follows:

"198. Special procedure in respect of Money Bills.-

(1) A Money Bill shall not be introduced in a Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it shall be transmitted to the Legislative Council for its recommendations, and the Legislative Council shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

(5) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly."

54 Ibid.

55 S. R. Bommai v. Union of India, 1994 INSC 111; (1994) 3 SCC 1 [9JB], see paragraphs 96, 106 (P B Sawant J., for Kuldeep Singh J. and himself), paragraph 247 (K. Ramaswami, J.).

56 1977 INSC 143; (1977) 3 SCC 592 [7JB].

57 1962 INSC 391; (1964) 1 SCR 371 [6JB]

58 Ibid., paragraph 82, which reads as follows:

"82. A federal structure is mainly conceived to harmonize existing conflicting interests and to provide against future conflicts. India is a vast country: indeed, it is described as a sub-continent. Historically, before the advent of the Constitution, there were different Provinces enjoying in practice a fair amount of autonomy and there were innumerable States with varying forms of government ranging from pure autocracy to guided democracy. There were also differences in language, race, religion etc. There were also foreign pockets expected sooner or later to be incorporated with the main country. In those circumstances our Constitution adopted a federal structure, with a strong bias towards the Centre. Under such a structure, while the Centre remains strong to prevent the development of fissiparous tendencies, the States are made practically autonomous in ordinary times within the spheres allotted to them."

59 Ibid., paragraph 25.

60 1994 INSC 111; (1994) 3 SCC 1 [9JB].

61 2022 INSC 44; (2002) 9 SCC 232 [5JB].

62 2006 INSC 532; (2006) 7 SCC 1 [5JB].

63 ITC Ltd. v. Agricultural Produce Market Committee, 2022 INSC 44; (2002) 9 SCC 232.

64 2019 INSC 194; (2018) 8 SCC 501 [5JB].

65 2019 INSC 194; (2018) 8 SCC 501, paragraph 121.

66 2023 INSC 1058; (2024) 11 SCC 1 [5JB].

67 1974 INSC 154; (1974) 2 SCC 831 [7JB], paragraph 54-57.

68 2004 INSC 642; (2004) 8 SCC 788 [5JB].

69 2016 INSC 526; (2016) 8 SCC 1 [5JB], paragraph 143, 147-151, 155, 257, 300.

70 Report of the Commission on Centre-State Relations (March 2010) <<https://interstatecouncil.gov.in/report-of-the-commission-on-centre-state-relations/>>.

71 Nabam Rebia (supra), paragraphs 147-154, 257, and 300.

72 2019 INSC 671; (2019) 16 SCC 129, see paragraphs 66, 67, 71.

73 State of Tamil Nadu (supra), paragraph 308.

74 Paragraph 309.

75

"456.16.3. The decision in Samsher Singh [Samsher Singh v. State of Punjab, (1974) 2 SCC 831: 1974 SCC (L&S) 550] illustrated certain provisions of the Constitution which expressly required the Governor to exercise his powers in his discretion. The second proviso to Article 200 was one such illustration. Thus, it is amply clear from the dictum in Samsher Singh [Samsher Singh v. State of Punjab, (1974) 2 SCC 831 : 1974 SCC (L&S) 550] that the seven-Judge Bench, after taking into consideration the scheme of Article 200, observed that the second proviso to Article 200 was the only instance where the Governor had been entrusted with the power to act in his own discretion.

Subsequent Constitution Bench decisions in M.P. Special Police [M.P. Special Police Establishment v. State of M.P., (2004) 8 SCC 788 : 2005 SCC (Cri) 1] and Nabam Rebia [Nabam Rebia & Bamang Felix v. Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1] clarified that besides the instances where the Governor has been expressly conferred with discretionary powers, there may still be certain exceptional circumstances wherein it would be legitimate for him to

act in his own discretion as indicated by us in paras 312 to 314. However, the general rule remains that the Governor acts upon the aid and advice of the State Council of Ministers.

456.16.5. The observations made in B.K. Pavitra [B.K. Pavitra v. Union of India, (2019) 16 SCC 129 : (2022) 2 SCC (L&S) 768] that "a discretion is conferred upon the Governor to follow one of the courses of action enunciated in the substantive part of Article 200" do not take into consideration the decision of Samsher Singh [Samsher Singh v. State of Punjab, (1974) 2 SCC 831 : 1974 SCC (L&S) 550] and is for this reason per incuriam. It failed to consider that Article 200 which had been duly considered by Samsher Singh [Samsher Singh v. State of Punjab, (1974) 2 SCC 831 : 1974 SCC (L&S) 550] was found to contain only one instance where the exercise of discretion was expressly provided, that being the second proviso thereto. Besides this, as already aforesaid, it failed to notice the removal of the expression "in his discretion" from Section 75 of the GoI Act, 1935 which ultimately culminated into Article 200."

76 Governor's power call for a floor test when the Council of Ministers has lost the confidence of the House as held in Shivraj Singh Chouhan v. M.P. Legislative Assembly, 2020 INSC 335, (2020) 17 SCC 1; Nabam Rebia, MP Establishments, Samsher Singh (supra).

77 First proviso to Article 31A.

78 Proviso to Article 31C.

79 Article 254 (2).

80 Article 288 (2).

81 Article 360.

82 These provisions contain similar phrasing in their proviso as indicated supra. See for instance, the first proviso to Article 31A: "Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:"

83 The Governor under Article 159 affirms on oath as follows:

"I, A. B., do swear in the name of God that I will faithfully execute the solemnly affirm office of Governor (or discharge the functions of the Governor) of (name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-

being of the people of (name of the State)." Similarly, the President under Article 60, affirms on oath as follows:

"I, A.B., do swear in the name of God/solemnly affirm that I will faithfully execute the office of President (or discharge the functions of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India.".

84 "304. Restrictions on trade, commerce and intercourse among States.- Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law-

(a) impose on goods imported from other States [or the Union territories] any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."

85

364. Special provisions as to major ports and aerodromes.-

(1) Notwithstanding anything in this Constitution, the President may by public notification direct that as from such date as may be specified in the notification-

(a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or

(b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification.

(2) In this article-

(a) "major port" means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port;

(b) "aerodrome" means aerodrome as defined for the purposes of the enactments relating to airways, aircraft and air navigation.

86 2016 INSC 1018; (2017) 1 SCC 121 [5JB].

87 1991 INSC 304; 1993 Supp. (1) SCC 96 (2) [5JB].

88

"334.1. Where the Governor is by or under the Constitution required to act in his discretion. The only situation in which such exercise of discretion has been explicitly laid down in the Constitution is the second proviso to Article 200, that is, where, in the opinion of the Governor, the Bill, if assented to, would so derogate from the powers of the High Court as to endanger the position which the High Court is designed to fill by the Constitution;"

89

"334.2. Where the Governor is by necessary implication required to act in his own discretion. This would include:

(i) Where a Bill attracts such a provision of the Constitution which requires the mandatory assent of the President for securing immunity or making the law enforceable. Exercise of discretion is permissible in these cases. For instance, Article(s) 31-A, 31-C, 254(2), 288(2), 360(4)(a)(ii), etc.

(ii) Situations where the exceptional conditions as described in M.P. Special Police [M.P. Special Police Establishment v. State of M.P., (2004) 8 SCC 788 : 2005 SCC (Cri) 1] and Nabam Rebia [Nabam Rebia & Bamang Felix v. Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1] are applicable i.e. the State Council of Ministers has disabled or disentitled itself; possibility of complete breakdown of the rule of law or by reason of peril to democracy/democratic principles, respectively, as a consequence of which an action may be compelled which, by its nature is not amenable to ministerial advice."

90 Volume IX, 30th July 1949.

91 Volume IX, 30th July 1949.

92 Constituent Assembly Debates dt. 01.06.1949 (Vol. VIII, p. 501).

93 Article 31A first proviso, Article 31C proviso, Article 254(2), Article 288(2), Article 360 of the Constitution.

94 1955 INSC 27; (1955) 1 SCC 553 [5JB].

95 1961 INSC 331; 1961 SCC OnLine SC 361 [5JB]

96 Articles 22, 62, 68, 75, 83, 85, 101, 108, 109, 123, 164, 172, 174, 190, 197, 198, 210, 224, 213, 239B, 240, 243E, 243U, 243ZF, 243ZL, 243ZM, 243ZN, 243ZQ, 243ZT, 249, 250, 279A, 280, 336, 337, 340, 343, 344, 349, 352, 354, 356, 360, 369, 372, 372A, 373, 392, Sixth Schedule-paragraph 15, Sixth Schedule-Paragraph 16, Tenth Schedule-Paragraph 2.

97 (2024) 1 SCC 405 [2JB].

98 Constituent Assembly Debates dated 20.05.1949 (Vol. VIII, p. 192), discussion on Article 111 (draft Article 91).

99 Ibid. at p. 194.

100 First proviso to Article 200.

101 Proviso to Article 201.

102 State of Tamil Nadu (supra), paragraphs 245 and 246.

103 2020 INSC 65; (2021) 16 SCC 503 [3JB]

104 State of Telangana (supra), paragraph 2.

105 (1972) 2 SCC 656 [3JB].

106 State of Tamil Nadu (supra), paragraphs 404-408, and 417.

107 State of Tamil Nadu (supra), corresponding conclusions at paragraphs 456.10 to 456.14.4 as well.

108 State of Tamil Nadu (supra), paragraphs 389-447.

109 State of Tamil Nadu (supra), paragraph 456.19.

110 Kesavananda Bharati v. State of Kerala, 1973 INSC 91; (1973) 4 SCC 225 [13JB], see paragraph 577 (Shelat & Grover, JJ.).

111 2010 INSC 276; (2010) 5 SCC 538 [5JB]

112 Article 142 reads as follows: "**142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.-** (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the

territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe."

113 1962 INSC 311; AIR 1963 SC 996 [5JB]

114 This decision was further considered in *Union Carbide Corpn. v. Union of India* [1991 INSC 250; (1991) 4 SCC 584], a Constitution Bench of this Court dealing with the ambit and scope of the powers of this Court under Article 142, wherein it was clarified that ordinary law did not limit the powers under Article 142(1) regardless of the public policy it was founded on, but that the violation of constitutional provisions and constitutional rights was significant and limited the scope of Article 142.

115 1998 INSC 183; (1998) 4 SCC 409 [5JB].

116 2023 INSC 468; (2023) 14 SCC 231 [5JB].

117 2022 INSC 588; (2023) 8 SCC 257 [3JB].

118

"249. Any time-limit in the exercise of powers in terms of Article 200 of the Constitution should not be construed as timelines laid within the edifice of the provision, rather should be understood as timelines that would serve as a lodestar for the purpose of exercise of judicial review by the courts, a benchmark tool to aid and enable the courts in ascertaining if any inaction or malfeasance has occasioned in the exercise of such powers. These timelines no doubt demand the earnest adherence by the Governor, however, these being nothing more than tools upon which scrutiny by judicial review is to be premised, remain as prescriptions within the realm of judicial review alone and do not transgress into the legislative bounds or amount to alteration of the text or authority of Article 200 of the Constitution.

The reason why these timelines do not immolate the very fabric of Article 200 is because the said provision even with the infusion of these time-limits still remains markedly different from its counterpart provisions where such time-limits are legislatively prescribed. For instance, Article 75 of the Constitution of the Islamic Republic of Pakistan or Article I, Section 7 of the US Constitution, where if no decision is taken within the stipulated time-limit by the President then the Bills are deemed to have been assented to."

119 Discussion from paragraph 361 onwards, with conclusions at paragraphs 386-387.

120 1986 INSC 174; (1986) 4 SCC 51 [2JB].

121 2002 INSC 406; (2002) 8 SCC 182 [5JB].

122 See paragraphs 381-382, and specifically for each judgment - paragraphs 361 (Kameshwar Singh), 363 (Hoechst), 364 (Bharat Sevashram Sangh), 367-368 (B.K. Pavitra), 373-374, 378 and 381 (Kaiser-i-Hind) in State of Tamil Nadu (supra).

123 State of Tamil Nadu (supra), see paragraphs 381-383 (Article 200), and 384-385 (on Article 201).

124 State of Tamil Nadu (supra), paragraph 364 and 365.

125 State of Tamil Nadu (supra), paragraph 365.

126 Which led to the Reservation Act, 2018.

127 Are the decisions of the Governor and the President under Article 200 and Article 201 of the Constitution of India, respectively, justiciable at a stage anterior into the law coming into force? Is it permissible for the Courts to undertake judicial adjudication over the contents of a Bill, in any manner, before it becomes law?

128 1988 INSC 203; (1988) 4 SCC 54 [2JB].

129 1981 INSC 210; (1982) 1 SCC 271 [5JB].

130

"361. Protection of President and Governors and Rajpramukhs

(1) The President, or the Governor or Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61:

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office.

(3) No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims."

131

"306. Protection of Governor-General, Governor or Secretary of State (1)

No proceedings whatsoever shall lie in, and no process whatsoever shall issue from, any court in India against the Governor-General, against the Governor of a Province, or against the Secretary of State, whether in a personal capacity or otherwise, and, except with the sanction of His Majesty in Council, no proceedings whatsoever shall lie in any court in India against any person who has been the Governor-General, the Governor of a Province, or the Secretary of State in respect of anything done or omitted to be done by any of them during his term of office in performance or purported performance of the duties thereof:

Provided that nothing in this section shall be construed as restricting the right of any person to bring against the Federation, a Province, or the Secretary of State such proceedings as are mentioned in chapter III of Part VII of this Act.

(2) The provisions of the preceding subsection shall apply in relation to His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States as they apply in relation to the Governor-General."

132 2006 INSC 42; (2006) 2 SCC 1 [5JB].

133 2016 SCC OnLine SC 94.

134 2001 INSC 453; (2001) 7 SCC 231 [5JB].

135 (2018) 15 SCC 628 [2JB].

136 Rameshwar Prasad (supra), paragraph 179.

IN THE SUPREME COURT OF INDIA

**Robert Lalchungnunga Chongthu @ R.L. Chongthu
Vs.
State of Bihar**

**[Criminal Appeal No. _____ of 2025
arising out of SLP (Crl.) No. 10130 of 2025]**

Head Note - Trial courts do not become functus officio after permitting further investigation and are obligated to seek explanations from investigating agencies for significant delay in filing supplementary charge sheets.

The accused cannot be made to suffer endlessly with this threat of continuing investigation and eventual trial proceedings bearing over their everyday existence.

A sanction under Section 197 CrPC to prosecute a public servant cannot rest on vague or mechanical assertions and must reflect a clear application of mind by the competent authority. Application of mind by the authorities granting or denying sanction must be easily visible including consideration of the evidence placed before it in arriving at the conclusion.

The avowed object of sanctions being granted before cognizance is to ensure that the threat of criminal prosecution does not hang over the heads of the officials in discharge of their public duty. If sanction is based on what can at best be described as vague statements such as “on perusal of the documents and evidences mentioned in Case Diary available”, this protection would be obliterated. The remainder of the sanction order touches upon the essence of Section 197 CrPC and the fact that the appellant is a public servant who would be covered thereby. The substance of why a sanction is required was however entirely missed by the sanctioning authority. The same is bad in law and must be, set aside. All consequential actions including the order taking cognizance, therefore would be quashed.

Directions for strengthening the procedure regarding the further investigation and filing of the supplementary charge sheets

(i) In view of *Vinay Tyagi v. Irshad Ali* (2003), it can be seen that the 'leave of the court' to file a supplementary chargesheet, is a part of Section 173(8) CrPC. That being the position, in our considered view, the Court is not rendered functus officio having granted such permission. Since the further investigation is being made with the leave of the Court, judicial stewardship/control thereof, is a function which the court must perform.

(ii) Reasons are indispensable to the proper functioning of the machinery of criminal law. They form the bedrock of fairness, transparency, and accountability in the justice system. If the Court finds or the accused alleges (obviously with proof and reason to substantiate the allegation) that there is a large gap between the first information report and the culminating chargesheet, it is bound to seek an explanation from the investigating agency and satisfy itself to the propriety of the explanation so furnished. The direction above does not come based on this case alone. This Court has noticed on many unfortunate occasions that there is massive delay in filing chargesheet/taking cognizance etc. This Court has time and again, in its pronouncements underscored the necessity of speedy investigation and trial as being important for the accused, victim and the society. However, for a variety of reasons there is still a lag in the translation of this recognition into a reality.

(iii) While it is well acknowledged and recognised that the process of investigation has many moving parts and is therefore impractical to have strict timelines in place, at the same time, the discussion made in the earlier part of this judgement, clearly establishes that investigations cannot continue endlessly. The accused is not out of place to expect, after a certain point in time, certainty- about the charges against him, giving him ample time to preparing plead his defence. If investigation into a particular offence has continued for a period that appears to be unduly long, that too without adequate justification, such as in this case, the accused or the complainant both, shall be at liberty to approach the High Court under Section 528 BNSS/482 CrPC, seeking an update on the investigation or, if the doors of the High Court have been knocked by the accused, quashing. It is clarified that delay in completion of investigation will only function as one of the grounds, and the Court, if in its wisdom, decides to entertain this application, other grounds will also have to be considered.

(iv) Reasons are not only important in the judicial sphere, but they are equally essential in administrative matters particularly in matters such as sanction for they open the gateway to greater consequences. Application of mind by the authorities granting or denying sanction must be easily visible including consideration of the evidence placed before it in arriving at the conclusion.

JUDGMENT

For convenience the judgment is divided into the following parts:

Index

The Appeal

Factual Aspects

The Impugned Judgment
The Case of The Parties
Analysis
Conclusion and Directions

Sanjay Karol J.,

1. Leave granted.

THE APPEAL

2. The Appellant is aggrieved by the High Court of Judicature at Patna's refusal in exercising its inherent powers under Section 482 of the Code of Criminal Procedure, 1973 in terms of judgment and order dated 9th May 2025² passed in Criminal Miscellaneous No. 62048 of 2023, wherein the prayer was to quash and order taking cognizance dated 1st June 2022 passed by the learned Chief Judicial Magistrate, Sahasra in connection with Sahasra Sadar P.S Case No. 112 of 2005 dated 24th April 2005.

FACTUAL ASPECTS

3. As can be seen, the genesis of this case is over twenty years old. It is necessary to recapitulate past events in order to appreciate the context in which the impugned judgement is under challenge before us.

I. The Appellant is an officer of the Indian Administrative Services, Bihar Cadre. He was posted as District Magistrate-cum-Licensing Authority, Sahasra, Bihar, on 24 December 2002 and remained in the possession till his transfer to Banka on 11th April 2005.

II. The Ministry of Home Affairs, Government of India passed an order vide letter No. 11026/76/2004, directed further streamlining of the procedure of issuance of arms licences. The said letter is extracted hereinunder:

"29th October, 2004

Sub: Streamlining the procedure of issuing Arms license.

Sir,

I am directed to state that large scale issue of licenses has been reported in certain States. In many cases the licences have been issued to non-resident without proper verification and in some cases the licenses have not been issued by the licensing authority. I order to plug the loopholes in the existing procedure of

issuing Arms Licence that have come to light, it has been decided to take the steps indicated in the succeeding paragraphs.

All arms licences issued between 1994-98 from J&K and between September 1998 to February 2001 from Ferojpur district (Punjab) and submitted at the office of District Collector all over the country for reregistration, reissuance or for any other purpose should be verified to ascertain the bonafide of the licenses and genuineness of the license documents. Under the provisions of Section 13(2A) the licensing authority can make such other enquiry as it considers necessary. Necessary instruction may be issued to the District Magistrate to conduct police verification at the place of his stay during the last 3 years, preceding the date of application.

Arms license for the categories of weapons specified in Schedule-II of the Arms Rules 1962, for which D.M. is the licensing authority and not the officers subordinate to him. It may be stated that there is no provision in the Arms Act, 1959, for delegation of such authority to others for granting arms license. The licensing authority in the states should be advised to furnish return on the licenses issued on a quarterly basis to the State Home Department for scrutiny on quarterly basis to the State Home Department for scrutiny/Secretary of the Home Department.

A very strict departmental action should be taken wherever any instances of lapse in issuance of arms license comes to the notice of the State Government. The records of all the licenses issued by the licensing authority in the States should be computerized and a mechanism should be put in the place for early warning wherever there is an unprecedented spur in issue of arms license in a particular district. Action taken in the matters may kindly be intimated to the Ministry.

Yours Faithfully
Director, Security."

III. For compliance of the directions issued in the above quoted extract, one Bal Krishna Jha, ASI was deputed to collect information and during such gathering of information, it was found that 7 persons to whom arms licences had been issued were unverified. The details of these persons as given in the FIR, lodged upon the statement of the Station House Officer, PS Saharsa, are as under:

1. Omprakash Tiwari S/o Jagtanand Tiwari, R/o patna, presently R/o Chitragupt Nagar, Kayasth Tola, Saharsa.
2. Smt. Rani Durgawati, W/o OmprakashTiwari, R/o Patna, presently R/o Chitragupt Nagar, Kayasth Tola, Saharsa.

3. Hariom Kumar S/o Jago Singh, Ward No. 15, Bokaro Shankarwar Tola, P.S. Mokama, District- Patna, presently at Shankar Chowk, Saharsa.

4. Abhishek Tripathi, S/o Vishwajeevan Tripathi, Village- Rajendra Tola, Balwa Tal, Motihari, at present Kayasth Tola.

5. Uday Shankar Tiwari S/o Jagtanand Tiwari, R/o Patna, at present Chitragupt Nagar, Kayasth Tola, Saharsa.

6. Rajesh Kumar, S/o Keshav Prasad, Village- Chitragupt Nagar, Parmaveer Albert kka Institute & Cultural Arts Center, Saharsa.

7. Madhup Kumar Singh, S/o Shambhu Nath Singh, R/o Rajapatti, Dumra Road, Sitamarhi, at present Gangjala, Saharsa."

The statement in the FIR was that some of these licences had been issued to persons who were not physically capable; the same had been issued in violation of Section 13(2), Arms Act, 1959, with intent to give undue benefit to the applicants, by the appellant, who, at the relevant point in time was District Magistrate-cum-licensing Authority, Saharsa, Bihar. As such, 'the then licensing authority' was also named as an accused therein. It was stated that the same had been done in furtherance of a criminal conspiracy and abetment at a large scale.

IV. After investigation, chargesheet dated 9th July 2005 was entered wherein one of the accused persons, namely Omprakash Tiwari was sent up for trial whereas investigation against other persons was continued. A supplementary chargesheet dated 13th April 2006 was then filed, wherein, qua the appellant it was observed that no offence was made out under the Arms Act against him, and the allegations levelled were termed 'false'. The complainant recorded his 'no objection' to such closure report. The relevant extract of the charge sheet is as under:-

"Resultantly, he could not have been verified and no Offence under Arms Act is made out against FIR accused Sh. R. L. Chongthu, the then District Magistrate, Saharsa. Therefore, the allegation against him have been found to be false. Rest of all the abovenamed Accused persons are on bail from the court. Therefore, the investigation is completing on all points in this case. Therefore, in the present case, I submit Supplementary Chargesheet No. 118/06 dated 13th April, 2006."

V. The Sub-Divisional Officer of Police, Sadar, Saharsa by letter dated 26th November 2007 addressed to the Chief Judicial Magistrate, Saharsa submitted as follows:

"1. The then District Magistrate, Saharsa- Sh. R.L. Chongthu issued Arms License without getting done verification of name and address of named Accused

Sh.Abhishek Tripathi, S/o Vishwajeevan Tripathi, Permanent Address - Shailendra Gupta- Balua Taal, Motihari, District - Champaran. The enquiry of name and permanent address of Abhishek Tripathi was conducted through Superintendent of Police, Motihari. After enquiry, it was found no person in the name of Abhishek Tripathi resides on this address, in whose favour Arms License was issued by the then District Magistrate Sh. Chongthu. Meaning thereby is that the matter of issuing Arms License in favour of a fake person in deliberate manner and by hatching criminal conspiracy without getting done the verification of temporary/ permanent address, has come into the light, in which, the criminal involvement of the then District Magistrate, Saharsa Sh. Chongthu clearly appears.

2. The then Superintendent of Police, Saharsa in his Report No. 3 issued vide his Office Memorandum No. 920/ C.R. dated 11.04.2005, has found the allegation against the then District Magistrate Sh. Chongthu to be false, whereas, in the same Report, it is mentioned to not to verify the alleged Licensee Abhishek Tripathi.

3. Also in Report-3, the Investigating Officer has been ordered to submit chargesheet also against those named accused prsons, whose' permanent/ temporary addresses have been found to be correct, which are not as per Rules. In the light of aforesaid order, the then SDPO, Saharsa Sh.Ashok Kumar Sinha vide Memo No.2558/07 dated 19.09.2007 of this Office, had requested to pass orders for conducting re-investigation on the aforesaid points in the present case, but, the order could not have been received yet. Again, vide Memo No.3547/C.R. dated 24.11.2007 of the Superintendent of Police, Saharsa, it has been directed to conduct investigation on aforesaid points after obtaining order from the Court. Therefore, it is requested that in the light of aforesaid order, kindly issue order to conduct re-investigation of case on the aforesaid points. For your kind information."

On the aforesaid aspects, a request for the re-investigation was resubmitted by letter dated 5th October 2008.

VI. The Chief Judicial Magistrate, Saharsa in an order dated 19th June 2009 observed that an order for reinvestigation could not be granted but further investigation was permitted in law, and as such, permitted further investigation under Section 173(8), CrPC. VII. The General Administration Department, Government of Bihar³ by letter dated 10th December 2015 asked the Appellant to show cause regarding the issuance of arms licences to a total of 16 accused persons. The Response is as under:

"Letter No. 242
Office of the Divisional Commission
Bhagalpur Division, Bhagalpur (Bihar)

From:

ROBERT L. CHONGTHU
Divisional Commissioner,
Bhagalpur Division Bhagalpur

To

Ashwral Dattatraya Thakare
Additional Secretary
Central Administration Department,
Govt, of Bihar, Patna

Bhagalpur dated 23.12.2015

Sub: Allegation against the then District Magistrate, Sarsa relating to irregularly in issuance of Arms License.

Ref: General Administration Department's Letter No. 17049 dt. 10.12.2015.

Sir,

I, with reference to the subject mentioned above I have to say that vide letter No. 17049 dated 10.12.2015, I am asked to submit explanation regarding all 16 persons. It is requested to kindly provide the documents related to sanctioning of arms licences of all 16 persons on the ground that the matter has become old one and I am not able to recollect all the facts and circumstances related to the sanctioning of arms licenses to these 16 persons. It would be really helpful if the above said documents are supplied to me so that I can explain things in proper manner otherwise in absence of these required documents, my explanation would not be proper and complete.

2. That as regards to the earlier papers supplied to me and after perusing the same, it seems to me that various office orders issued from the Ministry of Home Affairs, Government of India are meant for streamlining the procedure of issuing arms licenses which inter alia, state that a decision has been taken to take steps, such as, all arms licenses issued for a period in Jammu Kashmir and Punjab be verified, the District Magistrate should delegate his powers of issuance of license to another officer, the licensing authority be advised to furnish Return on the licenses issues on quarterly basis, the records of licenses should be computerized, licensing authority is required to obtain report from the officer in charge of the

nearest police station and if lapses took place then strict departmental proceeding should be taken.

3. That another office order talks about scam occurred in the State of Jammu & Kashmir highlighting the connivance of the District Magistrate, Jammu with some gun dealers.

4. That support to the circular/office order issued by the Government of India, Ministry of Home Affairs, also categorically serving that while issuance of licenses during my tenure, I have called for the police verification report from the nearest police station in all the cases. Not only this, even reminder was sent to the Saharsa police station for sending the verification report vide letter no. 667-2/General dated 8.7.2004.

5. That it is further to state that during my tenure, parliamentary election said bye-elections were held in the district which also necessitated the requirement of police verification for all the license no such verification report was ever served or submitted to my office.

6. That from period of proviso of section 13 of Arms Act, 1959, it is apparent that where the officer of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if deems, fit, make such order, after the expiry of the prescribed time, without further waiting for that report.

7. That when the officer in charge of the concerned police station failed to submit the required report then I have issued the licenses to these persons and my action is protected under the provisions of the Arms Act, 1959 as stated hereinabove.

8. That it is pertinent to mention here that my action of issuing was not irreversible and the licenses issued by me have been revoked. Further, the entire circular/office order insists upon the streamlining of the procedure for prevention of misuse of such licenses. There is nothing on the record nor there is any material on record to show that any person having been granted the license, had misused the same during the period of subsistence of licence.

9. That the Arms Act, 1959 provides the safeguard against irregular issuance of license if it is learnt that the license has been obtained by suppressing material information or by providing wrong information. The moment I came to know that there was suppression of material information then immediately. I proceeded to cancel the licenses and the licenses were accordingly cancelled by me hence, there is no residue effect to such licenses.

10. That in terms of sections 13 & 14 of the Arms Act, 1959 and Rules 51,51-A, 52 and 53 of the Arms Rules, 1962 which deal with grant of arms licenses and police verification is not since qua non for issuance of license.

11. That it is pertinent to mention here that owing to many a reasons, it necessitated the Ministry of Home Affairs to issue circular/office order for streamlining the procedure of issuing arms Licenses vide letter dated 29.10.2004. It is mentioned therein that in order to plug the loopholes in the existing procedure of issuing arms licenses, it has been decided to take steps indicated in the succeeding paragraphs and thereafter, few steps and guidelines have been provided. The humble submission is that the guidelines contained in the said circular would be prospectively used and there cannot be any retrospective effect of the said guidelines. Therefore, the very seeking of explanation on the basis of the guidelines which call for taking strict departmental proceeding would not be applicable in the present case as the licenses have been issued before the issuance of the guidelines.

12. That it is humbly requested to kindly provide the documents related to all 15 persons so that I may be able to give proper reply/explanation as required by your goodself. It is further prayed to your goodself not to treat this explanation as final explanation and I reserve the right to file proper explanation expeditiously within a week from the date of receipt of the entire documents related to grant of arms licenses of all these 16 persons.

Yours Faithfully
Sd/- (Robert L. Chonghtu)
Divisional Commissioner,
Bhagalpur Division, Bhagalpur"

VIII. The explanation was accepted and the Department discharged the Appellant on 25th February 2016 putting an end to the disciplinary proceedings. Hence, the chargesheet No.834/2020, after completion of further investigation, was submitted on 31st August 2020.

IX. The State granted sanction under Section 197 CrPC on 27th April 2022. Cognizance of the chargesheet was taken on 1st June 2022. It is against this order that the appellant had approached the High Court, and which resulted in the impugned judgment.

THE IMPUGNED JUDGMENT

4. The High Court rejected the application under Section 482, CrPC observing that various illegalities and irregularities pervaded the issuance of licenses by the appellant, in as much as certain persons who were physically unfit, were issued licenses; in some of the applications approved, the bodyguard of the appellant

was listed in the "column of care"; in yet others licenses were issued a mere 2 days after calling for the police report, in which time the said report was obviously not furnished.

Regarding the departmental proceedings, it was observed that while discharging the appellant, the department had asked him to remain careful in the future which, cannot be equated to exoneration in departmental proceedings. Further, on the aspect of power vested in the authority as per section 13(2A) of the Arms Act, it was held that the power cannot be used in an arbitrary and unjust manner. The Court did observe that the Trial Court, keeping in view the many years that had passed since the inception of the case, ought to conclude the trial expeditiously by conducting the same on a day-to-day basis.

THE CASE OF THE PARTIES

5. We have heard learned counsel for the parties. The mainstay of the argument on behalf of the appellant is that Section 13(2A) of the Arms Act vested within him the discretion to grant an arms license even without police verification and all that he did was exercise such discretion in a bona fide manner. Secondly, it is submitted that none of the chargesheets even as much as remotely suggest, conspiracy between the appellant and the licensees or any act of corruption on part of the former. This reinforces the bona fide exercise of power.

Since the alleged misuse of this power under the Arms Act is the standalone charge against the appellant, the fact that he has been discharged in the departmental proceedings acquires importance, as the same is fatal to criminal prosecution on the same facts, is the third limb of the submissions. Fourthly, it is submitted that the chargesheet in which the appellant has eventually been named has been submitted after an inordinate delay of 15 years that too in the absence of any fresh material/evidence. Fifthly, some of the accused licensees have been acquitted by the High Court by orders dated 5th February 2020 and 23rd February 2024 passed in Criminal Misc No.5536 of 2016, Criminal Misc No. 29456 of 2016 and Criminal Misc No. 63786 of 2021.

Next it is urged that the order granting sanction against the appellant is a nonspeaking order and defeats the object of Section 197 CrPC which is to protect an officer against vexatious prosecution. In the end, it is submitted that all the points above make out a case, affirmatively in the appellant's favour as per the grounds mentioned in *State of Haryana v. Bhajan Lal*⁴.

6. On the other hand, the case of the State is that the exercise of power by the appellant was abuse of power vested in him since he did not wait for the police verification report and issued licenses to persons of questionable integrity as also those who are physically unfit and even fictitious. About the acquittal of other

persons connected to the sequence of events, it is submitted that the case of the appellant is distinct and no benefit on ground of parity can be accorded to him.

Regarding the discharge in the departmental proceedings, it is urged that the same is the demonstration of influence of the appellant on two grounds, one, that it is inconceivable that an SHO would ignore the orders of the higher officer and thereby not submit such verification report and two, that the SHO concerned denied having received any request from the office of the appellant for conducting verification.

ANALYSIS

7. The first argument for us to consider is the scope of Section 13(2A) of the Arms Act. It reads as under:

13. Grant of licences.-

(1) An application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such form, contain such particulars and be accompanied by such fee, if any, as may be prescribed.

(2) On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.

(2A) The licensing authority, after such inquiry, if any, as it may consider necessary, and after considering the report received under sub-section (2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same:

Provided that where the officer in charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deems fit, make such order, after the expiry of the prescribed time, without further waiting for that report.

(emphasis supplied)

It flows from the above that calling for a police verification report is mandatory and the same is to be sent to the licensing authority within a prescribed time. What is meant by prescribed has been clarified by Section 2 (g) which defines prescribed to be that which has been described in the rules made under the Arms Act. The rules in vogue at the relevant point in time i.e., 2002-2004 were the Arms Rules 1962. A perusal thereof reveals that the rules did not prescribe a timeline within which the police was to submit a report or the licensing authority is to either grant or deny a license.

8. It is a generally understood position in law that when a legislation or a rule does not provide for limitation/time limit for a particular aspect, the same is to be governed by the standard of reasonable time. [See: Collector v. D. Narsing Rao⁵.] We may also refer to an earlier decision given by this Court in Collector v. P. Mangamma⁶, as follows:

5. A reasonable period would depend upon the factual circumstances of the case concerned. There cannot be any empirical formula to determine that question. The court/authority considering the question whether the period is reasonable or not has to take into account the surrounding circumstances and relevant factors to decide that question.

6. In State of Gujarat v. Patel Raghav Natha [(1969) 2 SCC 187 : AIR 1969 SC 1297] it was observed that when even no period of limitation was prescribed, the power is to be exercised within a reasonable time and the limit of the reasonable time must be determined by the facts of the case and the nature of the order which was sought to be varied. It would be hard to give an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic stands now like the jingling of a child's toy.

But mankind must be satisfied with the reasonableness within reach; and in cases not covered by authority, the decision of the Judge usually determines what is "reasonable" in each particular case; but frequently reasonableness "belongs to the knowledge of the law, and therefore to be decided by the courts". It was illuminatingly stated by a learned author that an attempt to give a specific meaning to the word "reasonable" is trying to count what is not a number and measure what is not space. It means prima facie in law reasonable in regard to those circumstances of which the actor, called upon to act reasonably, knows or ought to know. [See Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar [(1987) 4 SCC 497 : AIR 1987 SC 2316] and Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd. [(1989) 1 SCC 532 : AIR 1989 SC 973]]

As observed by Lord Romilly, M.R. in Labouchere v. Dawson [(1872) LR 13 Eq Ca 322, 325 : 41 LJ Ch 472 : 25 LT 894] it is impossible a priori to state what is reasonable as such in all cases. You must have the particular facts of each case established before you can ascertain what is reasonable under the circumstances. Reasonable, being a relative term is essentially what is rational according to the dictates of reason and not excessive or immoderate on the facts and circumstances of the particular case."

(emphasis supplied)

[See: Telangana Housing Board v. Azamunnisa Begum⁷,]

9. Given that at the relevant point in time, no time limit stood prescribed, an alternate interpretation to 'prescribed time' can be the time specified by the authority seeking the police report in such letter itself. This too, is absent from the record before us. The State and the learned Single Judge have chosen to focus on only one instance. Be whatsoever the contours of the application of doctrine of reasonable time, it only stands to reason that when no time stands clarified it is expected that the Authority may act appropriately within a logically sound period of time. In question are the appellant's actions in so far as 16 licenses are concerned.

However, the record only speaks, to perhaps one instance, where a mere two days after the request for the report of police was made, that the license was issued, and the papers in that regard and do not specify the time granted by the appellant/the appellant's office to furnish the report. It cannot be doubted that the particular instance of application by Kanhaiya Kumar Singh and Chandan Kumar Singh would not be justified as a proper exercise of discretion when licenses have been granted after only two days, but given that the State has remained silent as to the timeline in other cases, we close consideration of this issue having recorded as above.

10. Next, let us turn our attention to the sanction issued against the appellant. As already recorded, it is his case that the sanction is vitiated because it is a non-speaking order. The sanction is reproduced below:

**"GOVERNMENT OF BIHAR
LAW DEPARTMENT
(Under Rule 53(1)(c) and 32(a) XIX of Executive Rules)**

ORDER

Order No. S.P.02/2016-164/J.

Patna, date

27.04.2022

Whereas, on perusal of the documents and evidences mentioned in Case Diary available in the File No. 06/Aarop-03/2016 of General Administration Department, Bihar, Patna addressed to the Secretary, Law Department, the State Government is satisfied that prima facie offence of issuance of Arms License in favour of a fake person deliberately under a criminal conspiracy without conducting verification of his permanent/ temporary address, appears to be made out against the Accused of P.S. Saharsa (Sadar) Crime No. 112/2005 dated 26.04.2005 namely Sh. R.L.Chongthu, IAS (1997), the then District Magistrate-cum- Licensing Authority, Saharsa, due to which, the prima facie case for

prosecuting him under Section 109, 419, 420, 467, 468, 471, 120(B) IPC and Section 30 of Arms Act, is made out against him.

And whereas, according to Section 197 of the Cr.P.C., 1973 (Act No. 2 of 1973), when any person who is a public servant not removable from his office save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction.

And Whereas, Sh. R. L. Chongthu, IAS (1997), the then District Magistrate-cum-Licensing Authority, Saharsa is such a public servant and it is alleged that he has committed such an offence while acting or purporting to act in discharge of his official duty.

And now therefore, the State Government do hereby grant Prosecution Sanction against him under the provisions of Section 197 of Cr.P.C. for prosecuting him u/s 109, 419, 420, 467, 468, 471, 120(B) IPC and Section 30 of Arms Act.

By the orders of Governor of Bihar

Sd/-

(Jyoti Swaroop Shrivastava)
Incharge Secretary to the Government,
Law Department, Bihar.

Memo No. SP -02/2016/164/J. Patna,
Dt. 27.04.2022"

11. Section 197 which mandates the grant of sanction before commencement of prosecution for public servants, reads:

"197. Prosecution of Judges and public servants.-

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction 6 [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:"

The ambit of this Section has been discussed in various judgments of this Court. It will be necessary to refer to them as under:

11.1 In *Gurmeet Kaur v. Devender Gupta*⁸ through B.V. Nagarathna, J., this Court observed:

"25. As already noted, the object and purpose of the said provision is to protect officers and officials of the State from unjustified criminal prosecution while they discharge their duties within the scope and ambit of their powers entrusted to them. A reading of Section 197CrPC would indicate that there is a bar for a court to take cognizance of such offences which are mentioned in the said provision except with the previous sanction of the appropriate Government when the allegations are made against, inter alia, a public servant. 26. There is no doubt that in the instant case the appellant herein was a public servant but the question is, whether, while discharging her duty as a public servant on the relevant date, there was any excess in the discharge of the said duty which did not require the first respondent herein to take a prior sanction for prosecuting the appellant herein."

11.2 The factors to be borne in mind when dealing with a case involving sanction under this section has been, after consideration of number of previous pronouncements crystallised as follows in *Devinder Singh v. State of Punjab*⁹:

39. The principles emerging from the aforesaid decisions are summarised hereunder:

39.1. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner.

39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197 CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply.

39.5. In case sanction is necessary, it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.

39.6. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of court at a later stage, finding to that effect is permissible and such a plea can be taken first time before the appellate court. It may arise at inception itself. There is no requirement that the accused must wait till charges are framed.

39.7. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

39.8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place material during the course of trial for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.

39.9. In some cases it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial."

11.3 A Bench of three Learned Judges in P.K. Pradhan v. State of Sikkim¹⁰ held thus:

"5. The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is

not removable from office save by or with the sanction of the Government, touches the jurisdiction of the court itself.

It is a prohibition imposed by the statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code: "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty."

12. The avowed object of sanctions being granted before cognizance is to ensure that the threat of criminal prosecution does not hang over the heads of the officials in discharge of their public duty. At the same time, it is not intended to protect officers who have transgressed the boundaries of their duty for some act/benefit which otherwise would not be termed acceptable. An aspect connected with this object, is that the authority granting sanction does not do so mechanically.

This is a layer of protection envisioned by this Section. In other words, when allegations are made, it is not for the authorities to grant sanction simply on the basis of the allegations but it is also that they should examine the materials placed by the investigating agency and come to a prima facie satisfaction thereon, about the officer having some or the other involvement in the alleged offence/crime. In *Mansukhlal Vitthaldas Chauhan v. State of Gujarat*¹¹, this Court held that the order of granting or refusing sanction must show application of mind. The relevant paragraphs thereof are extracted hereunder:

"17. Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions. (See *Mohd. Iqbal Ahmed v. State of A.P.* [(1979) 4 SCC 172 : 1979 SCC (Cri) 926 : AIR 1979 SC 677]) Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty.

18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it."

19. Since the validity of "sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration.

If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution." Not much more needs to be said. The sanction awarded against the appellant which we have extracted in toto (supra) can in our considered view, in no way be said to be reflecting application of mind by the authorities.

If sanction is based on what can at best be described as vague statements such as "on perusal of the documents and evidences mentioned in Case Diary available", this protection would be obliterated. The remainder of the sanction order touches upon the essence of Section 197 CrPC and the fact that the appellant is a public servant who would be covered thereby. The substance of why a sanction is required was however entirely missed by the sanctioning authority. The same is bad in law and must be, set aside. All consequential actions including the order taking cognizance, therefore would be quashed.

13. There is another ground which needs detailed consideration. The permission for further investigation was given in 2009 and the chargesheet that was submitted as a result thereof was dated 31st August 2020 that is after a period of 11 years. This is after the fact that in the second chargesheet, the investigating authorities have concluded the charges against the appellant to be false. In 2024, the impugned judgment records that even after the cognizance was taken nearly two years ago in 2022, the trial had not moved forward. As we approach the end of 2025, the question to be considered is as to how long this can continue.

14. Various judgments of this Court have emphasised the right to speedy trial as being an important facet of Article 21 of the Constitution. Timely completion of investigation is inherent thereto.

14.1 A Constitution Bench of this Court in Abdul Rehman Antulay v. R.S. Nayak¹², observed:

"81. Article 21 declares that no person shall be deprived of his life or liberty except in accordance with the procedure prescribed by law. The main procedural law in this country is the Code of Criminal Procedure, 1973. Several other enactments too contain many a procedural provision. After Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : AIR 1978 SC 597], it can hardly be disputed that the 'law' [which has to be understood in the sense the expression has been defined in clause (3)(a) of Article 13 of the Constitution] in Article 21 has to answer the test of reasonableness and fairness inherent in Articles 19 and 14. In other words, such law should provide a procedure which is fair, reasonable and just.

Then alone, would it be in consonance with the command of Article 21. Indeed, wherever necessary, such fairness must be read into such law. Now, can it be said that a law which does not provide for a reasonably prompt investigation, trial and conclusion of a criminal case is fair, just and reasonable? It is both in the interest of the accused as well as the society that a criminal case is concluded soon. If the accused is guilty, he ought to be declared so. Social interest lies in punishing the guilty and exoneration of the innocent but this determination (of guilt or innocence) must be arrived at with reasonable despatch - reasonable in all the circumstances of the case.

Since it is the accused who is charged with the offence and is also the person whose life and/or liberty is at peril, it is but fair to say that he has a right to be tried speedily. Correspondingly, it is the obligation of the State to respect and ensure this right. It needs no emphasis to say, the very fact of being accused of a crime is cause for concern. It affects the reputation and the standing of the person among his colleagues and in the society. It is a cause for worry and expense. It is more so, if he is arrested. If it is a serious offence, the man may stand to lose his life, liberty, career and all that he cherishes.

82. The provisions of the Code of Criminal Procedure are consistent with and indeed illustrate this principle. They provide for an early investigation and for a speedy and fair trial. The learned Attorney General is right in saying that if only the provisions of the Code are followed in their letter and spirit, there would be little room for any grievance. The fact however, remains unpleasant as it is, that in many cases, these provisions are honoured more in breach. Be that as it may, it is sufficient to say that the constitutional guarantee of speedy trial emanating from Article 21 is properly reflected in the provisions of the Code."

The Court laid down guidelines regarding fair trial. Regarding investigation, which is the relevant facet here, the direction issued is as under:

"(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That

is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise."

14.2 A Bench of seven judges in *P. Ramachandra Rao v. State of Karnataka*¹³, while disapproving of setting up of strict timelines by this Court for completion of investigation etc observed:

"The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21. Speedy trial, again, would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and retrial - in short everything commencing with an accusation and expiring with the final verdict - the two being respectively the terminus a quo and terminus ad quem - of the journey which an accused must necessarily undertake once faced with an implication.

The constitutional philosophy propounded as right to speedy trial has though grown in age by almost two and a half decades, the goal sought to be achieved is yet a far-off peak. Myriad fact situations bearing testimony to denial of such fundamental right to the accused persons, on account of failure on the part of prosecuting agencies and the executive to act, and their turning an almost blind eye at securing expeditious and speedy trial so as to satisfy the mandate of Article 21 of the Constitution."

14.3 Just recently, a bench of three Judges of this Court in *Sovaran Singh Prajapati v. State of U.P.*¹⁴, (including one of us, Sanjay Karol J.) after considering number of pronouncements, culled out the features of fair trial. The

third point mentioned therein is important here. It reads, "Process of investigation and trial must be completed with promptitude."

14.4 Another recent instance was in the case CBI v. Mir Usman¹⁵ wherein this Court held:

"31. The right to speedy trial is implicit in Article 21 of the Constitution of India. The first written articulation of the right to speedy trial appeared in 1215 in the Magna Carta:

"We will sell to no man, we will not deny or defer to any man either justice or right." Article 21 of the Indian constitution declares that "no person shall be deprived of his life or personal liberty except according to the procedure laid by law." Justice V.R. Krishna Iyer in Babu Singh v. State of U.P., (1978) 1 SCC 579 : AIR 1978 SC 527 remarked, "Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to "fair trial" whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings."

In the case of Sheela Barse v. Union of India, (1986) 3 SCC 632 : (1986) 3 SCR 562, this Court has held that the right to speedy trial is a fundamental right. Further it was stated by this Court that the consequence of violation of the fundamental right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of fundamental right."

15. Moving further, it is to be noted that this aspect of prompt investigation has received statutory recognition as well in the CrPC, which of course, is the comprehensive code laying down detailed procedure for stages of investigation, trial and appeal among other things. It must be stated that statutory recognition of prompt investigation is a pre-constitutional stipulation. During the colonial period, the Code of Criminal Procedure, 1861, and its immediate successor, the Code of Criminal Procedure, 1872, conceived the process of criminal investigation as a domain of exclusive police competence, characterized by minimal judicial supervision.

These early procedural frameworks vested extensive autonomy in the police establishment, leaving investigations largely beyond the reach of magisterial control, and notably omitted any statutory timelines for their completion. The institutional foundation for this arrangement lay in the Police Act, 1861, which served as the principal legal instrument governing investigative powers and responsibilities. Although the police operated nominally under the "general control and direction" of the District Magistrate, in practice, the investigation of

offences was conducted independently within the police hierarchy, reflecting the colonial state's preference for an executive, rather than judicially mediated, model of law enforcement.

This design is made explicit in the text of the Police Act itself. Reference may be made to Section 5 which granted the police authorities a power of the magistrate and 23 which delineated the core duties of police officers in notably broad terms. Sections 25, 26 and 27 establish that the role of the Magistrate was limited to certain spheres only, for instance dealing with property. Read together, these provisions reveal a conception of policing that was investigative, preventive, and executive in nature, with the judiciary occupying a passive and peripheral role. The Magistrate's function under the Codes of 1861 and 1872 was confined largely to receiving police reports or taking cognizance of completed investigations, rather than directing or monitoring their course.

It was only with the advent of later reforms - first, through the Code of Criminal Procedure, 1898, and subsequently under the Code of 1973 - that the architecture of criminal procedure began to incorporate judicial control and procedural accountability, through provisions such as Sections 61, 167 and 173(1) of the 1898 Code and 156(3), 167, and 173(1), 173(2) of the 1973 Code, which introduced oversight mechanisms (in Section 156(3) and 167) and prescribed reasonable limits (in Section 173(1), 173(2)) for the duration of investigations. In its latest avatar, the legislation codifying criminal procedure i.e. BNSS 2023, also provides similar timelines under Sections 187, 193, 230, 250, 251, 262, 263 etc.

16. At this juncture, we would not be out of place to refer as to how other jurisdictions provide for and deal with speedy trial, in same and similar terms as has been held by this Court. 16.1 In the United States of America, the Sixth Amendment to the Constitution¹⁶, introduced by the Bill of Rights, 1791 provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

The following cases demonstrate the application of this constitutional enshrinement-

16.1.1 Earl Warren, CJ wrote for a unanimous Court in *Klopfer v United States*¹⁷ as under:

"We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment. That right has its roots at the very foundation of our English law heritage. Its first articulation in modern jurisprudence appears to have been made in Magna Carta (1215), wherein it was written, "We will sell to no man, we will not deny or defer to any man either justice or right"; ' but evidence of recognition of the right to speedy justice in even earlier times is found in the Assize of Clarendon (1166).' By the late thirteenth century, justices, armed with commissions of gaol delivery and/or oyer and terminer " were visiting the countryside three times a year."

These justices, Sir Edward Coke wrote in Part II of his Institutes, "have not suffered the prisoner to be long detained, but at their next coming have given the prisoner full and speedy justice, without detaining him long in prison." 12 To Coke, prolonged detention without trial would have been contrary to the law and custom of England; " but he also believed that the delay in trial, by itself, would be an improper denial of justice. In his explication of Chapter 29 of the Magna Carta, he wrote that the words "We will sell to no man, we will not deny or defer to any man either justice or right" had the following effect:

"And therefore, every subject of this realme, for injury done to him in bonis, terris, vel persona, by any other subject, be he ecclesiasticall, or temporall, free, or bond, man, or woman, old, or young, or be he outlawed, excommunicated, or any other without exception, may take his remedy by the course of the law, and have justice, and right for the injury done to him, freely without sale, fully without any deniall, and speedily without delay."

16.1.2 In *Baker v Wingo*¹⁸, the Court, consolidating the tests that were already in application by the lower courts, laid down a four- pronged test, commonly known as the Baker Test. The Court is to consider-the length of the delay, the reason for the delay, when the defendant asserted his right to speedy trial, and the prejudice suffered by the defendant as a result of the delay.

16.1.3 In *Doggett v. United States*¹⁹, the Court was concerned with the case in which an alleged drug peddler was indicted for conspiracy to distribute cocaine. The accused had apparently fled the jurisdiction of the United States. Even though the information of the outstanding arrest warrant had been sent to all posts of the United States Customs, he could only be arrested 6 years after his return to the country, and in total, 8 ½ years after his indictment. Souter J., for the majority held:

"We have observed in prior cases that unreasonable delay between formal accusation and trial threatens to produce more than one sort of harm, including "oppressive pretrial incarceration," "anxiety and concern of the accused," and "the possibility that the [accused's] defense will be impaired" by dimming

memories and loss of exculpatory evidence. *Barker*, 407 U. S., at 532; see also *Smith v. Hooey*, 393 U. S. 374, 377-379 (1969); *United States v. Ewell*, 383 U. S. 116, 120 (1966). Of these forms of prejudice, "the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." 407 U. S., at 532. Doggett claims this kind of prejudice, and there is probably no other kind that he can claim, since he was subjected neither to pretrial detention nor, he has successfully contended, to awareness of unresolved charges against him."

Our speedy trial standards recognize that pretrial delay is often both inevitable and wholly justifiable. The government may need time to collect witnesses against the accused, oppose his pretrial motions, or, if he goes into hiding, track him down. We attach great weight to such considerations when balancing them against the costs of going forward with a trial whose probative accuracy the passage of time has begun by degrees to throw into question. See *Loud Hawk*, *supra*, at 315-317. Thus, in this case, if the Government had pursued Doggett with reasonable diligence from his indictment to his arrest, his speedy trial claim would fail. Indeed, that conclusion would generally follow as a matter of course however great the delay, so long as Doggett could not show specific prejudice to his defense."

16.2 Next, we turn our attention to Canada. Section 11 under the Canadian Charter of Rights and Freedoms houses a total of nine rights. For the instant purposes, (a) and (b) are relevant-

"11. Any person charged with an offence has the right-

(a) to be informed without unreasonable delay of the specific offence;

(b) to be tried within a reasonable time"

16.2.1 The case of *R. v. Askov* 20saw the Supreme Court of Canada holding that:

"The court should consider a number of factors in determining whether the delay in bringing the accused to trial has been unreasonable: (1) the length of the delay; (2) the explanation for the delay; (3) waiver; and (4) prejudice to the accused. The longer the delay, the more difficult it should be for a court to excuse it, and very lengthy delays may be such that they cannot be justified for any reason. Delays attributable to the Crown will weigh in favour of the accused. Complex cases, however, will justify delays longer than those acceptable in simple cases. Systemic or institutional delays will also weigh against the Crown.

When considering delays occasioned by inadequate institutional resources, the question of how long a delay is too long may be resolved by comparing the questioned jurisdiction to others in the country. The comparison of similar and

thus comparable districts must always be made with the better districts, not the worst. The comparison need not be too precise or exact; rather, it should look to the appropriate ranges of delay in determining what is a reasonable limit. In all cases it will be incumbent upon the Crown to show that the institutional delay in question is justifiable. Certain actions of the accused, on the other hand, will justify delays. A waiver by the accused of his rights will justify delay, but the waiver must be informed, unequivocal and freely given to be valid.

16.2.2 Just two years later, the Court in *R v. Morin*²¹ in an attempt to refine the holding in *Askov*, (supra) held that institutional delays would not on their own, constitute a violation of section 11 (b) of the Charter. The factors to be considered were expanded as hereinbelow, and then came to be known as the Morin Framework:

"The general approach to a determination of whether the s. 11(b) right has been denied is not by the application of a mathematical or administrative formula but rather by a judicial determination balancing the interests which the section is designed to protect against factors which inevitably lead to delay. The factors to be considered are: (1) the length of the delay; (2) waiver of time periods; (3) the reasons for the delay, including (a) inherent time requirements of the case, (b) actions of the accused, (c) actions of the Crown, (d) limits on institutional resources and (e) other reasons for delay; and (4) prejudice to the accused."

16.2.3 In *R v. Jordan*²² which is a case almost a quarter-century after the Morin Framework, the Court recognised various issues with implementation thereof in the following terms "The Morin framework for applying s. 11(b) has given rise to both doctrinal and practical problems, contributing to a culture of delay and complacency towards it. Doctrinally, the Morin framework is too unpredictable, too confusing, and too complex. It has itself become a burden on already overburdened trial courts. From a practical perspective, the Morin framework's after-the-fact rationalization of delay does not encourage participants in the justice system to take preventative measures to address inefficient practices and resourcing problems." Keeping these issues in view, the Court then directed:

"At the heart of this new framework is a presumptive ceiling beyond which delay - from the charge to the actual or anticipated end of trial - is presumed to be unreasonable, unless exceptional circumstances justify it. The presumptive ceiling is 18 months for cases tried in the provincial court, and 30 months for cases in the superior court (or cases tried in the provincial court after a preliminary inquiry). Delay attributable to or waived by the defence does not count towards the presumptive ceiling.

Once the presumptive ceiling is exceeded, the burden is on the Crown to rebut the presumption of unreasonableness on the basis of exceptional circumstances.

If the Crown cannot do so, a stay will follow. Exceptional circumstances lie outside the Crown's control in that (1) they are reasonably unforeseen or reasonably unavoidable, and (2) they cannot reasonably be remedied. It is obviously impossible to identify in advance all circumstances that may qualify as exceptional for the purposes of adjudicating a s. 11(b) application. Ultimately, the determination of whether circumstances are exceptional will depend on the trial judge's good sense and experience.

The list is not closed. However, in general, exceptional circumstances fall under two categories: discrete events and particularly complex cases. If the exceptional circumstance relates to a discrete event (such as an illness or unexpected event at trial), the delay reasonably attributable to that event is subtracted from the total delay. If the exceptional circumstance arises from the case's complexity, the delay is reasonable and no further analysis is required.

An exceptional circumstance is the only basis upon which the Crown can discharge its burden to justify a delay that exceeds the ceiling. The seriousness or gravity of the offence cannot be relied on, nor can chronic institutional delay. Most significantly, the absence of prejudice can in no circumstances be used to justify delays after the presumptive ceiling is breached. Once so much time has elapsed, only circumstances that are genuinely outside the Crown's control and ability to remedy may furnish a sufficient excuse for the prolonged delay." s

16.3 The next example we take is from the Republic of South Africa²³. Article 35 of its Constitution is titled "Arrested, detained and accused persons". Article 35(1) enshrines, among other things, what are famously known as the Miranda Rights after the decision of the US Supreme Court in *Miranda v. Arizona*²⁴. Thereafter, Article 35(2) provides for prisoners' rights and relevant for the present discussion, Article 35(3) provides for 'fair trial'. Therein, it is stipulated as hereunder:

"(d) to have their trial begin and conclude without unreasonable delay"

16.3.1 In *Ptrue Bothma v. Petrus Arnoldus Els*²⁵ the constitutional court held as under:

"[32] Major pre-trial abuses by the state are now firmly prohibited by the Constitution. It is no accident that section 35 of the Constitution, which deals with arrested, detained and accused persons, is by far the longest section in the Bill of Rights. It sets out precise protections against treating people in arbitrary ways after they have been placed under arrest. One that becomes operative as soon as someone becomes an accused person is the right to have the trial begin and conclude without unreasonable delay.

[33] Although section 35(3) does not deal expressly with pre-trial delay, it must be construed and understood in the light of the value accorded to human dignity and freedom in our Constitution.²² Freedom is protected by section 12 of the Constitution."

17. The inescapable conclusion arrived at from the above discussion in the Indian context, is that there has been an evolution in legislative wisdom over the years and the criminal procedure have moved from a period of no timelines and minimal judicial interventions/oversight to progressively more oversight and recognition of the need to conclude investigations in time. It may be true that no strict timelines are provided in the CrPC, but it is equally so that investigations are to be completed in reasonable time.

18. The discussion regarding other countries also leads us to a similar conclusion. The Supreme Court of Canada has although given timelines, it has also recognised that the possibility of extension of the said timeline is open. The fourprong test as in Baker, the Askov - Morin framework that we have discussed above, has a subjective element, which keeping in view the realities of the Indian judicial system, is the only option that can be practically applied. Strict timelines, if laid down would be in ignorance of ground realities.

19. Coming back to the present case, why the investigation in this case took more than a decade to be completed is lost on us. Apparently, it was found that the licenses issued by the appellant were also issued to a fictitious person even at the time when the order for further investigation was taken. Out of the 16 accused persons one person stood charge-sheeted in terms of the first chargesheet and the remaining, excluding the appellant and one Abhishek, were charge-sheeted by way of the second chargesheet. When only the actions of the appellant were subject matter of investigation by the time permission was taken as above - 11 years is quite obviously a timeline afflicted by delay.

No reason is forthcoming for this extended period either in the chargesheet or at the instance of the Court having taken cognizance of such chargesheet. In other words, the appellant has had the cloud of a criminal investigation hanging over him for all these years. The judgments above referred to supra hold unequivocally that investigation is covered under the right to speedy trial and it is also held therein, that violation of this right can strike at the root of the investigation itself, leading it to be quashed. At the same time, it must be said that timelines cannot be set in stone for an investigation to be completed nor can outer limit be prescribed within which necessarily, an investigation must be drawn to a close.

This is evidenced by the fact that further investigation or rather permission therefor, can be granted even after commencement of trial. [See: Rampal Gautam

v The State^{26]} Where though, Article 21 would be impacted would be a situation where, like in the present matter, no reason justifiable in nature, can be understood from record for the investigation having taken a large amount of time. The accused cannot be made to suffer endlessly with this threat of continuing investigation and eventual trial proceedings bearing over their everyday existence.

CONCLUSION AND DIRECTIONS

20. On this count, prosecution against the appellant is liable to be quashed. The conclusion is that even though, in the one case that has been consistently highlighted by the State, it cannot be said that the appellant acted within the scope of authority as given by Section 13(2A) of the Arms Act, but given that the administrative authorities have already discharged him, that issue need not be taken further. On the issue of sanction being improper and large delay in filing of chargesheet as also consequent action, we have decided in favour of the appellant. The appeal is accordingly allowed.

21. Before parting with this matter, we deem it fit to issue the following directions:

(i) In view of *Vinay Tyagi v. Irshad Ali*²⁷, it can be seen that the 'leave of the court' to file a supplementary chargesheet, is a part of Section 173(8) CrPC. That being the position, in our considered view, the Court is not rendered functus officio having granted such permission. Since the further investigation is being made with the leave of the Court, judicial stewardship/control thereof, is a function which the court must perform.

(ii) Reasons are indispensable to the proper functioning of the machinery of criminal law. They form the bedrock of fairness, transparency, and accountability in the justice system. If the Court finds or the accused alleges (obviously with proof and reason to substantiate the allegation) that there is a large gap between the first information report and the culminating chargesheet, it is bound to seek an explanation from the investigating agency and satisfy itself to the propriety of the explanation so furnished.

The direction above does not come based on this case alone. This Court has noticed on many unfortunate occasions that there is massive delay in filing chargesheet/taking cognizance etc. This Court has time and again, in its pronouncements underscored the necessity of speedy investigation and trial as being important for the accused, victim and the society. However, for a variety of reasons there is still a lag in the translation of this recognition into a reality.

(iii) While it is well acknowledged and recognised that the process of investigation has many moving parts and is therefore impractical to have strict

timelines in place, at the same time, the discussion made in the earlier part of this judgement, clearly establishes that investigations cannot continue endlessly. The accused is not out of place to expect, after a certain point in time, certainty- about the charges against him, giving him ample time to preparing plead his defence.

If investigation into a particular offence has continued for a period that appears to be unduly long, that too without adequate justification, such as in this case, the accused or the complainant both, shall be at liberty to approach the High Court under Section 528 BNSS/482 CrPC, seeking an update on the investigation or, if the doors of the High Court have been knocked by the accused, quashing. It is clarified that delay in completion of investigation will only function as one of the grounds, and the Court, if in its wisdom, decides to entertain this application, other grounds will also have to be considered.

(iv) Reasons are not only important in the judicial sphere, but they are equally essential in administrative matters particularly in matters such as sanction for they open the gateway to greater consequences. Application of mind by the authorities granting or denying sanction must be easily visible including consideration of the evidence placed before it in arriving at the conclusion.

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

.....J. (Sanjay Karol)

.....J. (Nongmeikapam Kotiswar Singh)

New Delhi;

November 20, 2025.

1 Hereinafter referred to as 'CrPC

2 Impugned judgement

3 The Department

4 1992 Supp. (1) 335

5 (2015) 3 SCC 695

6 (2003) 4 SCC 488

7 (2018) 7 SCC 346

8 (2025) 5 SCC 481

- 9 (2016) 12 SCC 87
- 10 (2001) 6 SCC 704
- 11 (1997) 7 SCC 622
- 12 (1992) 1 SCC 225
- 13 (2002) 4 SCC 578
- 14 2025 SCC OnLine SC 351
- 15 2025 SCC OnLine SC 2066
- 16 <https://constitution.congress.gov/constitution/amendment-6/>
- 17 386 U.S. 213 (1967)
- 18 407 US 514 (1972)
- 19 1992 SCC OnLine US SC 94
- 20 [1990] 2 SCR 1199
- 21 [1992] 1 SCR 771
- 22 [2016] 1 SCR 631
- 23 The Constitution OF THE REPUBLIC OF SOUTH AFRICA, 1996-
<https://www.justice.gov.za/constitution/SACConstitution-web-eng.pdf>
- 24 384 U.S. 436 (1966)
- 25 [2009] ZACC 27
- 26 Criminal Appeal @ SLP (Crl.) 7968 of 2016
- 27 (2013) 5 SCC 762- See para 49

IN THE SUPREME COURT OF INDIA

**Balaji Steel Trade
Vs.
Fludor Benin S.A. & Ors.**

[Arbitration Petition No. 65 of 2023]

Head Note - Indian Courts have no jurisdiction to appoint an arbitrator for a foreign-seated arbitration, irrespective of the nationality or domicile of the parties.

JUDGMENT

1. For the sake of convenience and ready reference, this judgment contains the following parts:-

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V. Conclusion and Decision:

I. Introduction:

2. The Arbitration Petition under Section 11 of the Arbitration and Conciliation Act, 1996 is an attempt by the petitioner to anchor an international commercial arbitration, arising out of Buyer and Seller Agreement (BSA), and its Addendum which is governed by laws of Republic of Benin, into the domestic framework of the Act, 1996 by placing reliance on dispute resolution clauses contained in subsequent contractual arrangements, namely Sales Contracts executed with respondent no. 2 and High Seas Sales Contracts (HSSAs) executed with respondent no. 3. The prayer is for constitution of an Arbitral Tribunal and a composite reference of the alleged disputes including within the embrace the three respondents as its parties by invoking the group of companies doctrine.

We have considered issue of jurisdiction, concluded decision between the parties, and also the propriety of the present petition and dismissed the petition. We have held that as the primary contract (BSA) incorporates (i) international commercial arbitration, question of application of Section 11 contained in Part I does not arise, (ii) BSA with respondent no. 1 is the "mother agreement" to which respondents no. 2 and 3 are aliens, (iii) the petitioner is barred by issue estoppel arising owing to dismissal of anti-arbitration injunction suit and also that, (iv) there is no compositeness of the transaction so as to attract group of companies doctrine.

II. Facts:

3. The petitioner, Balaji Steel Trade, has approached this Court under Section 11(6) read with Section 11(12)(a) of the Act 1996 praying for appointment of sole arbitrator to adjudicate and decide upon dispute that has arisen between the parties owing to the alleged breach of Buyer and Seller Agreement (hereinafter, "BSA") dated 06.06.2019 executed between the present petitioner and respondent no.1, Fludor Benin S.A. Petitioner prays for a composite reference to arbitration by seeking the inclusion of respondent no. 2, M/s Vink Corporations DMCC, a

company incorporated in Dubai, UAE, and respondent no. 3, Tropical Industries International Pvt. Ltd., a private limited company registered in New Delhi, India. As per the petitioner, all three respondents are owned and controlled by Tropical General Investments Ltd. Group ("TGI Group") whereby TGI Group holds 100% shares in respondent no.1, 51% shares in respondent no. 2 and 99.73% shares in respondent no.3.

4. Buyer and Seller Agreement between Petitioner and Respondent No.1: The petitioner, Balaji Steel Trade, is a partnership firm engaged in the business of steel trading as well as in the trade of various agricultural commodities. Respondent No. 1, Fludor Benin S.A., is a private limited company incorporated under the laws of Republic of Benin, a country in West Africa. According to the petitioner, in the year 2018, respondent no. 1 made representations to the petitioner with respect to the supply of cotton seeds. Consequent thereto, both parties entered into negotiations with a view to explore a business arrangement for the manufacture and sale of cottonseed cakes.

5. In furtherance of the aforesaid discussions, the parties executed a Collaboration and Buy Back Agreement ("Collaboration Agreement") dated 10.12.2018. Under the said agreement, the petitioner undertook to provide the requisite machinery and establish a manufacturing unit at Bohicon, a city in Benin, for the manufacture of cottonseed cake. Respondent no. 1, on its part, assumed the obligation to manufacture the said product and supply it to the petitioner in India. Clause 202 of the Collaboration Agreement contained an arbitration provision stipulating that disputes thereunder would be referred to arbitration before CAMECCCIB3 in Benin.

6. Subsequently, and in supersession of the Collaboration Agreement, the petitioner and respondent no. 1 entered into a Buyer-Seller Agreement ("BSA") dated 06.06.2019, for a term of five years, governing the supply and sale of the product. The said BSA also incorporated an arbitration clause this time providing for ad hoc arbitration to be conducted in Benin. Article 11 of the BSA incorporating arbitration agreement is as follows:

"11. Arbitration: All the disputes will be resolved by discussions and if Arbitration becomes only option then it will take place in Benin and decision will be binding on both the parties and Arbitration fee will be borne by the losing party."

7. Execution of Sales Contracts with Respondent No. 2: After having executed the BSA, on 17.10.2019 respondent no. 1 assigned its obligation for supply of product to respondent no. 2, M/s. Vink Corporations DMCC. In order to give effect to the said assignment and to facilitate supply of the product, the petitioner and respondent no. 2 entered into a series of Sales Contracts providing for

reference of dispute to sole arbitrator in accordance with the Act, 1996, with the place of arbitration at New Delhi. The relevant portion of the dispute resolution clause is as follows:

"Dispute Resolution: Any dispute arising out of or relating to this agreement, including any question regarding its existence, validity, or termination, which cannot be amicably resolved by the Parties, shall be settled before a sole arbitrator in accordance with the Indian Arbitration and Conciliation Act, 1996. The sole arbitrator shall be appointed mutually by the parties. In the event the Parties fail to agree on a sole arbitrator within Thirty (30) days from the date of notice of arbitration, then appointment of such sole arbitrator shall take place as per the provisions of the Indian Arbitration and Conciliation Act, 1996. The place of arbitration should be New Delhi and language shall be English. The resulting arbitral award shall be final and binding without right of appeal, and judgment upon such award may be entered in any court having jurisdiction thereof. A dispute shall be deemed to have been arisen when either Party notifies the other Party in writing to that effect."

8. Execution of the Addendum: The terms of BSA were modified on 09.01.2021 by signing an Addendum, terms of which eliminated petitioner's exclusive rights of purchase of the product thereby allowing respondent no. 1 to sell the product to third parties also. The petitioner contends that, following the execution of the Addendum, there was a shortfall in the quantity of the product supplied to it.

9. HSSAs executed between Petitioner and Respondent No. 3: In order to address the said shortfall, respondent no. 3, Tropical Industries International Pvt. Ltd., was introduced to the petitioner. Consequent thereto, the petitioner and respondent no. 3 entered into a series of High Sea Sale Contracts ("HSSA"), which, inter alia, delineated the respective rights and obligations of respondent no. 3 as the seller and the petitioner as the purchaser of the product. Said HSSAs also contained arbitration clause providing that:

"g) Dispute if any, between the parties arising in relation to this agreement of HIGH SEAS SALE shall be referred to the arbitration under the Indian Arbitration Act 1940. In witness whereof, the parties have said and subscribe their hands at DELHI, INDIA, the day and year first hereinabove written."

10. Disputes arose between the parties with respect to quantity of supply and payments inter-se which led to petitioner serving a notice dated 15.07.2022 served on all party respondents. Respondent nos. 2 and 3 replied to said notice shrugging their responsibility on the ground of lack of privity and separateness from respondent no. 1. Petitioner then issued termination notice dated 06.09.2022 under which BSA and the Addendum were terminated.

11. Respondent No.1's invocation of Benin Arbitration: Things took a turn when the petitioner received a notice from Chamber of Commerce, Benin - CAMEC dated 12.04.2023 apprising the petitioner that respondent no. 1 has requested for settlement of disputes by arbitration in terms of the BSA before it in Benin and called upon the petitioner to nominate its arbitrator. Petitioner refuted to the said arbitration by sending its objections vide letter dated 15.05.2023. Thereafter, respondent no.1 on 31.05.2023 sent notice invoking arbitration under the laws of Benin to the petitioner to which the petitioner replied on 30.06.2023 denying the contents of the notice and resisting to Benin as seat of arbitration. Further objection of the petitioner was with regard to the non-joinder of respondent no. 2 and respondent no. 3, who were, as per petitioner, proper and necessary parties.

12. Instead of submitting to the Benin arbitration, the petitioner issued its own notice invoking arbitration to all the three respondents purportedly in terms of Section 21 of the Act, 1996 referring the disputes arising out of the BSA, Sales Contract and HSSAs to arbitration and proposed the name of sole arbitrator. Respondent no. 1 however continued to proceed with Benin arbitration and filed an application before the Commercial Court of Cotonou, Benin ("Benin Court") seeking appointment of arbitrator which was allowed on 26.07.2023, whereby the Benin Court appointed one Dr. Gilbert Ahouandjinou as the sole arbitrator for determination of disputes between the petitioner and respondent no. 1.

13. Petitioner's institution of Anti-Arbitration Injunction Suit: Petitioner however proceeded to institute Anti-Arbitration Injunction Suit (CS (Comm) No. 544 of 2023) before the High Court of Delhi on 10.08.2023, inter alia praying for a decree of permanent injunction restraining the respondent no. 1 from proceeding/continuing with the Benin Arbitration.

14. Filing of the Present Petition: Pending disposal of anti-arbitration injunction suit, more or less around the same time, petitioner on 23.08.2023 filed the present application under Section 11(6) read with Section 11(12)(a) of the Act, 1996 for appointment of sole arbitrator for adjudication of the disputes.

15. Culmination of Benin Arbitration: Pending disposal of the antiarbitration injunction suit, and the application under Section 11(6) of the Act, 1996 for constitution of arbitral tribunal before this Court, the ad hoc arbitration in Benin got concluded and the sole arbitrator rendered its award on 21.05.2024.

16. Further fact having a bearing on the present proceeding is the dismissal of the anti-arbitration injunction suit (Comm) No. 544 of 2023 by High Court of Delhi on 08.11.2024.

III. Submissions:

17. Submissions on behalf of the Petitioner: Mr. Devadatt Kamat, senior counsel assisted by Ms. Shruti Sabharwal, Mr. Nishant Doshi and others, appearing on behalf of the petitioner has made the following submissions:

(i) Disputes against all respondents arise from a composite transaction, as the series of agreements are interlinked and founded on a common commercial objective under the TGI Group. Respondents nos. 2 and 3 supplied goods on the instructions of respondent no. 1, thereby performing obligations under the BSA by conduct. This, coupled with contemporaneous correspondence and the common legal notice dated 15.07.2022 issued to all respondents, shows that the disputes are inseparable and require a composite reference under the group of company doctrine⁴.

(ii) The dispute resolution clause in the BSA stands novated by the arbitration clauses contained in the subsequent Sales Contracts and HSSAs executed with respondent nos. 2 and 3. Reference in this regard has been made to Sales Contract between the petitioner and respondent no. 2, the arbitration clause of which is framed as, "appointment of such sole arbitrator shall take place as per the provisions of the Indian Arbitration and Conciliation Act, 1996".

(iii) Alternatively, even if the BSA clause is given effect, it is submitted that Benin was indicated only as the venue, not the juridical seat, since Article 11 merely states that arbitration "will take place in Benin." In contrast, the later contracts evince a clear intention to adopt Indian law as the governing law of arbitration. Relying on *Mankastu Impex Pvt. Ltd. v. Airvisual Ltd.*⁵, it is argued that the seat must be inferred from the parties' conduct and the governing law, which unmistakably points to India as the seat.

(iv) Arbitral proceedings in Benin and the consequent award are non-est in law, having been unilaterally invoked by respondent no. 1 to pre-empt petitioner's claims under Indian law. Benin is not a reciprocating territory under Section 44(b)(6) of the Act, 1996, and any award rendered there would be unenforceable in India.

(v) Lastly, it is argued that the Delhi High Court's findings in the antiarbitration injunction suit have no bearing on these proceedings, as the inquiry under Section 45 (before the High Court) and Section 11 (before this Court) operate in distinct spheres. The limited scrutiny is only to enquire about the existence of a valid arbitration agreement, and all other questions can be raised and contested before the arbitral tribunal itself.

18. Submissions on behalf of Respondent No. 1: Mr. Nakul Dewan, senior counsel, assisted by Mr. Susshil Daga, Mr. Pallav Mongia and others made the following submissions opposing the maintainability of the petition. He would

strongly urge for dismissal of the present petition on the ground that it is abuse of process for the following reasons:

(i) It is urged that Part I of the Act, 1996, including Section 11, has no application since the dispute arises solely under the BSA, which expressly stipulates that arbitration "shall take place in Benin" and that the governing law shall be the laws of Benin (Article 5 of the Addendum). Hence, the arbitration under BSA is international commercial arbitration, governed by the Benin Arbitration Act.

(ii) The legal notice issued by the petitioner on 15.07.2022 virtually seeks specific performance of the BSA on the ground that the respondent has breached the agreement by not supplying the contracted quantity of goods. On the other hand, his client invoked arbitration on 31.05.2023 under the BSA, on the ground that the petitioner had defaulted in accepting delivery, resulting in losses. Under these circumstances, the dispute arises out of rights and obligations under BSA, for which the governing law is that of Republic of Benin, the Benin Arbitration Act⁷ being the curial law.

(iii) Respondent no. 1 is not bound by the arbitration clauses in the Sales Contracts or HSSAs, which were executed independently between the petitioner and respondent nos. 2 and 3 as the BSA neither refers nor incorporates these subsequent contracts. The principles of group of companies doctrine as laid down in *Cox & Kings*, has no application to the facts of the present case.

(iv) Placing reliance on *Balasore Alloys Ltd. v. Medima LLC*⁸, respondent no. 1 argues that the BSA is the principal or "mother" agreement, and therefore its arbitration clause prevails over those in any ancillary or subsequent contracts. Having consciously accepted Benin as the seat of arbitration, the petitioner cannot now resile from its contractual commitment or seek parallel proceedings in India.

(v) Lastly, the contention that the BSA stood novated or assigned through the Sales Contracts and HSSAs is denied. Even if such assignment were assumed, respondent nos. 2 and 3 would merely step into respondent 1's contractual position, leaving no ground for a separate or parallel arbitration. In any event, all such issues fall within the jurisdiction of the arbitral tribunal constituted under the BSA. The respondents further rely on the Delhi High Court's findings in the petitioner's anti-arbitration injunction suit, which, having attained finality, bar re-litigation of identical issues.

19. Submissions on behalf of Respondent No. 2: Ld. Counsel for respondent no. 2, M/s. Vink Corporations DMCC, submitted that the multiple Sales Contracts that they have entered into with the petitioner were standalone limited term

contracts concluding with the delivery of the goods. The arbitration clause is limited to, "any dispute arising out of or relating to this Agreement".

20. Submissions on behalf of Respondent No. 3: Similarly, Ld. Counsel for respondent no. 3 submits that it and petitioner entered into four HSSAs for delivering a specified quantity of the products detailed in each HSSAs. The arbitration clause in each HSSA provided that "Dispute if any, between the parties arising in relation to this agreement of HIGH SEAS SALE shall be referred to the arbitration under the Indian Arbitration Act 1940". Hence, the said clause was limited to disputes arising out of the specific HSSA between the petitioner and respondent no. 3.

21. Thus, respondent nos. 2 and 3 have submitted that no dispute has arisen with respect to Sales Contracts or the HSSAs and that the disputes raised by the petitioner are limited to BSA and the Addendum, with respect to which they are aliens.

IV. Analysis:

22. At the outset, it is to be noted that the present application has been filed under Section 11(6) read with Section 11(12)(a) of the Arbitration and Conciliation Act, 1996 seeking appointment of a sole arbitrator for a composite reference of disputes arising out of the (i) BSA, (ii) the Sales Contracts, and (iii) the HSSAs. At this stage, the Court is required to advert to the foundational question of whether there exists a valid and enforceable arbitration agreement between the parties, which can form the basis of an arbitral reference.⁹ Equally material is the principle that the Court at this stage does not engage in a roving enquiry into merits but confines itself to the existence and validity of an arbitration agreement.¹⁰

23. Maintainability of the Section 11(6) Petition in International Commercial Arbitration: However, before touching upon the merits of the matter, we must first concern ourselves with the seminal question whether the present petition is proper in the sense that whether this Court, in exercise of jurisdiction under Section 11(6) read with Section 11(12)(a) of the 1996 Act, can at all entertain a request for appointment of an arbitrator in respect of a dispute which, as contended by respondent, is an international commercial arbitration. This issue assumes foundational importance because, if Part I of the 1996 Act stands excluded by virtue of the parties' choice of the seat of arbitration and the governing law, the jurisdiction of this Court to entertain the application is ousted at the threshold.

24. Section 2(1)(f) of the Act, 1996 defines 'international commercial arbitration' as arbitration relating to disputes arising out of legal relationships, whether

contractual or not, considered as commercial under the law in force in India and where at least one of the parties is a foreign national, whether that party is an individual, a body corporate, an association or body of individuals or a foreign Government. Respondent no. 1 being a company incorporated under the laws of Benin, the present dispute squarely falls within the ambit of international commercial arbitration.

Once this characterisation is made, Section 2(2) of the Act becomes immediately relevant, for it stipulates that Part I shall apply only where the place of arbitration is in India, thereby mandating that Part I stands excluded where the parties have chosen a foreign seat. This Court has consistently held, beginning with *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*¹¹ (BALCO), that Part I of the 1996 Act has no application to arbitrations seated outside India. The seat has a juridical significance in arbitration law: it determines the courts that exercise supervisory jurisdiction over the arbitral proceedings.

25. Respondent no. 1 has urged that Part I, including Section 11 is not applicable to the BSA dated 06.06.2019. At the threshold, it is common ground that the relationship between the petitioner and respondent no. 1 was crystallised in the BSA and its Addendum dated 09.01.2021. These agreements constitute the principal arrangements between the two contracting entities. The arbitration clause contained in Article 11 of the BSA explicitly provides that in the event of disputes, arbitration shall "take place in Benin," while Article 5 of the Addendum makes it further explicit that the BSA shall be "construed, governed and interpreted in accordance with the laws of Benin."

In *Mankastu* (supra), this Court emphasised that the seat of arbitration is to be ascertained from the intention of the parties as gathered from the agreement as a whole. Further, in *BGS SGS SOMA JV v. NHPC Ltd.*¹² this Court observed that;

"61. It will thus be seen that wherever there is an express designation of a "venue", and no designation of any alternative place as the "seat", combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding."

26. Article 11 of BSA read with Article 5 of the Addendum unequivocally shows that the parties not only indicated the geographical location of arbitration but also selected the governing law. The dual indications together leave little scope for doubt that Benin was intended to be the juridical seat with laws of Benin as the curial law.

27. Inapplicability of Arbitration Clauses in Sales Contracts and HSSAs to dispute arising from BSA and Addendum: The petitioner has sought to place reliance on arbitration clauses contained in Sales Contracts and HSSAs to argue that it was the intention of the parties to arbitrate in India. Petitioner argued that mere mention in BSA that arbitration shall take place in Benin does not by itself make Benin the juridical seat especially in light of contrary indica in terms of arbitration clauses in Sales Contracts and HSSAs. To buttress this proposition, petitioner further argued that BSA stood novated or superseded by the Sales Contracts and HSSAs which provide for arbitration in India.

This argument is equally unmeritorious. It is well settled that novation of a contract must be established by clear and unequivocal intention of the parties to substitute the earlier agreement with a new one. The BSA dated 06.06.2019 constituted the principal or "mother" contract between the petitioner and respondent no. 1, defining their long-term commercial relationship, specifying supply obligations, pricing structure, risk allocation, and a selfcontained dispute resolution clause providing for arbitration "to take place in Benin" under Benin law.

28. No novation or supersession of BSA by Sales Contracts and HSSAs: By contrast, the Sales Contracts executed between the petitioner and respondent no. 2, and the HSSAs executed with respondent no. 3, were subsequent, limited-purpose instruments. They were entered into only to facilitate execution of individual shipments once respondent no. 1 assigned part of its performance to other group entities.

Each Sales Contract and HSSA were confined to a specific consignment or transaction, contained its own commercial terms such as quantity, price and delivery schedule, and had separate arbitration clauses, one referring disputes to arbitration under the Act, 1996 (for Sales Contracts) and the other under the Indian Arbitration Act, 1940 (for HSSAs). None of these contracts incorporate or refer to the BSA or its arbitration clause, nor did they expressly substitute, novate, or supersede the BSA. Their scope ended upon completion of delivery and payment under the respective consignment.

29. The absence of cross-references or language of substitution makes it impossible to infer novation under Section 6213 of the Indian Contract Act, 1872. The BSA continued to subsist independently and governed the broader supply arrangement, while the Sales Contracts and HSSAs merely operated as implementing or ancillary arrangements for discrete transactions. As this Court observed in Balasore Alloys Ltd., where several contracts coexist, the arbitration clause of the mother agreement governs the dispute unless a later contract unequivocally replaces it.

The petitioner has shown no such intention of substitution. Consequently, any alleged default by respondent no. 1, such as short-supply or failure to deliver contracted quantities, emanates from obligations under the BSA, not from the Sales Contracts or HSSAs, which stand concluded. Therefore, the arbitration agreements in the Sales Contracts or HSSAs cannot displace or override the arbitration clause in the BSA, and disputes rooted in the BSA must be resolved exclusively through the arbitration agreed therein, namely, arbitration seated in Benin and governed by Benin law. Owing to the separateness of the three contractual instruments, it cannot be said that there were any contrary indications in BSA in respect of any other law.

30. In view of the aforesaid discussion, both the legal position and the factual matrix converge to a single, inescapable conclusion. The very nature of the present dispute is that of an "international commercial arbitration" as defined under Section 2(1)(f) of the 1996 Act, respondent no. 1 being a corporation incorporated under the laws of Benin. This statutory characterisation necessarily triggers the application of Part II of the 1996 Act when the arbitration is foreign-seated, and not Part I. Section 2(2) makes the position explicit by providing that Part I applies only where the place of arbitration is in India; consequently, recourse to Section 11, located within Part I, is available solely in respect of India-seated arbitrations.

As this Court explained in *BALCO*, reaffirmed in *Mankastu*, *BGS SGS SOMA JV*, and emphatically reiterated in *PASL Wind Solutions*¹⁴, Indian Courts have no jurisdiction to appoint an arbitrator for a foreign-seated arbitration, irrespective of the nationality or domicile of the parties. On the facts as well, the BSA and its Addendum constitute the mother agreement, containing a clear and deliberate choice of Benin as the juridical seat of arbitration and Benin law as the governing and curial law.

The subsequent Sales Contracts and HSSAs are merely ancillary, facilitating performance of isolated shipments, and cannot override the dispute resolution framework of the BSA. Thus, both in principle and in the factual circumstances of the case, the arbitration agreement in the BSA prevails. The disputes raised by the petitioner arise squarely from the BSA, and the parties' chosen forum for their adjudication is arbitration in Benin. Accordingly, the invocation of Part I and the present request under Section 11(6) of the 1996 Act is fundamentally misconceived, legally untenable, and contrary to the statutory scheme as well as the autonomy of the parties' contractual design.

31. Initiation and Culmination of Benin Arbitration: It is significant to note, even prior to the institution of the present proceedings, respondent no. 1 had already invoked arbitration in terms of Article 11 of the BSA in Benin. As already indicated, the Benin Commercial Court, vide order dated 26.07.2023, appointed a

sole arbitrator, Dr. Gilbert Ahouandjinou, in exercise of powers available under the Benin Arbitration Act, thereby constituting a tribunal under the parties' chosen curial law. The arbitral tribunal, after considering the objections, ruled affirmatively on its own jurisdiction in accordance with the doctrine of kompetenz-kompetenz and proceeded to adjudicate the substantive disputes arising out of the BSA.

32. The Benin-seated arbitral tribunal thereafter rendered a final and reasoned award dated 21.05.2024. The consequence of this development is twofold. First, the arbitral process agreed to by the parties in the BSA has already culminated in an adjudication on the very disputes which the petitioner now seeks to re-agitate through the present Section 11 proceedings. Second, once the tribunal has asserted and exercised its jurisdiction and delivered a final award, the petitioner cannot seek to initiate a parallel arbitral process in India in respect of the same subject matter. Allowing such an endeavor would be wholly antithetical to the principles of finality of arbitral proceedings, undermine the doctrine of kompetenz-kompetenz, and would defeat the territorial principle that the courts of the seat (Benin) exercise supervisory jurisdiction over the arbitration.

33. Dismissal of Anti-Arbitration Injunction by High Court of Delhi: Another consideration which cannot be lost sight of is that petitioner's attempt to resist the Benin arbitration before the Delhi High Court failed in light of the judgment dated 08.11.2024 whereby the High Court allowed respondent no. 1's application under Section 45 and dismissed the antiarbitration injunction suit filed by the petitioner. Although proceedings under Section 45 of the 1996 Act are distinct in scope from an application under Section 11, the reasoning adopted by the High Court, particularly its interpretation of the BSA, the Addendum, and the inter-relationship of the subsequent Sales Contracts and HSSAs, bears directly upon the factual architecture that underlies the present petition.

The High Court, after a detailed examination of the contractual framework, arrived at a categorical finding that the BSA and its Addendum form the principal and operative contractual matrix between the petitioner and respondent no. 1, and that the arbitration clause contained therein represents the parties' deliberate and binding choice of dispute resolution. It held that the Sales Contracts and HSSAs, being independent and self-contained arrangements with respondent nos. 2 and 3 respectively, do not, and cannot, supersede, modify, or dilute the arbitration agreement in the BSA, nor do they create a composite dispute capable of attracting a unified arbitral mechanism under Indian law. To this effect, it was observed:

"52. Defendant No. 1 is not a party to either the Sales Contracts or HSSAs. Thus, there is no question of it being bound by the arbitration clause contained in the Sales Contracts and/or HSSAs. It is an admitted fact that Plaintiff and Defendant

No. 1 signed the BSA and Addendum. If Defendant No. 1 assigned its obligation to Defendant No. 2 & 3 and Plaintiff agreed to the same, it would result in Defendant No. 2 & 3 stepping into the shoes of Defendant No. 1 for the purposes of the BSA and addendum. Defendants No. 2 & 3 would then be bound by the BSA and Addendum, including Article 11 and Article 5, respectively, but it cannot be vice-versa.

Hence, Articles 11 and article 5 would continue to remain the binding arbitration agreement between the parties. The arbitration clause/Article 11 of BSA and Article 5 of the Addendum reads as under: After pursuing the arbitration clauses of BSA and Addendum, it is clear that the plaintiff and defendant no. 1 had, out of their own will, choose the preferred place of arbitration to be in Benin. Therefore, Arbitration would be the method of resolving any disagreement that might emerge between the parties to the BSA and addendum. Therefore, it is clear that the agreements entered into between defendants no 2 & 3 and the plaintiff are separate from the BSA and addendum.

53. The supplementary obligation, as stated by the plaintiff, would be limited to the consignment identified in the Sales Contracts or HSSAs. The sales contracts and HSSAs were entered for the supply of the product on behalf of defendants no 2 & 3. Neither is there a mention of any article/clause that states that the sales contracts and HSSAs are just an addition to the BSA, nor any clause that states that addendum and parties to BSA and addendum would be governed by the clauses of sales contracts and HSSAs. Defendants No. 2 & 3 are individual companies. Therefore, the contracts or agreements entered into between Defendants no 2 & 3 and the plaintiff containing an arbitration clause with the place of arbitration in India will be enforceable separately."

34. The findings and conclusions have been summed up by the High Court in paragraph 60 in the following manner:

"60. This court finds that the BSA, Addendum, and Sales contracts, along with HSSAs are distinct contracts having different parties, differing scope of work and different arbitration clauses. Merely stating that the defendant no 2 & 3 are the companies which are run by the defendant no.1 is not sufficient. Defendants No. 1 and the plaintiff have entered into the BSA and Addendum as individual entities therefore, any dispute that arises out of these agreements will be resolved as per the dispute resolution mechanism provided in the articles of these agreements, i.e., as per article 11 of BSA and article 5 of Addendum.

The Initiation of arbitration proceedings under CAMEC in April 2023 and issuance of the Fludor NOA, demonstrate that the Plaintiff's concerns stem from the BSA read with the Addendum as the cause of action of the present Suit is all rooted in the BSA and the Addendum. Therefore, disputes, if any, are to be

adjudicated as per the Parties' chosen adjudicatory forum, i.e., under Article 11 of the BSA and the arbitration clause provided under Article 11 of the BSA. Clearly Plaintiff has never questioned the validity of BSA and Addendum, which means that the Agreements are not null, void, inoperative or incapable of being performed."

(emphasis supplied)

In terms of the above, the High Court of Delhi allowed respondent no. 1's application under Section 45 and dismissed the suit filed by the petitioner.

35. Findings of High Court of Delhi as 'Issue Estoppel': Importantly, these findings relating to (i) the autonomy and separateness of the contractual frameworks, (ii) the absence of any common arbitration agreement across respondents, and (iii) the impossibility of construing the BSA as having been novated by the later consignment-based contracts, are findings of jurisdictional fact. Once such jurisdictional facts have been adjudicated by a competent court, they cannot be reopened in subsequent proceedings between the same parties.

The petitioner, having unsuccessfully canvassed the very same assertions before the High Court, is now barred by issue estoppel from reagitating those issues in a slightly altered statutory setting. The doctrine applies with full force even though the present proceeding is under Section 11 and the earlier one was under Section 45, for the identity of the issue, namely the operative agreement, the seat of arbitration, and the scope of the respective arbitration clauses, remains the same.

36. This Court in *Hope Plantations Ltd. v. Taluk Land Board Peermade & Anr.*¹⁵ has elaborated upon 'issue estoppel' by observing as under:

"26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrably wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it.

They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available.

The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice."

(emphasis supplied)

37. Further, in *Anil v. Rajendra*¹⁶ this Court noted that once there is refusal to refer to arbitration under Section 8 of the Act, 1996, parties thereafter cannot seek reference to arbitration under Section 11(6) as the earlier refusal under Section 8 amounts to issue estoppel. It was observed that;

"15. Thus, once the judicial authority takes a decision not to refer the parties to arbitration, and the said decision having become final, thereafter Section 11(6) route before the Chief Justice is not available to either party."

38. In the totality of circumstances, therefore, the findings of the High Court of Delhi furnish a cogent and authoritative factual foundation against which the present petition must be tested. When those findings are read conjointly with the statutory framework under Sections 2(1)(f) and 2(2) of the 1996 Act and the jurisprudence laid down in above referred judicial pronouncements, the legal position becomes unequivocal:

(i) the BSA constitutes the mother agreement;

(ii) the juridical seat of arbitration is Benin;

(iii) the governing and curial law is the law of Benin;

(iv) Part I of the Act stands excluded by operation of law;

(v) Indian courts lack jurisdiction to appoint an arbitrator for a foreign-seated arbitration;

(vi) after the commencement and during the subsistence of international commercial arbitration at Benin, the petitioner filed the anti-arbitration injunction suit, but failed to obtain any order or direction,

(vii) in the meanwhile, international commercial arbitral proceedings culminated in the final award dated 21.05.2024, and finally

(viii) the Delhi High Court dismissed the anti-arbitration injunction suit considering the very same issues raised herein and as such the petitioner will be estopped from raising the same issues.

39. The petitioner's endeavor to confer jurisdiction upon this Court by invoking ancillary contracts of a different genus, executed with different parties, and containing materially different arbitration clauses, is wholly misconceived and contrary to the territorial principle that lies at the heart of the 1996 Act. The petition, therefore, is not merely untenable, it is foreclosed both in law and on account of estoppel arising from the petitioner's own prior litigation conduct.

40. Misplaced reliance on Group of Companies Doctrine: At this juncture, we must also answer the argument raised by Mr. Devadatt Kamat that under the group of companies doctrine, respondent nos. 2 and 3, though not signatories to the BSA, should nonetheless be made parties for a composite arbitration. The group of companies doctrine, as recognised in Indian law, is not an automatic talisman for impleading every corporate entity of a group into arbitral proceedings.

This Court in Cox & Kings was at pains to emphasise that the doctrine is applied sparingly and only where there is compelling evidence of mutual intention of all the parties concerned to bind a non-signatory to an arbitration agreement. Such intention may be inferred from direct participation in negotiation, performance of contract, or from the role played in the overall transaction. However, a mere overlap of shareholding, or the fact that entities belong to the same corporate family, is not by itself sufficient. It was observed:

"93. Moreover, since the companies in a group have separate legal personality, the presence of common shareholders or Directors cannot lead to the conclusion that the subsidiary company will be bound by the acts of the holding company. The statements or representations made by promoters or Directors in their personal capacity would not bind a company. Similarly, the mere fact that the two companies have common shareholders or a common Board of Directors will not constitute a sufficient ground to conclude that they are a single economic entity."

(emphasis supplied)

V. Conclusion and Decision:

41. Hence, the reliance placed by the petitioner on group of companies doctrine is misplaced in light of the foregoing analysis.

42. For the reasons stated above, Arbitration Petition No. 65 of 2023 filed under Section 11(6) read with Section 11(12)(a) of the Act, 1996 is hereby dismissed.

43. Parties shall bear their own costs.

.....J. [Pamidighantam Sri Narasimha]

.....J. [Atul S. Chandurkar]

New Delhi;

November 21, 2025

1 Hereinafter, "Act, 1996".

2

20. Arbitration: All the disputes shall be settled amicably and if arbitration becomes the sole option to settle a crises, it shall take place in Benin before CAMEC-CCIB and the decision shall be binding on both parties. The arbitration costs shall be borne by the losing party.

3 "Centre d'Arbitrage, de Médiation et de Conciliation de la Chambre de Commerce et d'Industrie du Bénin"

4 Cox & Kings Ltd. v. SAP India (P) Ltd., 2023 SCC OnLine SC 1634. (hereinafter, Cox & Kings)

5 (2020) 5 SCC 399. (hereinafter, Mankastu Impex)

6 Section 44. Definition -...

(a) ...

(b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies.

7 Uniform Act on Arbitration of the Organisation for the Harmonisation of Business Law in Africa (OHADA).

8 (2020) 9 SCC 136.

9 SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754.

10 Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re, (2024) 6 SCC 1.

11 (2012) 9 SCC 552.

12 (2020) 4 SCC 234.

13 Section 62. Effect of novation, rescission, and alteration of contract: If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed.

14 PASL Wind Solutions Pvt. Ltd. v. GE Power Conversion India Pvt. Ltd, 2021 SCC OnLine SC 331.

15 (1999) 5 SCC 590.

16 (2015) 2 SCC 583.

IN THE SUPREME COURT OF INDIA

**Samadhan S/o. Sitatram Manmothe
Vs.**

State of Maharashtra & Anr.

**[Criminal Appeal No. 5001 of 2025
arising out of SLP (Crl.) No. 6906 of 2025]**

Head Note - The offence of rape, being of the gravest kind, must be invoked only in cases where there exists genuine sexual violence, coercion, or absence of free consent. To convert every sour relationship into an offence of rape not only trivialises the seriousness of the offence but also inflicts upon the accused indelible stigma and grave injustice. Such instances transcend the realm of mere personal discord. The misuse of the criminal justice machinery in this regard is a matter of profound concern and calls for condemnation.

In a country such as ours, the institution of marriage holds deep social and cultural significance. It is, therefore, not uncommon for a woman to repose complete faith in her partner and to consent to physical intimacy on the assurance that such a relationship would culminate in a lawful and socially recognised marriage. In such circumstances, the promise of marriage becomes the very foundation of her consent, rendering it conditional rather than absolute. It is, thus, conceivable that such consent may stand vitiated where it is established that the promise of marriage was illusory, made in bad faith, and with no genuine intention of fulfilment, solely to exploit the woman. The law must remain sensitive to such genuine cases where trust has been breached and dignity violated, lest the protective scope of Section 376 of the IPC be reduced to a mere formality for those truly aggrieved. At the same time, the invocation of this principle must rest upon credible evidence and concrete facts, and not on unsubstantiated allegations or moral conjecture.

JUDGMENT

Nagarathna, J.

1. Leave granted.
2. Being aggrieved by the order dated 06.03.2025 passed by the Bombay High Court at Aurangabad in Criminal Application No. 601 of 2025 dismissing the application filed by the appellant under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS") seeking quashing of FIR No. 294 of 2024, registered with City Chowk Police Station, District Chhatrapati Sambhajnagar City on 31.08.2024, for the offences punishable under Sections

376, 376(2)(n) and 507 of the Indian Penal Code, 1860 (for short "IPC"), the appellant is before this Court.

3. We have heard learned counsel for the appellant, learned counsel for respondent No.1-State and learned Amicus Curiae, Ms. Radhika Gautham, for respondent No.2 as the latter has not responded to the notice issued and served on her.

4. Briefly stated the facts of this case as per the prosecution are that respondent No.2 had lodged a complaint with City Chowk Police Station, District Chhatrapati Sambhajanagar City, stating that she was married to a person ABC in the year 2019 and had a minor daughter out of the said wedlock. However, due to matrimonial discord with her husband and in-laws, she had been residing separately since May 2020 and was living with her parents at Rajangaon, Taluka Paithan, District Chhatrapati Sambhajanagar.

5. In July 2020, respondent No.2 had filed a complaint against her husband at the Women's Grievance Redressal Centre, Office of Superintendent of Police, Chhatrapati Sambhajanagar. However, owing to the failure of reconciliation between them, respondent No.2 initiated proceedings against her husband seeking alimony/ maintenance from him.

6. It is in connection with the said proceedings that respondent No.2, on 27.01.2022, was introduced to the appellant, who is a practising advocate in the courts of Aurangabad. Later, appellant took respondent No.2's contact number and the two regularly kept in touch on WhatsApp and through phone calls. Over a period of time, the appellant and respondent No.2 developed a close relationship. It was then that the appellant proposed to meet respondent No.2 in person at Vivekananda Garden in TV Centre. During the course of their meeting, the appellant expressed his desire to marry respondent No.2. However, owing to her troubled marital past, respondent No.2 declined the proposal. Despite her reluctance, the appellant continued to insist on marriage at each subsequent meeting.

7. On 12.03.2022, the appellant called respondent No.2 to Hotel Citizen, near Mill Corner, Chhatrapati Sambhajanagar, where he once again expressed his desire to marry her and assured her that he would marry her despite her concern that his mother might not approve of the alliance. Based on such assurance, the appellant established physical relations with her.

8. Subsequently, in September 2022, the complainant discovered that she was pregnant with the appellant's child. However, with the consent of the appellant, she aborted the child. Thereafter, when respondent No.2 decided to part ways with the appellant, he continued to assure her of marriage and engaged in further

sexual relations with her, as a result of which she got pregnant again in July 2023 and later in May 2024. Both the pregnancies were terminated.

9. On 20.05.2024, the appellant once again called respondent No.2 to Hotel Citizen, where he engaged in physical acts with her. Later, when respondent No.2 insisted on marriage, the appellant flatly refused to marry her and further threatened to kill her if she disclosed the matter to anybody.

10. Based on the aforesaid facts, FIR No. 294 of 2024 dated 31.08.2024 came to be registered against the appellant for the offences punishable under Sections 376, 376(2)(n) and 507 of the IPC at City Chowk Police Station, District Chhatrapati Sambhajinagar City.

11. Being aggrieved, the appellant filed an anticipatory bail application bearing Criminal Bail Application No. 1841 of 2024 before the Additional Sessions Judge, Aurangabad (hereinafter referred to as "Trial Court"). The Trial Court, by order dated 19.09.2024, allowed the application and enlarged the appellant on anticipatory bail. During the course of the investigation, both respondent No. 2 and her mother, in their statements, supported the prosecution's version of events. Subsequently, on completion of the investigation, a charge-sheet bearing No. 143 of 2024 dated 25.10.2024 came to be filed against the appellant under Sections 376, 376(2)(n) and 507 of the IPC.

12. Being aggrieved, the appellant preferred an application bearing Criminal Application No. 601 of 2025 before the Bombay High Court at Aurangabad under Section 528 of the BNSS, seeking quashing of FIR No. 294 of 2024.

13. By the impugned order dated 06.03.2025, the High Court refused to quash the criminal proceedings pending against the appellant in FIR No. 294 of 2024 on the ground that a chargesheet had already been filed and the matter was ready for trial; the appellant could not sufficiently prove that the instant case was a clearly case of consensual relationship; that the relationship between the appellant and respondent No.2 could be termed as a fiduciary relationship inasmuch as the appellant was discussing the maintenance case of respondent No.2 with her; and that in view of the aforesaid, the facts of the present case warranted the conduct of a trial to test the veracity of the allegations made by respondent No.2 and to ascertain whether the acts alleged to have occurred between the appellant and respondent No.2 were against her will or otherwise.

14. We have heard learned counsel for the appellant and learned counsel for the respondent-State and learned Amicus on behalf of respondent No.2.

15. Learned counsel appearing for the appellant submitted that the appellant has been falsely implicated as there is no evidence against him with respect to the

commission of the offences punishable under Sections 376, 376(2)(n) and 507 of the IPC.

16. It is further submitted that the respondent No.2 is a well educated lady who is married and has a minor daughter. It was contended that there is no divorce decree passed between respondent No.2 and her husband. Therefore, during the subsistence of her marriage, respondent no.2 consequently entered into a relationship with the appellant for a period of three years. Further, during the subsistence of their relationship, no complaint whatsoever was ever lodged by respondent No.2 against the appellant. It was only in August 2024 after the appellant refused to pay a sum of Rs.1,50,000/- demanded by respondent No.2, that in a fit of anger, she lodged the present criminal case against him.

17. Learned counsel for the respondent-State, on the other hand, supported the impugned order and submitted that the allegations made by respondent No.2 discloses commission of a cognisable offence and warrants no interference at the threshold. It is submitted that the veracity of the defence taken by the appellant is a matter for trial and not for adjudication under the limited jurisdiction of a petition for quashing.

18. Learned Amicus also supported the respondent-State by contending that there is no merit in this appeal.

19. Having heard the learned counsel appearing for the parties and having perused the material on record, the only question that needs to be addressed is whether FIR No. 294 of 2024 dated 31.08.2024, along with Chargesheet No.143 of 2024 filed on 25.10.2024 against the appellant herein, should be quashed.

20. In the instant case the allegations in the FIR are under Sections 376, 376(2)(n) and 507 of the IPC. An offence of rape, if established in terms of Section 375 of the IPC, is punishable under Section 376 of the IPC. In the present case, the second description of Section 376 is relevant which is set out below:

"376. Punishment for rape.- (1). Whoever, except in the cases provided for in sub- section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

2. Whoever,-

(n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.-For the purposes of this sub-section,-

(a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861 (5 of 1861);

(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children."

21. Section 376(2)(n) of the IPC provides for enhanced punishment in cases where rape is committed repeatedly on the same woman. It mandates rigorous imprisonment for a term of not less than ten years which may extend to life imprisonment for the remainder of the person's natural life. The object of this provision is to address aggravated instances of sexual assault where the offence is not a single incident but has occurred repeatedly on the same victim. The expression "repeatedly" employed in the provision is of significance. It contemplates more than one act of sexual assault, committed at different points in time on the same victim. Courts have consistently interpreted this phrase to mean a series of acts that are separate in nature and not a continuation of a single transaction.

22. In genuine cases under Section 376(2)(n) of the IPC, the pattern is usually unmistakable; it is an initial act of sexual assault, followed by multiple acts under fear, pressure, captivity, or continued deceit, often when the woman is rendered vulnerable and unable to escape the situation.

23. In the present case, a bare perusal of the FIR and the statement on record reveals that respondent No.2 met the appellant, who is a practising advocate, for the first time in reference to a case which was instituted by respondent No.2 against her husband. Thereafter, they exchanged numbers and regularly kept in touch. Over a passage of time, respondent No.2 and the appellant developed a close relationship and started meeting each other frequently. During this time, they established sexual relations multiple times between 12.03.2022 to 20.05.2024.

The appellant contends that during the course of their relationship, not once did respondent No.2 file a complaint regarding the alleged non-consensual sexual relations, and it is inconceivable that the appellant would force himself upon her for so many years without there being any protest or complaint from the side of respondent No.2. Notably, it was only in August of 2024 when the appellant refused to fulfil respondent No.2's demand of payment of Rs.1,50,000/- that the instant criminal case came to be instituted against the appellant.

24. Another question which arises for consideration is whether the appellant engaged in physical relationship with respondent No.2 based on a deception or a false promise to marry.

25. The allegation of rape in the present case hinges entirely on respondent No.2's claim that appellant established physical relations with her on false pretext of marriage. It is alleged by the appellant that respondent No.2 opposed the idea of marriage whenever the appellant broached the said idea; however, the appellant kept on insisting possibly this was because her first marriage was in subsistence. It is, however, not clear as to why, despite being opposed to the idea of marriage, respondent No.2 continued to meet the appellant and indulged in physical relations with him even though she was already married.

26. The FIR in the present case also states that in September 2022, when respondent No.2 found out that she was pregnant with the appellant's child, she told the appellant, "You live your life and I will live my life". At that time, the appellant again assured her that they would get married and asked for some time from respondent No.2, to which she refused. However, despite her refusal to be with the appellant, respondent No.2 continued to meet him at Hotel Citizen and engaged in physical relations with him.

27. In this regard, it becomes relevant to refer to the decision of this Court in the case of Mahesh Damu Khare vs. State of Maharashtra, (2024) 11 SCC 398, ("Mahesh Damu") wherein the following observations were made:

"27. In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties.

28. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the

appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact."

(underlining by us)

28. We find that the present case is not a case where the appellant lured respondent No.2 solely for physical pleasures and then vanished. The relationship continued for a period of three long years, which is a considerable period of time. They remained close and emotionally involved. In such cases, physical intimacy that occurred during the course of a functioning relationship cannot be retrospectively branded as instances of offence of rape merely because the relationship failed to culminate in marriage.

29. This Court has, on numerous occasions, taken note of the disquieting tendency wherein failed or broken relationships are given the colour of criminality. The offence of rape, being of the gravest kind, must be invoked only in cases where there exists genuine sexual violence, coercion, or absence of free consent. To convert every sour relationship into an offence of rape not only trivialises the seriousness of the offence but also inflicts upon the accused indelible stigma and grave injustice. Such instances transcend the realm of mere personal discord. The misuse of the criminal justice machinery in this regard is a matter of profound concern and calls for condemnation.

30. In Prashant vs. State of NCT of Delhi, (2025) 5 SCC 764, this Court speaking through one of us (Nagarathna, J.) observed that a mere break-up of a relationship between a consenting couple cannot result in the initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marriage. The relevant portion is extracted as under:

"20. In our view, taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 376(2)(n)IPC are absent. A review of the FIR and the complainant's statement under Section 164CrPC discloses no indication that any promise of marriage was extended at the outset of their relationship in 2017. Therefore, even if the prosecution's case is accepted at its face value, it cannot be concluded that the complainant engaged in a sexual relationship with the appellant solely on account of any assurance of marriage from the appellant.

The relationship between the parties was cordial and also consensual in nature. A mere break up of a relationship between a consenting couple cannot result in initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marital relationship. Further, both parties are now married to someone else and have moved on in their respective lives. Thus, in our view, the continuation of the prosecution in the present case would amount to a gross abuse of the process of law. Therefore, no purpose would be served by continuing the prosecution."

(underlining by us)

31. This Court is conscious of the societal context in which, in a country such as ours, the institution of marriage holds deep social and cultural significance. It is, therefore, not uncommon for a woman to repose complete faith in her partner and to consent to physical intimacy on the assurance that such a relationship would culminate in a lawful and socially recognised marriage. In such circumstances, the promise of marriage becomes the very foundation of her consent, rendering it conditional rather than absolute.

It is, thus, conceivable that such consent may stand vitiated where it is established that the promise of marriage was illusory, made in bad faith, and with no genuine intention of fulfilment, solely to exploit the woman. The law must remain sensitive to such genuine cases where trust has been breached and dignity violated, lest the protective scope of Section 376 of the IPC be reduced to a mere formality for those truly aggrieved. At the same time, the invocation of this principle must rest upon credible evidence and concrete facts, and not on unsubstantiated allegations or moral conjecture.

32. Upon a careful consideration of the record in the present case, we are unable to discern any material that would warrant the invocation of Section 376(2)(n) of the IPC. The facts of the present case unmistakably indicate that it is a classic instance of a consensual relationship having subsequently turned acrimonious.

33. The appellant has unequivocally asserted that, during the subsistence of the relationship, no grievance or allegation was ever raised by respondent No.2 regarding the absence of consent in their physical relations. It was only upon the appellant's refusal to fulfil her demand for payment of the sum of Rs.1,50,000/- that the present criminal proceedings came to be instituted. Furthermore, the alleged incidents are stated to have occurred between 12.03.2022 and 20.05.2024; however, the FIR was lodged only on 31.08.2024, i.e. nearly three months after the last alleged act of sexual intimacy.

34. The FIR is conspicuously silent as to any specific allegation that the appellant had either forcibly taken or compelled respondent No.2 to accompany him to the hotel, nor does it disclose any circumstance suggesting deceit or inducement on the part of the appellant to procure her presence there. Therefore, the only logical inference that emerges is that respondent No.2, of her own volition, visited and met the appellant on each occasion. It is also borne out from the record that whenever the appellant brought up the subject of marriage, respondent No.2 herself opposed the proposal. In such circumstances, the contention of respondent No.2 that the physical relationship between the parties was premised upon any assurance of marriage by the appellant is devoid of merit and stands unsustainable.

35. We deem it appropriate to refer to the decision of this Court in *Rajnish Singh vs. State of Uttar Pradesh*, (2025) 4 SCC 197, whereby it was held that when a woman who willingly engages in a long-term sexual relationship with a man, fully aware of its nature and without any cogent evidence to show that such relationship was induced by misconception of fact or false promise of marriage made in bad faith from the inception, the man cannot be held guilty of rape under Section 376 of the IPC. The relevant portion of the judgment is extracted as under:

"33. There is no dispute that from the year 2006 onwards, the complainant and the appellant were residing in different towns. The complainant is an educated woman and there was no pressure whatsoever upon her which could have prevented her from filing a police complaint against the accused if she felt that the sexual relations were under duress or were being established under a false assurance of marriage. On many occasions, she even portrayed herself to be the wife of the appellant thereby, dispelling the allegation that the intention of the appellant was to cheat her right from the inception of the relationship.

34. We cannot remain oblivious to the fact that it was mostly the complainant who used to travel to meet the appellant at his place of posting. Therefore, we are convinced that the relationship between the complainant and the appellant was consensual without the existence of any element of deceit or misconception.

35. Further, the application filed by the complainant at One Stop Centre, Lalitpur on 23-3-2022, makes it abundantly clear that she was in a consensual relationship with the appellant since 2006. It is alleged in the complaint that when she had proposed that they should marry and live together, the appellant physically abused her and beat her up. If at all there was an iota of truth in this allegation then the FIR should have been registered immediately after this incident. However, it is only when it came to the knowledge of the complainant that the appellant was getting married to another woman, in an attempt to stop his marriage, she filed aforesaid complaint at the One Stop Centre wherein she also

admitted that she was equally guilty as the appellant and therefore, his marriage must be stopped.

39. It is, therefore, clear that the accused is not liable for the offence of rape if the victim has wilfully agreed to maintain sexual relations. The Court has also recognised that a prosecutrix can agree to have sexual intercourse on account of her love and passion for the accused."

(underlining by us)

36. By the impugned order dated 06.03.2025, the High Court observed that although it was contended on behalf of the appellant that the relationship between him and respondent No. 2 was consensual in nature, no such categorical statement was made by him in the memo of application and that the plea of consent was merely inferred. In this regard, reliance was placed by the High Court on the case of Ganga Singh vs. State of Madhya Pradesh, (2013) 7 SCC 278, wherein this Court had stated that unless there was a specific defence of a consensual relationship, such a defence cannot be inferred.

37. The said finding of the High Court, however, fails to appreciate that a plain reading of the FIR in question itself reveals that the relationship between the parties was, in fact, consensual, inasmuch as respondent No.2 met the appellant whenever he expressed a desire to meet her. Furthermore, respondent No. 2, being a major and an educated individual, voluntarily associated with the appellant and entered into physical intimacy on her own volition.

It is also pertinent to note that, at the relevant time, the marriage of respondent No.2 was subsisting. In light of the foregoing circumstances, even upon a bare reading of the material on record, it is manifest that the relationship between the parties was consensual, and therefore, the absence of an express statement to that effect in the memo of application, as emphasised in the impugned order, cannot be held against the appellant when the same can be otherwise clearly discerned.

38. At this stage it is material to refer to the decision of this Court in Mahesh Damu, wherein the following observations were made:

"29. It must also be clear that for a promise to be a false promise to amount to misconception of fact within the meaning of Section 90IPC, it must have been made from the very beginning with an intention to deceive the woman to persuade her to have a physical relationship. Therefore, if it is established that such consent was given under a misconception of fact, the said consent is vitiated and not a valid consent. In this regard we may refer to Deepak Gulati v. State of Haryana [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] , in which it was held as follows: (SCC pp. 682-84, paras 21 & 24)

"21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise.

Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances.

The 'failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance'. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

(underlining by us)

39. In State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335, this Court formulated the parameters in terms of which the powers under Section 482 of the Code of Criminal Procedure, 1973 (now Section 528 of the BNSS) could be exercised. While it is not necessary to revisit all these parameters, a few that are relevant to the present case may be set out. The Court held that quashing may be appropriate:

"102. xxx

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code."

40. In view of the foregoing analysis, we are unable to concur with the findings recorded by the High Court, inasmuch as the present case pertains to a consensual relationship, and the acts of respondent No.2 clearly manifest consent to such a relationship devoid of any coercion, fraud, or misrepresentation as contemplated in Section 19 of the Indian Contract Act, 1872. In our opinion, the High Court's refusal to exercise its jurisdiction under Section 528 of BNSS is unsustainable. The acts complained of in the present case occurred within the contours of a relationship that was, at the time, voluntary and willing. The continuation of the prosecution in such facts would be nothing short of an abuse of the court machinery.

41. We accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 06.03.2025 in application under Section 528 BNSS bearing Criminal Application No. 601 of 2025. The said application accordingly stands allowed. Consequently, FIR No. 294 of 2024 dated 31.08.2024, registered with City Chowk Police Station, District Chhatrapati Sambhajnagar City under Sections 376, 376(2)(n) and 507 of the IPC and Chargesheet No. 143 of 2024 dated 25.10.2024, filed in the Court of the 3rd Judicial Magistrate First Class, Aurangabad, accordingly stands quashed.

42. We express our sincere appreciation of the services rendered by Ms. Radhika Gowtam, learned Advocate-on-Record who had been appointed as Amicus Curiae in the matter. Registry of this Court is directed to pay honorarium of Rs.15,000/- (Rupees Fifteen Thousand only) to the learned Amicus Curiae.

.....J. (B.V. Nagarathna)

.....J. (R. Mahadevan)

New Delhi;

November 24, 2025

IN THE SUPREME COURT OF INDIA

G.R. Selvaraj (D), through LRS.

Vs.

K.J. Prakash Kumar and Ors.

[Civil Appeal No. 8887 of 2011]

Head Note – A judgment-debtor cannot, at a belated stage, assail an auction sale in execution proceedings, particularly once the sale has been completed. Such a challenge is impermissible under Order XXI Rule 96(3) of the Code of Civil Procedure when the judgment-debtor had a prior opportunity to raise objections before the proclamation of sale was issued.

JUDGMENT

Sanjay Kumar, J.

1. By order dated 10.02.2009 passed in C.R.P. (NPD) No.2574 of 2007, a learned Judge of the High Court of Judicature at Madras invalidated the auction sale held on 12.09.2002 by the learned IXth Assistant Judge, City Civil Court, Chennai, in Execution Petition No. 199 of 1998 in Original Suit No. 9158 of 1995. Aggrieved thereby, the auction purchaser, G.R. Selvaraj, filed this appeal.

2. G.R. Selvaraj, the appellant, died during the pendency of this appeal and his legal representatives, being his widow, five sons and two daughters, were brought on record. At the risk of the appellant(s), the name of respondent No.4, Rasheeda Yasin, the decree holder, was deleted from the array of parties, vide order dated 20.11.2012. As she is not a necessary party anymore, her absence has no impact on this case.

3. O.S. No. 9158 of 1995 (earlier, C.S. No. 297 of 1995) was filed by Rasheeda Yasin, respondent No. 4, against Komala Ammal and her son, K.J. Prakash Kumar, for recovery of a sum of ₹3,75,000/- along with interest and costs. It was her case that the defendants, along with late K. Jagannathan, the husband of the first defendant and father of the second defendant, jointly borrowed a sum of ₹2,00,000/- from her on 02.03.1992 and were, therefore, liable to repay the same to her along with interest. The suit was decreed ex parte on 16.04.1997 by the learned IInd Assistant Judge, City Civil Court, Chennai, directing the defendants therein to pay the plaintiff a sum of ₹3,75,000/- with interest on the principal sum of ₹2,00,000/- @ 18% per annum, from the date of the plaint till the date of realization, along with costs of ₹10,435.50/-.

4. Execution Petition No. 199 of 1998 was filed by Rasheeda Yasin on 20.01.1998 seeking execution of the decree dated 16.04.1997, by attachment and

sale of the property belonging to the defendants, viz., the house and site, admeasuring 2120 square feet, situated at Door No. 90, Astabujam Road at Choolai, (Old No. 43), Chennai. The site was, thus, a little less than one Ground (2400 square feet). The decretal amount, as on that date, stood at ₹4,98,145.50/-.

5. Komala Ammal and K.J. Prakash Kumar, the judgment debtors/ defendants, made an unsuccessful attempt to have the judgment and decree dated 16.04.1997 set aside. They also participated in the execution proceedings by filing various applications, including for enlargement of time to make payments in instalments, as directed by the executing Court. However, owing to their failure in complying with the decree, the property mentioned above was directed to be attached on 14.12.1998. The sale papers were filed on 12.07.1999. Notice was issued to the judgment debtors on 23.07.1999. On 07.09.1999, service was held sufficient but the judgment debtors were called absent and they were set ex parte.

The first sale proclamation came to be issued thereafter on 01.11.1999, fixing the date of the auction sale as 05.01.2000. Considering the valuation of the property by Rasheeda Yasin @ ₹10,50,000/- for fixation of the upset price and the estimation by the Court Bailiff @ ₹15,25,000/-, the executing Court fixed the upset price at ₹16,25,000/-. However, there were no bids in the auction sale on 05.01.2000. Thereupon, Rasheeda Yasin filed E.A. No. 271 of 2000 seeking reduction of the upset price to ₹13,25,000/-. This E.A. was filed on 10.01.2000. Notice was issued thereon by the executing Court on 18.01.2000, and K.J. Prakash Kumar, judgment debtor No. 2, appeared in person on 24.02.2000 and sought time on behalf of himself and Komala Ammal, judgment debtor No. 1. They filed their counter on 22.03.2000.

6. After enquiry and upon hearing the arguments of the judgment debtors, the E.A. was ordered on 21.09.2000, reducing the upset price to ₹14,75,000/-. The auction sale was fixed on 30.01.2001. However, there were no bids even on that day. Rasheeda Yasin, the decree holder, thereupon, filed E.A. No. 4950 of 2001 seeking further reduction of the upset price to ₹10,50,000/-. Despite service of notice, the judgment debtors, Komala Ammal and K.J. Prakash Kumar, failed to appear before the executing Court on 08.11.2001. They were accordingly set ex parte and the upset price was reduced to Rs. 12 lakh.

An application to set aside this order was unsuccessfully filed by the judgment debtors. As there were no bids even at the upset price of Rs. 12 lakh, Rasheeda Yasin, the decree holder, filed E.A. No. 2017 of 2002 seeking further reduction of the upset price to Rs. 10,50,000/-. Despite service of notice, the judgment debtors were called absent on 11.07.2002 and the upset price was reduced to Rs. 11,00,000/-. It is pursuant to this last exercise, that the sale was finally held on 12.09.2002 and G.R. Selvaraj emerged successful at the knockdown price of Rs. Rs. 11,03,000/-.

7. The sale certificate was issued to G.R. Selvaraj on 10.01.2003 after he deposited the sale consideration amount before the executing Court, which was duly handed over to Rasheeda Yasin, the decree holder. While so, E.A. No. 475 of 2002 was filed by the judgment debtors, Komala Ammal and K.J. Prakash Kumar, in E.P. No. 199 of 1993 under Order XXI Rule 90 of the Code of Civil Procedure, 1908, to set aside the sale held on 12.09.2002.

Significantly, in their application in E.A. No. 475 of 2002, the judgment debtors, Komala Ammal and K.J. Prakash Kumar, mainly raised the issue of reduction of the upset price, alleging that it was done without notice to them, apart from the ground that the sale was not held at the spot where the property was situated. They only made a bald allegation that the proceedings of the sale were totally against Order XXI Rule 66 CPC. By order dated 15.10.2004, the learned IXth Assistant Judge, City Civil Court, Chennai, dismissed the application.

8. The dismissal order was subjected to appeal in C.M.A. No. 17 of 2005 before the learned III Additional Judge, City Civil Court, Chennai. Komala Ammal died during the course of these appeal proceedings and her daughters, K.J. Hemalatha and K.J. Padmasini, were brought on record as her legal representatives. The appellate Court dismissed the appeal with costs, by judgment dated 13.07.2007. Aggrieved by this judgment, K.J. Prakash Kumar and his sisters, K.J. Hemalatha and K.J. Padmasini, filed CRP (NPD) No. 2574 of 2007 before the High Court.

9. What weighed with the High Court in ultimately holding in favour of the judgment debtors was that the executing Court had not examined whether sale of a part of the property in question would have satisfied the decree, in terms of Order XXI Rule 66(2)(a) CPC. Noting that Order XXI Rule 90(3) CPC placed a statutory bar on the judgment debtor from raising any ground to set aside the sale which the judgment debtor could have taken on or before the date on which the proclamation of sale was drawn up, the High Court did not apply this bar as the executing Court was found fault with on the aforesaid count. Citing judgments of this Court, the High Court held that the sale of the property in entirety caused substantial injury to the judgment debtors and set aside the sale held on 12.09.2002. Consequential directions were issued for initiation of fresh steps.

10. The issue in this appeal boils down to whether Order XXI Rule 90(3) CPC would have an overriding effect barring the judgment debtors from seeking invalidation of the sale when they could have but never raised the ground, that the entire property need not have been sold to satisfy the decree, at a point of time before the last sale proclamation. Significantly, Order XXI Rule 90 CPC was substituted by Act No. 104 of 1976, with effect from 01.02.1977. Prior thereto, Order XXI Rule 90 CPC read as under:

'90. Application to set aside sale on ground of irregularity or fraud.-

(1) Where any immovable property has been sold in execution of a decree, the decree-holder, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(2) Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.' After its amendment, Order XXI Rule 90 CPC now reads as under:

'90. Application to set aside sale on ground of irregularity or fraud.-

(1) Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.'

11. In this context, we may now refer to the decisions relied upon by the High Court. In *Ambati Narasayya vs. M. Subba Rao and another*², the execution sale was conducted on 31.05.1976 and an application was filed under Order XXI Rule 90 CPC to set it aside. One of the grounds taken in support of the application was that the judgment debtor therein was not served with notice. However, the executing Court rejected his application. In appeal, an additional ground was raised that the executing Court ought to have sold only such portion of the land as would have satisfied the decree and that the sale of the entire property was illegal. However, the appeal and, thereafter, the revision filed before the High Court met with failure.

It was in these circumstances that the judgment debtor came before this Court. Taking note of Order XXI Rule 64 CPC, this Court observed that in all execution proceedings, the executing Court has to first decide whether it is necessary to bring the entire property to sale or only such portion thereof as may seem necessary to satisfy the decree. It was held that a sale, without examining this aspect and not in conformity with this requirement, would be illegal and without jurisdiction.

Reference was made to Takkaseela Pedda Subba Reddi vs. Pujari Padmavathamma³, wherein this Court had examined the scope of Order XXI Rule 64 CPC and took a similar view to the effect that the executing Court derives jurisdiction to sell attached properties only to the point at which the decree is fully satisfied and the words 'necessary to satisfy the decree' clearly indicate that no sale can be allowed beyond the decretal sum mentioned in the sale proclamation.

Taking note of this legal position, this Court held that the sale of the entire extent of 10 acres for ₹17,000/- to satisfy a decree for ₹2,400/- was unnecessary. It was further held that the land could not be taken to be indivisible and that the executing Court could have demarcated and sold a portion thereof. It was held that a duty is cast upon the executing Court to sell only such property or portion thereof, as would be necessary to satisfy the decree and this was the mandate of the legislature, which could not be ignored. The sale was, accordingly, held to be in contravention of Order XXI Rule 64 CPC.

12. Notably, both Ambati Narasayya (supra) and Takkaseela Pedda Subba Reddi (supra) were decisions delivered in the context of the unamended Order XXI Rule 90 CPC, that is, prior to insertion of Order XXI Rule 90(3) therein.

13. In Desh Bandhu Gupta vs. N.L. Anand & Rajinder Singh⁴, a similar question arose for consideration in relation to an execution sale held on 06.07.1979, i.e., post the coming into force of the substituted Order XXI Rule 90 CPC. Again, there was no notice to the judgment debtor, the appellant. Further, there was no sale proclamation and no notice was issued before settling the terms of the sale. However, the executing Court rejected the application to set aside the sale, in view of Order XXI Rule 90(3) CPC. It was held that pre-sale illegalities or irregularities would not vitiate the sale and the application was dismissed. The appellate Court as well as the High Court, in revision, followed the same approach. The matter accordingly came before this Court.

14. Noting that a specific procedure was prescribed in the Code of Civil Procedure, 1908, with regard to sale of attached properties during the course of execution, this Court held that Order XXI Rule 66(1) enjoined the Court that the details enumerated in Order XXI Rule 66(2) should be specified as fairly and accurately as possible. It was observed that the duty to comply with it arises only after service of notice on the judgment debtor who is, thus, given an opportunity in the settlement of the value of the property.

It was further observed that the absence of notice caused irremediable injury to the judgment debtor as the absence of notice disabled him from offering his estimate of the value and bringing intending bidders at the time of the sale. It was, accordingly, held that a sale made without notice to the judgment debtor is a

nullity, as it divests the judgment debtor of his right, title and interest in his property without an opportunity. The omission of service of notice on the judgment debtor, per this Court, would render void the action taken and the sale in pursuance thereof.

15. On facts, this Court found that the due procedure had not been followed as the appellant was not given any notice and an occasion for him to offer his valuation did not arise. It was observed that before depriving a judgment debtor of the remedy under Order XXI Rule 90 CPC, it must be seen whether he had notice from the executing Court and still acquiesced, by taking no action before the date of sale, and if so, he would then be precluded from assailing its legality or correctness thereafter. Some of the observations made by this Court, which are of relevance presently, are extracted hereunder:

'14. The Code, therefore, has taken special care charging the duty on the Executing Court and it has a salutary duty and a legislative mandate to apply its mind before settling the terms of proclamation and satisfy that if part of such property as seems necessary to satisfy the decree should be sold if the sale proceeds or portion thereof is sufficient for payment to the decree-holder or the person entitled under the decree to receive the amount and so much of that property alone should be ordered to be sold in execution.

In *Ambati Narasayya v. M. Subba Rao* [1989 Supp (2) SCC 693 : AIR 1990 SC 119] this Court held that it is the duty cast upon the court under Order 21 Rule 64 to sell only such property or a portion thereof as may be necessary to satisfy the decree. It is a mandate of the legislature which cannot be ignored. In *Takkaseela Pedda Subba Reddi v. Pujari Padmavathamma* [(1977) 3 SCC 337 : (1977) 3 SCR 692] to recover the decree debt in two decrees, the properties situated in two different villages were brought to sale. In the first instance the property in 'D' village fetched a sum of Rs 16,880, which was sufficient to satisfy the decretal amount.

The property in 'G' village was also sold which fetched a sum of Rs 12,000. This Court set aside the sale of 'G' village. Admittedly the site in sale is to the extent of 550 sq. yards, situated in a commercial area around which the petroleum installations are established. Though, as contended by Shri Madhava Reddy, that there may be building regulation for division of the property into portions, but the court made no attempt to sell a portion of the property, maybe 100 yards or 150 yards out of it, or whether undivided portion thereof would have satisfied the decree debt. It could be legitimately concluded that the court did not apply its mind at all to this aspect as well.

15. To get over the difficulty, Shri Madhava Reddy has fallen back on Order 21 Rule 90(3) of the Code, which provides that "no application to set aside a sale

under this rule shall be entertained upon any ground which the applicant could have taken on or before the date of which the proclamation of sale was drawn up". Undoubtedly, this special rule was brought on statute by 1976 Amendment Act. It is like a "caveat emptor" that the judgmentdebtor be vigilant and watchful to vindicate pre-sale illegalities or material irregularities. He should not stand by to procrastinate the execution proceedings.

If he so does, Rule 90(3) forewarns him that he pays penalty for obduracy and contumacy. Equally it is a reminder that the court should be strict to comply with the procedural part under Rule 54(1-A) before depriving the judgment-debtor of the remedy under Order 21 Rule 90 CPC. If he had notice from court and acquiesced by taking no action before the date of sale, he would be precluded to assail its legality or correctness thereafter. '

(Emphasis is ours)

At the cost of repetition, we must lay stress on this Court's specific observation that, had it been a case where he had notice and acquiesced by taking no action before the date of the sale, the judgment debtor would be precluded from assailing its validity or correctness thereafter.

16. We may also note the recent decision of this Court in Bhikchand S/o Dhondiram Mutha (Deceased) through LRs vs. Shamabai Dhanraj Gugale (Deceased) through LRs⁵ in the context of an execution sale. In that case, the sale was held on 09.08.1985 and the decree holders, respondent Nos. 1 and 2 therein, themselves purchased the attached property. The question arose as to why properties valued at over ₹1,05,700/- had to be sold to satisfy a decree for ₹27,694/-.

Taking note of Order XXI Rule 66(2) CPC and the law laid down in Ambati Narasayya (supra) and Takkaseela Pedda Subba Reddi (supra), this Court held that the executing Court's power to auction any property or part thereof also enjoins an obligation on that Court to examine the issue as to whether the sale of part of the property would have been sufficient to satisfy the decree. However, this case did not involve the application of Order XXI Rule 90(3) CPC, which postulates a bar against setting aside of the sale at the behest of a judgment debtor, if he failed to raise an available ground to invalidate it at the appropriate stage.

17. Given the insertion of Order XXI Rule 90(3) in the statute book with effect from 01.02.1977, it would be incumbent upon a judgment debtor or any other interested person who applies for setting aside an execution sale, held thereafter, to satisfy the executing Court that the ground upon which the application was made could not have been taken on or before the date on which the proclamation

of sale was drawn up. In effect, if such a ground could have been taken by that applicant who seeks setting aside of the sale but he failed to do so at the appropriate stage, he would stand barred, by Order XXI Rule 90(3) CPC, from doing so at a subsequent stage.

It is in this context that the aforementioned observations made by this Court in *Desh Bandhu Gupta* (supra) gain significance as that was a case involving an execution sale held after the insertion of Order XXI Rule 90(3) CPC and this Court made it clear that, even in the context of a material irregularity under Order XXI Rule 66(2)(a) CPC, if the judgment debtor had been put on notice by the executing Court but had acquiesced, by taking no action before the date of the sale, he would be precluded from assailing its legality or correctness thereafter. In a given case, where a judgment debtor is not given notice prior to the sale, as was the situation in *Desh Bandhu Gupta* (supra), Order XXI Rule 90(3) CPC obviously cannot posit a bar to his raising a ground thereafter.

18. However, on the facts obtaining presently, we are convinced that not only were the judgment debtors in the case on hand put on notice at every stage during the exercises undertaken by the executing Court to reduce the upset price from one unsuccessful sale to the other, they also participated to an extent and then chose to refrain from doing so. Therefore, they do not have the right to claim that they were not put on notice, though they feebly contended to such effect. The record clearly negates their claim in that regard.

Having failed to raise a material irregularity in the context of Order XXI Rule 66(2)(a) CPC at the appropriate stage, i.e., with regard to sale of a part of the property being sufficient to satisfy the decree, it is not open to them to now raise such a belated plea and blithely place the burden on the executing Court, so as to seek setting aside of a sale held as long back as in the year 2002. Unfortunately, the High Court, having noted the bar postulated by Order XXI Rule 90(3) CPC in para 31 of the impugned judgment, failed to give effect to it assuming that the obligation under Order XXI Rule 66(2)(a) CPC would operate independently upon the executing Court, irrespective of the lapse on the part of the judgment debtors.

19. The judgment dated 10.02.2009 passed by the High Court of Judicature at Madras in C.R.P. (NPD) No.2574 of 2007 is, therefore, set aside, and the judgment dated 13.07.2007 passed by the learned IIIrd Additional Judge, City Civil Court, Chennai, in C.M.A. No. 17 of 2005, is confirmed, thereby affirming the order dated 15.10.2004 passed by the learned IXth Assistant Judge, City Civil Court, Chennai, in E.A. No. 475 of 2003 in E.P. No. 199 of 1998 in Original Suit No. 9158 of 1995.

The appeal is allowed in the aforestated terms.

In the circumstances, there shall be no order as to costs.

.....J. [Sanjay Kumar]

.....J. [Alok Aradhe]

New Delhi;

November 25, 2025.

1 For short, 'CPC'.

2 1989 Supp (2) SCC 693

3 (1977) 3 SCC 337

4 (1994) 1 SCC 131

5 2024 INSC 411

IN THE SUPREME COURT OF INDIA

**Sk. Md. Anisur Rahaman
Vs.
State of West Bengal & Anr.**

**[Miscellaneous Application Diary No. 44979/2025]
[Interlocutory Application Nos. 197604/2025 & 227763/2025]
[Criminal Appeal No.43/2025]**

**Afjal Ali Sha @ Abjal Shaukat Sha
Vs.
State of West Bengal & Anr.**

**[Miscellaneous Application Diary No. 55130/2025]
[Interlocutory Application No. 244053/2025]
[Criminal Appeal No. 43/2025]**

Head Note – Voiced strong disapproval of attempts at bench hunting, noting growing trends amongst litigants to seek reversal of a prior bench's ruling by approaching a subsequent bench. Permitting such practices would undermine the very purpose of Article 141, as no judgment could have finality if it could be reopened merely because a later bench believes its own view to be a 'better' view.

JUDGMENT

Dipankar Datta, J.

FACTS

1. The basic facts, relevant for disposal of the application for cancellation of bail (I.A. No.244053/2025) and the application for modification of one of the conditions for bail (I.A. No.197604/2025) along with an application for condonation of delay (I.A. No.227763/2025) in presentation of such application for modification, which we propose to dispose of by this common order, are not in dispute.

2. SK. Md. Anisur Rahaman¹ along with several co-accused is facing trial, inter alia, for the offence of murder. By an order of this Court dated 3rd January, 2025, Anisur has been granted bail. While Anisur seeks modification of the condition that requires him to remain confined to the city of Kolkata after his release on bail, Afjal Ali Sha @ Abjal Shaukat Sha² (brother of Kurban Sha³) seeks cancellation of bail granted to Anisur on the grounds urged in the application for cancellation.

3. Panskura P.S. Case No.496 of 2019 dated 8th October, 2019 was registered under Section 302/120B, Indian Penal Code, 1860 read with section 25/27 of the Arms Act, 1959 at the instance of one Jahar Sha5 (nephew of the victim). The allegation levelled is that Anisur had entered into a conspiracy with the co-accused to eliminate his political rival, viz. the victim, and that in furtherance of such conspiracy, on 7th October, 2019, the victim was shot in the presence of the de-facto complainant for taking up vendetta against Anisur. On 16th November, 2019, Anisur was arrested.

4. Upon conclusion of investigation, police report (charge-sheet) under Section 173(2) of the Code of Criminal Procedure, 1973 was filed against Anisur and the co-accused. Charges having been framed, all the accused were committed for trial. The trial⁷ was assigned to the 3rd Court of Additional Sessions Judge, Tamluk, Purba Medinipur, West Bengal. The de-facto complainant was examined as PW-1. He narrated the incident of murder and in course thereof implicated Anisur as a conspirator in the murder.

5. While the trial was in progress before the court at Tamluk and Anisur continued to remain in custody, surprisingly enough, the Legal Remembrancer and ex-officio Secretary to the Government of West Bengal, Judicial Department, made an order dated 26th February, 2021 to the following effect:

"ORDER

The undersigned is directed to say that the Government has been pleased to instruct the concerned Ld. Public Prosecutor for withdrawal of the case being Sessions Case No.33 of 2020 arising out of Panskura P.S. Case No.496 of 2019 dated 08.10.2019 u/s. 302/120B IPC and U/s 25/27 of the Arms Act, pending before Ld. 3rd Additional District and Sessions Judge, Tamluk, Purba Medinipur under the provisions of Section 321 of Cr.P.C. subject to consent of the Ld. Court."

6. The order dated 26th February, 2021 came to be challenged by the defacto complainant in a writ petition⁸ before the High Court at Calcutta.

7. During the pendency of the said writ petition, the court at Tamluk seized of the sessions trial mechanically acquitted the accused by an order dated 2nd March, 2021 as the prosecution had been withdrawn under Section 321, Cr. PC.

8. The writ petition of the de-facto complainant was taken up for consideration on 2nd March, 2021 itself by a Single Judge of the High Court. By an order of even date, the order dated 26th February, 2021 was set aside.

9. Anisur carried the order dated 2nd March, 2021 in an intra-court appeal. A Division Bench by its order dated 13th April, 2021 set aside the order under challenge on the technical ground of violation of principles of natural justice. The

writ petition was directed to be re-heard on remand. However, while so ordering, the Division Bench clarified that the status prevailing when the Single Judge passed the order dated 2nd March, 2021 shall continue.

10. Since Anisur was already in custody and the Division Bench had not directed his release, the Single Judge observed that he would continue in such custody unless order to the contrary is passed by an appropriate court.

11. On 28th April, 2021, the Single Judge hearing the writ petition of the defacto complainant was urged by him to allow his prayer for withdrawal of the writ petition based on an apprehended threat to his life and liberty. The prayer for withdrawal of the writ petition was disallowed for the reasons recorded by the Single Judge, which are not required to be noted in details here. Suffice it to note that Afjal having scent of the de-facto complainant's desire to withdraw the writ petition had moved an application for addition of party⁹. The Single Judge found that Afjal was the brother of the victim and hence had the locus standi to continue with such writ petition. Afjal, thus, came to be transposed as the petitioner in place of the de-facto complainant.

12. Crestfallen by such development, whereby the writ petition survived, Anisur carried the order dated 28th April, 2021 in an intra-court appeal¹⁰. By a judgment and order dated 2nd July, 2021, the Division Bench dismissed the appeal.

13. It was at this stage that Afjal approached this Court with an application¹¹ under Section 406, Cr. PC seeking transfer of the trial to a different State. Stay of proceedings before the trial court was ordered on 5th October, 2021, resulting in the trial being halted.

14. Anisur had applied for bail but such application was not being heard in view of the order of stay dated 5th October, 2021. As such, this fact was brought to the notice of this Court. By a further order dated 2nd May, 2022, this Court clarified that the order of stay will not stand in the way of the trial court to hear any application for bail at the instance of the accused.

15. The trial court then took up for consideration the application for bail filed by Anisur. Upon hearing the parties, the trial court dismissed the application for bail by an order dated 12th May, 2022.

16. Aggrieved thereby, Anisur then applied for bail¹² under Section 439, Cr. PC before the High Court. By a detailed judgment and order dated 10th June, 2022, a Division Bench of the High Court dismissed the application for bail.

17. The judgment and order dated 10th June, 2022 of the High Court was laid to challenge by Anisur before this Court in a special leave petition¹³. It was dismissed by this Court on 15th December, 2022.

18. Meanwhile, the Single Judge by a fresh order dated 2nd August, 2022 allowed the writ petition and set aside the order dated 26th February, 2021.

19. While the trial proceeded, the de-facto complainant in course of his crossexamination resiled from the statements made in examination-in-chief. Surprisingly, the de-facto complainant was not declared hostile. This led Afjal to file an application to declare the de-facto complainant hostile and to allow Afjal's lawyer to cross-examine the de-facto complainant. The trial court, however, rejected such application.

20. By an order dated 17th March, 2023, this Court allowed the transfer petition of Afjal. The concluding paragraphs of the order are reproduced hereunder:

"36. Taking into consideration all the facts and circumstances, we deem it appropriate to dispose of this transfer petition in following terms:-

(i) Criminal Trial bearing ST No. 1 (03) of 2020 arising out of FIR No. 495/2019 registered at Police Station Panskura, District Purba Medinipur is ordered to be transferred from the Court of Additional Sessions Judge, 3rd Court, Tamluk, Purba Medinipur, West Bengal to the Court of Chief Judge, City Sessions Court at Calcutta.

(ii) The trial shall be conducted by the Chief Judge, City Sessions Court and he shall not entrust the case to any other Additional Sessions Judge.

(iii) The Chief Judge, City Sessions Court shall endeavour to take up the trial on a weekly basis and shall make an effort to conclude the same within a period of six months.

(iv) The State of West Bengal is directed to appoint a Special Public Prosecutor on the recommendations of the Chief Judge, City Sessions Court, Calcutta with the prior approval of the High Court. This exercise shall be completed within two weeks.

(v) The wife of the Deceased, the Petitioner and other crucial prosecution witnesses shall be provided adequate security. The State of West Bengal is directed to ensure that no harm is caused to the life and liberty of the witnesses and no direct or indirect attempt is made by Respondent No. 2 or his co-accused persons or anyone on their behalf to influence, frighten or threaten the witnesses.

(vi) The De-facto Complainant who is also stated to be the eye-witness and has allegedly resiled from his version recorded during the examination-in-chief, shall be subjected to cross-examination by the Special Public Prosecutor, for which the advocate engaged by the Petitioner may provide assistance to the learned Special Public Prosecutor.

(vii) Respondent No. 2 or any other accused who are in custody shall be transferred forthwith to the Central Jail at Calcutta.

(viii) Respondent No. 2, having regard to his criminal antecedents, as well as other accused who are in custody, shall not be enlarged on bail till the conclusion of trial save and except by the High Court.

(ix) The Learned Portfolio Judge of the Calcutta High Court is requested to regularly monitor and supervise the trial proceedings in terms of the directions issued hereinabove.

37. This transfer petition is hence, disposed of in above stated terms."

21. The trial has since been proceeding before the Court of the Chief Judge, City Sessions Court at Calcutta¹⁴. We have also been informed that in terms of the order dated 17th March, 2023 passed by this Court, a Special Public Prosecutor has been appointed to present the case of the prosecution at the trial.

22. Not one to be discouraged by repeated rejection of his prayers, Anisur again applied for bail¹⁵ before the High Court under Section 439, Cr. PC but without success. Vide order dated 29th January, 2024, the Division Bench [presided over by the Judge who was the presiding judge of the bench which dismissed the earlier application by order dated 10th June, 2022] dismissed the application for bail by ordering as follows:

"11. In order to ensure expeditious trial, we direct the trial court as follows:-

(i) Trial court shall continue to hold the trial on a day-to-day basis;

(ii) In the event examination-in-chief of a witness has commenced the trial Judge shall ensure his/her examination is concluded on the day itself and if the time of the Court or other circumstances do not permit, the examination-in-chief shall be concluded by the next day positively. In similar fashion cross-examination of the witness shall not exceed 2/3 consecutive dates;

(iii) Subject to the pendency in the file of the trial Judge, the judge shall ensure at least two hours are allotted on each day to conduct trial particularly when witness action is in progress. No adjournment shall be given to either of the parties on

unnecessary grounds including resolutions of the bar association not to attend proceedings.

(iv) We hope and trust that the trial Court and all stake holders shall make efforts to conclude the examination of all vulnerable witnesses by 30th April, 2024."

23. Close on the heels of such rejection, Anisur once again applied for bail before the High Court by filing an application¹⁶ under Section 439, Cr. PC. It was rejected by an order of another Division Bench dated 8th November, 2024. Both the Judges constituting the Division Bench penned individual opinions and recorded reasons as to why Anisur did not deserve to be released on bail, despite being incarcerated for more than five years.

24. The said order of rejection was carried in appeal¹⁷ before this Court. Fortune smiled on Anisur. His appeal succeeded. By an order dated 3rd January, 2025, a co-ordinate Bench of this Court (cor. Abhay S. Oka and Augustine George Masih, JJ.) passed the following order:

"Leave granted.

Heard the learned senior counsel appearing for the appellant, the learned senior counsel appearing for the respondent-State of West Bengal and the learned senior counsel appearing for the second respondent (complainant).

The appellant is in the custody for the last 5 years and 2 months. As per order dated 17th March, 2023 passed by this Court, the trial was expected to be completed within six months. As of today, out of 114 witnesses, 75 have been examined.

We have perused the notes of evidence. Considering the facts of the case and the role attributed to the appellant, the appellant deserves to be enlarged on bail subject to stringent conditions. One of the conditions will be that the appellant will remain confined to the city of Kolkata after his release on bail and shall mark the attendance every day at appropriate Police Station as may be directed by the Trial Court. Another condition will be that if it is found that the trial is being delayed at the instance of the appellant due to either his non-cooperation or his advocate indulging in unnecessary long cross-examination, the bail will be liable to be cancelled.

Apart from the aforesaid conditions, usual conditions shall be imposed which will ensure that the appellant does not tamper with the prosecution evidence and prosecution witnesses. The State will have to cooperate with the Trial Court by ensuring the presence of all official witnesses.

The State will have to render all effective assistance to the Special Public Prosecutor appointed under the orders of this Court. We direct the State to render all possible cooperation to the Special Public Prosecutor by ensuring that all official witnesses remain present before the Court. We also direct the State to ensure that if any witness needs the protection, he/she shall be provided adequate protection.

We direct that the appellant shall be enlarged on bail till the conclusion of the trial by producing him before the Trial Court within a maximum period of one week from today. The Trial Court shall fix appropriate terms and conditions including the conditions incorporated above. The Trial Court shall give hearing to the counsel for the State and the second respondent on the terms and conditions of bail.

In the event the appellant commits any breach of the terms and conditions, it will be always open for the respondents to apply to this Court for cancellation of bail.

The appeal is accordingly disposed of."

25. Despite being granted bail by the aforesaid order, Anisur felt dissatisfied with the condition that restricted his movements. He applied for modification of such condition¹⁸. By an order dated 5th May, 2025, a coordinate Bench (cor. Abhay S. Oka and Ujjal Bhuyan, JJ.) rejected the application holding that no case is made out "at this stage".

26. Undeterred, Anisur has now renewed his prayer for modification of the condition requiring him to remain confined to the city of Kolkata after his release on bail. According to Anisur, such a condition is an unreasonable restriction on his right to liberty protected by Article 21 of the Constitution of India.

27. Also, Afjal has prayed for cancellation of bail granted to Anisur contending that there can be no fair trial if Anisur is not taken into custody. Be it recorded here that such application has been filed by Afjal after he was permitted, by an order dated 19th September, 2025, to withdraw the previous application for cancellation of bail and file afresh by 27th September, 2025.

ARGUMENTS

28. We have patiently heard Mr. Vikas Singh, learned senior counsel for Anisur, Mr. P.S. Patwalia, learned senior counsel for Afjal, and Mr. Shadan Farasat, learned senior counsel for the State of West Bengal. 29. Mr. Patwalia has contended that Anisur enjoys political patronage, so much so that the State of West Bengal has left no stone unturned to ensure his acquittal. He has lamented that the developments over the months in course of the trial before the Sessions Court would reveal a mockery of the criminal justice system. According to him,

witnesses were turning hostile even when Anisur was in custody; however, emboldened by release on bail by this Court, Anisur cast his net of influence wide and has been successful in having a good number of other prosecution witnesses turn hostile out of fear and intimidation.

It is contended that only the second investigating officer (PW-88) has stood his ground and mustered courage to testify and is presently being examined. Photographs of Anisur with a prominent political leader of the ruling dispensation, which are part of the application for cancellation of bail, have been brought to our notice to show the extent of clout that Anisur enjoys. Scathing remarks made by the Judges of the High Court as well as this Court have been read out to expose how the State of West Bengal has shamelessly sought to shield Anisur.

30. Mr. Patwalia has also brought to our notice that after being released on bail, the Superintendent of Police, Purba Medinipur, West Bengal, has deputed two police personnel as Anisur's security staff. According to him, Anisur was provided security in 2013 but such security cover has now been continued without any assessment of threat perception. He contended that such action of the Superintendent of Police speaks volume of the special favour that Anisur has been receiving from the district police authorities.

31. To ensure that the trial is not rendered an unfair and ineffective trial, Mr. Patwalia claimed that the bail granted to Anisur should be cancelled. He, accordingly, prayed that upon cancellation of bail, Anisur be taken back into custody till completion of the trial.

32. Per contra, Mr. Vikas Singh contended that a witch-hunt is in progress to anyhow nail Anisur despite he having absolutely no nexus with the incident of murder of the victim and no material having surfaced that he conspired to murder the victim. According to him, because of the restrictions imposed on movements of Anisur, he has been deprived of leading a meaningful life in his home district which happens to be Purba Medinipur, West Bengal. Not only has Anisur been unable to attend to his ailing parents (one of whom has since passed away), he could not even attend the last rites of his deceased brother-in-law who too passed away recently.

33. Mr. Singh further contended that since the trial is on the verge of completion and that the remaining witnesses are all public officials, there is no possibility of tampering evidence or influencing witnesses; thus, the condition of bail that Anisur should be confined to the city of Kolkata may be revoked.

34. We had enquired from Mr. Farasat as to the existence of any order passed by the Superintendent of Police on assessment of threat perception of Anisur after his release on bail. The answer was in the negative.

OUR VIEWS AND CONCLUSIONS

35. The facts, as outlined, detailing the progression of the sessions trial and the series of events and judicial orders so far, are self-explanatory. Lest any observation made by us influences the Sessions Court, we refrain from commenting on the manner in which the trial has been progressing. However, while we consider it appropriate to observe that the developments [which, inter alia, include the de-facto complainant resiling from his stand and almost 10 police witnesses turning hostile apart from other witnesses and the State giving direction for withdrawal of prosecution (ultimately set aside)] do leave a very bitter taste in the mouth, it would be worthwhile to read portions of certain orders passed by the High Court as well as the order dated 17th March, 2023 of this Court on the transfer petition.

36. The order dated 10th June, 2022 rejecting the application for bail of Anisur, inter alia, reads as follows:

"We have also given anxious thought to the contention of Mr. *** that detention of the petitioner at this stage when the prosecution is stayed by the Hon'ble Apex Court is in breach of his fundamental right under Article 21 of the Constitution of India. A fair prosecution requires to address not only the rights of the accused but also the rights of the victims in particular and the public confidence in criminal justice administration in general. Manner in which the prosecution is sought to be jettisoned gives rise to grave doubt with regard to the bona fides of the State in effectively prosecuting the petitioner and the other accused persons. As noted above, while on one hand the State chooses to support its stance of withdrawal of prosecution, on other hand it appears to be conducting a 'lip-service' trial wherein most witnesses have turned hostile.

An aura of fear and apprehension seems to pervade the minds of the witnesses and the relations of the victim. In fact, Jahar Sha (informant in the case) was constrained to withdraw himself from the writ proceeding challenging the withdrawal of prosecution. This calls for a balancing act between rights of victim i.e., access to justice and witness protection and the right of the petitioner accused under Article 21 of the Constitution of India.

In view of the painful state of affairs where the bias of the State is heavily loaded in favour of the petitioner-accused, it would be prudent for us to tilt in favour of protection of the witnesses and family members of the deceased and ensure a fair and just prosecution. Hence, we are not inclined to release the petitioner on bail.

37. The aforesaid order was upheld by a coordinate bench of this Court on 15th December, 2022 by recording that there was no reason to interfere.

38. As has been noted above, the Single Judge set aside the order dated 26th February, 2021 by a judgment and order dated 2nd August, 2022. The following observations may be read:

"45. Mere lip-service to the settled legal criteria in the application under Section 321, Cr.PC does not, by itself, lend sanctity to the motive behind non-prosecution. Rather, the dubious manner in which the application was shifted back early at the behest of the State and allowed by the trial Court on the very same date when the present writ petition was fixed and was being taken up for hearing by this court in the first round of litigation, even after the trial court being informed and well aware of such fixation in this court, evokes suspicion about the motive rather than confidence in the application being moved by the PP in good faith.

47. The surrounding circumstance and varied developments in the instant case, as discussed above, all cast a shadow of doubt on the motive behind the State's fiat to withdraw prosecution against the respondent no. 5 and the other coaccused persons in the case. No ingredient of public justice and/or interest of administration of justice has been made out at all for withdrawing prosecution against the accused persons, that too at an advanced stage of trial.

48. Just as political vendetta has been belied as a ground for withdrawal in the instant case, the averment in the application under Section 321, Cr.PC to the effect that the respondent no. 5 has not previously been accused of any serious offence is also fraught with untruth, since the respondent is not only a historysheeter during the same political regime which now seeks to withdraw prosecution against him, but has been charged with heinous crimes such as murder, rape, etc. Such antecedent, without anything else, do not justify the argument that the withdrawal was for public interest or in the interest of proper administration of justice.

49. The State's argument, that the withdrawal is in public interest, is betrayed by the events as traced out above. Rather, the communication of the State instruction to the trial court simultaneously with the PP and the concurrent haste adopted in the trial, despite witness after witness turning hostile but not being declared so, while in the same breath seeking withdrawal of prosecution, does not augur well in favour of the bona fides of the prosecution.

50. The other argument of the respondent no. 5, that the present writ petition is a non-starter in the absence of challenge to the order under Section 321, Cr.PC, though specious, is still-born, since the impugned memo logically culminated in

the application and the order under the said provision and is a continuum of the same cause of action. In fact, in the first round of litigation before remand, the writ petition had been allowed by setting aside not only the impugned memo but all consequential action.

51. Hence, it would only subserve justice, good conscience and public interest if the trial of the respondent no. 5 and other accused persons is conducted properly and with the same zeal as the withdrawal of prosecution has been pursued, and not vice versa."

39. Certain passages from the order of this Court dated 17th March, 2023, while disposing of the transfer petition read as under:

"33. Adverting to the facts of the case in hand in light of the principles enunciated by this Court from time to time, it is true that the State of West Bengal has taken a complete u-turn with a view to help the main accused, namely, Respondent No. 2 and it went to the extent of resorting to its powers under Section 321 of CrPC to withdraw the prosecution itself. A plain reading of Section 321, CrPC leaves no room to doubt that it is the Public Prosecutor in-charge of the case who has to apply his mind independently and impartially to form a view for withdrawal from the prosecution with the consent of the court.

The procedure followed in the case in hand was completely alien to the scheme of Section 321, CrPC as the decision to withdraw prosecution was taken at the level of the State Government and the Public Prosecutor was merely asked to act upon the said Government notification. The Link Judge also showed tearing hurry in accepting the application of the Public Prosecutor and permitting withdrawal from prosecution even before the date when the case was listed for prosecution evidence.

34. However, none of these patent illegalities were allowed to sustain as a result of the pro-active exercise of appellate/revisional/writ jurisdiction by the High Court. Not only was the State Government's notification set aside, the order passed by the Link Judge permitting such withdrawal was also annulled by the High Court. It is a matter of record that the learned Trial Judge has repeatedly declined bail to Respondent No. 2 and even the High Court rejected his prayer for enlargement on bail. In this factual scenario, the question arises whether it is essential to transfer the trial outside the State of West Bengal or whether the ends of justice can be adequately met by issuing alternative appropriate directions?

D. CONCLUSIONS

35. Having given our thoughtful consideration to this issue, it appears to us that there is no legal necessity to transfer the trial outside the State of West Bengal and the apprehensions of the petitioner, some of which are indeed genuine, can be

effectively redressed by issuing appropriate directions. We say so for the reason that more than 90 witnesses, most of whom are Bengali speaking, are yet to be examined.

The transfer of trial to any other neighbouring state will cause serious impediment in the deposition of those witnesses and some of them might be reluctant to travel to a far away place and, thus, the case of the Prosecution will be severely prejudiced. So long as the High Court and District Judiciary are ensuring the fairness in trial proceedings within their jurisdictional framework, we are not inclined to accept that the victim's family will not get fair justice, if the trial is held in the State of West Bengal."

40. The order dated 29th January, 2024 of the High Court recorded that:

"8. Under such circumstances, we are constrained to hold the trial judge has taken all efforts to conduct the trial expeditiously and conclude it within the time frame proposed by the Hon'ble Apex Court.

9. We have also examined the evidence of the witnesses who have deposed so far. PWs. 1, 8, 10, 26 and 30 have deposed against the petitioner and evidence is forthcoming with regard to his complicity in the murder. We do not wish to make further observations with regard to the evidence on record lest the same prejudices either the prosecution or the defence.

10. We have also taken note of the fact one of the prosecution witnesses, PW 29, deposed that he had been intimidated by associates of the petitioner. As per the special Public Prosecutor 18 vulnerable witnesses are yet to be examined. Offences, if proved, would attract mandatory life imprisonment. Gravity of the offence and the evidence led against the accused are relevant considerations for bail. Similarly, impact of release of the petitioner on bail on the vulnerable witnesses also needs to be kept in mind. But the Court cannot turn its eyes away from the protracted undertrial detention already suffered by the petitioner i.e. more than 4 years.

One cannot be unmindful of the systematic and infrastructural shortcomings which may inspite of earnest efforts on the part of the trial Court and the stakeholders stand in the way of conclusion of trial at an early date. In order to balance the right to liberty of an undertrial which is an enshrined right under Article 21 of the Constitution of India on the one hand with the right of the State to conduct trial in a free, fair and non-intimidatory atmosphere on the other hand, we do not wish to consider the bail prayer of the petitioner favorably at this stage till all the vulnerable witnesses are examined."

41. Reverting to the applications, we find from the status report of the State that presently only a couple of witnesses remain to be examined and few are to be

examined on recall. It also appears from a petition filed before the Sessions Court, handed over to us by Mr. Patwalia that recording of evidence of PW-88 is now in progress, which is likely to be followed by recording the evidence of two Magistrates (one of whom recorded the statement of a witness under Section 164, Cr. PC and the other held a T.I. Parade), a doctor and two other witnesses.

42. The application for cancellation of bail at the instance of Afjal seems to be more of a retaliatory response to Anisur's application for modification of bail condition rather than a genuine effort to further project before this Court how Anisur has breached the terms and conditions of bail. The anxiety and concern of Afjal is understandable. Having lost his brother in a homicidal attack, it is quite but natural that regardless of the State's effort to scuttle the trial he would sincerely and earnestly wish to have the culprits brought to book. It has, however, not been shown how a breach has occasioned.

We quite agree with Mr. Patwalia, as recorded by this Court in its order dated 17th March, 2023, that the State seems to have crossed the line of being an honest and fair prosecutor and bordered on becoming a real facilitator for the accused in the sessions trial to evade conviction. There is also little doubt that witnesses for the prosecution have turned hostile, but that Anisur is directly responsible for the damage caused has not been conclusively established before us. Be that as it may, having regard to the stage the trial has progressed, we do not consider any useful purpose being served by cancelling the bail granted in favour of Anisur.

43. The application for cancellation of bail, thus, stands rejected.

44. The application for condonation of delay (I.A. No.227763/2025) in presentation of the application for modification by Anisur stands allowed.

45. Adverting to the modification application of Anisur, we do not see sufficient reason to modify the condition under consideration either.

46. Anisur's previous application for modification was rejected by the bench presided over by A.S. Oka, J. The present application has been filed on 8th August, 2025, i.e., a couple of months after His Lordship demitted office. In between, there were Partial Working Days from 26th May, 2025 till 11th July, 2025. The purpose is not far to seek. We perceive this to be an attempt to take a chance because of the changed scenario.

47. Though elementary, it requires restatement that it is fundamental to the rule of law to maintain the sanctity and finality of judicial verdicts. Judicial orders which determine issues arising between the parties to the lis bind them and its conclusive nature ensures resolution of disputes so that justice is served. The strength of judicial power lies less in the hope of perfection and more in the

confidence that decisions, once made, are settled. As Justice Robert Jackson¹⁹ famously said "We are not final because we are infallible, but we are infallible only because we are final". By upholding the finality of verdicts, not only is endless litigation prevented but public confidence in the judiciary is also maintained.

48. In the recent past, we have rather painfully observed a growing trend in this Court (of which we too are an indispensable part) of verdicts pronounced by Judges, whether still in office or not and irrespective of the time lapse since pronounced, being overturned by succeeding benches or specially constituted benches at the behest of some party aggrieved by the verdicts prior in point of time. To us, the object of Article 141 of the Constitution seems to be this: the pronouncement of a verdict by a bench on a particular issue of law (arising out of the facts involved) should settle the controversy, being final, and has to be followed by all courts as law declared by the Supreme Court. However, if a verdict is allowed to be reopened because a later different view appears to be better, the very purpose of enacting Article 141 would stand defeated.

The prospect of opening up a further round of challenge before a succeeding bench, hoping that a change in composition will yield a different outcome, would undermine this Court's authority and the value of its pronouncements. A matter that is *res integra* may not be reopened or revisited or else consistency in legal interpretation could be compromised and the special authority that is invested in decisions of this Court, under Article 141, lost. The weight and influence of that special authority depend on the credibility we, the Judges, give to it. As Judges of this Court, we are alive to the position that overturning a prior verdict by a later verdict does not necessarily mean that justice is better served.

49. However, with an over looming sense of dissatisfaction and remorse, we propose not to walk that path. While it is true that in a case of the present nature - where an issue of a citizen's right to move freely throughout the territory of India is involved - the principle of finality may not be applied strictly against the party whose right has been so restricted, but the antecedent facts in the light whereof the restriction is imposed assumes significance and must, of necessity, bear serious thought.

Any restrictive order of the nature under consideration has to be and must be premised on some worthy reason. Such reason need not be brushed aside as irrelevant or untenable. Judicial discipline, propriety and comity, which are also inseparable parts of a just and proper decision-making process, demand that a subsequent bench of different combination defers to the view expressed by the earlier bench, unless there is something so grossly erroneous on the face of the record or palpably wrong that it necessitates a re-look in exercise of inherent

jurisdiction either by a review petition or through a curative petition as explained in *Rupa Ashok Hurra v. Ashok Hurra*²⁰.

50. The very purpose of the order granting bail, in this case, would stand frustrated if the condition requiring Anisur not to leave Kolkata were modified. This Court granted bail bearing in mind two factors. First, Anisur was in custody for more than 5 years and second, despite this Court's order dated 17th May, 2023 requiring completion of trial within 6 months, the trial had not concluded. Grant of bail being discretionary and having regard to the developments over the years, refusal to grant bail to Anisur was indeed a distinct option available to the bench.

However, the bench leaned in favour of granting the concession of bail on stringent conditions which this Court found fit to impose considering the attendant circumstances and balancing competing interests of need for incarceration and right to liberty. If any modification of such condition is made now and thereby the stringency relaxed, that would not only amount to overstepping the order of this Court granting bail but would send a wrong message of this Court being unconcerned with the principle of finality of judicial decisions. The stringent condition imposed by the bench while granting bail being justified on facts and in the circumstances, and there being no significant change in circumstances warranting a reconsideration, we see no reason to interfere.

51. That apart, this Court being the protector of Fundamental Rights of the people of the country cannot also perhaps overlook that Anisur has been provided security cover by none other than the Superintendent of the police force of the district of which he is a permanent resident. If indeed there is any threat perception that endangers Anisur's life in Purba Medinipur, it would be appropriate for him not to leave Kolkata till such time the trial is concluded.

52. We, therefore, reject the application for modification of bail condition filed by Anisur.

53. The Sessions Court is requested to prepare a schedule for recording the evidence of the remaining prosecution witnesses on successive/alternative days, as far as possible but subject to its convenience. The Sessions Court shall be free to proceed with the trial in accordance with law.

54. I.A. No.244053/2025 (application for cancellation of bail) and I.A. No.197604/2025 (application for modification of one of the conditions for bail) are, accordingly, dismissed.

POSTSCRIPT

55. After we had reserved judgment on the applications on 18th November, 2025 and the opinion expressed above was scheduled to be pronounced on 25th November, 2025, Mr. Patwalia mentioned the matter on 24th November, 2025 in the presence of Mr. Bedi, learned counsel for Anisur. We were shown a copy of an order dated 21st November, 2025 passed by the Sessions Court on an application filed by the Special Public Prosecutor.

56. Mr. Patwalia submitted that without any reason or justification, the Sessions Court has made scathing comments against the Special Public Prosecutor and referred the matter to the Legal Remembrancer, West Bengal based on his perception that the Special Public Prosecutor has been remiss in conducting the proceedings of the trial and committed a serious lapse in filing a belated application and that too, without assigning any reason. According to him, the Special Public Prosecutor has been prosecuting the case fairly and with a good deal of competence and Afjal has no dissatisfaction with the manner of conducting of the trial. He expresses an apprehension that unless some observations are made, the trial would end up meandering into a mere ritual being completed with the conclusion written on the wall.

57. Mr. Bedi, for Anisur, submitted that any interference with the order dated 21st November, 2025 in course of these proceedings would not be proper. According to him, Anisur is not responsible for the order made by the Sessions Court; Anisur is entitled to a fair trial and if any party is dissatisfied with partial allowing of the application of the prosecution, he/it may move the appropriate forum.

58. It is noted in such order dated 21st November, 2025 as follows:

"3. The learned Special Public Prosecutor has submitted that the prosecution wants to get the indulgence of this Court to -

(a) Re-examine CSW 83;

(b) Examine fresh witnesses namely; CSW 84, CSW 37, CSW 41 and the Executive Officials (DM/ADM) to prove the order of sanction (marked Z1 for identification) accorded under Section 39 Arms Act;

(c) Examine some forensic experts who submitted their reports;

(d) Examine PW75 (Dilip Chakraborty), who was though declared as hostile but the matter has been stayed by the Hon'ble High Court;

(e) Examine one Dipankar Adak who is said to be an ocular witness though not cited in the charge-sheet;

(f) Examine the seizure witnesses relating to recovery of some articles and re-examine the officials who seized those articles and

(g) Examine ASI Goutam Roy of Panskura Police Station who made the GD entry no. 281 dated 07.10.2019 (marked Z for identification).

7. At the outset, this Court is afraid to make a comment that the prosecution has not assigned any reason as why the witnesses sought to be re-examined [CSW 83 and seizing officials as specified in paragraph 3 (a) & (f)]. Nothing is also found explaining the reason for filing such an application is such a belated stage even after closure of the evidence of the Investigation officer."

59. Despite being critical, the Sessions Court partly allowed the application and permitted examination of executive officials (DM/ADM), Dipankar Adak and ASI Goutam Roy.

60. Since the application of the prosecution has been partly allowed and partly disallowed by the Sessions Court by the said order dated 21st November, 2025, we do not propose to examine the validity thereof in course of these proceedings, except to the extent specified hereafter. Such order may be challenged in appropriate proceedings by the aggrieved party, if so advised.

61. However, the alleged scathing comments made by the Sessions Court against the Special Public Prosecutor (who has been appointed pursuant to the order dated 17th March, 2023 on the transfer petition passed by this Court), to which our attention was drawn by Mr. Patwalia, read thus:

"30. At the same time, this court firmly observes that the Learned Special Public Prosecutor, Mr. ***, cannot exculpate himself from the solemn and onerous duty cast upon his office - to lend unalloyed assistance to the court and to lay bare the unvarnished truth, thereby enabling the Court to traverse the path of justice conviction, and completeness.

31. It is more so, when Mr. ***, is well aware about the directives of the Hon'ble Apex Court whereby we all are enjoined to dispose of this case within a stipulated period - a circumstance that ought to have impelled greater vigilance and circumspection on the part of Mr. Maity.

32. This Court, therefore, deems it imperative ex debito justitiae to express its profound disquiet the manner in which Mr. *** has represented the State in the present proceeding. His torpid and indifferent approach, contra officii dignitatem, stands in glaring discord with the solemn responsibility reposed in a Public Prosecutor. In a prosecution touching the very vitals of societal order and moral rectitude, such apathy is non toleranda.

33. Accordingly, this Court, suo motu et cum gravi animi sensu, urges the Learned Legal Remembrancer, Government of West Bengal, to take due cognizance of this lapse and to ensure that cases of such grave import and societal impact are hereafter conducted cum summa diligentia et fide publica (with the greatest diligence and public faith).

34. A copy of this order be accordingly forwarded to the Learned Legal Remembrancer, Government of West Bengal, for information."

62. The above observations have been made against the Special Public Prosecutor by the presiding officer of the Sessions Court, once he approached the Court with the application to grant the prosecution the indulgence to examine additional witnesses/re-examine witness already examined.

63. We are pained to record that the comments made by the Sessions Court criticising the Special Public Prosecutor are wholly uncalled for, thoroughly unwarranted and absolutely unnecessary. In his anxiety to conclude the trial early, owing to the directions given by this Court on the transfer petition as well as the High Court while dismissing the applications for bail of Anisur, the Sessions Court perhaps omitted to bear in mind the antecedent facts relatable to progression of the trial.

If indeed the Special Public Prosecutor by filing an application sought the indulgence of the Court to re-examine/examine witnesses, it was entirely within the jurisdiction of the Sessions Court to allow or reject such prayer. Indeed, the fact that the application of the prosecution has been partly allowed does suggest that the Sessions Court did not consider the attempt of the prosecution to be part of any dilatory tactics to unduly prolong the trial. Having regard thereto, the order is contradictory in the sense that on the one hand the application is partly allowed and, on the other, the Special Public Prosecutor is criticized for lack of vigilance and circumspection.

64. The Sessions Court, further, ought to have realised that the directions for early conclusion of trial were passed owing to long incarceration of Anisur. This Court was anxious that an under-trial's liberty should not be curtailed without sufficient reason. However, with the passing of the order dated 3rd January, 2025 by this Court releasing Anisur on bail (albeit with restrictions on his movement), the extreme urgency to conclude the trial as early as possible by fixing successive/alternative dates did recede a bit and the endeavour of the Sessions Court ought not to have been to discourage the prosecution from placing its case by all means, as permitted by law.

If indeed the prosecution, for ensuring a fair trial for the victim as well as the accused, felt that it was essential to apply for permission to have witnesses re-

examined/examined, obviously such an application was not one which necessitated scathing remarks to be made against the Special Public Prosecutor. To characterise the approach of the Special Public Prosecutor as torpid and indifferent amounts to unjustly criticising him for lack of initiative. The Sessions Court ought to have been alive to the situation that the predecessor in office of the Special Public Prosecutor was tardy, lethargic, indolent and unenthusiastic for which the current initiative of the Special Public Prosecutor was necessary for a fair, effective and meaningful trial.

The Sessions Court ought not to forget the status of a prosecutor, who has been appointed pursuant to an order of this Court. Reference to legal maxims could be insightful, if the context so requires, but overusing them might distract from the main issue, coming across as ostentatious rather than substantive. We conclude by observing that the Special Public Prosecutor has been unfairly criticised by the Sessions Court in its hurried attempt to conclude the trial without, however, realising the seriousness and magnitude of the situation. However, while viewing this as a one-off aberration on the part of the presiding officer of the Sessions Court, we hope that it is not repeated.

65. Having limited our examination to that part of the order dated 21st November, 2025 whereby reference has been made to the Legal Remembrancer, we interfere and set aside such reference.

66. The Special Public Prosecutor is encouraged to continue conducting the trial on behalf of the prosecution with fairness, integrity and diligence.

67. The Sessions Court is directed to deal with all applications that might be filed by the parties on its own merits.

68. This order may not be construed as restricting Anisur from raising legitimate objections during the trial, which the Sessions Court will decide as per law.

69. The Sessions Court may conclude the trial, in accordance with law, without being overly concerned about the previous timelines set by this Court.

.....**J. (Dipankar Datta)**

.....**J. (Augustine George Masih)**

New Delhi;

November 26, 2025.

1 Anisur

- 2 Afjal
- 3 the victim
- 4 IPC
- 5 the de-facto complainant
- 6 Cr. PC
- 7 S.T. Case No.01(03)
- 8 WPA No. 6315 of 2021
- 9 CAN 1 of 2021
- 10 MAT 550 of 2021
- 11 T.P. (Crl.) 409 of 2021
- 12 CRM (DB) 1472 of 2022
- 13 SLP (Crl.) 9051 of 2022
- 14 Sessions Court
- 15 CRM (DB) No.3916 of 2023
- 16 CRM (DB) No.1510 of 2024
- 17 Criminal Appeal No.43/2025
- 18 Misc. Application Diary No. 18397 of 2025
- 19 Associate Justice of the U.S. Supreme Court in Brown v. Allen
- 20 (2002) 4 SCC 388

IN THE SUPREME COURT OF INDIA

Jai Balaji Industries Ltd. and Ors.

Vs.

M/s. HEG Ltd.

**[Transfer Petition (Crl.) No. 1099 of 2025
arising out of Transfer Petition (Crl.) D. No. 24362 of 2025]**

**[Transfer Petition (Crl.) No. 1100 of 2025
arising out of Transfer Petition (Crl.) D. No. 24506 of 2025]**

**[Transfer Petition (Crl.) No. 1101 of 2025
arising out of Transfer Petition (Crl.) D. No. 24500 of 2025]**

**[Transfer Petition (Crl.) No. 1102 of 2025
arising out of Transfer Petition (Crl.) D. No. 24493 of 2025]**

Head Note – Complaints arising from the dishonour of account payee cheques must be instituted only before the court that has jurisdiction over the branch of the bank where the payee maintains their account.

Even if the cheque is deposited at a branch different from the payee's home branch, for the purposes of jurisdiction under the Negotiable Instruments Act, the complaint must still be filed before the court governing the home branch of the payee's bank account.

The ruling of **Yogesh Upadhyay Vs. Atlanta Ltd., (2023) 19 SCC 404**, held to be **per incuriam**. The case of Yogesh Upadhyay wrongly held that the Courts situated at any of the branches of the payee bank, where the cheque is presented, will get jurisdiction. Only the home branch where the account of the payee is maintained will get jurisdiction.

The judgment of Yogesh Upadhyay ignored the Explanation to Section 142(2)(a), which deems a cheque delivered at any branch of the payee's bank to have been delivered at the payee's home branch, where their account is actually maintained.

The interpretation held in Yogesh will enable forum-shopping. If the construction placed on Section 142(2)(a) by the decision in Yogesh Upadhyay (supra) is accepted, then a payee may manipulate the question of jurisdiction in his favour by letting him decide where he wants to deliver the cheque for collection. We are of the firm opinion that the legislature could not have intended to let misuse perpetuate in such a manner. The necessity of delivery of an account payee cheque to the home branch is only legal and not commercial.

JUDGMENT

J.B. Pardiwala, J.

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

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A. FACTUAL MATRIX

B. ISSUES FOR DETERMINATION

C. ANALYSIS

(i) Position of law as regards jurisdiction of courts prior to the Amendment Act, 2015

a. Analysis of the observations of this Court in Bhaskaran

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c. Analysis of the observations of this Court in Dashrath Rupsingh Rathod

(ii) Position of law as regards jurisdiction of courts after the enactment of the Amendment Act, 2015.....

Meaning of the expressions "delivered for collection through an account" and "presentation for payment otherwise through an account"

b. Meaning of the expression "maintains an account" under Section 142(2)

c. Conjoint reading of Section 142(2)(a) and the Explanation thereto

(iii) Determination of the issues framed

a. Whether the MM, Kolkata has the jurisdiction to try the complaint?

b. Whether a case of transfer of the complaint from the court of JMFC, Bhopal to MM, Kolkata is made out?.....

D. CONCLUSION

1. Since the issues raised in all the captioned transfer petitions are the same, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. For the sake of convenience, the Transfer Petition (Criminal) Diary No. 24362 of 2024 is treated as the lead matter.

3. This transfer petition filed under Section 446 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter, "BNSS") read with Order XXXIX of the Supreme Court Rules, 2013 is at the instance of a private limited company through its directors, praying for transfer of the Complaint Case No. RCT 2501046/2017 titled as "M/s HEG Limited vs Jai Balaji Industries Ltd. & Ors" pending in the court of Judicial Magistrate First Class, Bhopal to the Court of Metropolitan Magistrate, Kolkata.

The transfer is prayed for on the ground that this Court, in Dashrath Rupsingh Rathod v. State of Maharashtra reported in (2014) 9 SCC 129 had held that cases where the trial had reached the stage of summoning, appearance of accused, and the recording of evidence had commenced as per Section 145(2) Negotiable Instruments Act, 1881 (for short, the "Act, 1881"), those should continue in the same court where the trial was ongoing.

A. FACTUAL MATRIX

4. The petitioner no. 1 herein (Jai Balaji Industries Ltd.) is the original accused no. 1 (hereinafter referred to as the "accused company"), while the other petitioners are the directors of the accused company. The respondent (M/s HEG Limited), is the original complainant (hereinafter referred to as the "complainant company" or "complainant").

5. A cheque for the amount of Rs. 19,94,996/- was drawn by the accused company through its directors, against an invoice generated by the complainant company, dated 23.03.2014. The cheque was drawn by the accused on the State Bank of Bikaner and Jaipur, Kolkata and the same was deposited by the complainant on 19.06.2014 in its account maintained with the State Bank of India, Bhopal branch.

6. The cheque referred to above came to be dishonoured due to insufficiency of funds on 20.06.2025 pursuant to which, the complainant issued the statutory notice dated 11.07.2014 to all the accused persons through registered speed post A/D, demanding that the sum of Rs. 19,94,996/- be paid within a period of 15 days as prescribed under Section 138 of the Act, 1881 in lieu of the dishonoured cheque. The said notice was delivered on 14.07.2014.

7. The accused company replied vide the letter dated 26.07.2014 which was received by the complainant on 30.07.2014, wherein all the accused persons took the defence that the said cheque had been issued as a 'Security Deposit' and not in discharge of any enforceable debt. As a result, the complainant company filed the Complaint Case No. 406978 of 2014 in the court of the Metropolitan Magistrate,

Kolkata (the "MM, Kolkata") on 16.08.2014. The same was registered on 29.01.2015 and summons were issued to the accused company and other accused persons on 29.01.2015. Consequently, the MM, Kolkata proceeded to frame charge to which the accused persons pleaded not guilty and claimed to be tried. On 27.04.2015, the affidavit of evidence in- chief of the complainant company's officer was taken on record by the MM, Kolkata.

8. While the case was pending before the MM, Kolkata, the Government enacted the Negotiable Instruments (Amendment) Act, 2015 (the "Amendment Act, 2015") on 26.12.2015. In accordance with the terms of the amendment to the Act, 1881, more particularly, Section 142 thereof, the territorial jurisdiction for prosecution and trial of cases registered under Section 138 was stipulated to be at the place where the payee or holder maintains his bank account. In this case, the payee, i.e., the complainant company maintained its bank account with the State Bank of India, Bhopal branch.

9. Upon request made by the complainant company, the MM, Kolkata returned the complaint to the respondent vide order dated 28.07.2016 observing that it lacked the jurisdiction to conduct trial for the case in hand and allowed the complainant to present the matter before the court of competent jurisdiction.

10. In such circumstances referred to above, the complainant company got the complaint for dishonour of cheque registered in the court of the Judicial Magistrate First Class, Bhopal (the "JMFC, Bhopal") bearing Complaint Case No. RCT 1501046 of 2017. The accused company raised an objection as regards the territorial jurisdiction of the JMFC, Bhopal to try the offence relying on the provisions of the Code of Criminal Procedure, 1973 (the "Act, 1973"). Besides according to the accused persons, the MM, Kolkata could not have returned the complaint once the recording of evidence as per Section 145(2) had already commenced. However, the said objections were rejected by the JMFC, Bhopal. The same was then challenged by the accused persons vide Criminal Revision before the Sessions Court, Bhopal which is still pending adjudication.

11. Be that as it may, the question before us is not one relating to the merits of the claims of the parties herein. What is discernible is the fact that the cheque so issued was dishonoured, and the sum for which such cheque was drawn was not made good by the accused despite a statutory notice. This conspectus of facts has enabled the complainant to prosecute the accused and the sole controversy before us is as to which court has the territorial jurisdiction to try the accused persons for the offence punishable under Section 138 of the Act, 1881.

B. ISSUES FOR DETERMINATION

12. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following two questions fall for our consideration:

i. Whether after the enactment of the Amendment Act, 2015, the court within whose local jurisdiction the drawee bank is situated, has the jurisdiction to try a complaint under Section 138?

ii. Whether after the enactment of the Amendment Act, 2015, a complaint under Section 138 of the Act, 1881 can be transferred to the court within whose local jurisdiction the drawee bank is situated, if the recording of evidence under Section 145 has already commenced in the said court?

C. ANALYSIS

13. Before adverting to the conspectus of facts before us, we must discuss or rather clarify the position of law as regards jurisdiction of courts to entertain complaints under Section 138 of the Act, 1881 especially after the introduction of Sections 142(2) and 142A respectively by the Amendment Act, 2015. For that, we must look into few judgments of this Court to better understand the legal backdrop in which the present dispute has arisen.

(i) Position of law as regards jurisdiction of courts prior to the Amendment Act, 2015

14. Prior to the enactment of the Amendment Act, 2015, the issue relating to territorial jurisdiction was quite complex. With a view to dispel any doubt and lend clarity, this Court, in several of its judgments, had addressed the issue of jurisdiction.

a. Analysis of the observations of this Court in Bhaskaran

15. In *K. Bhaskaran v. Sankaran Vaidhyan Balan*, reported in (1999) 7 SCC 510, this Court addressed itself on the issue of territorial jurisdiction in detail.

16. In the said case, the cheque was issued by the accused at Adoor, Kerala and the same was presented by the complainant at the bank in Kayamkulam, Kerala, for encashment. The drawee bank dishonoured the cheque due to funds being insufficient in the account of the accused. Consequently, the complainant therein issued the statutory notice as required under Section 138 of the Act, 1881 but the same remained unclaimed and not delivered to the accused as the addressee (the accused) was not found at the address mentioned in the notice. The complainant proceeded to file the complaint before the Court of the Judicial Magistrate, First Class, Adoor ("JMFC, Adoor").

17. The accused questioned the jurisdiction of the JMFC, Adoor on the ground that the cheque was dishonoured at the bank situated in Kayamkulam where the complainant had presented the cheque for encashment and therefore, there was no occasion for the complainant to file a case at Adoor. The JMFC, Adoor accepted the said submission canvassed by the accused and held that he had no territorial jurisdiction to try the case as the cheque was dishonoured in a different district of Kerala. On the other hand, the High Court set aside the trial court's judgment and held that since the cheque was issued at Adoor, i.e., within the territorial jurisdiction of the JMFC, Adoor, he was competent to conduct the trial in respect of the complaint.

18. This Court took the view that the JMFC, Adoor had erroneously held that the trial of the complaint was outside its jurisdiction. It was observed that although Section 177 of the Code of Criminal Procedure, 1973 (the "CrPC") lays down the rule that every offence must be tried by a court within whose jurisdiction it was committed, yet this rule was not invariable. Situations that may present uncertainty as regards the question of jurisdiction are accounted for by the CrPC, more particularly Section 178 thereof. Section 178 reads thus:

"178. Place of inquiry or trial.

(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas."

19. The plain reading of Section 178(d) referred to above clarifies that when it is not possible to answer the question of jurisdiction with certainty due to several acts having been done in different local areas, the offence could be tried in a court having jurisdiction over any of such local areas.

20. This Court highlighted that the offence under Section 138 is a consequence of the dishonour of cheque but such dishonour by itself does not result in the offence unless and until the following acts are established:

(i) Drawing of the cheque,

(ii) Presentation of the cheque to the bank,

(iii) Returning the cheque unpaid by the drawee bank,

(iv) Issuing notice in writing to the drawer of the cheque demanding payment of the cheque amount,

(v) Failure of the drawer to make payment within 15 days of the receipt of the notice.

21. This Court held that the complainant may choose to lodge his complaint in any court exercising jurisdiction over the localities where the aforesaid acts may have been done. The relevant portion of the judgment is reproduced below:

"11. We fail to comprehend as to how the trial court could have found so regarding the jurisdiction question. Under Section 177 of the Code "every offence shall ordinarily be enquired into and tried in a court within whose jurisdiction it was committed". The locality where the Bank (which dishonoured the cheque) is situated cannot be regarded as the sole criterion to determine the place of offence. It must be remembered that offence under Section 138 would not be completed with the dishonour of the cheque.

It attains completion only with the failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in clause (c) of the proviso to Section 138 of the Act. It is normally difficult to fix up a particular locality as the place of failure to pay the amount covered by the cheque. A place, for that purpose, would depend upon a variety of factors. It can either be at the place where the drawer resides or at the place where the payee resides or at the place where either of them carries on business. Hence, the difficulty to fix up any particular locality as the place of occurrence for the offence under Section 138 of the Act.

12. Even otherwise the rule that every offence shall be tried by a court within whose jurisdiction it was committed is not an unexceptional or unchangeable principle. Section 177 itself has been framed by the legislature thoughtfully by using the precautionary word "ordinarily" to indicate that the rule is not invariable in all cases. Section 178 of the Code suggests that if there is uncertainty as to where, among different localities, the offence would have been committed the trial can be had in a court having jurisdiction over any of those localities. The provision has further widened the scope by stating that in case where the offence was committed partly in one local area and partly in another local area the court in either of the localities can exercise jurisdiction to try the case. Further again, Section 179 of the Code stretches its scope to a still wider horizon. It reads thus:

"179. Offence triable where act is done or consequence ensues.-When an act is an offence by reason of anything which has been done and of a consequence which

has ensued, the offence may be enquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued."

13. The above provisions in the Code should have been borne in mind when the question regarding territorial jurisdiction of the courts to try the offence was sought to be determined.

14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence: (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at five different localities. But a concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

"178. (a)-(c)*** (d) where the offence consists of several acts done in different local areas, it may be enquired into or tried by a court having jurisdiction over any of such local areas."

16. Thus it is clear, if the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act."

(Emphasis supplied)

22. The decision in Bhaskaran (supra) took into account or rather highlighted that Section 138 would get attracted upon commission of multifarious acts. Such acts may not always share local areas and might have been done in different jurisdictions. It was recognized that the special nature of the offence contained in the said section gave rise to jurisdictional ambiguity which was hindering the complainants' litigations to recover their money. To remedy the mischief that was being perpetuated by the absence of a specific jurisdiction, this Court held that the amplitude of the offence under Section 138 was so wide as to confer

jurisdiction on all the courts in whose territorial jurisdiction any of the five acts as mentioned above, might have been committed.

b. Analysis of the observations of this Court in Harman Electronics

23. In *Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd.*, reported in (2009) 1 SCC 720, the cheque was issued by the drawer in Chandigarh and was presented by the complainant in Chandigarh itself. The complainant sent the statutory notice under Section 138 from Delhi which was admittedly served on the drawer in Chandigarh. Upon non-clearance of dues, the complainant filed a complaint under Section 138 before the Additional Sessions Judge, New Delhi (the "ASJ, Delhi").

24. It was the grievance of the accused therein that although most of the acts required to constitute an offence under Section 138 were committed in Chandigarh, yet the complainant had filed the complaint in the court at New Delhi only on the strength of the fact that the statutory notice was issued in Delhi. The accused therein had contended that this by itself would amount to absurdity if the complaint was entertained in Delhi.

25. The ASJ, Delhi held that the court in Delhi had the territorial jurisdiction to conduct trial in respect of the complaint as the statutory notice was sent by the complainant from Delhi. The High Court of Delhi affirmed the decision of the ASJ, Delhi saying that this Court's judgment in *Bhaskaran* (supra) had clarified that if five different acts constituting the offence under Section 138 were found to have been done in five different localities, any one of the courts exercising jurisdiction in one of such five areas could become the place of trial. The High Court held that the issuance of statutory notice being one of the acts mandatory for the completion of an offence under Section 138, the court in Delhi exercising territorial jurisdiction over the place from which the statutory notice was issued, would have the jurisdiction to try the complaint.

26. The question that fell for the consideration of this Court was whether the sending of notice from Delhi, by itself would give rise to a cause of action for taking cognizance under Section 138.

27. This Court held that the cause of action for proceeding against an accused person under Section 138 would arise not from the mere sending of the statutory notice but rather from its receipt by the accused person. The object behind sending of notice was considered by this Court and it was observed that it is only upon receipt of the notice that an accused person may elect to either pay the amount due and payable within a period of 15 days or not to pay the same. Therefore, issuance of notice by itself would not give rise to a cause of action.

The service of notice is imperative as it is only when the communication thereof is complete that the cause of action arises.

28. This Court also noted that allowing multitudinous courts the jurisdiction to try a single complaint would enable or rather place a complainant in the position to misuse the law and cause harassment to the accused.

29. In light of such considerations, this Court held that though the statutory notice was sent from Delhi, yet its receipt was recorded in Chandigarh. As the cause of action accrued in Chandigarh, it was held that the court in Delhi had no jurisdiction to try the matter. The relevant portions of the judgment are reproduced below:

"12. The complaint petition does not show that the cheque was presented at Delhi. It is absolutely silent in that regard. The facility for collection of the cheque admittedly was available at Chandigarh and the said facility was availed of. The certificate dated 24-6-2003, which was not produced before the learned court taking cognizance, even if taken into consideration does not show that the cheque was presented at the Delhi branch of Citibank. We, therefore, have no other option but to presume that the cheque was presented at Chandigarh. Indisputably, the dishonour of the cheque also took place at Chandigarh. The only question, therefore, which arises for consideration is that as to whether sending of notice from Delhi itself would give rise to a cause of action for taking cognizance under the Negotiable Instruments Act.

13. It is one thing to say that sending of a notice is one of the ingredients for maintaining the complaint but it is another thing to say that dishonour of a cheque by itself constitutes an offence. For the purpose of proving its case that the accused had committed an offence under Section 138 of the Negotiable Instruments Act, the ingredients thereof are required to be proved. What would constitute an offence is stated in the main provision. The proviso appended thereto, however, imposes certain further conditions which are required to be fulfilled before cognizance of the offence can be taken.

If the ingredients for constitution of the offence laid down in provisos (a), (b) and (c) appended to Section 138 of the Negotiable Instruments Act are intended to be applied in favour of the accused, there cannot be any doubt that receipt of a notice would ultimately give rise to the cause of action for filing a complaint. As it is only on receipt of the notice that the accused at his own peril may refuse to pay the amount. Clauses (b) and (c) of the proviso to Section 138 therefore must be read together. Issuance of notice would not by itself give rise to a cause of action but communication of the notice would.

17. Section 177 of the Code of Criminal Procedure determines the jurisdiction of a court trying the matter. The court ordinarily will have the jurisdiction only where the offence has been committed. The provisions of Sections 178 and 179 of the Code of Criminal Procedure are exceptions to Section 177. These provisions presuppose that all offences are local. Therefore, the place where an offence has been committed plays an important role. It is one thing to say that a presumption is raised that notice is served but it is another thing to say that service of notice may not be held to be of any significance or may be held to be wholly unnecessary.

19. Presumption raised in support of service of notice would depend upon the facts and circumstances of each case. Its application is on the question of law or the fact obtaining. Presumption has to be raised not on the hypothesis or surmises but if the foundational facts are laid down therefor. Only because presumption of service of notice is possible to be raised at the trial, the same by itself may not be a ground to hold that the distinction between giving of notice and service of notice ceases to exist.

20. Indisputably all statutes deserve their strict application, but while doing so the cardinal principles therefor cannot be lost sight of. A court derives a jurisdiction only when the cause of action arose within its jurisdiction. The same cannot be conferred by any act of omission or commission on the part of the accused. A distinction must also be borne in mind between the ingredient of an offence and commission of a part of the offence.

While issuance of a notice by the holder of a negotiable instrument is necessary, service thereof is also imperative. Only on a service of such notice and failure on the part of the accused to pay the demanded amount within a period of 15 days thereafter, the commission of an offence completes. Giving of notice, therefore, cannot have any precedent over the service. It is only from that view of the matter that in *Dalmia Cement (Bharat) Ltd. v. Galaxy Traders & Agencies Ltd.* [(2001) 6 SCC 463 : 2001 SCC (Cri) 1163 : AIR 2001 SC 676] emphasis has been laid on service of notice.

21. We cannot, as things stand today, be oblivious of the fact that a banking institution holding several cheques signed by the same borrower can not only present the cheque for its encashment at four different places but also may serve notices from four different places so as to enable it to file four complaint cases at four different places. This only causes grave harassment to the accused. It is, therefore, necessary in a case of this nature to strike a balance between the right of the complainant and the right of an accused vis-à-vis the provisions of the Code of Criminal Procedure."

(Emphasis supplied)

30. This Court, while applying the principles relating to jurisdiction as laid down in Bhaskaran (supra), explained the legal effect of the act of sending the statutory notice under Section 138 for the purpose of determining the jurisdiction to try a complaint thereunder. It was recognized that conferring jurisdiction on the locality from where the notice was sent would give unfettered powers to a complainant to set jurisdiction at a particular location that may be inconvenient or cause undue hardship to the accused person. Thus, the dictum in Harman Electronics (supra) curtailed the wide jurisdictional empowerment expounded in Bhaskaran (supra) to some extent.

c. Analysis of the observations of this Court in Dashrath Rupsingh Rathod

31. This Court, in its landmark decision in Dashrath Rupsingh (supra), was faced with the conundrum of jurisdictional ambiguity for trial of offence under Section 138 of the Act, 1881 posed by the differing interpretations thereof expounded in Bhaskaran (supra), Harman Electronics (supra) and Shri Ishar Alloy Steels Ltd. v. Jayaswals respectively and several other judgments.

32. A three-Judge Bench recognized the position of law in this regard as settled by Bhaskaran (supra), as well as the limits placed on wide jurisdiction by Harman Electronics (supra). While analysing these decisions, this Court observed that Bhaskaran (supra) adopted a liberal approach influenced by a curial compassion towards the unpaid payee. It was also noted that such approach was prone to abuse and had resulted in miscarriage of justice over the years.

33. This Court was of the view that for the purpose of determining jurisdiction, the commission of crime ought to be distinguished from its prosecution. It was held that though the five concomitants of Section 138 enabled prosecution of the offence thereunder, yet the offence itself came to be committed as soon as the cheque was dishonoured by the drawee bank. As a natural consequence, only the court exercising jurisdiction over the territory where the offence, i.e., the dishonour of cheque, was committed, was clothed with the power to try a complaint in respect of such offence. The relevant portions of the judgment in Dashrath Rupsingh (supra) are reproduced below:

"10. It is axiomatic that when a court interprets any statutory provision, its opinion must apply to and be determinate in all factual and legal permutations and situations. We think that the dictum in Ishar Alloy [Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd., (2001) 3 SCC 609 : 2001 SCC (Cri) 582] is very relevant and conclusive to the discussion in hand. It also justifies emphasis that Ishar Alloy [Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd., (2001) 3 SCC 609 : 2001 SCC (Cri) 582] is the only case before us which was decided by a three-Judge Bench and, therefore, was binding on all smaller Benches. We ingeminate that it is the drawee Bank and not the complainant's bank which is

postulated in the so-called second constituent of Section 138 of the NI Act, and it is this postulate that spurs us towards the conclusion that we have arrived at in the present appeals.

There is also a discussion of Harman [Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd., (2009) 1 SCC 720 : (2009) 1 SCC (Civ) 332 : (2009) 1 SCC (Cri) 610] to reiterate that the offence under Section 138 is complete only when the five factors are present. It is our considered view, which we shall expound upon, that the offence in the contemplation of Section 138 of the NI Act is the dishonour of the cheque alone, and it is the concatenation of the five concomitants of that section that enable the prosecution of the offence in contradistinction to the completion/commission of the offence.

11. We have also painstakingly perused Escorts Ltd. [Escorts Ltd. v. Rama Mukherjee, (2014) 2 SCC 255 : (2014) 1 SCC (Civ) 789 : (2014) 1 SCC (Cri) 808] which was also decided by the Nishant [Nishant Aggarwal v. Kailash Kumar Sharma, (2013) 10 SCC 72 : (2013) 4 SCC (Civ) 627 : (2013) 3 SCC (Cri) 189] two-Judge Bench. Previous decisions were considered, eventually leading to the conclusion that since the cheque concerned had been presented for encashment at New Delhi, its Metropolitan Magistrate possessed territorial jurisdiction to entertain and decide the subject complaint under Section 138 of the NI Act.

Importantly, in a subsequent order, in FIL Industries Ltd. v. Imtiyaz Ahmed Bhat [(2014) 2 SCC 266 : (2014) 1 SCC (Civ) 800 : (2014) 4 SCC (Cri) 58] passed on 12-8-2013, it was decided that the place from where the statutory notice had emanated would not of its own have the consequence of vesting jurisdiction upon that place. Accordingly, it bears repetition that the ratio in Bhaskaran [K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510 : 1999 SCC (Cri) 1284] has been drastically diluted in that the situs of the notice, one of the so-called five ingredients of Section 138, has now been held not to clothe that court with territorial competency. The conflicting or incongruent opinions need to be resolved."

(Emphasis supplied)

34. The aforesaid exposition stands fortified by the plain language of Section 138 of the Act, 1881. The primary part of the Section delineates the return of a cheque unpaid by the person who issued such cheque as an offence. However, the conditions stipulated in the proviso to the Section indicate that though the offence may come into existence upon dishonour of cheque, the consequences arising therefrom would be kept in abeyance till the time the concomitants contained in the provisory portion of the Section are also completed. In other words, the ingredients contained in the provisory portion of Section 138 are necessarily to be

fulfilled to successfully initiate prosecution in respect of the offence of dishonour of cheque which is committed when the cheque is returned unpaid by the drawee bank. The relevant paragraphs of the judgment read thus:

"18. Section 138 of the NI Act is structured in two parts-the primary and the provisory. It must be kept in mind that the legislature does not ordain with one hand and immediately negate it with the other. The proviso often carves out a minor detraction or diminution of the main provision of which it is an appendix or addendum or auxiliary. Black's Law Dictionary states in the context of a proviso that it is "[a] limitation or exception to a grant made or authority conferred, the effect of which is to declare that the one shall not operate, or the other be exercised, unless in the case provided. A clause or part of a clause in a statute, the office of which is either to except something from the enacting clause, or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of its extent".

It should also be kept in perspective that a proviso or a condition are synonymous. In our perception in the case in hand the contents of the proviso place conditions on the operation of the main provision, while it does (sic not) form a constituent of the crime itself, it modulates or regulates the crime in circumstances where, unless its provisions are complied with, the already committed crime remains impervious to prosecution. The proviso to Section 138 of the NI Act features three factors which are additionally required for prosecution to be successful. In this aspect Section 142 correctly employs the term "cause of action" as compliance with the three factors contained in the proviso are essential for the cognizance of the offence, even though they are not part of the action constituting the crime.

To this extent we respectfully concur with Bhaskaran [K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510 : 1999 SCC (Cri) 1284] in that the concatenation of all these concomitants, constituents or ingredients of Section 138 of the NI Act, is essential for the successful initiation or launch of the prosecution. We, however, are of the view that so far as the offence itself the proviso has no role to play. Accordingly a reading of Section 138 of the NI Act in conjunction with Section 177 CrPC leaves no manner of doubt that the return of the cheque by the drawee bank alone constitutes the commission of the offence and indicates the place where the offence is committed.

19. In this analysis we hold that the place, situs or venue of judicial inquiry and trial of the offence must logically be restricted to where the drawee bank is located. The law should not be warped for commercial exigencies. As it is Section 138 of the NI Act has introduced a deeming fiction of culpability, even though, Section 420 is still available in case the payee finds it advantageous or convenient to proceed under that provision. An interpretation should not be

imparted to Section 138 which will render it as a device of harassment i.e. by sending notices from a place which has no causal connection with the transaction itself, and/or by presenting the cheque(s) at any of the banks where the payee may have an account.

In our discernment, it is also now manifest that traders and businessmen have become reckless and incautious in extending credit where they would heretofore have been extremely hesitant, solely because of the availability of redress by way of criminal proceedings. It is always open to the creditor to insist that the cheques in question be made payable at a place of the creditor's convenience. Today's reality is that every Magistracy is inundated with prosecutions under Section 138 of the NI Act, so much so that the burden is becoming unbearable and detrimental to the disposal of other equally pressing litigation. We think that courts are not required to twist the law to give relief to incautious or impetuous persons; beyond Section 138 of the NI Act."

(Emphasis supplied)

35. It was further observed in Dashrath Rupsingh (supra) that the infusion of the concept of 'cause of action' in criminal proceedings as done by Bhaskaran (supra) perpetuated ambiguity relating to jurisdiction by allowing filing of a complaint under Section 138 at multiple venues. This Court held that the interpretation of Sections 177 and 178 of the CrPC respectively, set forth in the said judgment ran counter to the approach of simplifying law.

It was observed that Section 178 despite being an exception to Section 177 which informs about criminal jurisdiction ordinarily, did not envisage the concept of 'cause of action' as being a consideration germane for determining territorial jurisdiction in criminal trials. Therefore, the plain meaning obtained from Sections 177 and 178 respectively ought not to be warped for commercial exigencies and the logical conclusion flowing therefrom can only be that territorial jurisdiction was anchored at the place where the offence was committed. The relevant portions of the judgment are reproduced below:

"16.1. Unlike civil actions, where the plaintiff has the burden of filing and proving its case, the responsibility of investigating a crime, marshalling evidence and witnesses, rests with the State. Therefore, while the convenience of the defendant in a civil action may be relevant, the convenience of the so-called complainant/victim has little or no role to play in criminal prosecution. Keeping in perspective the presence of the word "ordinarily" in Section 177 CrPC, we hasten to adumbrate that the exceptions to it are contained in CrPC itself, that is, in the contents of the succeeding Section 178. CrPC also contains an explication of "complaint" as any allegation to a Magistrate with a view to his taking action in respect of the commission of an offence; not being a police report.

Prosecution ensues from a complaint or police report for the purpose of determining the culpability of a person accused of the commission of a crime; and unlike a civil action or suit is carried out (or "prosecuted") by the State or its nominated agency. The principal definition of "prosecution" imparted by Black's Law Dictionary, 5th Edn. is "[a] criminal action; a proceeding instituted and carried on by due course of law, before a competent tribunal, for the purpose of determining the guilt or innocence of a person charged with crime". These reflections are necessary because Section 142(b) of the NI Act contains the words, "the cause of action arises under clause (c) of the proviso to Section 138", resulting arguably, but in our opinion irrelevantly, to the blind borrowing of essentially civil law attributes onto criminal proceedings.

16.2. We reiterate that Section 178 admits of no debate that in criminal prosecution, the concept of "cause of action", being the bundle of facts required to be proved in a suit and accordingly also being relevant for the place of suing, is not pertinent or germane for determining territorial jurisdiction of criminal trials. Section 178 CrPC explicitly states that every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. Section 179 is of similar tenor. We are also unable to locate any provision of the NI Act which indicates or enumerates the extraordinary circumstances which would justify a departure from the stipulation that the place where the offence is committed is where the prosecution has to be conducted.

In fact, since cognizance of the offence is subject to the five Bhaskaran [K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510 : 1999 SCC (Cri) 1284] components or concomitants the concatenation of which ripens the already committed offence under Section 138 of the NI Act into a prosecutable offence, the employment of the phrase "cause of action" in Section 142 of the NI Act is apposite for taking cognizance, but inappropriate and irrelevant for determining commission of the subject offence. There are myriad examples of the commission of a crime the prosecution of which is dependent on extraneous contingencies such as obtainment of sanction for prosecution under Section 19 of the Prevention of Corruption Act, 1988.

Similar situation is statutorily created by Section 19 of the Environment (Protection) Act, 1986; Section 11 of the Central Sales Tax Act, 1956; Section 279 of the Income Tax Act; Sections 132 and 308 CrPC; Section 137 of the Customs Act, etc. It would be idle to contend that the offence comes into existence only on the grant of permission for prosecution, or that this permission constitutes an integral part of the offence itself. It would also be futile to argue that the place where the permission is granted would provide the venue for the trial. If sanction is not granted the offence does not vanish. Equally, if sanction is granted from a place other than where the crime is committed, it is the latter which will remain the place for its prosecution."

36. It is abundantly clear from the aforesaid that in Dashrath Rupsingh (supra), this Court viewed the question of jurisdiction strictly from the lens of 'territoriality of offences'. In other words, the payee cannot select the jurisdiction for trial of an offence under Section 138 by presentation of the cheque at a location of his choosing. Though the presentation of cheque at any branch of the payee's bank is permitted by the Act, 1881 for the purposes of commercial convenience, yet it cannot be said that such act of presentation confers jurisdiction on the court within whose territorial jurisdiction the said bank branch may be situated.

37. Since an offence under Section 138 could be said to be committed upon dishonour of cheque by the drawee bank, it was held that such offence would be localised at the place where the drawee bank is situated. Therefore, only the court within whose territorial jurisdiction the drawee bank is situated, is empowered to proceed against an accused person under Section 138.

(ii) Position of law as regards jurisdiction of courts after the enactment of the Amendment Act, 2015

38. The exposition of law in Dashrath Rupsingh (supra) resulted in several representations from the commercial sector to the government, registering protests against the accused-centric interpretation of the jurisdictional issue adopted by this Court. Such representations were considered by the Parliament and the Negotiable Instruments (Amendment) Act, 2015 was enacted by the Parliament to inter alia, clarify the issue of jurisdiction to try the offence under Section 138.

39. The Amendment Act, 2015 introduced sub-section (2) to Section 142 of the Act, 1881. The amended Section 142 reads thus:

"142. Cognizance of offences.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause

(c) of the proviso to section 138:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,-

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.- For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."

(Emphasis supplied)

40. A bare textual reading of the amended Section 142 indicates that the jurisdiction to try the offence under Section 138 has been specified in two circumstances: first, when the cheque is delivered for collection through an account, and secondly, when the cheque is presented for payment otherwise through an account. It is also worth noting that the Explanation to Section 142(2)(a) further clarifies the question of jurisdiction by taking into account the realities of negotiating by way of cheques and the technological advancement in the field. However, this Court as well as the High Courts have been divided over the conjoint reading of Section 142(2)(a) and the Explanation thereto.

41. We find it necessary to resolve this controversy and eliminate divergent positions in this regard, and for that we must understand the true import of the amendments made to Section 142. In such view of the matter, it is apposite to consider the following definitions:

- "Drawer" refers to the maker of a bill of exchange or cheque [See: Section 7 of the Act, 1881].

- "Drawee" refers to the person who is directed to pay the amount specified in the bill of exchange or cheque made by the drawer [See: Section 7 of the Act, 1881].
- "Payee" refers to the person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid [See: Section 7 of the Act, 1881]. The relevant provision reads thus:

"7. "Drawer".- The maker of a bill of exchange or cheque is called the drawer; the person thereby directed to pay is called the drawee.

"Drawee in case of need".- When in the Bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need such person is called a "drawee in case of need".

"Acceptor".- After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor". "

Acceptor for honour".- When a bill of exchange has been noted or protested for non-acceptance or for better security,] and any person accepts it supra protest for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour".

"Payee".- The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee".

(Emphasis supplied)

a. Meaning of the expressions "delivered for collection through an account" and "presentation for payment otherwise through an account"

42. The expression "delivered for collection through an account" is an integral part of Section 142(2)(a) and distinguishes it from the provision in Section 142(2)(b) which comes into operation when a cheque is "presented for payment otherwise through an account". We find it apposite to clarify that the expressions "delivered for collection" and "presented for payment" respectively, are distinct. They operate in separate stages of discharging a liability by way of a cheque.

43. The word "delivery" is defined in Section 46 of the Act, 1881 and reads thus:

"46. Delivery.

The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive. As between parties

standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorised by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein. A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof. A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof."

(Emphasis supplied)

44. What is discernible from the aforesaid is that the "making" of a cheque is complete only upon delivery of the same by the drawer. The act of "delivery" thus, creates a relationship between the drawer and the payee. Such relationship is what describes the entitlement of the payee to the amount of money for which the cheque is drawn and enables the payee to encash the same.

45. Upon perusal of Section 142(2)(a), we are of the considered opinion that the terms "delivered" and "for collection through an account" are to be read in such a manner that the latter describes the nature of delivery. The plain reading of Section 46 supports this line of argument as the definition contained therein indicates that the making of the cheque is complete upon the act of delivery.

Therefore, the nature of the cheque becomes crystallized as an account payee cheque once the drawer delivers it to the payee who further delivers it to the bank in which he maintains his account. Once the cheque is delivered by the payee to his bank, the "making" of the cheque is said to be complete. The inclusion of the expression "for collection through an account" in Section 142(2)(a) is only to indicate the intention of the drawer to "make" the cheque in such a manner that it can only result in a transaction between the bank accounts of the drawer and the payee.

46. Presentment, on the other hand, is the stage that immediately succeeds "delivery". The expression "presentment for payment" is defined under Section 64 of the Act, 1881. It stipulates that a cheque must be presented for payment to the maker of such cheque (the drawer) or the person to whom directions are given to pay the amount specified in the cheque (the drawee). Such presentment must be by or on behalf of the payee. The relevant provision reads thus:

"64. Presentment for payment.

(1) Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder. Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Exception.- Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

(2) Notwithstanding anything contained in section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification:

Provided that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly."

(Emphasis supplied)

47. Therefore, presentment creates a relationship between the drawee bank and the payee (in case of an account bearer cheque) or the payee's bank (in case of an account payee cheque).

48. We may with a view to obviate any confusion, clarify at the threshold that presentment under Section 64 of the Act, 1881 and presenting of cheque by the payee to his bank are two distinct acts. The presentation of cheque by a payee to the payee's bank is included in the concept of "delivery" defined under Section 46 of the Act, 1881. It is nothing but an extension of delivery in the case of non-transferable account payee cheques. The jurisdiction in such cases has been anchored by Section 142(2)(a) at the place where branch of the bank in which the payee maintains an account is situated. The sketch below explains the concepts of "delivery" and "presentment":



b. Meaning of the expression "maintains an account" under Section 142(2)

49. Having discussed the bifurcation created by the legislature for the purposes of determining jurisdiction as regards any dispute pertaining to account payee cheques and account bearer cheques respectively, we may now explain the meaning of the expression "the branch of the bank where the payee or holder in due course, as the case maybe, maintains the account".

50. This Court in *Bijoy Kumar Moni v. Paresh Manna*, reported in 2024 SCC OnLine SC 3833, had the occasion to provide an exhaustive explanation for the expression "maintains an account" as it appears in Section 138 of the Act, 1881. The issue therein was whether it was permissible for a third party to draw a cheque on the bank account of the company of which he was a director, to discharge his individual liability. This Court observed that the expression "on an account maintained by him with a banker" describes an intrinsic relationship between an account holder and the bank in which he holds such account.

Such relationship could not be altered by a delegation of authority. Therefore, even though a person may draw a cheque on the bank account of another person, it is not possible to hold such a person who draws the cheque, liable for the offence under Section 138 as he is not the one who maintains the account with the bank. The relevant portion of the judgment in *Bijoy Kumar Moni* (supra) is reproduced below:

"45. It is of vital importance to understand the import of the expression "on an account maintained by him with a banker" used in Section 138 of the NI Act. The expression, in our considered opinion, describes the relationship between the account holder and the banker. This relationship is fundamental to the application of Section 138. The act of maintaining an account is exclusively tied to the

account holder and does not extend to any third party whom the account holder may authorize to manage the account on its behalf.

Therefore, any delegation of authority to manage the account does not alter the intrinsic relationship existing between the account holder and the banker as envisaged under the NI Act. Corporate persons like companies, which are mere legal entities and have no soul, mind or limb to work physically, discharge their functions through some human agency recognised under the law to work. Therefore, if some function is discharged by such human agency for and on behalf of the company it would be an act of the company and not attributable to such human agent.

One such instance of discharge of functions could be the authority to manage the bank accounts of the company, issue and sign cheques on its behalf, etc. which may be delegated to an authorised signatory. However, such authorisation would not render the authorised signatory as the maker of those cheques. It is the company alone which would continue to be the maker of these cheques, and thus also the drawer within the meaning of Section 7 of the NI Act.

(Emphasis supplied)

51. It is abundantly clear from the aforesaid exposition that when a person maintains an account with a bank, he establishes a relationship with such bank for the management of his money. The scheme of the Act, 1881 leaves no manner of doubt in our minds that such relationship forms the substructure of all transactions in respect of the account so maintained.

52. Having clarified the meaning of the expression "maintains an account", we may proceed to determine the precise details of the relationship between a person and the bank in which he maintains an account. A bare perusal of Section 138 indicates that for an offence to be made out thereunder, a person must draw a cheque on an account maintained by him with a bank. There is no further stipulation as regards the nature of such account or requirement of any other details of the bank that may be relevant for the purpose of adjudication. Therefore, what Section 138 describes by use of the expression "on an account maintained by him with a banker" is a simpliciter relationship between a person and his banker.

53. Sub-section (2) of Section 142 adopts a similar language, to indicate the same relationship as described in Section 138. However, it does so with a slight modification. The expressions "the branch of the bank where the payee or holder in due course, as the case maybe, maintains the account" or alternatively "the branch of the drawee bank where the drawer maintains the account" include the word "branch". This indicates that the payee or drawer, by maintaining the

account in a particular branch of the bank, share a relationship not with the bank as a whole but with the specific branch thereof (we may refer to this specific branch as the "home branch" for ease of exposition).

Therefore, the inclusion of "branch" in Sections 142(2)(a) and (b) places an additional condition for determining the place where the payee or drawer maintains the account. This additional condition is placed on the relationship between a person and his banker, in order to decide the question of jurisdiction and streamline the process of adjudication. In other words, for deciding jurisdiction, it is not sufficient to establish whether a person maintains an account in a particular bank. It is necessary to also ascertain the specific branch of the bank in which he maintains the account to completely and unambiguously decide the said question.

c. Conjoint reading of Section 142(2)(a) and the Explanation thereto

54. It is limpid from the aforesaid discussion that the necessary corollary of including 'branch' as a factor that shapes the relationship between the payee/drawer and their bank, is that a complaint under Section 138 would be triable only by the court in whose local jurisdiction the branch of the bank where the payee/drawer maintain their account, is situated.

55. Before we explain the Section 142(2)(a), we deem it fit to briefly discuss Section 142(2)(b). In the case of account bearer cheques governed by Section 142(2)(b), the provision of jurisdiction by way of the Amendment Act, 2015 is partially reinforced by the position of law expounded in Dashrath Rupsingh (supra). Section 142(2)(b) confers jurisdiction on the court within whose local area the drawee bank is situated and upon presentation, the cheque comes to be dishonoured. It is, however, worth noting that since the introduction of 'payable at par' cheques, the encashment of cheques can happen at any branch of the drawee bank.

It is not necessary that the branch which is honouring or dishonouring the cheque may be that particular branch in which the drawer maintains the account. Therefore, the technological advancements in the banking sector have made it so that the offence of dishonour of cheque can be committed at any branch of the drawee bank. In such a case, if the law as explained in Dashrath Rupsingh (supra) is applied strictly then the jurisdiction would be fixed at the branch of the drawee bank where the cheque was actually dishonoured.

Such branch may not necessarily be the branch in which the drawer maintains an account. Having taken into account this possibility, we recognize that the Amendment Act, 2015 has worded Section 142(2)(b) in such a manner that even if a cheque is dishonoured elsewhere, the jurisdiction for trial of the complaint

under Section 138 would lie with the court within whose local jurisdiction the branch of the drawee bank in which the drawer maintains the account, is situated.

56. The legislature has adopted a similar route under Section 142(2)(a) to determine jurisdiction in cases pertaining to the dishonour of account payee cheques. The distinction between Section 142(2)(a) and (b) respectively is not only limited to the nature of the cheque sought to be encashed but also the stage at which jurisdictional ambiguity may arise, i.e., at the stage of delivery or presentment in the case of account payee cheque and account bearer cheque respectively.

In the case of an account payee cheque, the jurisdictional uncertainty may arise in the first stage of delivery itself. As discussed in the aforesaid, "delivery" is continued by the payee to also include delivery of the cheque to the payee's bank. In such a case, the act of making of the cheque is influenced by the payee allowing him to deliver the cheque for collection at any branch of the bank in which he maintains an account.

57. If the aforesaid be so and the jurisdiction is to be decided on the basis of the place where the cheque was delivered to the bank of the payee, the same would lead to conferring unbridled power to the payee in deciding jurisdiction which may be misused for the purposes of forum shopping. We are cognizant of the fact that the dictum in *Dashrath Rupsingh* (supra) sought to minimize such abuse of law that arose from the wide ambit of jurisdiction specified in *Bhaskaran* (supra).

While a bare perusal of the amended Section 142 and the Statement of Objects and Reasons of the Amendment Act, 2015 shows that the Parliament has made a departure from the offence-centric understanding of jurisdiction in *Dashrath Rupsingh* (supra), yet we find it difficult to accept that the legislature would relegate the position of law back to a situation that would facilitate its manipulation.

58. At this juncture, it is relevant to refer to the Explanation to Section 142(2)(a). A bare textual reading of the provision indicates that the Explanation creates a legal fiction that a cheque, when delivered for collection through an account, at 'any branch' of the bank in which the payee maintains the account, would be deemed to have been delivered to the particular branch of the bank in which the payee maintains his account, i.e., the home branch of the payee.

Therefore, by way of Explanation, the legislature ensures convenience of transaction by recognizing that a payee may deliver a cheque at 'any branch' of his bank. However, in a situation where such cheque comes to be dishonoured, it would be deemed that the cheque was delivered at the home branch so as to

empower the court, within whose local territorial jurisdiction the said branch falls, to try the complaint in this regard.

59. We may advert to the following illustrative table to lend further clarity to the aforesaid exposition:

Payee's Home Branch: DELHI	Drawer's Home Branch: MUMBAI
Drawer issues the cheque in Ahmedabad.	
SECTION 142(2)(a)	SECTION 142(2)(b)
In case of an account payee cheque (governed by Section 142(2)(a)), Payee delivers the cheque for collection in branch of the payee's bank situated in CHENNAI .	In case of an account bearer cheque (governed by Section 142(2)(b)), Payee presents the cheque in branch of the drawee bank situated at BANGALORE .
Jurisdiction in case of account payee cheque, under Section 142(2)(a) is vested with the courts at DELHI .	Jurisdiction in case of account bearer cheque, under Section 142(2)(b) is vested with the courts at MUMBAI .
Reason:	Reason:
The legal fiction created in the Explanation to Section 142(2)(a) stipulates that jurisdiction would lie at the Home Branch of the Payee (DELHI) irrespective of where the cheque has been delivered by the Payee (in this case at Chennai).	The plain language of Section 142(2)(b) indicates that jurisdiction in cases of account bearer cheques would lie at the Home Branch of the Drawer (MUMBAI) irrespective of where the cheque has been presented by the Payee (in this case, at Bangalore).

60. This Court had the occasion to apply the principles of jurisdiction laid down in Section 142(2)(a) for the first time in *Bridgestone India (P) Ltd. v. Inderpal Singh*, reported in (2016) 2 SCC 75 wherein it was observed that the legal position declared in *Dashrath Rupsingh (supra)* has been overturned by the Negotiable Instruments (Amendment) Second Ordinance, 2015 whereby Section 142 was amended such that the jurisdiction would be fixed at the place where the cheque is delivered for collection, i.e., the branch of the bank in which the payee maintains an account. The relevant portions of the judgment in *Bridgestone (supra)* are reproduced below:

"11. In order to overcome the legal position declared by this Court in *Dashrath Rupsingh Rathod* case [*Dashrath Rupsingh Rathod v. State of Maharashtra*, (2014) 9 SCC 129 : (2014) 4 SCC (Civ) 676 : (2014) 3 SCC (Cri) 673], the learned counsel for the appellant has drawn our attention to the Negotiable Instruments (Amendment) Second Ordinance, 2015 (hereinafter referred to as "the Ordinance").

A perusal of Section 1(2) thereof reveals that the Ordinance would be deemed to have come into force with effect from 15-6-2015. It is, therefore, pointed out to us that the Negotiable Instruments (Amendment) Second Ordinance, 2015 is in force. Our attention was then invited to Section 3 thereof, whereby, the original Section 142 of the Negotiable Instruments Act, 1881, came to be amended, and also, Section 4 thereof, whereby, Section 142-A was inserted into the Negotiable Instruments Act.

13. A perusal of the amended Section 142(2), extracted above, leaves no room for any doubt, specially in view of the Explanation thereunder, that with reference to an offence under Section 138 of the Negotiable Instruments Act, 1881, the place where a cheque is delivered for collection i.e. the branch of the bank of the payee or holder in due course, where the drawee maintains an account, would be determinative of the place of territorial jurisdiction."

(Emphasis supplied)

61. We are of the considered view that the paraphrasing of Section 142(2)(a) as done in *Bridgestone* (supra) bears some relevance and requires explanation. This Court applied the provision as intended by the language of Section 142(2)(a), however, in the process of exposition, rephrased the same and the Explanation thereto in a manner that gives primacy to the expression "for collection" without indicating the complete context in which it occurs in the provision.

A perusal of Section 142(2)(a) reflects that the expression "for collection through an account" is employed by the legislature to identify the nature of the cheque as an account payee cheque. Therefore, the use of the phrase "delivered for collection" with incomplete context in *Bridgestone* (supra) gave rise to a cleavage of opinion. This is evident from this Court's decision in *Yogesh Upadhyay v. Atlanta Ltd.*, reported in (2023) 19 SCC 404.

62. In *Yogesh Upadhyay* (supra), the petitioner therein had prayed for transfer of the two complaints filed in Nagpur to Delhi, as the complaint in respect of other four cheques, between the same parties, were registered before the competent court in Delhi. This Court, on a conjoint reading of the Statement of Objects and Reasons of the Amendment Act, 2015 and Para 13 of *Bridgestone* (supra) respectively, held that the jurisdiction to try an offence under Section 138 will lie with a court within whose local jurisdiction the cheque has been delivered for collection i.e., through an account in the branch of the bank where the payee maintains an account. The relevant paragraphs of the judgment are reproduced below:

"12. Perusal of the Statement of Objects and Reasons in Amendment Act 26 of 2015 makes it amply clear that insertion of Sections 142(2) and 142-A in the

1881 Act was a direct consequence of the judgment of this Court in Dashrath Rupsingh Rathod [Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129 : (2014) 4 SCC (Civ) 676 : (2014) 3 SCC (Cri) 673]. Therefore, the use of the phrase: "shall be inquired into and tried only by a court within whose local jurisdiction." in Section 142(2) of the 1881 Act is contextual to the ratio laid down in Dashrath Rupsingh Rathod [Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129 : (2014) 4 SCC (Civ) 676 : (2014) 3 SCC (Cri) 673] to the contrary, whereby territorial jurisdiction to try an offence under Section 138 of the 1881 Act vested in the court having jurisdiction over the drawee bank and not the complainant's bank where he had presented the cheque. Section 142(2) now makes it clear that the jurisdiction to try such an offence would vest only in the court within whose jurisdiction the branch of the Bank where the cheque was delivered for collection, through the account of the payee or holder in due course, is situated. The newly inserted Section 142-A further clarifies this position by validating the transfer of pending cases to the courts conferred with such jurisdiction after the amendment.

13. The later decision of this Court in Bridgestone India (P) Ltd. v. Inderpal Singh [Bridgestone India (P) Ltd. v. Inderpal Singh, (2016) 2 SCC 75 : (2016) 1 SCC (Civ) 588 : (2016) 1 SCC (Cri) 472] affirmed the legal position obtaining after the amendment of the 1881 Act and endorsed that Section 142(2)(a) of the 1881 Act vests jurisdiction for initiating proceedings for an offence under Section 138 in the court where the cheque is delivered for collection i.e. through an account in the branch of the bank where the payee or holder in due course maintains an account. This Court also affirmed that Dashrath Rupsingh Rathod [Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129 : (2014) 4 SCC (Civ) 676 : (2014) 3 SCC (Cri) 673] would not non-suit the company insofar as territorial jurisdiction for initiating proceedings under Section 138 of the 1881 Act was concerned."

(Emphasis supplied)

63. We also find it apposite to refer to the Statement of Objects and Reasons of the Amendment Act, 2015. The same reads thus:

"Negotiable Instruments (Amendment) Act, 2015 Prefatory Note-Statement of Objects and Reasons.-

3. The Supreme Court, in its judgment dated 1st August, 2014, in the case of Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129, held that the territorial jurisdiction for dishonour of cheques is restricted to the court within whose local jurisdiction the offence was committed, which in the present context is where the cheque is dishonoured by the bank on which it is drawn.

The Supreme Court has directed that only those cases where, post the summoning and appearance of the alleged accused, the recording of evidence has commenced as envisaged in Section 145(2) of the Negotiable Instruments Act, 1881, will proceeding continue at that place. All other complaints (including those where the accused/respondent has not been properly served) shall be returned to the complainant for filing in the proper court, in consonance with exposition of the law, as determined by the Supreme Court.

4. Pursuant to the judgment of the Supreme Court, representations have been made to the Government by various stakeholders, including industry associations and financial institutions, expressing concerns about the wide impact this judgment would have on the business interests as it will offer undue protection to defaulters at the expense of the aggrieved complainant; will give a complete go-by to the practice/concept of 'Payable at Par cheques' and would ignore the current realities of cheque clearing with the introduction of CTS (Cheque Truncation System) where cheque clearance happens only through scanned image in electronic form and cheques are not physically required to be presented to the issuing branch (drawee bank branch) but are settled between the service branches of the drawee and payee banks; will give rise to multiplicity of cases covering several cheques drawn on bank(s) at different places; and adhering to it is impracticable for a single window agency with customers spread all over India.

5. To address the difficulties faced by the payee or the lender of the money in filing the case under Section 138 of the said Act, because of which, large number of cases are stuck, the jurisdiction for offence under Section 138 has been clearly defined. The Negotiable Instruments (Amendment) Bill, 2015 provides for the following, namely-

(i) filing of cases only by a court within whose local jurisdiction the bank branch of the payee, where the payee presents the cheque for payment, is situated;

(ii) stipulating that where a complaint has been filed against the drawer of a cheque in the court having jurisdiction under the new scheme of jurisdiction, all subsequent complaints arising out of Section 138 of the said Act against the same drawer shall be filed before the same court, irrespective of whether those cheques were presented for payment within the territorial jurisdiction of that court;

(iii) stipulating that if more than one prosecution is filed against the same drawer of cheques before different courts, upon the said fact having been brought to the notice of the court, the court shall transfer the case to the court having jurisdiction as per the new scheme of jurisdiction; and

(iv) amending Explanation I under Section 6 of the said Act relating to the meaning of expression "a cheque in the electronic form", as the said meaning is

found to be deficient because it presumes drawing of a physical cheque, which is not the objective in preparing "a cheque in the electronic form" and inserting a new Explanation III in the said section giving reference of the expressions contained in the Information Technology Act, 2000."

(Emphasis supplied)

64. What has been conveyed by this Court in *Yogesh Upadhyay* (supra) is that the account which the payee maintains in a particular branch of the bank, serves only as a conduit for the payee to deliver the cheque at any branch of the bank, for subsequent presentment to the drawee bank. In other words, the payee is only required to maintain an account in a branch of the bank, for the said bank to present the cheque to the drawee bank from any of its branches. Therefore, the act of "maintaining an account in a branch" is to enable the primary action of "delivery for collection". Accordingly, the jurisdiction must lie at the place where the primary action was performed, i.e., the branch of the payee's bank where the cheque was actually delivered for collection, is situated.

65. The reasoning adopted in *Yogesh Upadhyay* (supra) may find some support in the literal reading of Para 5(i) of the aforesaid Statement of Objects and Reasons which states that cases would be filed in the court having jurisdiction over the branch of the bank in which the payee presents the cheque for payment. It is apposite to note that, on the face of it, the language used in the Statement of Objects and Reasons is not synonymous with the language of Section 142(2)(a) and the Explanation thereto. Therefore, in our considered view, *Yogesh Upadhyay* (supra) could not have derived support from the Statement of Objects and Reasons.

66. We say so because no value could have been attached to the language adopted in the Statement of Objects and Reasons for the purpose of discerning the true meaning and effect of a substantive provision occurring in the statute book. This principle of interpretation has been settled by this Court in *Devadoss v. Veera Makali Amman Koil Athalur*, reported in (1998) 9 SCC 286 wherein it was observed thus:

"21. The question arises naturally whether the court can refer to the Statement of Objects and Reasons mentioned in a bill when it is placed before the legislature and even if it is permissible, to what extent the court can make use of the same. On this aspect, the law is well settled. In *Narain Khamman v. Parduman Kumar Jain* [(1985) 1 SCC 1] it was stated that though the Statement of Objects and Reasons accompanying a legislative bill could not be used to determine the true meaning and effect of the substantive provisions of a statute, it was permissible to refer to the same for the purpose of understanding the background, the antecedent

state of affairs, the surrounding circumstances in relation to the statute and the evil which the statute sought to remedy."

(Emphasis supplied)

67. Further, we must also closely scrutinize the reliance placed by Yogesh Upadhyay (supra) on the phrasing of Section 142(2)(a) in *Bridgestone* (supra). We say so because the application of Section 142(2)(a) in *Bridgestone* (supra), in no manner, supports how the provision was applied in *Yogesh Upadhyay* (supra). Though the judgment in *Yogesh Upadhyay* (supra) does not mention where the branch of the bank was situated in which the payee maintained an account, was situated, yet it is discernible from the decision that this Court gave primacy to the place where the cheque was "delivered for collection" when it upheld the correctness of institution of complaints in Nagpur.

68. In our considered view, the interpretation of jurisdiction under Section 142(2)(a) in *Yogesh Upadhyay* (supra) is not borne out of the statutory scheme of the Act, 1881. A perusal of the judgment shows that it did not take into account the deeming fiction put forth in the Explanation to Section 142(2)(a) that delivery of a cheque at any branch of the payee's bank will be deemed to have been delivered at the branch of the bank in which the payee maintains the account, i.e., the home branch of the payee. Even though, this Court in *Yogesh Upadhyay* (supra) does not go so far as to discuss the meaning and import of the Explanation, yet we may attempt to harmoniously read the language of the Explanation with the reasons provided in the said judgment in the interests of gauging the correct position of law.

69. Therefore, in arguendo, we may look at the Explanation from one another angle. The language used in the Explanation may also create a legal fiction that would enable 'any branch' of the payee's bank to be deemed as 'the branch in which the payee maintains an account' (the "home branch"). This construction of the Explanation would mean that by virtue of Section 142(2)(a), the court within whose local jurisdiction the home branch is situated, has an inherent power to try a complaint under Section 138 filed by the payee.

However, the payee delivered the cheque for collection at another branch instead of the home branch. According to the dictum as laid in *Yogesh Upadhyay* (supra), primacy has to be accorded to the action of the payee in "delivery of the cheque for collection" for the purpose of determining jurisdiction. The only understanding that we can obtain from the aforesaid is that the court exercising territorial jurisdiction over the home branch will have to share the inherent powers that it possesses under Section 142(2)(a), with the court in whose jurisdiction such other branch is situated, in which the payee delivered the cheque for collection.

70. Having undertaken the academic exercise of understanding the ways in which the Explanation may be read, we do not have any qualms in saying that the aforesaid construction of Section 142(2)(a) and the Explanation thereto does not appeal to us. We say so for the following two reasons:

(i) First, the understanding of the Explanation in such a manner leads to distorting of the plain language of Section 142(2)(a). This Court, in *Dashrath Rupsingh* (supra) observed that "the legislature does not ordain with one hand and immediately negate it with the other". We find the said principle to be of much significance especially while reading explanations attached to the provisions that seek to clarify the operation of such provision. In our considered view, an explanation cannot be raised to such a high pedestal that the provision which it intends to clarify becomes a mere supporting device.

(ii) Secondly, a perusal of the Statement of Objects and Reasons to the Amendment Act, 2015 indicates that the legislature intended to change the process of determination of jurisdiction for trial of complaints under Section 138. The inclusion of Section 142(2) in the Act, 1881, which is a special legislation, meant that the jurisdictional vacuum was filled. The natural consequence of such amendment was that there remained no requirement of approaching the issue of jurisdiction from an ordinary criminal perspective as provided in the CrPC, as was done in *Dashrath Rupsingh* (supra).

However, the Statement of Objects and Reasons gives no indication that the said judgment made erroneous observations about the misuse of the wide ambit of jurisdiction by complainants to the inconvenience of the accused persons. In our considered view, it could not have been the intention of the Parliament to let abuse of law go unchecked. It is for this reason that the judgment in *Yogesh Upadhyay* (supra) does not impress us. If we accept the construction placed on Section 142(2)(a) by the decision in *Yogesh Upadhyay* (supra), we will be allowing a payee to manipulate the question of jurisdiction in his favour by letting him decide where he wants to deliver the cheque for collection. We are of the firm opinion that the legislature could not have intended to let misuse perpetuate in such a manner.

71. We find it apposite to also look into the decision rendered in *Shri Sendhur Agro & Oil Industries v. Kotak Mahindra Bank Ltd.*, reported in 2025 SCC OnLine SC 508 wherein this Court placed reliance on both *Bridgestone* (supra) as well as *Yogesh Upadhyay* (supra) respectively. The phraseology employed in *Sendhur Agro* (supra) suggests that this Court was in agreement with the law expounded in *Yogesh Upadhyay* (supra) in respect of "delivery for collection".

However, upon a closer examination, it is clear that this Court understood the term "delivered" and "for collection through an account" in a disjunct manner

which is not in consonance with how Yogesh Upadhyay (supra) perceived Section 142(2)(a). It was observed that presentation of a cheque to the drawee bank will be "through the account" of the payee and that such place would be determinative for the purpose of identifying jurisdiction. The relevant portion of the judgment in Sendhur Agro (supra) is reproduced below:

"61. It is clear on a reading of Section 142(2)(a) and the Explanation thereto that, for the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.

62. A conjoint reading of Section 142(2)(a) along with the explanation thereof, makes the position emphatically clear that, when a cheque is delivered or issued to a person with liberty to present the cheque for collection at any branch of the bank where the payee or holder in due course, as the case may be, maintains the account then, the cheque shall be deemed to have been delivered or issued to the branch of the bank, in which, the payee or holder in due course, as the case may be, maintains the account, and the court of the place where such cheque was presented for collection, will have the jurisdiction to entertain the complaint alleging the commission of offence punishable under Section 138 of the N.I. Act.

In that view of the position of law, the word 'delivered' used in Section 142(2)(a) of the N.I. Act has no significance. What is of significance is the expression 'for collection through an account'. That is to say, delivery of the cheque takes place where the cheque was issued and presentation of the cheque will be through the account of the payee or holder in due course, and the said place is decisive to determine the question of jurisdiction."

(Emphasis supplied)

72. What is discernible from the aforesaid exposition is that this Court considered the requirement of "maintaining of the account" implicit in "for collection through an account". In other words, once it is identified that the cheque in question is an account payee cheque, the delivery must be to such branch in which the payee maintains the account as it is this branch of the bank that will receive the funds in the account maintained by the payee, from the drawee bank which will debit the drawer's account to send such amount.

However, the necessity of delivery of an account payee cheque to the home branch is only legal and not commercial. It is to address commercial exigencies that the legislature enacted the Explanation to Section 142(2)(a). The deeming fiction in the Explanation ensures that even if a cheque is delivered to a branch other than the home branch for commercial convenience, it shall be considered to

have been delivered to the home branch for the legal purpose of determining jurisdiction. This understanding is also apparent from this Court's recent judgment in *Prakash Chimanlal Sheth v. Jagruti Keyur Rajpopat*, reported in 2025 SCC OnLine SC 1511.

73. The aforesaid comparison may be better illustrated through the following diagram depicted hereunder:



74. The above diagrammatic representation shows that each judgment has considered specific phrases together or disjunct from each other due to which there have been variations in understanding of the provision in Section 142(2)(a) and the Explanation thereto.

75. In such view of the matter, we are constrained to observe that the position of law expounded in Yogesh Upadhyay (supra) is per incuriam.

(iii) Determination of the issues framed

a. Whether the MM, Kolkata has the jurisdiction to try the complaint?

76. In view of the aforesaid discussion, it is as clear as a noon day that the jurisdiction to try a complaint filed under Section 138 in respect of a cheque delivered for collection through an account, i.e., an account payee cheque, is vested in the court within whose local jurisdiction the branch of the bank in which the payee maintains the account, i.e., the payee's home branch, is situated.

Therefore, we find no force in the petitioner's argument that as per the relevant provisions of the CrPC, the jurisdiction to try the complaint under Section 138 is vested in the court within whose local bounds the drawee bank is situated where the cheque was dishonoured. We say so because the enactment of the Amendment Act, 2015 and the introduction of Section 142(2) thereby, being a special legislation, occupies the field over a general procedural legislation viz. CrPC. Thus, the MM, Kolkata does not have jurisdiction to try the case.

b. Whether a case of transfer of the complaint from the court of JMFC, Bhopal to MM, Kolkata is made out?

77. The petitioner, who is the accused company in the complaint instituted by the respondent-complainant, has prayed for transfer of the complaint on the ground that the MM, Kolkata, before returning the complaint, had already reached the stage of recording of evidence under Section 145(2) of the Act, 1881.

78. It is apposite to note that Section 142A of the Act, 1881 provides for transfer of pending cases under Section 138, to the court having jurisdiction in terms of Section 142(2). We are aware that the jurisdiction to try the complaint in the instant case lied exclusively with the JMFC, Bhopal. If the matter had remained pending at the stage prior to the recording of evidence, there would have been no difficulty in accepting the deemed transfer of the complaint under Section 142A(1) to the court of JMFC, Bhopal from the court of MM, Kolkata.

However, much water has floated under the bridge. We were informed that the court of MM, Kolkata returned the complaint when it had already reached the stage of recording of evidence under Section 145(2) of the Act, 1881. In such

view of the matter, we are of the considered opinion that allowing the parties to contest the complaint afresh before the JMFC, Bhopal would amount to a procedural impropriety that may prove to be detrimental to the case of the accused.

79. In *Dashrath Rupsingh* (supra), this Court, with a view to obviate and eradicate legal complications, had allowed the category of complaint cases in which proceedings had reached the stage of recording evidence under Section 145(2), to remain in the court where they were pending, despite such courts not being vested with jurisdiction in terms of the judgment. The relevant portion of the judgment is reproduced below:

"22. To obviate and eradicate any legal complications, the category of complaint cases where proceedings have gone to the stage of Section 145(2) or beyond shall be deemed to have been transferred by us from the court ordinarily possessing territorial jurisdiction, as now clarified, to the court where it is presently pending."

80. In light of the observations in *Dashrath Rupsingh* (supra) and to meet the ends of justice, we are of the view that the instant case be transferred to the jurisdiction of MM, Kolkata and the proceedings be resumed from the stage before the order of return of complaint dated 28.07.2016.

D. CONCLUSION

81. Having regard to the pleadings in the memorandum of the transfer petition, we have reached the conclusion that a case has been made out for transfer of the proceedings in question.

82. In the result, the petition succeeds and is hereby allowed. All other connected transfer petitions are also disposed of in the aforesaid terms.

83. The Registry shall forward one copy each of this judgment to all the High Courts.

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

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

.....**J. (R. Mahadevan)**

New Delhi.

November 28, 2025

IN THE SUPREME COURT OF INDIA

Yogendra Pal Singh
Vs.
Raghvendra Singh alias Prince and Anr.

**[Criminal Appeal No. _____ of 2025
arising out of SLP (Crl.) No. 8075 of 2025]**

Head Note – Marriage, in its true essence, is a sacred and noble institution founded on mutual trust, companionship, and respect. However, in recent times, this pious bond has regrettably been reduced to a mere commercial transaction. The evil of dowry, though often sought to be camouflaged as gifts or voluntary offerings, has in reality become a means to display social status and to satiate material greed.

The phenomenon of dowry deaths represents one of the most abhorrent manifestations of this social malaise, where the life of a young woman is extinguished within her matrimonial home – not for any fault of her own, but solely to satisfy the insatiable greed of others. Such heinous offences strike at the very root of human dignity and violate the constitutional guarantees of equality and life with dignity under Articles 14 and 21 of the Constitution of India. They corrode the moral fibre of the community, normalize violence against women, and erode the foundations of a civilized society.

JUDGMENT

R. Mahadevan, J.

1. Leave granted.
2. The challenge in the present appeal is to the judgment and order dated 09.01.2025¹ passed by the High Court of Judicature at Allahabad² in Criminal Misc. Bail Application No. 7768 of 2024, whereby the High Court granted bail to Respondent No. 1 / accused, in connection with Case Crime No. 415 of 2023 registered at Police Station Kotwali, District Fatehpur, Uttar Pradesh, for offences punishable under Sections 498A, 304B, and 328 of the Indian Penal Code, 1860³ read with Sections 3 and 4 of the Dowry Prohibition Act, 1961⁴.
3. This appeal has been preferred by the appellant, who is the father of the deceased Aastha @ Saarika, seeking cancellation of bail granted to Respondent No. 1/ Accused - Husband, Raghvendra Singh @ Prince. The appellant's daughter died on 05.06.2023, i.e., within four months of her marriage, in highly suspicious circumstances by allegedly consuming poison.

4. The facts, as projected by the appellant, are as follows:

4.1. The appellant's daughter Aastha @ Saarika was married to Respondent No.1 - Raghvendra Singh @ Prince, on 22.02.2023 according to Hindu rites and rituals. At the time of marriage, the appellant spent approximately Rs. 22 lakhs in cash, gave articles worth Rs. 10 lakhs and jewellery worth Rs. 15 lakhs to the first respondent's family.

4.2. Soon after marriage, the deceased was subjected to cruelty and harassment by Respondent No. 1 and his family members on the pretext that the dowry given was insufficient. The accused persons persistently demanded a Fortuner car as additional dowry and subjected the deceased to mental and physical torture.

4.3. When the deceased came to her parental home during the chhathi ritual, she informed the appellant about the cruelty and demand for a Fortuner car. Ten days before her death, on 02.06.2023, she was again sent back to her matrimonial home only after assurance by Respondent No. 1 that such harassment would not be repeated.

4.4. On 04.06.2023, during a family function at Kaushambi, there was a quarrel between Respondent No. 1 and the deceased. Later that night, around 01.30 am, the deceased telephoned her elder sister Diksha in a distressed state, crying and seeking urgent help. At that time, she disclosed that Respondent No. 1 along with his relatives had forcibly administered some foul-smelling substance to her, due to which she was feeling uneasy.

4.5. The deceased was immediately taken to Sadar Hospital, Fatehpur, where she was found with froth emanating from her mouth. Despite medical intervention, her condition deteriorated and she expired while being shifted to Kanpur.

4.6. A post-mortem examination was conducted on 05.06.2023, but the cause of death was not initially ascertained. Thereafter, the viscera was sent to a forensic science laboratory for examination, and the FSL report confirmed the presence of aluminium phosphide poison.

4.7. Despite serious allegations, the police did not arrest the accused immediately. After investigation, charge sheet no.557 of 2023 dated 30.10.2023 was filed, implicating only Respondent No. 1/ husband, and excluding other named in-laws.

4.8. Respondent No. 1 approached the Sessions Court seeking bail, which was dismissed by order dated 20.10.2023. However, the High Court, by the impugned order, allowed his bail application.

4.9. Aggrieved thereby, the appellant is before this Court with the present appeal.

5. Learned senior counsel for the appellant assailed the impugned order granting bail to Respondent No. 1 on multiple grounds. It was submitted that the High Court failed to consider the gravity of the offence, the nature of evidence available against the accused, as well as the statutory presumption under Section 113B of the Indian Evidence Act, 1872, which squarely applies in cases of dowry death occurring within seven years of marriage.

5.1. It was contended that the present case involves the most serious allegations where the deceased was continuously harassed for dowry by Respondent No. 1 / husband, and in the course of such harassment, was poisoned to death on 05.06.2023, i.e., within four months of her marriage. According to the learned senior counsel, the post-mortem report records an ante-mortem injury - an abrasion on the left forearm - and the Forensic Science Laboratory report categorically confirmed the presence of aluminium phosphide poison, thereby corroborating the prosecution's case of homicidal poisoning.

5.2. Learned senior counsel placing reliance on the chargesheet, which records that the accused's uncle, Tej Bahadur Singh alias Ram Bahadur, is politically active, having contested the 2017 Assembly Elections, and owns several plots, agricultural lands, brick kilns, and multiple vehicles, submitted that the family of the accused is highly influential and wields considerable clout in the area. It is to be noted that though the uncle was initially arraigned as an accused along with his wife, Vijay Shri, their names were later dropped from the chargesheet, which according to the learned senior counsel, suggests that there could be serious doubts regarding the fairness of the investigation.

5.3. It was further submitted that the investigation in this case has been carried out in an impartial manner since the inception. Respondent No. 1/ husband was arrested only after three months of the FIR, while the other named accused were never arrested. The chargesheet filed on 30.10.2023 did not fairly reflect the involvement of all accused. In fact, the Assistant Prosecution Officer, Fatehpur, vide letter dated 16.11.2023, pointed out several deficiencies in the investigation and requested the Joint Director, Prosecution, Fatehpur to seek a fresh legal opinion after collecting the material evidence which had been ignored by the investigating officer. This eventually led to the transfer of the investigation to the CB-CID itself indicative of the gravity of the offence and the shortcomings in the earlier investigation.

5.4. Learned senior counsel argued that in such circumstances, any leniency shown towards the accused would severely prejudice the trial, as there exists a strong likelihood of tampering with the evidence and influencing the prosecution witnesses and the High Court, while granting bail, failed to appreciate this real and imminent threat.

5.5. It was also contended that the High Court committed an error in relying upon the judgments in *Satender Kumar Antil v. CBI*⁵ and *Manish Sisodia v. Directorate of Enforcement*⁶, since both these cases are clearly distinguishable based on the facts, nature of offence, period of incarceration, and the materials available against the accused. The settled principles governing bail in cases of dowry death under Section 304B IPC and the presumption under Section 113B of the Evidence Act were altogether ignored by the High Court.

5.6. On the basis of these submissions, learned senior counsel for the appellant prayed for cancellation of bail granted to Respondent No. 1, so as to ensure a fair and effective trial.

6. Per contra, the learned counsel for Respondent No. 1 / accused, at the outset, submitted that the present appeal is not maintainable, as there is no perversity, arbitrariness, or illegality in the well-reasoned order of the High Court granting bail. Once the discretionary relief of bail has been exercised judiciously on appreciation of material, it ought not to be interfered with by this Court in the absence of gross illegality or miscarriage of justice.

6.1. It was contended that the incident dated 05.06.2023 was first reported by the complainant vide G.D. Entry No. 019, which merely mentions the death of the deceased under suspicious circumstances, without any reference to dowry demand or cruelty. The FIR was lodged belatedly on 15.06.2023, after ten days and after the last rites, raising doubts about its genuineness.

6.1.1. During the investigation, statements of the deceased's family members introduced allegations of dowry demand for a Fortuner car and cruelty by Respondent No. 1 and his relatives. However, these allegations were absent in the initial report. Similarly, the allegation that the deceased made a distress call to her sister in the intervening night of 04/05.06.2023 complaining of being administered some "smelly substance" remains uncorroborated, as no call records substantiate the same.

6.1.2. The chargesheet dated 30.10.2023 was filed against Respondent No. 1 under Sections 498A, 304B, and 328 IPC read with Sections 3 and 4 of the D.P. Act. Notably, co-accused Tej Bahadur Singh and Vijay Shri, initially named in the FIR, were exonerated as their presence at the relevant point of time was established elsewhere, and they had no motive. Further investigation culminated in a final report dated 30.04.2025, which reaffirmed their innocence. The exoneration of these relatives significantly weakens the prosecution's version, making it improbable that the alleged offence was committed by Respondent No.1 alone.

6.2. It was argued that the prosecution has relied solely on statements of interested witnesses - the father, mother, and sisters of the deceased, which according to the learned counsel, are not corroborated by independent or documentary evidence, and thus cannot be treated as conclusive proof of dowry harassment.

6.3. Learned counsel further submitted that the deceased was allegedly unwilling to marry Respondent No. 1 as she was in love with one Abhay Singh (brother-in-law of her elder sister).

6.4. It was submitted that the post-mortem report dated 05.06.2023 records a single abrasion of 1 cm x 1 cm on the left forearm, and the FSL report indicates aluminium phosphide ingestion as the cause of death. However, neither document establishes that the poison was administered by Respondent No. 1. The issue of whether poison was self-ingested or administered, and the significance of the forearm injury, are matters of trial.

6.5. Lastly, it was highlighted that Respondent No. 1 has already undergone more than 15 months of incarceration (from 22.09.2023 to 09.10.2025) and is willing to cooperate with the trial.

6.6. On these grounds, it was urged that the order granting bail to Respondent No. 1 calls for no interference by this Court. 7. Learned counsel for the State supported the case of the complainant, submitting as follows:

(i) Based on the complaint given by the appellant alleging that his daughter was killed by her in-laws on account of unmet dowry demands, FIR No.415/2023 dated 15.06.2023 was registered at P.S. Kotwali, District Fatehpur under Sections 498A, 304B, 120B and 328 IPC and Sections 3 and 4 of the D.P. Act against Respondent No. 1 and his family members.

(ii) The delay of ten days in lodging the FIR was explained by the appellant's mental condition, as he was in deep shock and grief after the sudden death of his daughter.

(iii) The post-mortem conducted on 05.06.2023 revealed an abrasion on the forearm, and the FSL report confirmed aluminium phosphide poisoning as the cause of death.

(iv) Statements of key witnesses - Abhay Singh (brother-in-law), the appellant (father), Premlata Singh (mother), and sisters (Sameeksha Singh and Diksha Singh) - recorded under Section 161 of the Code of Criminal Procedure, 1973 corroborated the allegations of dowry demand and cruelty mentioned in the FIR.

(v) Upon the appellant's representation, the investigation was transferred to CB-CID, which reaffirmed the findings of the local police.

(vi) Chargesheet No. 557 of 2023 dated 30.10.2023 was filed only against Respondent No. 1, on which cognizance was duly taken by the Sessions Court.

(vii) The High Court failed to appreciate the seriousness of the offence - the unnatural death of a young woman within four months of marriage, amid specific allegations of dowry demands and poisoning. The High Court's order overlooked the gravity of the allegations and the societal menace of dowry deaths.

7.1. It was therefore submitted that the bail granted to Respondent No. 1 ought to be cancelled in the interests of justice.

8. We have considered the submissions of the learned counsel appearing for the parties and perused the materials available on record.

9. Apparently, criminal proceedings were initiated against Respondent No. 1 / Husband pursuant to a complaint lodged by the appellant / father in connection with the unnatural death of his daughter on 05.06.2023. FIR No. 415 of 2023 dated 15.06.2023 was registered against Respondent No. 1 and the in-laws of the deceased for offences punishable under Sections 498A, 304B, 120B and 328 IPC and Sections 3 and 4 of the D.P. Act.

Upon completion of investigation, the chargesheet was filed only against Respondent No. 1 for offences under Section 498A, 304B and 328 IPC and Sections 3 and 4 of the D.P. Act. Respondent No. 1 was arrested on 22.09.2023. His Bail Application (No. 2225 of 2023) was rejected by the Sessions Court on 20.10.2023, following which he filed Criminal Misc. Bail Application No. 7768 of 2024 before the High Court, which allowed the same, by the order impugned herein.

10. The appellant, being the father of the deceased, is undoubtedly an aggrieved person and thus possesses the requisite locus standi to maintain the present appeal seeking cancellation of the bail granted to Respondent No. 1. The unnatural death of his daughter within four months of marriage, allegedly on account of dowry harassment, directly affects his rights as a complainant.

10.1. In *R. Rathinam v. State by DSP8*, this Court has categorically held that the power under Section 439(2) Cr.P.C. to cancel bail may be invoked not only at the instance of the State but also by any aggrieved party.

10.2. Similarly, in *Brij Nandan Jaiswal v. Munna @ Munna Jaiswal and another9*, this Court observed:

"7. It is now a settled law that complainant can always question the order granting bail if the said bail is not validly passed. It is not as if once a bail is granted by any court, the only way is to get it cancelled on account of its misuse. The bail order can be tested on merits also. In our opinion, therefore, the complainant could question the merits of the order granting bail."

10.3. Applying the above legal position to the present case, the appellant, being the complainant and father of the deceased, has a direct and substantial interest in seeking cancellation of bail. Accordingly, the present case is clearly maintainable before this Court.

11. The law relating to cancellation of bail is well settled. Recently, in *State of Karnataka v. Sri Darshan, etc.*¹⁰, this Court comprehensively reviewed the principles governing annulment and cancellation of bail. The Court distinguished between annulment of bail due to legal infirmity in the order, and cancellation of bail arising from post-bail misconduct or supervening circumstances.

It is well established that bail granted without due application of mind to relevant factors - such as the gravity of the offence, prima facie evidence, or the antecedents of the accused - may be annulled. Courts must consider the totality of circumstances, balancing the presumption of innocence against the seriousness of the crime, societal interest, and risk of the misuse of liberty. For ready reference, the relevant paragraphs are extracted below:

"15. The statutory framework governing cancellation of bail is well-settled. Section 439(2) of the Criminal Procedure Code, 1973 empowers the High Court or the Court of Sessions to direct the re-arrest of an accused who has been released on bail, if such direction is deemed "necessary". Similarly, Section 437(5) enables a Magistrate to cancel bail granted under Section 437(1) or (2). These provisions underscore the legislative intent that the power to grant bail is not absolute but is always subject to judicial reconsideration in light of emerging facts or legal infirmities in the original order.

16. It is equally well established that the considerations for grant of bail and for its cancellation are not identical. While the grant of bail involves a preventive evaluation of the likelihood of misuse of liberty, the cancellation of bail entails a review of the prior decision - either on account of supervening circumstances or because the original order was legally flawed. As laid down in *State (Delhi Administration) v. Sanjay Gandhi*¹¹, "Rejection of bail when bail is applied for, is one thing; cancellation of bail already granted is quite another". This principle reflects a recognition of the sanctity of liberty once granted, and the requirement of compelling justification for its withdrawal.

17. However, it is equally well recognized that bail granted without due application of mind to relevant factors - such as the gravity of the offence, the strength of the evidence, or the conduct and antecedents of the accused - may be cancelled. Even in the absence of subsequent misconduct, a bail order that is perverse, unjustified, or legally untenable is vulnerable to interference. In *Dolat Ram v State of Haryana*¹², this Court held that "where a bail order is passed in disregard of material facts or in an arbitrary manner, it can be set aside".

18. Let us now examine the jurisprudence on when bail may be annulled or cancelled. Two distinct categories have emerged in this regard:

(A) Annulment of Bail due to legal infirmity in the order; and

(B) Cancellation of Bail, i.e., revocation of bail due to post-grant misconduct or supervening circumstances.

(A) Annulment of bail orders

18.1. This refers to the appellate or revisional power to set aside a bail order that is perverse, unjustified, or passed in violation of settled legal principles. It is concerned with defects existing at the time the bail was granted, without reference to subsequent conduct.

18.2. In *Prahlad Singh Bhati v. NCT of Delhi*¹³, this court laid down guiding principles:

"(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

18.3. In *Puran v. Rambilas and another*¹⁴, it was held that a bail order can be set aside even in the absence of post-bail misconduct if it is found to be unjustified, illegal, or perverse.

18.4. Similarly, in *Dr. Narendra K. Amin v. State of Gujarat and another*¹⁵, a three-Judge Bench held that consideration of irrelevant materials renders the bail order vulnerable and liable to be set aside.

18.5. In *Prasanta Kumar Sarkar v. Ashis Chatterjee*¹⁶, this Court held that where the High Court grants bail mechanically and without application of mind to material factors such as the gravity of the offence or antecedents of the accused, such an order must be set aside.

18.6. In *Prakash Kadam and others v. Ramprasad Viswanath Gupta and another*¹⁷, this Court distinguished between cancellation of bail by the same court and annulment by an appellate / revisional court. It observed:

"18. In considering whether to cancel the bail the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same court which granted bail is approached for cancelling the bail. It will not apply when the order granting bail is appealed against before an appellate/Revisional Court.

19. There are several other factors also which may be seen while deciding to cancel the bail."

18.7. In *Neeru Yadav v. State of UP*¹⁸, this court annulled a bail order where the High Court had ignored the criminal antecedents of the accused and relied mechanically on parity. It held that consideration of irrelevant factors and omission of relevant considerations renders the order perverse. As the court noted:

"15. It is clear as a cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightning having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner."

It further clarified:

"18. Before parting with the case, we may repeat with profit that it is not an appeal for cancellation of bail as the cancellation is not sought because of supervening circumstances. The annulment of the order passed by the High Court is sought as many relevant factors have not been taken into consideration which includes the criminal antecedents of the accused and that makes the order a deviant one. Therefore, the inevitable result is the lancination of the impugned order."

18.8. In *Anil Kumar Yadav v. State (NCT of Delhi)*¹⁹, this Court reiterated that while no exhaustive list can be laid down, courts must always consider the totality of circumstances, including the seriousness of the offence, prima facie evidence, and potential for interference with the trial.

18.9. In *State of Kerala v. Mahesh*²⁰, it was observed that even under Article 136, where interference with bail orders is rare, this Court will exercise its powers if the bail order is found to be lacking application of mind or based on irrelevant considerations.

18.15. Thus, it is clear that while cancellation of bail is a serious matter involving deprivation of personal liberty, the law does permit annulment of a bail order that is unjustified, legally untenable, or passed without due regard to material considerations. The distinction between annulment of bail orders due to perversity and cancellation for post-bail misconduct must be clearly understood and applied, ensuring a careful, calibrated, and constitutionally sound approach to the administration of criminal justice.

19. At this juncture, it is apposite to refer to the decision of this Bench in *Pinki v. State of Uttar Pradesh* and another²¹, wherein, the bail granted to the accused therein was cancelled, after a detailed consideration of the facts and the gravity of the offence, namely, child trafficking as well as the legal principles. The Court underscored that while personal liberty is a cherished constitutional value, it is not absolute. Liberty must yield where it poses a threat to the collective interest of society. No individual can claim a liberty that endangers the life or liberty of others, as the rational collective cannot tolerate anti-social or anti-collective conduct. Emphasizing that bail jurisprudence is inherently fact-specific, the Court reiterated that each bail application must be decided on its own merits, in light of the well settled on its own merits, in light of the well-settled parameters governing grant or denial of bail."

12. In the present case, Respondent No. 1 /accused was subjected to criminal prosecution for offences punishable under Sections 498A, 304B and 328 IPC read with Sections 3 and 4 of the D.P. Act, in connection with the unnatural death

of his wife, who is the daughter of the appellant. The appellant alleges that his daughter was subjected to persistent torture and harassment for failure to provide a Fortuner car as additional dowry.

13. The post-mortem report reveals an abrasion on the left forearm of the deceased, approximately 8 cm above the wrist joint. The subsequent Forensic Laboratory Report on the chemical analysis of the viscera may indicate ingestion of a poisonous or unnatural substance. Therefore, the cause of death cannot be conclusively ascertained at this stage and is to be determined by the trial Court during the course of the trial.

14. The statements of witnesses recorded under Section 161 Cr.P.C. prima facie indicate that the deceased was subjected to persistent dowry demands and cruelty at the hands of the accused. Abhay Singh, the brother-in-law of the appellant's elder daughter, stated that the deceased repeatedly complained of harassment and abuse by her husband and in-laws on account of dowry demands, including the demand for a vehicle. The appellant further deposed that shortly before her death, the deceased disclosed to him that her husband and inlaws had forcibly made her consume a "smelly substance", after which she collapsed and succumbed while being taken to Kanpur. This disclosure constitutes a dying declaration of high evidentiary value, corroborated by other witnesses.

14.1. The mother of the deceased, Premlata Singh, corroborated the appellant's statement, adding that she was in regular telephonic contact with her daughter, who narrated continuous torture for dowry. The younger sister, Sameeksha Singh, gave a concurrent statement, testifying that Respondent No. 1 used to threaten the deceased not to disclose the abuse, and frequently used abusive language. The elder sister, Diksha Singh, narrated the facts of the fateful night. She testified that the deceased had called her repeatedly around 1.30 am, crying and begging to be rescued. She further deposed that when her father asked the deceased at the hospital about what had happened, the deceased again said that her husband, uncle, and aunt had forcibly administered a "smelly substance" to her.

15. Despite such grave allegations, the police remained inactive for an inordinate period. Respondent No. 1 was arrested only on 22.09.2023, after a delay of 104 days from lodging the FIR, and the appellant addressed a representation to the Home Secretary seeking transfer to CB-CID. Such a delay reflects serious lapses in the investigation and undue benefit to the accused.

16. Without considering these aspects, the High Court erroneously granted bail to Respondent No. 1/ accused by observing that at the stage of bail only prima facie satisfaction is required, and that an elaborate evaluation of the merits of the case should be avoided. It invoked Article 21 of the Constitution, holding that bail is

the rule and jail is the exception, and noted that there was no material to suggest that the accused was likely to abscond or tamper with witnesses.

17. The statutory framework embodied in Sections 304B and 498A IPC and Section 113B of the Evidence Act further highlights the need for careful and cautious consideration in such cases. Section 304B IPC classifies the death of a married woman occurring within seven years of marriage, preceded by dowry-related cruelty or harassment, as a "dowry death", punishable with imprisonment that may extend to life. Section 498A IPC criminalises cruelty by the husband or his relatives, including harassment for unlawful demands of dowry. In addition, Section 113B of the Evidence Act mandates a presumption of dowry death once such foundational facts are established. Collectively, these provisions reflect the legislature's firm resolve to combat the social evil of dowry and to safeguard married women from cruelty and harassment within their matrimonial homes.

17.1. In the present case, the marriage took place on 22.02.2023, and the death occurred on 05.06.2023 i.e. within four months of marriage. The dying declarations to the father and elder sister, coupled with consistent testimony of relatives and post-mortem noting of an abrasion suggestive of restraint, satisfy the foundational requirements of Section 304B IPC. Consequently, the presumption under Section 113B of the Evidence Act arises inexorably against Respondent No. 1.

17.2. The High Court, however, failed to take this statutory presumption into account, and instead relied solely on general bail principles. This approach contradicts the law laid down in State of U.P. through CBI v. Amarmani Tripathi²², which requires courts to evaluate the gravity of the offence, the nature of accusations and the prima facie evidence while considering bail.

18. In Kans Raj v. State of Punjab²³, this Court elaborated upon the presumption under Section 113B of the Evidence Act. It held that once the prosecution establishes that the death of a woman occurred otherwise than under normal circumstances within seven years of marriage, and that she was subjected to cruelty or harassment "soon before her death" in connection with a demand for dowry, a statutory presumption arises that the husband or his relatives caused the dowry death.

The burden then shifts to the accused to rebut this presumption by showing the absence of dowry-related cruelty or lack of a causal link between such cruelty and the death. The Court emphasised that once the ingredients of Section 304B IPC are established, the presumption under Section 113B of the Evidence Act becomes mandatory, and the proximity between harassment and death is a

decisive factor in its application. The following paragraph is pertinent in this context:

"9. The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry such death shall be punishable under Section 304B. In order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that:

(a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;

(b) such death should have occurred within 7 years of her marriage;

(c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;

(d) such cruelty or harassment should be for or in connection with the demand of dowry; and

(e) to such cruelty or harassment the deceased should have been subjected to soon before her death.

10. As and when the aforesaid circumstances are established, a presumption of dowry death shall be drawn against the accused under Section 113B of the Evidence Act. It has to be kept in mind that presumption under Section 113B is a presumption of law."

15. "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act.

These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time.

If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be "soon before death" if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough."

19. The above principle was reaffirmed in *Rajinder Singh v. State of Punjab*²⁴, to the effect that once the prosecution establishes the ingredients of Section 304-B IPC, the presumption under Section 113B of the Evidence Act must be drawn. The words "soon before her death" have to be understood in a practical manner, and the proximity of the cruelty to the death must be established to invoke the presumption. The following paragraphs are apposite:

"24. Days or months are not what is to be seen. What must be borne in mind is that the word "soon" does not mean "immediate". A fair and pragmatic construction keeping in mind the great social evil that has led to the enactment of Section 304B would make it clear that the expression is a relative expression. Time-lags may differ from case to case. All that is necessary is that the demand for dowry should not be stale but should be the continuing cause for the death of the married woman under Section 304-B.

25...

We hasten to add that this is not a correct reflection of the law. "Soon before" is not synonymous with "immediately before"."

20. This Court in *Baijnath v. State of M.P.*²⁵, clarified the scope and operation of the presumption under Section 113B of the Evidence Act in conjunction with Section 304B IPC. The relevant paragraphs are usefully extracted below:

"24. As the prosecution is on the charge of the offences envisaged in Sections 304B and 498A of the Code, the provisions for reference are extracted hereunder:

"304B. Dowry death.-

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

498A. Husband or relative of husband of a woman subjecting her to cruelty.-

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.-For the purposes of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

25. Whereas in the offence of dowry death defined by Section 304B of the Code, the ingredients thereof are:

(i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and

(ii) is within seven years of her marriage, and

(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.

The offence under Section 498A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section explicates "cruelty" as:

(i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) or

(ii) harassment of the woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or

valuable security or is on account of failure by her or any person related to her to meet such demand.

26. Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

27. The expression "dowry" is ordained to have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The expression "cruelty", as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry, to reiterate, is the gravamen of the two offences.

28. Section 113B of the Act enjoins a statutory presumption as to dowry death in the following terms:

"113B. Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.- For the purpose of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860)"

29. Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

30. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113B of the Act against the accused. Proof of cruelty or harassment by the husband or her relative or the person charged is thus the sine qua non to inspire the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent coherent and persuasive

evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

31. The legislative primature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life within the guarded confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be overeased to gloss-over and condone its failure to prove credibly, the basic facts enumerated in the Sections involved, lest justice is the casualty.

32. This Court while often dwelling on the scope and purport of Section 304B of the Code and Section 113B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304B as in *Shindo Alias Sawinder Kaur and another v. State of Punjab*²⁶ and echoed in *Rajeev Kumar v. State of Haryana*²⁷.

In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113B of the Act. It referred to with approval, the earlier decision of this Court in *K. Prema S. Rao v. Yadla Srinivasa Rao*²⁸ to the effect that to attract the provision of Section 304B of the Code, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and harassment "in connection with the demand for dowry".

21. In *Shabeen Ahmad v. State of U.P.*²⁹, this Court cautioned that the grant of bail in dowry death cases, despite strong incriminating material, undermines public confidence in the justice delivery system. The Court observed that in cases of dowry death, courts must remain alive to the broader societal ramifications, as such offences strike at the very root of social justice and gender equality. Permitting alleged prime perpetrators of such heinous crimes to remain at liberty on bail, when evidence indicates active infliction of physical as well as mental cruelty, may not only jeopardize the fairness of the trial but also erode public faith in the administration of criminal justice.

22. Thus, the present case squarely falls within the category of annulment of bail. The High Court's omission to consider the gravity of the offence, the corroborated dying declarations and the post-mortem evidence renders the impugned order perverse and unsustainable. As held in *Puran v. Rambilas*, bail orders passed in disregard of material evidence or settled principles are liable to

be set aside. This Court in Chaman Lal v. State of U.P. and another³⁰, clearly observed:

"11. Though a conclusive finding in regard to the points urged by the parties is not expected of the court considering the bail application, yet giving reasons is different from discussing merits or demerits. As noted above, at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case is not to be undertaken. But that does not mean that while granting bail some reasons for prima facie concluding why bail was being granted is not required to be indicated."

23. Dowry death is not merely an offence against an individual but a crime against society at large. As emphasized in Social Action Forum for Manav Adhikar v. Union of India³¹, the alarming rise in such cases necessitates strict judicial scrutiny. Permitting the accused to remain at large in the face of such material would erode the deterrent object of Sections 304B and 498A IPC.

24. In view of the foregoing, the impugned order of the High Court is liable to be set aside, and the bail granted to Respondent No. 1 deserves to be annulled.

25. This Court cannot lose sight of the fact that marriage, in its true essence, is a sacred and noble institution founded on mutual trust, companionship, and respect. However, in recent times, this pious bond has regrettably been reduced to a mere commercial transaction. The evil of dowry, though often sought to be camouflaged as gifts or voluntary offerings, has in reality become a means to display social status and to satiate material greed.

25.1. The social evil of dowry not only corrodes the sanctity of marriage but also perpetuates systemic oppression and subjugation of women. When such demands transgress the bounds of reason and culminate in cruelty - or worse, in the untimely death of a young bride - the offence transcends the private sphere of the family and assumes the character of a grave social crime. It ceases to remain a mere personal tragedy and becomes an affront to the collective conscience of society.

25.2. The phenomenon of dowry deaths represents one of the most abhorrent manifestations of this social malaise, where the life of a young woman is extinguished within her matrimonial home - not for any fault of her own, but solely to satisfy the insatiable greed of others. Such heinous offences strike at the very root of human dignity and violate the constitutional guarantees of equality and life with dignity under Articles 14 and 21 of the Constitution of India. They corrode the moral fibre of the community, normalize violence against women, and erode the foundations of a civilized society.

25.3. In this backdrop, this Court is constrained to observe that judicial passivity or misplaced leniency in the face of such atrocities would only embolden perpetrators and undermine public confidence in the administration of justice. A firm and deterrent judicial response is, therefore, imperative - not only to uphold the majesty of law and do justice in the present case, but also to send an unequivocal message that neither law nor society will countenance barbarities born out of the evil of dowry.

26. With the above observations, this Criminal Appeal is allowed and the impugned order of the High Court is set aside. The bail granted to Respondent No. 1 is hereby cancelled, and he is directed to surrender to custody forthwith, failing which, the concerned authorities shall take him into custody immediately. It is, however, clarified that this judgment is confined to the issue of cancellation of bail, and the trial shall proceed independently, on its own merits, and strictly in accordance with law.

27. Connected Miscellaneous Application(s), if any, stand disposed of.

.....**J. [B.V. Nagarathna]**

.....**J. [R. Mahadevan]**

New Delhi;

November 28, 2025

1 Hereinafter referred to as "the impugned order"

2 Hereinafter referred to as "the High Court"

3 For short, "IPC"

4 For short, "D.P. Act"

5 2022 INSC 690

6 2024 INSC 595

7 For short, "Cr.P.C"

8 (2000) 2 SCC 391

9 Criminal Appeal No. 2087 of 2008 decided on 19.12.2008

10 2025 INSC 979

11 (1978) 2 SCC 411
12 (1995) 1 SCC 349
13 (2001) 4 SCC 280
14 (2001) 6 SCC 338
15 2008 (6) SCALE 415
16 (2010) 14 SCC 496
17 (2011) 6 SCC 189
18 (2014) 16 SCC 508
19 (2018) 12 SCC 129
20 AIR 2021 SC 2071
21 2025 INSC 482
22 (2005) 8 SCC 21
23 (2000) 5 SCC 207
24 (2015) 6 SCC 477
25 (2017) 1 SCC 101
26 (2011) 11 SCC 517
27 (2013) 16 SCC 640
28 (2003) 1 SCC 217
29 (2025) 4 SCC 172
30 (2004) 7 SCC 525
31 (2018) 10 SCC 443

IN THE SUPREME COURT OF INDIA

**Hindustan Construction Company Ltd. through its
Authorised Signatory Yogesh Dalal**

Vs.

Bihar Rajya Pul Nirman Nigam Ltd. and Ors.

**[Civil Appeal No. _____ of 2025
arising out of SLP (C) No. 4211 of 2025]**

Head Note – Once an arbitrator is appointed, the arbitral process must proceed unhindered. There is no statutory provision for review or appeal from an order under Section 11, which reflects a conscious legislative choice.

The High Court did not have the jurisdiction to reopen or review its earlier order passed under Section 11(6) of the Arbitration and Conciliation Act. Once the appointment was made, the court became functus officio and could not sit in judgment over the very issue it had already settled. The review order cuts against the grain of the Act, undermines the principle of minimal judicial interference, and effectively converts the review into an appeal in disguise.

JUDGMENT

R. Mahadevan, J.

1. Leave granted.

2. This Appeal is directed against the final judgment and order dated 09.12.2024 passed by the High Court of Judicature at Patna¹ in Request Case No. 53 of 2020, whereby the High Court dismissed the request case filed by the appellant, Hindustan Construction Company Limited, under Section 11 of the Arbitration and Conciliation Act, 1996.

PREFACE

3. Arbitration is often a friend in conferences but a foe in practice. Its raison d'être has always been to ease the burden on courts and to ensure the expeditious resolution of commercial disputes. Yet, this is not its only virtue. The true advantage of arbitration lies in its freedom and flexibility, with party autonomy as the cornerstone of the arbitral process.

3.1. Parties enjoy the liberty to determine the strength and composition of the tribunal, to appoint domain experts as arbitrators, and to design procedures suited

to the nature and complexity of their disputes. This freedom allows them to bring to the table expertise and insight that even a judge may not be able to contribute.

3.2. However, parties often embrace arbitration in good times, only to resist or manipulate it when disputes actually arise - seeking either to wiggle out of arbitration altogether or to tilt the process unfairly in their favour. In such situations, judicial intervention becomes inevitable and rightly so to safeguard fairness and the integrity of the arbitral process.

3.3. The evolution of the judicial role from that of a helicopter parent to that of a guardian angel of arbitration has been neither smooth nor uniform. Successive legislative amendments, most notably those of 2015, 2019, and 2021, have sought to curtail judicial interference and recalibrate the delicate balance between autonomy and oversight. Yet, in practice, arbitration has at times become more cumbersome than civil litigation. Parties continue to exploit every procedural avenue to delay proceedings, i.e., filing a maze of applications before the arbitral tribunal, the High Court, and even this Court, often on technical or jurisdictional objections.

3.4. The present case is yet another instance where the fine boundary between judicial oversight and arbitral independence is tested. At its core, arbitration remains a creature of contract, founded on the twin pillars of party autonomy and impartiality. Every act of interpretation whether of the statute or of the contract must therefore be guided by these two foundational principles. With this preface, we proceed to the facts of the present case.

FACTUAL MATRIX

4. Respondent No. 1, Bihar Rajya Pul Nirman Nigam Limited³ awarded a contract to the appellant on 04.03.2014 for the construction of a bridge over River Sone in the Districts of Aurangabad and Rohtas, Bihar. The contract contained Clause 25 providing for settlement of disputes through arbitration.

4.1. During execution of the contract, the appellant, by letter dated 18.09.2018, raised a claim before the Deputy Chief Engineer, BRPNNL seeking compensation for additional costs and losses incurred during the original contract period, in terms of Clause 25. Receiving no response, the appellant preferred an appeal on 20.10.2018 before the Managing Director, BRNPPL, and thereafter, issued a notice dated 14.12.2018 expressing its intention to commence arbitration. However, the Managing Director failed to appoint an arbitrator within the prescribed period.

4.2. Consequently, the appellant filed an application under Section 11 of the A&C Act for appointment of arbitrator. By order dated 02.08.2019 in Request Case No. 4 of 2019, the Patna High Court appointed Justice P.K. Sinha (Retd.) as

the sole arbitrator. The arbitrator passed an award on 31.12.2021, which was accepted by the respondents, and the awarded sum was duly paid to the appellant.

4.3. Thereafter, the appellant once again approached the Deputy Chief Engineer, BRNPPL under Clause 25, raising fresh claims relating to extension of time for completion of works and compensation for the additional costs incurred during the extended period. However, no response was received, and the appeal to the Managing Director also remained undecided.

4.4. On 10.01.2020, the appellant issued a notice of intention to commence arbitration and sought appointment of an arbitrator for adjudication of the aforesaid disputes. As the Managing Director failed to act, the appellant filed another petition under Section 11 of the A&C Act before the Patna High Court, being Request Case No. 53 of 2020, for appointment of arbitrator.

4.5. By judgment dated 18.08.2021, the High Court appointed Justice Shivaji Pandey (Retd.) as the sole arbitrator to adjudicate all disputes arising out of the contract dated 04.03.2014.

4.6. Upon completion of pleadings, the parties jointly sought extension of the mandate under Section 29A of the A&C Act. The arbitrator, by order dated 11.03.2023, extended the mandate for six months. As the extended period was to expire on 27.08.2023, both parties sought liberty to approach the Court for further extension. The arbitrator, by order dated 17.06.2023, granted liberty to approach court under Section 29A (5).

4.7. The Patna High Court, by order dated 13.10.2023, extended the mandate for a further period of six months. On a subsequent joint request, the arbitrator again extended time by order dated 17.03.2024, and the High Court, by order dated 10.05.2024, granted a corresponding extension of six months.

4.8. Despite having consented to arbitration and actively participated in the proceedings for over three years, the respondents filed Civil Review Application No. 293 of 2024 before the High Court seeking review of the order dated 18.08.2021. By order dated 04.10.2024, the High Court reviewed its earlier order and directed the arbitrator not to proceed further with the ongoing arbitration. The Court further ordered that Request Case No. 53 of 2020 be listed on 25.10.2024 for appointment of a new arbitrator, pointing out that Justice Shivaji Pandey had, in the meantime, been appointed as President of the State Consumer Disputes Redressal Commission, Meghalaya.

4.9. In compliance with the High Court's direction, the arbitrator, by order dated 19.10.2024, suspended the arbitral proceedings sine die until further orders. The High Court thereafter heard arguments and reserved orders on 22.11.2024, and by

judgment dated 09.12.2024, dismissed the appellant's Request Case No. 53 of 2020.

4.10. Aggrieved by the aforesaid judgment and order, the appellant has preferred the present Civil Appeal before this Court.

CONTENTIONS OF THE PARTIES

5. The learned senior counsel for the appellant submitted that the High Court exceeded its jurisdiction in passing the impugned judgment dated 09.12.2024 thereby reviewing its earlier order dated 18.08.2021 passed under Section 11(6) of the A&C Act, by which a sole arbitrator had been appointed. That order had attained finality, having never been challenged by the respondents through any appeal or other proceedings. Moreover, the A&C Act is a self-contained code and does not confer any power of review upon the High Court. Hence, the very act of entertaining a review petition was without jurisdiction.

5.1. It was further submitted that the order dated 04.10.2024 passed in the review petition had specifically directed that Request Case No. 53 of 2020 be listed on 25.10.2024 for appointment of a new arbitrator. However, the impugned judgment went beyond that limited extent and proceeded to dismiss Section 11 petition itself, thereby nullifying its own subsisting order and acting in excess of jurisdiction.

5.2. Without prejudice to the above, it was submitted that the review petition was hopelessly barred by limitation, having been filed more than three years after the order of appointment had been passed and fully acted upon by both sides. Even assuming that a review was maintainable in law, it could not have been entertained after such an inordinate and unexplained delay.

5.3. The learned senior counsel submitted that Clause 25 of the agreement contains a valid arbitration clause in writing, clearly manifesting the parties' intention to refer all or certain disputes arising out of the contract to arbitration. The language of the clause leaves no ambiguity regarding the parties' intention to submit their disputes to an arbitral forum. Consequently, the High Court's finding that Clause 25 was not an arbitration clause is misconceived, untenable, and contrary to the settled position of law.

5.4. It was pointed out that the appellant had duly complied with the prearbitral procedure prescribed under Clause 25 by referring the dispute to the Deputy Chief Engineer on 15.10.2019, preferring an appeal to the Managing Director on 12.11.2019, and issuing a notice of arbitration on 10.01.2020. The High Court thereafter appointed a sole arbitrator by order dated 18.08.2021. The respondents neither filed an application under Section 16 objecting to jurisdiction nor raised such a plea in their statement of defence. The arbitration commenced on

13.09.2021 and proceeded through over seventy sittings and three joint applications under Section 29A, reaching the stage of final arguments, before the respondents belatedly filed the review petition.

5.5. According to the learned senior counsel, in the counter affidavit filed in the review petition, the respondents for the first time, referred to a Bihar Government Notification dated 14.08.2019, which substituted Clause 25 of the Standard Bidding Document to provide for reference to the Bihar Public Works Contract Disputes Arbitration Tribunal Act, 2008. It was submitted that such substitution could not operate retrospectively to alter the terms of the contract dated 04.03.2014.

5.6. It was submitted that an arbitration clause does not become null and void merely because the person or authority designated to appoint an arbitrator, has become ineligible under law. The High Court, therefore, erred in interpreting Clause 25 to mean that arbitration itself was rendered impossible merely because the Managing Director, BRNPPL could not act as the appointing authority.

5.7. It was further submitted that both parties had jointly moved applications under Section 29A of the A&C Act on multiple occasions seeking extension of the arbitrator's mandate. Such conduct clearly demonstrates their acknowledgment of the arbitral process and their submission to the jurisdiction of the arbitrator.

5.8. The learned senior counsel emphasized that the impugned judgment was passed, after more than three years of continuous arbitral proceedings during which, over seventy sittings were conducted. The appellant alone had incurred approximately Rs.50 lakhs towards arbitrator's fees, secretarial expenses, travel, accommodation, and legal costs. The proceedings had reached the stage of final arguments when the High Court rendered the impugned judgment, thereby defeating the very objective of the A&C Act - speedy and cost-effective resolution of disputes.

5.9. It was further submitted that in their reply to the Section 11 petition, the respondents had categorically admitted that Clause 25 of the agreement provided for arbitration. Such admission, coupled with its active participation in the proceedings, conclusively establishes the existence of a valid arbitration agreement. The plea of non-arbitrability was raised for the first time only in the review petition and was initially rejected. The review was allowed only to the limited extent of substituting the arbitrator since Justice Shivaji Pandey had been appointed as President, State Consumer Protection Commission, Meghalaya. Despite this, the High Court subsequently dismissed the Section 11 petition in its entirety.

5.10. It was further contended that unilateral appointment of an arbitrator has been held to be impermissible in law. Hence, the only option available to the appellant was to invoke the jurisdiction of the High Court under Section 11(6) of the A&C Act. The High Court, however, by enforcing a clause of unilateral appointment, acted contrary to the principles laid down by this Court in TRF Ltd v. Energo Engineering Projects Ltd⁴, and Perkins Eastman Architects DPC and another v. HSCC (India) Ltd⁵, which have been affirmed by the Constitutional Bench in Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV)⁶.

5.11. The learned senior counsel submitted that the High Court's observation regarding the absence of an express waiver under Section 12(5) of the A&C Act is misconceived. The effect of Section 12(5) does not negate or curtail the jurisdiction of the High Court under Section 11 to appoint an independent arbitrator where the designated authority suffers a disqualification under the Seventh Schedule. The Court, acting as the appointing authority in place of the Managing Director named in the clause, does not destroy the arbitration clause; rather, it preserves it by substituting a neutral appointing mechanism. Otherwise, PSUs could compel private contractors to waive disqualification criteria, defeating the purpose of Section 12(5).

5.12. It was also submitted that the same Clause 25 had earlier been invoked between the very same parties, resulting in an arbitral award that was accepted and implemented by the respondents. The High Court's contrary interpretation, therefore, is inconsistent with the parties' own conduct and past understanding of the clause.

5.13. According to the learned counsel, having fully participated in the arbitral proceedings, filed statements of claim and defence, and sought extensions under Section 29A, the respondents are estopped under Section 4 of the A&C Act from subsequently challenging the existence or validity of the arbitration agreement. Reliance was placed on Narayan Prasad Lohia v. Nikunj Kumar Lohia and others⁷. Further reference was placed on Gayatri Project Ltd. v. Madhya Pradesh Road Development Corporation Ltd.⁸, to contend that once arbitration proceedings are underway, the parties cannot subsequently challenge the jurisdiction of the arbitral tribunal.

5.14. The High Court's reliance on State of Bihar v. Kashish Developers⁹ was said to be misplaced, as that decision preceded the Constitution Bench judgement in Central Organisation for Railway Electrification v. ECI-SPICSMO- MCML (JV)¹⁰, which overruled the earlier view taken in CORE v. ECISPIC- SMO- MCML (JV)¹¹, relied upon in Kashish Developers.

5.15. Accordingly, it was prayed that this Court may be pleased to set aside the impugned judgment dated 09.12.2024, restore the validity of the arbitration proceedings pursuant to the order dated 18.08.2021, and either appoint a substitute arbitrator itself or direct the High Court to do so within a time-bound period.

6. Per contra, the learned counsel for the respondents submitted that the present dispute does not merely raise questions on the enforceability of unilateral appointment but brings to light an uncommon yet valid manifestation of party autonomy, where the contract explicitly restricts arbitration to a single prescribed method and thereby excludes all alternate routes to arbitration.

6.1. According to the learned counsel, the specific question, as to whether an arbitration clause which stipulates the unilateral appointment of an arbitrator by one party and further provides that no arbitration shall be held if such appointment cannot be made, can still be said to constitute a valid and subsisting arbitration agreement, has not been directly adjudicated upon by this Court and thus requires authoritative determination.

6.2. It was further submitted that Clause 25 of the contract titled "Settlement of Disputes and Arbitration", comprises two distinct parts. The first part provides that upon the emergence of a dispute and compliance with prearbitration steps the Managing Director of the respondent company shall appoint the arbitrator. The second part, however, goes a step further and stipulates that if for any reason, such appointment cannot be made, there shall be no arbitration at all.

While it is undeniable that the Constitution Bench in *Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV)* has held that unilateral appointment of an arbitrator by one party is unenforceable, the peculiar feature of the present clause is that it contains a negative covenant that expressly forecloses arbitration altogether in the event the prescribed mode of appointment cannot be followed. This makes the clause substantially different from the one considered in *CORE*.

6.3. Adding further, it was submitted that in *CORE*, Clause 64(3)(b) of the General Conditions of Contract provided that the arbitration panel would consist of three retired railway officers, one or more of whom were to be chosen by the Railways from a panel. There was no stipulation in that clause that arbitration would not take place if the procedure became invalid or could not be implemented. In contrast, the present clause clearly records the parties' intention that arbitration is contingent upon the appointment of an arbitrator by the Managing Director, and that failing such appointment, the disputes shall not be referred to arbitration. Accordingly, the reliance placed by the appellants on *CORE* is misplaced.

6.4. The learned counsel submitted that the impugned order rightly follows the judgment of the Patna High Court in Civil Review No. 181 of 2023, where an identical clause was considered. The High Court held that by reason of the substitution of Section 12 by Act 3 of 2016, an arbitration clause enabling appointment of an arbitrator by an ineligible officer such as the Engineer-in-Chief or Administrative Head becomes otiose. The Special Leave Petitions bearing Nos.25109 - 25110 of 2024 challenging that judgment came to be dismissed by this Court after notice and hearing, thereby affirming the view that such a clause does not survive in law.

6.5. It was submitted that Clause 25, on its true construction, operates as a contingent contract under Section 31 of the Indian Contract Act, 1872. The first part constitutes a positive covenant for arbitration by an arbitrator appointed by the Managing Director, while the second part provides that if such appointment cannot be made, there shall be no arbitration. Upon the unilateral appointment clause being rendered unenforceable by law, the contingency contemplated in the first part became impossible, triggering the operation of the second part under Section 33 of the Contract Act. Consequently, the clause itself dictates that no arbitration shall take place.

6.6. The learned counsel further submitted that the principle of party autonomy, as reaffirmed in CORE, remains the foundational norm of arbitration, subject to statutory limitations and the principle of equality. However, party autonomy cannot be invoked to rewrite the parties' agreement. In Vidya Drolia and others v. Durga Trading Corporation¹², this Court held that the scope and existence of arbitration depend on the subjective will of the parties as expressed in the arbitration agreement.

If the parties have agreed that arbitration shall not be held unless a specific mode of appointment is followed, the court cannot override that consensus. The subjective will of the parties here, clearly recorded in clause 25, is that arbitration shall be conducted only by an arbitrator appointed by the Managing Director, otherwise, disputes shall be resolved through the courts. To appoint an arbitrator under Section 11 in such a case would amount to rewriting the contract.

6.7. It was further contended that the two parts of Clause 25 are separable. The first part, now unenforceable due to the ruling in CORE, can be severed without affecting the remainder of the clause. The second part, which independently records the negative covenant against arbitration, remains valid and binding. The doctrine of severability and the "blue pencil test" as recognized in Shin Satellite Public Co. Ltd v. Jain Studios Ltd¹³, and Beed District Central Cooperative Bank Ltd v. State of Maharashtra and others¹⁴, allow the offending portion to be struck off while giving effect to the surviving portion that reflects the parties' intention. Upon such severance, the second part of Clause 25 stands

independently and unambiguously expresses that disputes shall not be referred to arbitration.

6.8. It was submitted that it is a settled principle that courts cannot rewrite or modify the terms of a contract. In Venkataraman Krishnamurthy and another v. Lodha Crown Buildmart Private Ltd¹⁵, this Court held that courts must give effect to the contract as executed and cannot make a new one, however, reasonable, if the parties themselves have not agreed to it. Therefore, the relief sought by the appellants, which effectively seeks to introduce an arbitration clause contrary to the contract, is legally untenable.

6.9. The learned counsel further submitted that the State of Bihar has consciously shifted from ad hoc arbitration to institutional arbitration by amending Clause 25 of the Standard Bidding Document through Gazette Notification dated 14.08.2019, substituting it with a provision mandating reference of disputes to the Bihar Public Works Contract Disputes Arbitration Tribunal established under the 2008 Act. This policy reform shows that the respondents never intended for ad hoc arbitration to subsist under earlier contracts, and the contractual clause under consideration must be construed in this policy context.

6.10. In view of the foregoing, it was submitted that the arbitration agreement in the present case has been rendered inoperative and unenforceable by operation of law. The second part of Clause 25 constitutes a binding negative covenant reflecting the parties' express intention to exclude arbitration if the Managing Director is unable to appoint an arbitrator. Any attempt by the Court to appoint an arbitrator notwithstanding this stipulation would amount to rewriting the contract and negating party autonomy. The impugned order, therefore, correctly concludes that no arbitration agreement exists between the parties, and the appeal deserves to be dismissed.

7. We have considered the submissions advanced by learned counsel for both sides and have meticulously examined the materials placed on record.

8. Apparently, there was an express agreement dated 04.03.2014 between Respondent No.1 and the appellant for award of the contract for construction of a bridge over River Sone in the Districts of Aurangabad and Rohtas. Clause 25 thereof provided for settlement of disputes through arbitration. The appellant's claim for additional costs / losses incurred during the original contract period, raised under Clause 25, was adjudicated and settled by an arbitral award dated 31.12.2021, which the respondents did not challenge. However, the respondents seriously resisted the appellant's claim for the extended period of the contract.

8.1. The appellant's request before the Deputy Chief Engineer, as required under Clause 25, and the subsequent appeal before the Managing Director, were not

considered. The appellant's notice of intention to commence arbitration and request for appointment of an arbitrator for adjudication of disputes relating to the extended period of the contract were also kept pending without any progress. Consequently, the appellant invoked Section 11 of the A&C Act by filing Request Case No. 53 of 2020 seeking appointment of an arbitrator.

8.2. By judgment dated 18.08.2021, the High Court of Patna appointed Justice Shivaji Pandey (Retd.) as the sole arbitrator to adjudicate all disputes arising out of the contract dated 04.03.2014. Arbitration proceedings commenced; evidence was adduced; and arguments on the side of the appellant were concluded by 30.07.2023. Meanwhile, both parties jointly sought an extension of time under Section 29A (3) of the A&C Act, which the arbitrator granted by extending the mandate for a further six months. Subsequently, the High Court extended the mandate of the arbitrator on two more occasions - vide order dated 13.10.2023 in Request Case No. 79 of 2023 and order dated 10.05.2024 in Request Case No. 59 of 2024.

8.3. Thereafter, the respondents filed Civil Review Application No. 293 of 2024 seeking review of the order dated 18.08.2021, stating inter alia that Justice Shivaji Pandey had been appointed as President of the Meghalaya State Consumer Protection Commission. By order dated 04.10.2024, the High Court directed the arbitrator not to proceed with the arbitration and posted the request case for appointment of a new arbitrator. However, the High Court dismissed the request case, by the impugned judgment dated 09.12.2024.

9. In the given backdrop, the issues that fall for consideration in the present appeal are as follows:

(i) Whether the High Court possessed the jurisdiction to review or recall its earlier order passed under Section 11(6) of the A&C Act, and whether the exercise of such power was valid in law.

(ii) Whether a valid and subsisting arbitration agreement existed between the parties within the meaning of Section 7 of the A&C Act, and whether clause 25 of the contract satisfies the statutory requirements of a binding arbitration clause.

(iii) whether the joint application filed by both parties, seeking extension of the arbitrator's mandate under Section 29A constitutes an express or implied waiver of the ineligibility under Section 12(5), and Section 4 of the Act.

10. Before proceeding further, it is apposite to look into the relevant provisions of the Arbitration and Conciliation Act, 1996, as follows:

"2. Definitions.- (1) In this Part, unless the context otherwise requires,-

(b) "arbitration agreement" means an agreement referred to in section 7;

4. Waiver of right to object.- A party who knows that-

(a) any provision of this Part from which the parties may derogate, or

(b) any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.

5. Extent of judicial intervention.- Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

7. Arbitration agreement.-

(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in-

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

11. Appointment of arbitrators.-

(1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

(2) Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(3) Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

(3A) The Supreme Court and the High Court shall have the power to designate, arbitral institutions, from time to time, which have been graded by the Council under section 43-I, for the purposes of this Act:

Provided that in respect of those High Court jurisdictions, where no graded arbitral institution are available, then, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institution and any reference to the arbitrator shall be deemed to be an arbitral institution for the purposes of this section and the arbitrator appointed by a party shall be entitled to such fee at the rate as specified in the Fourth Schedule:

Provided further that the Chief Justice of the concerned High Court may, from time to time, review the panel of arbitrators.

(4) If the appointment procedure in sub-section (3) applies and-

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, [the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be].

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, on an application of the party in accordance with the provisions contained in sub-section (4).

(6) Where, under an appointment procedure agreed upon by the parties,-

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(6B) The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court.

(8) The arbitral institution referred to in sub-sections (4), (5) and (6), before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of section 12, and have due regard to-

(a) any qualifications required for the arbitrator by the agreement of the parties; and

(b) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

12. Grounds for challenge.-

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,-

(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subjectmatter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and

(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

Explanation1.-The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

Explanation 2.-The disclosure shall be made by such person in the form specified in the Sixth Schedule.

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.

(3) An arbitrator may be challenged only if-

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

(b) he does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.

14. Failure or impossibility to act.-

(1) The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if-

(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and

(b) he withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an

arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.

15. Termination of mandate and substitution of arbitrator.-

(1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate-

(a) where he withdraws from office for any reason; or

(b) by or pursuant to agreement of the parties.

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held maybe repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

16. Competence of arbitral tribunal to rule on its jurisdiction.-

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,-

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

18. Equal treatment of parties.- The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

29A. Time limit for arbitral award.-

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

34. Application for setting aside arbitral award. (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3)."

10.1. The above provisions make it clear that the Arbitration and Conciliation Act, 1996 embodies a legislative policy of party autonomy, limited judicial intervention, and procedural self-sufficiency. Section 5 expressly restricts judicial interference except as provided under the Act, reflecting the proarbitration intent of the legislature. Once the parties have agreed to resolve their disputes through arbitration, and such agreement satisfies the requirements of Section 7, the Court's role becomes largely facilitative - confined to enabling, not obstructing, the arbitral process.

10.2. Section 11 delineates the mechanism for the appointment of arbitrators and underscores the neutrality of the arbitral process by empowering the High Courts and this Court to intervene only where the parties or the designated authorities fail to act. Importantly, sub-section (6) confers a default power upon the Court to secure such appointment when the agreed procedure breaks down, while Section 11(8) reinforces independence and impartiality through mandatory disclosures under Section 12(1).

10.3. Section 12(5) renders persons having relationships enumerated in the Seventh Schedule ineligible for appointment as arbitrators, subject only to an express written waiver executed after the disputes have arisen. This provision marks a deliberate shift from presumed consent to conscious post-dispute waiver, thereby strengthening the integrity of arbitral appointments.

10.4. Similarly, Sections 14 and 15 contemplate situations where an arbitrator becomes de jure or de facto unable to act, or withdraws for any reason. In such cases, the statute ensures continuity through substitution under Section 15(2), thereby preserving the validity of prior proceedings. Section 18, often hailed as the Magna Carta of Arbitration, guarantees equal treatment of parties. Section 29A further reinforces expedition and procedural discipline by imposing time limits for completion of arbitral proceedings, while empowering the Court, within the contours of the Act, to extend or substitute the tribunal, set terms, and impose exemplary costs to prevent frustration of the process.

10.5. Section 34, read with Section 16, provides for challenges to the award on limited grounds, including the validity of the arbitration agreement, but not midstream, thus ensuring continuity of proceedings until an award is rendered.

11. Issue No. 1 Whether the High Court had jurisdiction to review its earlier order passed under Section 11(6) of the A&C Act, and whether such exercise of power was valid in law.

11.1. The issue goes to the very foundation of the legislative policy underlying the Arbitration and Conciliation Act, 1996, which was enacted to promote expedition, party autonomy, and finality in arbitral proceedings, while keeping

judicial intervention to a minimum. The Statement of Objects and Reasons of both the 1996 Act and the 2015 Amendment clearly reflect the intention to facilitate a fair and efficient arbitral process and to "minimize the supervisory role of courts in the arbitral process".

11.2. In *Bharat Sanchar Nigam Limited and another v. Nortel Networks India Pvt. Ltd*¹⁶, this Court reiterated that "the legislative policy of the 1996 Act is to minimize the supervisory role of courts in the arbitral process and to ensure that arbitration proceedings are conducted expeditiously without unnecessary interference".

11.3. The insertion of Section 11(6-A) through the 2015 Amendment reaffirmed the limited nature of judicial scrutiny at the appointment stage, restoring the position that courts must confine themselves to a prima facie determination of the existence of an arbitration agreement, curtailing the wider inquiry recognized in *SBP & Co. v. Patel Engineering Ltd. and another*¹⁷.

11.4. Section 5 of the A&C Act begins with a non-obstante clause that expressly restricts judicial intervention only to situations enumerated under the Act. The statute identifies specific points for court involvement - principally under Sections 8, 9, 11, 29A, 34 and 37 - beyond which judicial interference is prohibited.

11.5. In the seven-Judge Bench decision in *Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899*, In re¹⁸, this Court reaffirmed that the role of the referral court under Section 11 is confined to a prima facie examination of the existence of an arbitration agreement. All other questions including validity, enforceability, and jurisdiction are matters for the arbitral tribunal under Section 16. The Court further emphasized that the Arbitration Act is a self-contained code governed by the principle that what is not expressly permitted under the Act is deemed prohibited. The following passages from *Interplay* highlight that minimal judicial intervention is the governing principle and that referral courts must avoid undertaking detailed fact-finding or adjudication at the Section 8 or Section 11 stage:

"88. One of the main objectives behind the enactment of the Arbitration Act was to minimise the supervisory role of Courts in the arbitral process by confining it only to the circumstances stipulated by the legislature. For instance, Section 16 of the Arbitration Act provides that the Arbitral Tribunal may rule on its own jurisdiction "including ruling on any objection with respect to the existence or validity of the arbitration agreement". The effect of Section 16, bearing in view the principle of minimum judicial interference, is that judicial authorities cannot intervene in matters dealing with the jurisdiction of the Arbitral Tribunal.

Although Sections 8 and 11 allow Courts to refer parties to arbitration or appoint arbitrators, Section 5 limits the Courts from dealing with substantive objections pertaining to the existence and validity of arbitration agreements at the referral or appointment stage. A Referral Court at Section 8 or Section 11 stage can only enter into a prima facie determination. The legislative mandate of prima facie determination ensures that the Referral Courts do not trammel the Arbitral Tribunal's authority to rule on its own jurisdiction.

89. Section 5 is of aid in interpreting the extent of judicial interference under Sections 8 and 11 of the Arbitration Act. Section 5 contains a general rule of judicial non-interference. Therefore, every provision of the Arbitration Act ought to be construed in view of Section 5 to give true effect to the legislative intention of minimal judicial intervention.

92. The Arbitration Act is a self-contained code inter alia with respect to matters dealing with appointment of arbitrators, commencement of arbitration, making of an award and challenges to the arbitral award, as well as execution of such awards. [Pasl Wind Solutions (P) Ltd.v.GE Power Conversion (India) (P) Ltd., (2021) 7 SCC 1 : (2021) 3 SCC (Civ) 702; Kandla Export Corpn. v. OCI Corpn., (2018) 14 SCC 715 : (2018) 4 SCC (Civ) 664] When a self-contained code sets out a procedure, the applicability of a general legal procedure would be impliedly excluded. [Subal Paul v.Malina Paul, (2003) 10 SCC 361] Being a self-contained and exhaustive code on arbitration law, the Arbitration Act carries the imperative that what is permissible under the law ought to be performed only in the manner indicated, and not otherwise.

Accordingly, matters governed by the Arbitration Act such as the arbitration agreement, appointment of arbitrators and competence of the Arbitral Tribunal to rule on its jurisdiction have to be assessed in the manner specified under the law. The corollary is that it is not permissible to do what is not mentioned under the Arbitration Act. Therefore, provisions of other statutes cannot interfere with the working of the Arbitration Act, unless specified otherwise.

94. The Arbitration Act represents the principles of modern arbitration, which seeks to give effect to the mutual intention of the parties to resolve their disputes by a neutral third-party Arbitral Tribunal, whose decision is final and binding on all the parties. Arbitration law allows the parties to design arbitral procedures, which ensures efficiency and expediency of the arbitration process. One of the reasons that business and commercial entities prefer arbitration is because it obviates cumbersome judicial processes, which can often prove expensive, complex and interminable. Most legal jurisdictions have also recognised and adopted legal approaches that favour arbitration at both the domestic and international level.

In the process, national courts have given effect to principles such as the separability presumption and jurisdictional competence of the Arbitral Tribunal. Modern arbitration law does not completely restrict the role of national courts in the arbitration process, but gives priority to the Arbitral Tribunal to decide on disputes and issues pertaining to arbitration agreements as well as the substantive rights of the parties. The Arbitration Act reflects these aspects of modern arbitration law. It is the duty of this Court to interpret the Arbitration Act in a manner which gives life to the principles of modern arbitration in India."

11.6. This position was reaffirmed in *Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV)*¹⁹, wherein, this Court reiterated that proceedings under Section 11 are strictly facilitative and not adjudicatory in nature, and that issues relating to validity or jurisdiction must be left to the arbitral tribunal. The following paragraphs are pertinent in this regard:

"H. Necessity of maintaining the principle of minimum judicial interference

165. In *Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899*, In re [Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1, para 92] a seven-Judge Bench of this Court emphasised the importance of minimal judicial interference by the courts at the Section 11 stage. This Court held that the scope of the proceedings under Section 11 must be confined to the existence of an arbitration agreement. The Court further observed : (SCC pp. 87-88, paras 165-67)

"165. The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of "existence" of an arbitration agreement draws effect from Section 7 of the Arbitration Act. In *Duro Felguera [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764]*, this Court held that the Referral Courts only need to consider one aspect to determine the existence of an arbitration agreement - whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement.

Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and

validity of an arbitration agreement to be decided by Arbitral Tribunal under Section 16.

166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal. This position of law can also be gauged from the plain language of the statute.

167. Section 11(6-A) uses the expression "examination of the existence of an arbitration agreement". The purport of using the word "examination" connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression "examination" does not connote or imply a laborious or contested inquiry. On the other hand, Section 16 provides that the Arbitral Tribunal can "rule" on its jurisdiction, including the existence and validity of an arbitration agreement. A "ruling" connotes adjudication of disputes after admitting evidence from the parties.

Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement." The Constitution Bench held that the nature of objections to the jurisdiction of an Arbitral Tribunal on the basis that stamp duty has not been paid or is inadequate cannot be decided on a prima facie basis. [Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1, para 207] Hence, it was observed that objections of such a kind will require a detailed consideration of evidence and submissions and a finding as to the law as well as the facts.

166. At the Section 11 stage, a referral court only has to determine the existence of arbitration agreement. The validity of the arbitration clause providing for the procedure for appointment of arbitrators will require the referral court to enter into a detailed consideration of evidence and render a finding as to law and facts. This issue should be left to be decided by the Arbitral Tribunal in view of the doctrine of competence-competence. The Arbitral Tribunal is competent to rule on its jurisdiction, including the issue of validity of the arbitration clause for violating the equality principle under the Arbitration Act.

Thus, the entire scheme of the Act strongly discourages any mid-way judicial intervention, especially by way of review, as it would run contrary to both the text and the spirit of the statute.

11.7. Although the power exercised by the High Court under Section 11 is judicial in nature post - SBP & Co. case, its scope remains narrow. Once an arbitrator is appointed, the arbitral process must proceed unhindered. There is no statutory provision for review or appeal from an order under Section 11, which reflects a conscious legislative choice.

11.8. While High Courts, as courts of record, do possess a limited power of review, such power is extremely circumscribed in matters governed by the Arbitration Act. It may be exercised only to correct an error apparent on the face of the record or to address a material fact that was overlooked. It cannot be used to revisit findings of law or reappreciate issues already decided.

11.9. In *Grindlays Bank Ltd v. Central Government Industrial Tribunal and others*²⁰, this Court drew a clear distinction between procedural review and review on merits, holding that the latter is impermissible unless expressly provided. Applied to the Arbitration Act, this means that review is available only to cure a patent or procedural error - not to reopen interpretation of the arbitration agreement.

11.10. Referring to the aforesaid decision in *Bharat Heavy Electricals Limited v. Jyothi Turbopower Services Private Limited*²¹, in which, one of us (R. Mahadevan, J.) was a member, the Madras High Court held that while a Tribunal has no inherent power to undertake a review on merits, it nonetheless possesses the inherent procedural power to recall an order terminating the proceedings. It cannot be that a constitutional court of record lacks such power, to presume otherwise would amount to a constitutional fallacy. The Court further observed that the A&C Act, 1996 is a complete code in itself and is premised on minimal judicial intervention in arbitral proceedings. The following paragraphs are apposite:

"18. The learned Arbitrator has also opined that an order under Section 25(a) of the said Act cannot be construed to be an award as there is no decision on merit and thus, it may not be possible to maintain an appeal under Section 34 of the said Act (reliance was placed on the decision of the Division Bench of the Delhi High Court in *ATV Projects India vs. IOC & another*, (2013) 200 DLT 553). The learned Arbitrator thus opined that since a party cannot be without a remedy, what should be the remedy in such a situation needed to be examined.

The Tribunal, while accepting that there cannot be any power of review inherent in character, that proposition would apply to decision on merits. However, with respect to procedural review, the implied power is available with the Tribunal to deal with petitions similar to the ones in the present case. The observations made by the Hon'ble Supreme Court in *Grindlays Bank Ltd. vs. the Central Govt. Industrial Tribunal*, reported in AIR 1981 SC 806, in latter part of para 13 were specifically referred to, which are once again extracted as under:

"13. Furthermore, different considerations arise on review. The expression 'review' is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in *Patel Narshi Thakershi case* (AIR 1970 SC 1273) held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal."

"27. We reject the plea of the learned counsel for the petitioner that on termination of proceedings under Section 25(a) of the said Act, the Arbitrator becomes *functus officio*, as he is a *persona designata*. Both the methods of appointment of Arbitrator are possible, i.e. by consent or through the process of Court. The position would not be different in the two situations. It is not as if there is a better sanctity to the appointment of an Arbitrator which enlarges the power if he is appointed by mutual consent, while there are abridged powers if he is not appointed by the Court."

"29. We are also in agreement with the views of both the Calcutta and Delhi High Courts and in view of the aforesaid finding, that the remedy under Article 226 of the Constitution of India is not really available as the aforesaid is the appropriate remedy. The invocation of jurisdiction of this Court by the petitioner is, in turn, predicated on a belief that either of the parties aggrieved have to approach this Court under its extraordinary writ jurisdiction.

However, we have already explained the remedy available and any further challenge to an order which may be passed in such application would, in turn, depend on the fate of it. The said Act is a complete code in itself and the basis is that there should not be periodic judicial intervention in arbitration proceedings. Were a favourable order to be passed commencing arbitration proceedings, the option would only be to challenge the award, if so advised, under Section 34 of the said Act. Similarly, if the application was to be dismissed, the position would really be no different."

11.11. The decisions such as *Municipal Corporation of Greater Mumbai and another v. Pratibha Industries Ltd. and others*²², and *Mohd. Anwar & others v. Pushpalata Jain & others*²³, illustrate this narrow window, where review was permitted only because the earlier orders had been passed in ignorance of fundamental facts. These cases are confined to procedural lapses, not to reexamining matters of law.

11.12. By contrast, in the present case, the High Court reopened the issue of interpretation of the arbitration clause based solely on a subsequent judgment. Such an exercise falls squarely outside the scope of review jurisdiction. Even assuming that a review was maintainable, it was filed after an unexplained delay of nearly three years and was not founded on any error apparent on the face of the record or any suppression of material fact.

11.13. Once the Section 11 order had attained finality, the only remedies available to the respondents were to approach this Court under Article 136 or to raise objections under Section 16 before the arbitral tribunal. Having chosen neither route, and having participated in the arbitral proceedings, including joint applications under Section 29A, they were estopped from reopening the matter through review. A later judgment cannot revive a concluded cause of action.

11.14. As emphasized in *BSNL v. Nortel Networks (India) (P) Ltd* (supra), courts must resist "attempts to re-enter through the back door what the statute has shut through the front door". Section 11 is intended to trigger arbitration, not to create multiple stages of judicial reconsideration.

11.15. For the reasons discussed above, this Court is of the considered view that the High Court did not have the jurisdiction to reopen or review its earlier order passed under Section 11(6) of the A&C Act. Once the appointment was made, the court became *functus officio* and could not sit in judgment over the very issue it had already settled. The review order cuts against the grain of the Act, undermines the principle of minimal judicial interference, and effectively converts the review into an appeal in disguise. Such an exercise cannot stand. Accordingly, this issue is answered in the negative.

12. Issue No.2 Whether a valid and subsisting arbitration agreement exists between the parties within the meaning of Section 7 of the A&C Act, and whether Clause 25 of the agreement satisfies the statutory requirements of an arbitration clause.

12.1. Section 7 of the A&C Act defines an "arbitration agreement" and stipulates the manner in which it may be proved. While sub-section (3) mandates that such an agreement must be in writing, Section 7(4)(c) significantly widens the evidentiary scope by recognizing a valid arbitration agreement even where it is

evidenced through an exchange of statements of claim and defence, provided that one party asserts the existence of such an agreement and the other does not deny it.

12.2. This formulation derived from Article 7(2) of the UNCITRAL Model Law, reflects a liberal legislative design that places primacy on the parties' intention to arbitrate rather than on formalistic requirements. What matters is the meeting of minds, not the mode in which that understanding is recorded.

12.3. This Court has consistently adopted a purposive interpretation of Section 7(4)(c). In *S.N. Prasad, Hitek Industries (Bihar) Ltd. v. Monnet Finance Ltd. and others*²⁴, it was held that the expression "statement of claim and defence" is not confined to pleadings before an arbitral tribunal, but extends to judicial proceedings where the existence of an arbitration agreement is asserted, but not specifically disputed.

12.4. Likewise, in *State of West Bengal v. Sarkar & Sarkar*²⁵, this Court reiterated that active participation in arbitral proceedings without objection may itself constitute sufficient evidence of a valid and subsisting arbitration agreement. Similarly, in *Mahanagar Telephone Nigam Limited v. Canara Bank and others*²⁶, it was held that even without a formally executed arbitration clause, a valid arbitration agreement can be inferred from the conduct of parties, including participation in arbitration and exchange of pleadings without denial.

12.5. These authorities make it abundantly clear that the true test lies not in technical formality, but in intention. Where parties have acted on a shared understanding to arbitrate, they are estopped from subsequently denying the existence of such an agreement.

12.6. Applying these principles to the present case, the record unequivocally demonstrates the existence of an arbitration agreement between the parties. Pursuant to Clause 25 of the contract, arbitral proceedings were formally commenced on 13.09.2021. More than seventy hearings were conducted before the sole arbitrator, during which both parties actively participated, filed pleadings, paid fees, and incurred substantial costs.

12.7. It is also significant to note that in an earlier dispute between the same parties, arising from the same contractual framework, arbitration had been invoked under Section 11, and the respondents had accepted the resulting award without protest. Such consistent conduct fortifies the conclusion that both parties intended to, and indeed did, submit their disputes to arbitration.

12.8. These circumstances collectively establish a clear meeting of minds and constitute compelling evidence of a valid and subsisting arbitration agreement within the meaning of Section 7(4)(c). Having invoked and participated in the

arbitral process, the respondents cannot now be permitted to resile from its earlier position.

12.9. Clause 25 of the agreement reads as follows: "Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in-before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim right matter or thing whatsoever in any way arising out of or relating to contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter.

(i) If the Agency considered any work demanded of him to be outside the requirements of the contract, or dispute any drawings, record or decision given in writing by the Engineer-in-charge on any matter in connection with or arising out of the contract or carrying out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 7 days request the Dy. Chief Engineer in writing for written instruction or decision. Thereupon, the Dy. Chief Engineer shall give his written instructions or decision within a period of fifteen days from the receipt of the Agency's letter.

If the Dy. Engineer fails to give his instructions or decision in writing within the aforesaid period or if the Agency is dissatisfied with the instructions or decision of the Dy. Chief Engineer, the Agency may, within 15 days of the receipt of Dy. Chief Engineer decision, appeal to the Managing Director who shall afford an opportunity to the Agency to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Managing Director shall give his decision within 30 days of receipt of Agency's appeal. If the Agency is dissatisfied with this decision the Agency shall within a period of 30 days from receipt of the decision, give notice to the Managing Director for appointment of arbitrator failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

ii) Except where the decision has become final, binding and conclusive in terms of Sub Para (i) above disputes or difference shall be referred for adjudication through arbitrator appointed by Managing Director, the administrative head of the aid Bihar Rajya Pul Nigam Ltd. If the arbitrator so appointed is unable or unwilling to act or resign his appointment or vacates his office due to any reason whatsoever another sole arbitrator shall be appointed in the manner aforesaid. Such persons shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Managing Director of the appeal. It is also a term of this contract that no person other than a person appointed by such Managing Director or administrative head of the Nigam as aforesaid should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitrator at all.

It is also a term of this contract that if the Agency does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 45 days of receiving the intimation from the Engineer-in-Charge that the final bill is ready for payment, the claim of the Agency shall be deemed to have been waived and absolutely barred and the B.R.P.N.N.L. TD shall be discharged and released of all liabilities under the contract in respect of these claims. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause.

It is also a term of the contract that if any fees are payable to the arbitrator these shall be paid equally by both the parties. It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid. All arbitration shall be held at PATNA and at no other place."

A plain reading of Clause 25 reveals two components: (i) an unequivocal mandate that disputes "shall be referred to arbitration", and (ii) a procedural stipulation that vests exclusive power in the Managing Director to appoint the arbitrator and forecloses arbitration altogether if such appointment is not made. While the first component clearly evidences a binding intention to arbitration, the latter imposes an arbitrary and exclusionary condition, incompatible with the fundamental principles of neutrality and equality that underpin the arbitral process.

12.10. This Court has consistently distinguished between the existence of an arbitration agreement and the validity of the appointment procedure. In TRF Ltd (supra) and Perkins Eastman Architects DPC (supra), it was held that while a

named authority may be ineligible to act as arbitrator, such ineligibility does not invalidate the arbitration agreement itself.

12.11. This principle was reaffirmed in *Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV)*²⁷, and conclusively settled by the Constitution Bench in *CORE II v. ECI SPIC SMO MCML (JV)*²⁸, wherein, it was held that unilateral appointment clauses in public-private contracts violate Article 14 and offend the principle of *nemo judex in causa sua*. The Constitution Bench observed in paragraph 164 as follows:

"Unilateral appointment clauses in a public-private contract fail to provide the minimum level of integrity required in authorities performing quasi-judicial functions such as arbitral tribunals. Therefore, a unilateral appointment clause is against the principle of arbitration, that is, impartial resolution of disputes between parties. It also violates the *nemo judex* rule which constitutes the public policy of India in the context of arbitration. Therefore, unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution for being arbitrary, in addition to being contrary to the equality principle under the Arbitration Act."

12.12. Accordingly, the portion of Clause 25 that vests exclusive appointment power in one party and forecloses arbitration in default of such appointment must be severed as void and unenforceable. However, the substantive agreement to arbitrate survives by virtue of the doctrine of severability.

12.13. The legal position is now settled. In *Offshore Infrastructures Ltd. v. Bharat Petroleum Corporation Ltd.*²⁹, this Court held that even where a clause contains an otherwise defective unilateral appointment mechanism, the Court may sever the offending portion and exercise its power under Section 11(6) to appoint an independent arbitrator, thereby giving effect to the parties' genuine intention to arbitrate. The following paragraphs are pertinent in this regard:

"19. The Respondent contends that once the arbitration clause referred to in the GCC has become obsolete and non-operative, it would render the entire arbitration mechanism non-existent therefore the Appellant cannot file an application for appointment of arbitrator.

20. We are not persuaded by this submission of the Counsel for Respondent. The very existence of the arbitration clause in the GCC referring to all disputes to arbitrator is the core part of contract. Merely because the procedure to appoint an arbitrator provided in the clause has become inoperative due to subsequent changes in statutory provisions, would not mean that the core of the contract referring the dispute for adjudication to arbitrator would be rendered nugatory. The amendment in the statute has been enacted with the legislative intent to

enforce neutrality of the arbitrator and bring impartiality in arbitration proceedings by virtue of Section 12(5) of the 1996 Act.

It cannot be justified to literally interpret the clause in the contract in a manner or at the cost of the entire arbitration mechanism itself being abandoned. The arbitration agreement must be interpreted in a purposive manner, but not literally so as to enable the parties to pursue the intended dispute redressal mechanism of contract. Therefore, it cannot be said that non-operation of arbitration clause in GCC will result into forgoing of entire arbitration mechanism and rendering the Appellant disentitled for seeking appointment of arbitrator. The Appellant is, therefore, entitled to file application under section 11(6) of the 1996 Act for appointment of arbitrator and thereby the power is vested with the court to appoint an arbitrator upon filing of such application."

The Court further cautioned that refusing to sever such clauses would effectively confer on the dominant party a "nuclear veto" to defeat arbitration altogether- a result wholly inconsistent with the pro-arbitration policy of the Act and violative of Article 14.

12.14. The present contract, being a public -private contract, must withstand not only conventional contractual scrutiny but also constitutional scrutiny. As held in CORE II, arbitral appointments in public contracts must satisfy the requirements of fairness, equality, and non-arbitrariness under Article 14.

12.15. The sub-clause in Clause 25 which provides that "if for any reason the matter shall not be referred to arbitration" is vague, uncertain, and arbitrary. The expression "for any reason" confers an unguided and absolute veto, particularly objectionable in a public contract. Such a clause fails the test of manifest arbitrariness and violates Section 18 of the Act, which mandates equal treatment of parties.

12.16. In light of the above discussion, the following propositions emerge:

- (i) The parties' conduct clearly demonstrates their intention to arbitrate, satisfying the requirement of Section 7(4)(c);
- (ii) Clause 25, in its substantive form, constitutes a valid arbitration agreement;
- (iii) The unilateral and exclusionary appointment mechanism is void and severable; and
- (iv) This Court is empowered under Section 11(6) to cure the defect and appoint an independent arbitrator.

12.17. Accordingly, it is held that a valid and subsisting arbitration agreement exists between the parties. Clause 25, when read in its entirety and construed in accordance with the doctrine of severability, satisfies the statutory requirements of an arbitration clause under Section 7 of the Act. The contrary finding of the High Court is unsustainable in law and is liable to be set aside.

13. Issue No. 3 Whether the joint application filed by both parties, seeking extension of the arbitral mandate under Section 29A amounts to an express or implied waiver under Section 4 read with the proviso to Section 12(5) of the Act.

13.1. Waiver is a foundational principle of arbitration, rooted in party autonomy and fairness in conduct. Arbitration, being adversarial in nature, inevitably results in a winning and a losing side. The legislative rationale in codifying waiver is to ensure that parties do not secure a second bite at the cherry after an unfavourable outcome. Parties are not permitted to sleep over their rights. This statutory policy is in harmony with the scheme of minimal judicial intervention, where the grounds for interference with an arbitral award are narrow, and waiver operates as a significant bar to belated objections.

13.2. Though waiver, acquiescence, and estoppel are often discussed together in arbitral jurisprudence, they occupy distinct conceptual spaces. Waiver is the intentional relinquishment of a known right; acquiescence arises from passive acceptance or delay; and estoppel precludes a party from resiling from a representation on which the other has relied. The Act, however, incorporates only the doctrine of waiver - presuming parties to be conscious of their conduct and its consequences. The Act elevates silence to waiver by importing an element of intent, thereby preventing parties from approbating and reprobating. A party who has actively participated or consented to continuation of the proceedings cannot later challenge the same process merely because the result is adverse. The legislative design thus discourages tactical objections and multiplicity of proceedings.

13.3. Section 12(5), read with the Seventh Schedule, introduces a mandatory disqualification for certain categories of persons from acting as arbitrators, such as employees, consultants, advisors, or those having financial or professional ties with a party. By the 2015 Amendment, the provision came to embody the twin pillars of independence and impartiality in arbitration. The proviso to Section 12(5) creates a narrow exception: such ineligibility may be waived only through an express agreement in writing, and only after disputes have arisen. The deliberate use of this phrase reflects a conscious legislative choice to exclude any notion of implied or inferred waiver.

13.4. In contrast, Section 4 embodies the broader principle of waiver by conduct - where a party, knowing of any non-compliance with the Act or the arbitration

agreement, proceeds with the arbitration without timely objection. Rooted in party autonomy, Section 4 prevents parties from raising tactical or belated objections after having substantially participated. Thus, while Section 12(5) demands an express post-dispute written waiver, Section 4 covers all other situations involving informed inaction or acquiescence.

13.5. In *Bharat Broadband Network Ltd. v. United Telecoms Ltd*³⁰, this Court held that once a person falls within the disqualifications of the Seventh Schedule, he becomes de jure ineligible to act as an arbitrator. The appointment is void ab initio and the mandate terminates automatically under Section 14(1) (a). The Court emphasized that such disqualification is absolute and capable of being waived only through an express post-dispute written agreement.

13.6. This position was reiterated in *Ellora Paper Mills Ltd. v. State of Madhya Pradesh*³¹, where the Court held that mere participation in arbitration proceedings does not amount to waiver of statutory ineligibility. While these decisions do not directly address Section 29A, the legislative intent behind the phrase "express agreement in writing" remains unambiguous: implied waiver, acquiescence, or estoppel cannot cure Section 12(5) ineligibility.

13.7. Conversely, in *Quippo Construction Equipment Ltd. v. Janardan Nirman Private Limited*³², this Court held that failure to object or nonparticipation, resulting in an ex parte award, amounts to a deemed waiver under Section 4. The governing principle is that objections may be raised at any stage, but not after a party has, through conduct or delay, waived its right.

13.8. In the present case, the respondents had ample opportunity to object. Instead, both parties jointly moved for extension under Section 29A, not once but thrice. This leads directly to the interplay between Sections 4, 12(5) and 29A.

13.9. Section 29A empowers courts to extend the mandate of an arbitral tribunal, either on a party's application or upon sufficient cause. Its object is to prevent termination of proceedings by efflux of time and to ensure continuity. A joint application under Section 29A stands on a distinct footing from ordinary acts of participation such as filing pleadings. When both parties jointly seek an extension, they signify continued consent and confidence in the tribunal. Under Section 29A(5), even a single party may apply; the other is free to oppose. The Court may, in its discretion, extend the mandate with or without substituting the arbitrator.

13.10. Thus, when a party joins in seeking extension under Section 29A despite having the opportunity to object or seek termination, it signifies a higher degree of consent. However, such consent cannot be equated with an express written

waiver under Section 12(5). The statutory language is categorical: only an express written post-dispute waiver can cure Seventh Schedule ineligibility.

13.11. Reconciling Sections 4, 12(5) and 29A

- Section 12(5) addresses inherent ineligibility - a structural defect affecting jurisdiction.
- Section 4 governs procedural waiver by conduct.
- Section 29A concerns extension of mandate, where joint invocation indicates consent but not an express written waiver.

The harmonious construction lies in recognizing that only Seventh Schedule disqualifications attract the stringent waiver regime of Section 12(5). In all other cases viz., procedural lapses, delays, or non-jurisdictional irregularities, Section 4 applies. Accordingly, a joint application under Section 29A amounts to a valid waiver under Section 4, save in cases of statutory ineligibility under Section 12(5). Any contrary view would render Section 4 redundant and distort the legislative design.

13.12. Where the disqualification under Section 12(5) is attracted, the language being plain and mandatory, a joint application merely seeking extension, without an informed written waiver, cannot cure ineligibility. Conversely, where no such disqualification exists, the conduct of the parties, especially in jointly invoking Section 29A, constitutes waiver under Section 4.

13.13. In conclusion, Section 12(5) protects impartiality; Section 4 regulates procedural conduct; and Section 29A ensures continuity of proceedings. In the present case, since no Seventh Schedule disqualification is attracted, the High Court's reliance on the rigours of Section 12(5) was misplaced. Viewed through the lens of Section 4, the respondents' conduct clearly amounts to waiver by participation and consent.

Application of Kashish Developers

14. In the present case, the respondents have placed considerable reliance on the fact that the decision in Kashish Developers, which was referred to by the High Court in the impugned judgment, stands "affirmed" on account of the dismissal of the Special Leave Petition. However, the circumstances in Kashish Developers involved an appointment made without affording the State an opportunity to oppose it. Whereas, the present matter arose after extensive pleadings, objections, and participation by both parties. The two cases are therefore factually distinct, and such reliance cannot justify revisiting or unsettling the earlier appointment order.

14.1. It is necessary to restate the well-settled legal position regarding the precedential value of orders dismissing Special Leave Petitions. A non-speaking dismissal of an SLP signifies only that this Court, in its discretion under Article 136, has declined to interfere. It does not amount to approval of the reasoning of the subordinate forum. The doctrine of merger does not apply to such dismissals. This position has been consistently affirmed by this Court, including in *Kunhayammed and others v. State of Kerala* and another³³; and *P. Singaravelan and others v. District Collector, Tiruppur* and others³⁴.

14.2. Similarly, in *State of Uttar Pradesh and others v. Atul Kumar Dwivedi and others*³⁵, after reviewing earlier authorities, this Court reiterated that dismissal of an SLP at the threshold without reasons does not elevate the underlying judgment to binding precedent unless accompanied by an express declaration of law under Article 141.

14.3. Accordingly, the respondents' reliance on the supposed "affirmation" of *Kashish Developers* is wholly misconceived. A non-speaking dismissal of an SLP neither endorses the reasoning of the judgment challenged nor transforms it into binding precedent. At best, such a decision has persuasive value; its only legal effect is to bring finality to the dispute between the parties in that particular case.

CONCLUSION

15. In the present case, the High Court had itself appointed the arbitrator in 2021 under Section 11(6) of the Act. Both parties participated fully, and more than seventy hearings took place. The High Court also extended the arbitrator's mandate twice under Section 29A. At that stage, the High Court could not, by invoking its jurisdiction under Articles 226 and 227, retrospectively invalidate its own appointment order on the strength of a subsequent interpretation of a similar clause in another matter. Such an approach undermines certainty, dilutes the sanctity of judicial orders, and erodes confidence in the arbitral process.

16. Once the High Court had accepted the existence of a valid arbitration agreement and appointed an arbitrator, its later interference on the same question of the validity of Clause 25 amounted, in substance, to an appeal disguised as supervisory review. If the arbitrator had become unable to act owing to recusal or disqualification, the proper course was to invoke Section 15(2) and appoint a substitute arbitrator to continue from the existing stage of the proceedings.

17. Sections 15(1) and 15(2) clearly provide that an arbitrator's mandate terminates upon withdrawal or by agreement of the parties, and that a substitute arbitrator must be appointed following the same procedure as the original appointment. The judgments in *Yashwith Constructions (P) Ltd v. Simplex*

Concrete Piles (India) Ltd. and another³⁶, ACC Ltd v. Global Cements Ltd.³⁷, and Union of India v. Pradeep Vinod Construction Company³⁸, reaffirm that such substitution preserves continuity, and prior proceedings remain valid unless either party objects. In light of the same, the High Court's decision to suspend the arbitration altogether, instead of ordering substitution, was contrary to settled law. The exercise of jurisdiction therefore calls for correction under Article 136 of the Constitution. Accordingly, the impugned judgment and order of the High Court is set aside.

18. On the facts of this case, restarting the arbitral process de novo would be both inequitable and inefficient. It is just and proper that the progress already made be preserved. Therefore, the High Court is directed to appoint a substitute arbitrator within two weeks from the date of receipt of this judgment. The newly appointed arbitrator shall continue the proceedings from the stage at which they were interrupted and endeavour to conclude them within one year, subject to any further extension under Section 29A by mutual consent.

19. At this juncture, we are also constrained to take note of the conduct of the respondent company, a public sector undertaking, which is far from satisfactory. Despite repeated notices in appeal and requests for the appointment of an independent arbitrator, the Managing Director chose to remain silent, thereby compelling the appellant to seek judicial intervention. Such indifference by a public authority, where contractual obligations demand prompt responsiveness, falls short of the standards of fairness required of a State entity under Articles 14 and 298 of the Constitution.

19.1. As held in *State of Bihar and others v. Kameshwar Prasad Singh and another*³⁹ and *Urban Improvement Trust, Bikaner v. Mohan Lal*⁴⁰, the State must act as a model litigant - fair, responsive, and transparent in its dealings. Silence or procedural evasion by senior officers is inconsistent with the constitutional trust reposed in public authorities. It is unfortunate that such apathy had to be defended before a constitutional court as an administrative prerogative.

19.2. Although this is a fit case for imposing costs, we refrain from doing so, but issue a stern warning to the then Managing Director of the respondent company, BRPNNL. Public Officers are custodians of public faith, not mere administrators. Any repetition of such neglect may invite adverse remarks or even personal accountability. The officer is advised to reflect upon the responsibilities of public office and ensure that such indifference does not recur.

20. With the aforesaid directions and observations, this appeal is allowed. There shall be no order as to costs.

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

.....J. [J.B. Pardiwala]

.....J. [R. Mahadevan]

New Delhi;

November 28, 2025.

1 Hereinafter referred to as "the High Court"

2 For short, "the A&C Act"

3 For short, "BRPNNL"

4 (2017) 8 SCC 377

5 (2019) SCC OnLine SC 1517

6 (2025) 4 SCC 641

7 (2002) 3 SCC 572

8 (2025) INSC 698

9 Order dated 04.10.2024 rendered by Patna High Court in C. Rev. No.181 and 182 of 2023

10 (2025) 4 SCC 641

11 (2020) 14 SCC 712

12 (2021) 2 SCC 1

13 (2006) 2 SCC 628

14 (2006) 8 SCC 514

15 (2024) 4 SCC 230

16 (2021) 5 SCC 738

17 (2005) 8 SCC 618

18 (2024) 6 SCC 1

19 (2025) 4 SCC 641

20 (1980) supp SCC 420

21 2016 SCC OnLine Mad 4029 : 2016-3-L.W. 683

22 (2019) 3 SCC 203

23 SLP (C) No. 4820 of 2021 dated 05.04.2021

24 (2011) 1 SCC 320

25 (2018) 12 SCC 736

26 (2020) 12 SCC 767

27 (2020) 14 SCC 712

28 (2025) 4 SCC 641

29 2025 SCC OnLine SC 2147

30 (2019) 5 SCC 755

31 (2022) 3 SCC 1

32 (2020) 18 SCC 277

33 (2000) 6 SCC 359

34 (2020) 3 SCC 133

35 (2022) 11 SCC 578

36 (2006) 6 SCC 204

37 (2012) 7 SCC 71

38 (2020) 2 SCC 464

39 (2000) 9 SCC 94

40 (2010) 1 SCC 512

4. Study Material-G.K.

MARATHA EMPIRE

The Maratha Empire was an early modern Indian confederation that rose to prominence in the 18th century, dominating much of the Indian subcontinent. The Maratha Empire was established by Chhatrapati Shivaji in the late 17th century as a response to the chaos and misrule in the Deccan region.

The confederacy was officially recognized as a tributary state by Emperor Bahadur Shah I in 1707 after a long rebellion. From 1737 to 1803, the Marathas played a crucial role in the imperial politics of Delhi, influencing the power dynamics of the region and shaping the course of Indian history during this period.

Maratha Empire Rise

During the seventeenth century, the Marathas rose to prominence in the Indian subcontinent under the leadership of Shivaji. He challenged the Adil Shahi dynasty and the Mughals, establishing a kingdom with Raigad as its capital. Aurangzeb's religious policies turned non-Muslims against him, causing his forces to suffer heavy losses in both manpower and finances during the Maratha uprising. This allowed the Marathas to gain power and control over large parts of the former Mughal territories in northern India.

Various factors played a role in the rise of the Marathas during the sixteenth and seventeenth centuries, including:

- **Geographic Advantages:** The physical geography of the Maratha region, with its mountainous terrain and dense forests, fostered their bravery and skill in guerilla warfare.
 - They constructed numerous forts on these mountains to strengthen their defences.
- **Religious and Political Unity:** Political unity was largely achieved through the leadership of Shivaji. **The Bhakti movement**, which spread through Maharashtra, instilled a sense of religious unity among the Marathas.
 - Spiritual leaders such as Tukaram, Ramdas, and Eknath promoted social cohesion.
- **Maratha Political Influence:** Many Marathas held important positions in the administration and military of the Deccan Sultanates of **Bijapur** and **Ahmadnagar**.

- While notable clans like the Mores and Nimbalkers had their roles, the strong Maratha state was mainly founded by **Shahji Bhonsle** and his son, **Shivaji**.

Maratha Empire Under Shivaji (1630-1680)

Shivaji (1630–1680) founded the **Maratha state** and fought against the **Sultanate of Bijapur** in 1645, capturing forts like **Torna**. He established **Hindavi Swarajya**, made **Raigad** his capital, defended his kingdom against the Mughals, and was crowned **Chhatrapati in 1674**.

- After the **Battle of Purandar (1665)**, Shivaji briefly became a Mughal vassal but continued expanding Maratha's influence by building forts and creating a navy.
- He set up an improved administration, brought back Hindu traditions, and promoted Marathi and Sanskrit over Persian.
- Shivaji was known for treating women with respect and for his inclusive policies, hiring people from all castes, religions, and even Europeans in his administration and military.

Successors of Shivaji

Shivaji had two sons, **Sambhaji** and **Rajaram**, who were half-brothers from different mothers. After **Shivaji died in 1681**, **Sambhaji inherited the throne** and continued pursuing his father's expansionist ambitions.

- **Sambhaji** was later captured and executed by the Mughals.
- **Rajaram** then took the throne but was forced to flee to Ginjee Fort by the Mughals. He later died at Satara.
- Rajaram's young son, **Shivaji II (Ramaraja)**, succeeded him with his mother, **Tara Bai**, as regent.
- The next ruler, **Shahu**, son of Sambaji saw the rise of the Peshwas to power.
- In 1713, Shahu designated **Balaji Vishwanath** as the **Peshwa**.

Maratha Empire Administration

The Maratha Empire had four types of administration: Central, Provincial, Revenue, and Military.

- **Central Administration: Ashtapradhan**, or Council of Eight, was a group of eight ministers responsible for governing the Maratha Kingdom. This system was established by Shivaji. The titles of the ministers were derived from Sanskrit and comprised:
 - **Peshwa or Pantpradhan**: Prime Minister responsible for overseeing the entire administration.

- **Amatya or Mazumdar:** Finance Minister, managing the Empire's accounts.
- **Shurunavis or Sacheev:** Secretary, who prepared royal orders.
- **Mantri:** Interior Minister, overseeing internal affairs and intelligence.
- **Sari-i-Naubat or Senapati:** Commander-in-Chief, in charge of the military and defense.
- **Sumant or Dabir:** Foreign Minister, managing relationships with other rulers.
- **Nyay Adhyaksh:** Chief Justice, handling civil and criminal justice.
- **Panditrao:** High Priest, managing religious matters.
- **Chitnis:** Personal Secretary to the Chhatrapati, acting as a senior writer and sometimes seen as second to the Peshwa in their absence.
- **Provincial Administration:** Shivaji divided his kingdom into several provinces for taxation and administration. He stopped the practice of outsourcing land revenue collection and had state officials collect taxes directly from the farmers (ryots).
- **Parganas and Tarafs:** Each province was subdivided into **Parganas** and **Tarafs**, with villages serving as the smallest units.
- Provinces were divided into **Tarafs (districts)**, which were further split into **Parganas (sub-districts)**.
- Officers called **Deshpande** and **Deshmukh** were responsible for **law and order in the Parganas**, which were made up of villages called **Mauza, Kulkarni, and Patil**.
- **Prants and Sarsubedar:** Conquered lands were organized into provinces called **prants**, each overseen by a **sarsubedar** and **subedar** officers.
- The district officer was known as the **Havaldar**.
- **Revenue Administration:** Shivaji developed a revenue system based on **Malik Amber's Kathi system** to assess land value. Local farmers had to pay **40% of their harvest in taxes**.
- **Chauth tax:** Shivaji introduced the **Chauth tax**, which took one-fourth of the earnings from nearby Mughal territories for military support, and a 10% additional tax called **Sardeshmukhi**.
- **Ryotwari system:** Shivaji developed the **Ryotwari system** to enhance the communication between the government and farmers (ryots). This reduced corruption from middlemen.
- **Mirsadars:** Shivaji kept strict control over the **Mirasdars**, who had inherited land rights and paid little tax. He later challenged their power and took control of their land.
- **Military Administration:** Shivaji established a strong military administration, paying ordinary soldiers in cash and giving chieftains revenue payments called **Saranjam**.
 - His cavalry, known as **Paga**, included 30,000 to 40,000 troops managed by **Havaldars**.

- Shivaji was the **first Indian king** to recognize the need for a naval force, building dockyards and ships for trade and defence.
- He also trained his troops in **guerrilla warfare** and mountain combat.

Maratha Empire During Peshwa Era

The Peshwa period began when Shahu appointed Balaji Vishwanath as Peshwa in 1713. One of his first major achievements was the **Treaty of Lonavala in 1714** with **Kanhoji Angre**, who later accepted Shahu as Chhatrapati.

Maratha Empire Under Balaji Viswanath (1713-1720)

Balaji Viswanath started as a minor revenue official and became **Peshwa in 1713**, establishing a powerful hereditary position. In **1719**, Balaji Viswanath obtained important rights from **Mughal emperor Farukh Siyar**, who recognized **Shahu** as king. He helped Shahu become the Maratha king by gaining support from other Maratha leaders.

Maratha Empire Under Baji Rao I (1720-1740)

Baji Rao was the eldest son of Balaji Viswanath and became **Peshwa** at the young age of twenty. Under his leadership, Maratha's power reached its peak.

- He established a confederacy among the Maratha chiefs, granting each chief the autonomy to govern their designated territory independently.
- This approach enabled numerous Maratha families to gain prominence and authority across India, including the **Gaekwads** in Baroda, the **Bhonsles** in Nagpur, the **Holkars** in Indore, the **Scindias** in Gwalior, and the Peshwas in Poona.
- During Baji Rao I's reign, he is said to have fought over 40 battles, including the "Battle of Palkhed" (1728), the "Battle of Delhi" (1737), and the "Battle of Bhopal" (1737).

Maratha Empire Under Balaji Baji Rao (1740-1761)

Balaji Baji Rao, also known as **Nanasaheb**, succeeded his father as Peshwa at just nineteen. He supported agriculture, protected the local population, and greatly enhanced the region's conditions.

- In 1752, the Peshwa agreed to protect the Mughal Empire in exchange for collecting **Chauth from northwest provinces** and total revenue from Agra and Ajmer.

- **Third Battle of Panipat:** The Battle was fought between the **Marathas and Ahmad Shah Abdali in 1761**.
 - The Marathas were responsible for defending India during Abdali's invasion and fought bravely but were ultimately defeated.
 - After Balaji Baji Rao died, the **Third Battle of Panipat** greatly weakened Maratha's power and caused internal conflicts within the confederacy.

Marathas and Mughals

The Marathas and the Mughals were two influential powers in India during the 17th and 18th centuries. Maratha warriors, skilled in **guerrilla warfare**, resisted Mughal authority, using their terrain knowledge to confront the formidable Mughal army.

- The conflict between the Marathas and the Mughals lasted many years, involving numerous battles and negotiations.
- Eventually, the Marathas emerged as a significant force in Indian politics, challenging the Mughal Empire's authority.

Anglo-Maratha War

In the late 18th and early 19th centuries, the Marathas and the English fought three times for political control, with the English emerging victorious. The conflicts were fueled by British ambition and internal Maratha divisions, allowing the English to establish control, like in Bengal.

- **The First Anglo-Maratha War (1775- 1782):** The First Anglo-Maratha War was fought between the **Maratha Empire** and the **British East India Company**. It began with the **Treaty of Surat** and concluded with the **Treaty of Salbai**.
 - **Treaty of Surat:** The Treaty of Surat in 1775 enabled the English to gain control of the territories of **Salsette** and **Bassein**, along with a portion of the revenues from the **Surat** and **Bharuch** districts.
 - **Treaty of Salbai:** The Treaty of Salbai, signed and ratified in **1782**, ended the First Phase of the Struggle by establishing a twenty-year peace between the English and Sindhia.
 - This treaty followed several English military victories, including the captures of Ahmedabad, Bassein, and Gwalior.
- **The Second Anglo-Maratha War (1803-1805):** The Second Anglo-Maratha War (1803-1805) represented the second significant clash between the two powers, culminating in a decisive victory for the British.
 - The war ended with the **Treaty of Rajpurghat (1806)**, which greatly weakened the Maratha's power and influence in India.
 - This defeat caused a substantial weakening of their empire.

- **The Third Anglo-Maratha War (1817-1818):** The Third Anglo-Maratha War occurred from 1817 to 1818 and was the **final conflict** between the Maratha Empire and the British East India Company.
 - This war is also referred to as the **Pindari War**, as it involved fighting between the Pindaris and the British forces.
- Ultimately, the Marathas were defeated by the British East India Company in this conflict.

Maratha Empire Decline

In **June 1818**, the Peshwa surrendered, which led to the collapse of the Maratha Confederacy.

The position of Peshwa was abolished, and **Bajirao** was made a British retainer in **Bithur**, near Kanpur.

Pratap Singh, a direct heir of Shivaji, was appointed as the ruler of the small principality of **Satara**. Several factors contributed to the Marathas' defeat by the English, with the primary reasons outlined below.

- **Ineffective Leadership:** The Maratha state's governance was influenced by despotic leaders, but later leaders including Bajirao II proved to be ineffective and failed to match the English officials' capabilities.
- **Flaws in the Maratha State:** Since Shivaji's time, the unity among the Maratha people has been weak and unplanned.
 - It lacked real efforts for community development, education, or unification.
 - This became clear when they faced a well-organized European power based on Western practices.
- **Fragile political structure:** The Maratha Empire, led by Chhatrapati and Peshwa, was a loose confederation with powerful chiefs like Gaikwad, Holkar, Sindhia, and Bhonsle forming their semi-independent kingdoms.
 - The rivalry and lack of cooperation among these chiefs weakened the Maratha state.
- **Weak Military Structure:** Although the Marathas were brave fighters, they were not as organized or equipped as the English in terms of military strategy, weapons, discipline, and leadership.
 - Their failures were due to divided command, betrayal among their ranks, and a lack of effective use of modern artillery techniques.
- **Weak Economic Framework:** The Marathas did not establish a stable economic policy to meet changing needs, which resulted in a lack of industries and foreign trade opportunities.
 - This situation made the Maratha economy unsuitable for a stable political environment.

- **Proficient English Diplomacy:** The English were skilled in diplomacy, forming alliances, and isolating their enemies, while the disunity among the Maratha chiefs made it easier for them to attack.
- Unlike the Marathas, who were unaware of their enemies, the English had an effective spy network that gathered crucial intelligence.

5. Study Material-Language

Synonyms

Word	Synonym-1	Synonym-2	Synonym-3	Synonym-4
Amazing	Incredible	Unbelievable	Improbable	Astonishing
Anger	Enrage	Infuriate	Arouse	Nettle
Angry	Wrathful	Furious	Enraged	Indignant
Answer	Reply	Respond	Retort	Acknowledge
Ask	Question	Inquire	Query	Interrogate
Awful	Dreadful	Terrible	Abominable	Unpleasant
Bad	Depraved	Rotten	Contaminated	Sinful
Beautiful	Gorgeous	Dazzling	Splendid	Magnificent
Begin	Start	Open	Launch	Initiate
Big	Enormous	Huge	Immense	Gigantic
Brave	Courageous	Fearless	Dauntless	Intrepid
Break	Fracture	Wreck	Crash	Demolish
Bright	Sparkling	Shimmering	Radiant	Vivid
Calm	Quiet	Peaceful	Unruffled	Tranquil
Come	Approach	Advance	Near	Arrive
Cool	Chilly	Cold	Frosty	Frigid
Crooked	Bent	Twisted	Zigzag	Hooked
Cry	Weep	Wail	Sob	Bawl
Cut	Slice	Carve	Cleave	Slit
Dangerous	Perilous	Hazardous	Risky	Uncertain
Dark	Shadowy	Unlit	Murky	Gloomy
Decide	Determine	Settle	Choose	Resolve
Definite	Certain	Sure	Positive	Determined
Delicious	Savory	Delectable	Appetizing	Luscious
Describe	Portray	Characterize	Picture	Narrate
Destroy	Ruin	Demolish	Raze	Slay
Difference	Disagreement	Inequity	Contrast	Dissimilarity
Do	Execute	Enact	Carry Out	Finish
Dull	Unimaginative	Lifeless	Tedious	Tiresome
Eager	Keen	Fervent	Enthusiastic	Involved
End	Stop	Finish	Terminate	Conclude
Enjoy	Appreciate	Delight In	Be Pleased	Indulge In
Explain	Elaborate	Clarify	Define	Interpret
Fair	Just	Impartial	Unbiased	Objective
Fall	Drop	Descend	Plunge	Topple
False	Fake	Fraudulent	Counterfeit	Spurious
Fast	Quick	Rapid	Hasty	Swiftly
Fat	Stout	Corpulent	Paunchy	Plump
Fear	Fright	Dread	Terror	Alarm
Fly	Soar	Hover	Flit	Wing
Funny	Humorous	Amusing	Droll	Laughable
Get	Acquire	Obtain	Secure	Procure
Go	Recede	Depart	Fade	Disappear

Good	Excellent	Apt	Marvelous	Qualified
Great	Noteworthy	Worthy	Distinguished	Remarkable
Gross	Improper	Rude	Coarse	Indecent
Happy	Pleased	Contented	Satisfied	Delighted
Hate	Despise	Loathe	Detest	Abhor
Have	Acquire	Gain	Maintain	Believe
Help	Aid	Assist	Succor	Encourage
Hide	Conceal	Camouflage	Shroud	Veil
Hurry	Hasten	Urge	Accelerate	Bustle
Hurt	Damage	Distress	Afflict	Pain
Idea	Thought	Concept	Conception	Notion
Important	Necessary	Vital	Critical	Indispensable
Interesting	Fascinating	Bright	Intelligent	Animated
Keep	Hold	Maintain	Sustain	Support
Kill	Slay	Execute	Assassinate	Abolish
Lazy	Indolent	Slothful	Idle	Inactive
Little	Dinky	Puny	Diminutive	Miniature
Look	Scrutinize	Inspect	Survey	Study
Love	Like	Admire	Esteem	Fancy
Make	Design	Fabricate	Manufacture	Produce
Mark	Impress	Effect	Trace	Imprint
Mischievous	Prankish	Waggish	Impish	Sportive
Move	Plod	Go	Creep	Crawl
Neat	Trim	Dapper	Natty	Smart
New	Novel	Modern	Current	Recent
Old	Aged	Used	Worn	Dilapidated
Part	Portion	Section	Fraction	Fragment
Place	Space	Area	Spot	Plot
Plan	Region	Location	Situation	Position
Predicament	Quandary	Dilemma	Plight	Spot
Put	Place	Assign	Keep	Establish
Quiet	Tranquil	Peaceful	Calm	Restful
Right	Correct	Accurate	Factual	True
Run	Race	Sprint	Dash	Rush
Say/Tell	Recount	Narrate	Explain	Reveal
Scared	Panicked	Fearful	Unnerved	Insecure
Show	Display	Exhibit	Present	Note
Slow	Unhurried	Behind	Tedious	Slack
Stop	Cease	Halt	Stay	Pause
Story	Tale	Yarn	Account	Narrative
Strange	Odd	Peculiar	Unusual	Unfamiliar
Take	Hold	Catch	Seize	Grasp
Tell	Disclose	Reveal	Show	Expose
Think	Consider	Contemplate	Reflect	Mediate
Trouble	Distress	Anguish	Anxiety	Wretchedness
True	Accurate	Right	Proper	Precise
Ugly	Horrible	Unpleasant	Monstrous	Terrifying

6. Current Affairs

NOVEMBER 2025

1. Model Youth Gram Sabha launched to engage school students in grassroots democracy and leadership.
2. PM Modi inaugurated Rs. 1,140 crore projects and unveiled a Rs. 150 commemorative coin honoring Sardar Patel's 150th birth anniversary in Gujarat.
3. India's Department of Social Justice signs MoU with PERSOLKELLY to boost employment for SC and OBC communities.
4. The world's richest 1% are responsible for 15% of global emissions driven more by their high-carbon investments than personal consumption, reveals the Climate Inequality Report 2025.
5. China lodges WTO complaint against India's PLI scheme, alleging it violates global trade rules and promotes local content unfairly.
6. India and Sri Lanka strengthen agricultural cooperation with their first Joint Working Group meeting in New Delhi.
7. National FPO Samagam 2025 was inaugurated by Union Agriculture Minister Shivraj Singh Chouhan in New Delhi.
8. World Cities Day 2025, observed on 31 October in Bogotá, Colombia, highlights "People-Centred Smart Cities" to promote sustainable, inclusive, and tech-driven urban development.
9. India's Department of Social Justice signs MoU with PERSOLKELLY to boost employment for SC and OBC communities.
10. '67' named Word of the Year 2025 by Dictionary.com, symbolizing Gen Alpha's playful and absurd internet culture.
11. EMRSs across India to celebrate Janjatiya Gaurav Varsh Pakhwada from November 1–15, marking 150 years of Bhagwan Birsa Munda's legacy of tribal pride and heroism.
12. India launches its first fully digital Marine Fisheries Census 2025 to revolutionize data collection and boost sustainable fisheries development.
13. PM Modi inaugurates ₹1,219 crore development projects in Ekta Nagar ahead of Sardar Patel's 150th birth anniversary, promoting unity and sustainable growth.
14. India launches ₹1 lakh crore 'Anusandhan' Fund to empower deeptech startups and boost indigenous innovation.
15. India launches ₹1 lakh crore 'Anusandhan' Fund to empower deeptech startups and boost indigenous innovation.

16. Raj Kumar Arora has assumed charge as the Financial Advisor of Defence Services, bringing with him over three decades of rich experience.
17. India sets three Guinness World Records under the “Swasth Nari, Sashakt Parivar” campaign, showcasing the nation’s commitment to women’s health and preventive care.
18. Reliance Jio partners with Google to offer 18 months of free Google AI Pro access worth ₹35,100 which is a major step towards empowering India’s youth with cutting-edge AI technology.
19. UNEP’s Adaptation Gap Report 2025 warns of a massive climate finance shortfall, urging urgent global action to boost adaptation funding and resilience.
20. Delhi bans entry of non-BS-VI commercial vehicles from November 1 to curb pollution and ensure cleaner air.
21. Gogabeel Lake in Bihar’s Katihar district has been declared India’s 94th and the state’s first community-managed Ramsar site in 2025.
22. EPFO launches ‘Employee Enrollment Scheme 2025’ to bring uncovered workers into the social security net.
23. Civil Aviation Minister Rammohan Naidu inaugurates a modern crèche facility at Udaan Bhawan to promote a family-friendly and inclusive workplace.
24. U.S. and China sign a landmark trade truce in Busan, easing tensions and fostering global economic stability.
25. Russia overtakes Ukraine to become India’s largest and most reliable sunflower oil supplier in 2025.
26. MoSPI and IICA join hands to develop a unified SDG Alignment Framework integrating National, State, ESG, and CSR indicators for the vision of Viksit Bharat.
27. India scripts history by defeating South Africa in the final to win its maiden ICC Women’s Cricket World Cup title.
28. Russia unveils its powerful nuclear submarine ‘Khabarovsk’, capable of carrying the deadly Poseidon “Doomsday” drone.
29. Maharashtra declares leprosy a notifiable disease to strengthen early detection and move toward a leprosy-free state by 2027.
30. Delhi Government introduces the ‘Pink Saheli Smart Card’ to provide free, safe, and digital bus travel for women and transgender passengers.
31. PM Modi lays foundation stone for the Museum of India’s Princely States near Statue of Unity, celebrating India’s royal heritage and unity.
32. Maldives becomes the world’s first country to impose a generational ban on tobacco and smoking to build a tobacco-free future.

33. India and New Zealand have begun the fourth round of Free Trade Agreement (FTA) talks in Auckland to strengthen economic ties and promote sustainable, balanced growth.
34. NITI Aayog launched a tech-driven roadmap to transform Indian agriculture through AI, digital tools, and innovation for Viksit Bharat 2047.
35. Janice Tjen becomes the first Indonesian in 23 years to win a WTA singles title with her historic victory at the Chennai Open 2025.
36. Sanjay Garg, IAS (1994 batch, Kerala cadre), has taken charge as the new Director General of the Bureau of Indian Standards (BIS).
37. Korean film 'Project Y' wins Best Film at the London East Asia Film Festival 2025 for its powerful female leads and gripping neo-noir storytelling.
38. Lucknow earns global acclaim as UNESCO designates it a Creative City of Gastronomy, celebrating its royal Awadhi cuisine and rich culinary heritage.
39. ISRO launches GSAT-7R, India's heaviest communication satellite, to boost naval connectivity and strengthen national space power.
40. World Jellyfish Day 2025 celebrates the ancient, glowing marvels of the ocean and their vital role in marine ecosystems.
41. India and Bahrain strengthen defence, trade, and strategic cooperation through the 5th High Joint Commission meeting in New Delhi.
42. India's top IITs slip in QS Asia Rankings 2026, while China and Singapore strengthen their dominance with higher research and global engagement.
43. India achieves a major milestone as Chhattisgarh sends its first export of Fortified Rice Kernel to Costa Rica, boosting global nutrition goals.
44. OECD's International Migration Outlook 2025 names India as the top source of skilled migrants, highlighting the need for better integration and inclusion policies.
45. Zohran Mamdani creates history by becoming New York City's first Muslim and youngest mayor in a century, symbolizing a new era of inclusive American politics.
46. Shri Vishvajit Sahay, a 1990-batch IDAS officer, takes charge as the Controller General of Defence Accounts (CGDA).
47. India and the UK launched a joint Science & Technology Partnership Dashboard to track 143 bilateral projects and boost innovation collaboration.
48. OpenAI launches IndQA, its first India-focused benchmark to evaluate AI's understanding of Indian languages and cultural contexts.
49. China achieves a global milestone by completing the world's first thorium-to-uranium fuel conversion in a molten salt reactor, advancing clean and safe nuclear energy innovation.

50. World Tsunami Awareness Day is observed every year on November 5 to promote preparedness and safety against tsunami disasters.
51. Sweden becomes the world's first fully cashless nation, leading the global shift toward a digital economy.
52. India and Israel signed a defence cooperation pact to boost co-development, technology sharing, and counterterrorism efforts.
53. India ranks third globally in clean industry projects with 65 initiatives worth over \$150 billion, driving sustainable growth and green jobs.
54. The Indian Navy is set to commission its third Survey Vessel 'Ikshak', built with over 80% indigenous content to boost maritime safety and Aatmanirbhar Bharat.
55. The Indian Army launched Operation Chhatru against terrorists in the remote Chhatru area of Kishtwar district, Jammu and Kashmir.
56. Gurudev Sri Sri Ravi Shankar received the World Leader for Peace and Security Award 2025 for his exceptional contribution to global peace and humanitarian leadership.
57. Veteran archaeologist Dr. Ravi Korisettar from Dharwad received the Rajyotsava Award 2025 for his outstanding contribution to Indian archaeology and prehistoric research.
58. Dr. Sai Gautam Gopalakrishnan of IISc Bengaluru wins the Manohar Parrikar Yuva Scientist Award 2025 for his pioneering work in Computational Materials Science.
59. India unveils the AI Governance Framework 2025 to ensure responsible, transparent, and innovative use of Artificial Intelligence across sectors.
60. Google's Project Suncatcher aims to revolutionize AI computing by building solar-powered data centers in space.
61. PM Modi launches year-long national celebration marking 150 years of 'Vande Mataram', honouring its legacy as a symbol of India's unity and pride.
62. Google partners with Brazil's Mombak in its largest-ever carbon reduction deal to restore the Amazon rainforest.
63. India showcased its global leadership in social development and inclusion at the 2nd World Summit for Social Development 2025 held in Doha, Qatar.
64. Poland launches its largest-ever military training program, "At Readiness," to train 400,000 citizens by 2026 amid rising regional security tensions.
65. India strengthens economic ties with Latin America through successful trade talks with Peru and Chile, paving the way for deeper regional cooperation.
66. India records the world's sharpest rise in greenhouse gas emissions in 2023–24, says UNEP Emissions Gap Report 2025.

67. Football legend David Beckham is knighted by King Charles for his remarkable contributions to sport, charity, and public service.
68. Shiv Nadar tops the Hurun India Philanthropy List 2025 with ₹2,708 crore in donations, highlighting India's growing culture of large-scale giving.
69. India marks National Cancer Awareness Day 2025 to promote early detection, prevention, and collective action against cancer under the theme "United by Unique."
70. Mizoram launches the GBV Solve Project to combat rising violence against women and promote gender equality.
71. Shri Manohar Lal launches DRAP, KMU, UiWIN, and AMRUT anthem to promote sustainable urban development.
72. Japan and U.S. partner to mine deep-sea rare earths near Minamitorishima, reducing reliance on China.
73. PM Modi inaugurates four new Vande Bharat trains, reducing travel time and boosting connectivity across India.
74. Rahul VS becomes India's 91st chess grandmaster after winning the 6th ASEAN Individual Championship 2025.
75. Sheetal Devi becomes first Indian para-archer selected for able-bodied national team, promoting inclusivity in sports.
76. China commissions its 80,000-tonne aircraft carrier Fujian with EMALS and modern air wing, enhancing naval power.
77. National Legal Services Day on November 9 promotes free legal aid and access to justice for marginalized citizens.
78. Uttarakhand celebrates its foundation day on November 9, marking 25 years of progress, culture, and development.
79. Guwahati initiates "Sahajeevan" to vaccinate, sterilize, and relocate stray dogs, ensuring human-animal coexistence.
80. Karnataka approves one paid menstrual leave per month for women employees across all sectors, promoting workplace gender equity.
81. Eli Lilly's Mounjaro becomes India's top-selling drug in October 2025 with ₹100 crore sales, revolutionizing diabetes and obesity management.
82. UN Security Council lifts sanctions on Syrian President ahead of historic White House visit.
83. COP30 2025 begins in Belem, Brazil, focusing on climate action, Paris Agreement implementation, forest protection and global climate finance.
84. Egypt discovers a new natural gas field in the Western Desert, boosting its energy reserves and export potential.
85. India's new deep-sea fishing rules aim to empower local fishermen, ban foreign vessels, and promote sustainable, tech-driven marine resource management.

86. Samrat Rana makes history as India's first world champion in the men's 10m air pistol event at the 2025 ISSF World Championship in Cairo.
87. 9-year-old Arshi Gupta becomes India's first female national karting champion, making history in the 2025 FMSCI National Karting Championship.
88. Mumbai tops Asia's Happiest Cities 2025 list, reflecting its joyful spirit, community warmth, and lively street culture.
89. National Education Day 2025 celebrates Maulana Abul Kalam Azad's vision of inclusive, modern, and quality education for all.
90. Mizoram to host the "Mizoram Tourism Conclave" in collaboration with NITI Aayog to boost sustainable tourism and local livelihoods in the Northeast.
91. National Watershed Conference started in Guntur to promote innovation, technology, and community participation for PMKSY 3.0.
92. According to the Hurun Research Institute report shared by World of Statistics, two Indian metros Mumbai and New Delhi have secured positions among the world's top 10 billionaire cities for 2025.
93. India and Angola strengthen ties as President Murmu signs multiple MoUs during historic first-ever visit.
94. India and Vietnam strengthened defence ties by signing an MoU on submarine rescue and boosting defence industry collaboration during the 15th Defence Policy Dialogue in Hanoi.
95. India and Saudi Arabia sign an MoU in Riyadh to boost cooperation in arts, heritage, music and literature.
96. NSDL launches a unified digital platform to simplify registration and compliance for foreign investors in India.
97. India's unemployment rate drops to 5.2% in Q2FY26, driven by strong rural job growth and rising female workforce participation.
98. Quad's Malabar Naval Exercise 2025 begins off Guam, strengthening regional maritime security and India's naval capabilities.
99. The India-Sri Lanka joint military exercise Yudh Abhyas Mitra Shakti-2025 began in Belagavi, Karnataka, on November 10 to enhance counter-terrorism cooperation and joint operational capabilities.
100. David Szalay won the 2025 Booker Prize for his novel Flesh, becoming the first author of Hungarian heritage to receive the award.
101. EAM Dr. S. Jaishankar attended the G7 Foreign Ministers' Meeting in Canada to strengthen India's global partnerships and amplify the voice of the Global South.
102. Bangladesh becomes the first South Asian country to join the UN Water Convention, marking a milestone in regional water cooperation and climate diplomacy.

103. India calls for equity, climate finance, and technology access for all at COP30 in Brazil.
104. Oman has been elected to UNESCO's Man and the Biosphere (MAB) Council for the 2025–2029 term, strengthening its global leadership in biodiversity and sustainable development.
105. Amit Shah launched 'Sahakar Digi Pay' and 'Sahakar Digi Loan' apps to digitally empower and modernize India's urban cooperative banks.
106. India ends its only overseas military presence by withdrawing from the Ayni Airbase in Tajikistan.
107. Shaikha Nasser Al Nowais becomes the first woman to head UN Tourism.
108. Maharashtra ranks first in the 6th National Water Awards 2024 for its outstanding efforts in water conservation and management.
109. President Droupadi Murmu will present the first Jal Sanchay Jan Bhagidari Awards 2025, recognizing outstanding community-led water conservation efforts across India.
110. "Cyber Bharat Setu" workshop inaugurated in Tripura by Ministry of Electronics and Information Technology Secretary Shri S. Krishnan to strengthen India's cyber resilience through collaboration, innovation, and proactive defence strategies.
111. Bharat–Sri Lanka Sanskrit Mahotsav 2025 inaugurated in Colombo to celebrate shared cultural heritage and the timeless wisdom of Sanskrit.
112. Cabinet approves Credit Guarantee Scheme for Exporters (CGSE), providing Rs. 20,000 crore collateral-free credit to boost exporters' liquidity and global competitiveness.
113. Indian Institute of Corporate Affairs (IICA) and WNS Global Services launch the Ybrant Programme to shape socially responsible leaders driving sustainable business growth.
114. Tata Trusts strengthens its leadership with Neville Tata's appointment as trustee, marking a new era of governance and transparency.
115. Shafali Verma named brand ambassador of Haryana State Commission for Women after her stellar World Cup performance.
116. Bollywood singer Palak Muchhal enters the Guinness World Records for funding over 3,800 heart surgeries for underprivileged children through her charitable foundation.
117. Union Agriculture Minister Shivraj Singh Chouhan presented the 'Plant Genome Saviour Awards' on the Silver Jubilee of the PPV&FRA Act, honoring farmers for conserving traditional seeds and biodiversity.
118. ISRO successfully tests Gaganyaan crew module's main parachute, a key step toward India's first human spaceflight.
119. World Pneumonia Day 2025 reminds us that every breath matters and global action can save millions of lives.

120. Once introduced to control pests, the Cane Toad has now become a serious ecological threat worldwide.
121. India records one of the world's sharpest TB declines, with cases dropping 21% (nearly twice the global average) thanks to tech-driven diagnosis and strong community support.
122. India has urged Russia to fast-track approvals for Indian establishments and expedite the registration of marine, agriculture and pharmaceutical products to boost bilateral trade.
123. India and Nepal signed a Letter of Exchange to expand transit routes and enable direct rail-based freight movement between Jogbani and Biratnagar, boosting bilateral and third-country trade connectivity.
124. India and Canada strengthened their economic partnership during the 7th Ministerial Dialogue in New Delhi.
125. Botswana symbolically gifted eight cheetahs to India under Project Cheetah, witnessed by President Droupadi Murmu at Mokolodi Nature Reserve.
126. Draft Seeds Bill 2025 aims to modernize India's seed laws by ensuring quality seeds, protecting farmers, and preventing the sale of fake varieties.
127. Defence Minister Rajnath Singh releases 'My Stamp' honouring the Reang La heroes and Major Shaitan Singh ahead of the battle's 63rd anniversary.
128. IIT Bombay develops India's first Quantum Diamond Microscope, revolutionizing nanoscale magnetic imaging for neuroscience and materials research.
129. World Diabetes Day 2025 highlights WHO's theme 'Diabetes across life stages,' stressing early diagnosis, integrated care, and universal access to essential treatment.
130. Punjab becomes the first state in India to fully implement the amended Bharat Net Scheme, ensuring statewide broadband connectivity and enabling real-time border monitoring.
131. The 10th International Gita Festival begins in Kurukshetra, showcasing global celebrations of the Bhagavad Gita with scholars from 16 countries.
132. The 44th India International Trade Fair 2025 has begun in New Delhi, showcasing India's cultural richness and technological progress under the theme 'Ek Bharat: Shresth Bharat.'
133. The US and South Korea released a joint fact-sheet to mark a new phase of their alliance, focusing on stronger security, trade, and strategic cooperation.
134. Vice President CP Radhakrishnan hails India as a top investment hub, praising Andhra Pradesh's business-friendly ecosystem.
135. Mumbai's Mandale Metro Depot becomes Asia's largest elevated metro facility, boosting connectivity and urban mobility.

136. According to Dr. Jitendra Singh, India has emerged as the world's 6th-largest patent filer, crossing 64,000 filings with over 55% coming from Indian innovators.
137. Esha Singh secured her first senior World Championship medal, winning bronze in the women's 25m pistol at ISSF 2025 in Cairo.
138. India grants GI tag to traditional Lepcha musical instruments Tungbuk and Pumtong Pulit, preserving cultural heritage and promoting artisans.
139. Odisha's Sunapur and Puri beaches have once again earned the prestigious Blue Flag certification, reaffirming their global standards of cleanliness, safety, and sustainability.
140. Janjatiya Gaurav Diwas was celebrated on 15 November to honour Bhagwan Birsa Munda's legacy of tribal pride.
141. Union Home Minister Amit Shah chaired the 32nd Northern Zonal Council meeting in Faridabad to discuss key inter-state issues on security, development, and governance.
142. Gulf Cooperation Council launches One-Stop Travel System to simplify cross-border movement for its citizens.
143. The 3rd International Ayurveda Conference in São Paulo highlighted 40 years of Ayurveda in Brazil and strengthened India-Brazil collaboration in traditional medicine.
144. Gujarat's Ambaji marble earns GI tag, enhancing its global recognition and market value.
145. The first Ramoji Excellence Awards 2025 honoured seven achievers for their remarkable contributions across diverse fields in India.
146. Vice-President C. P. Radhakrishnan honored Union Minister Suresh Gopi with the Manorama News Newsmaker Award 2024, praising his dual success and stressing media's duty to uphold truth.
147. ISRO accelerates its space ambitions with Chandrayaan-4, Gaganyaan, and an Indian Space Station, marking a major leap toward global space leadership.
148. National Epilepsy Day 2025 highlights awareness, early treatment, and the fight against stigma for India's 10 million epilepsy patients.
149. National Press Day 2025 celebrates India's growing media landscape and reaffirms the role of a free, ethical, and responsible press in strengthening democracy.
150. Goa Police becomes India's first state police force to achieve a 100% response rate on the 1930 cyber-fraud helpline, setting a new benchmark in tech-enabled policing.
151. The UK has been announced as the Country Partner for the Hornbill Festival 2025, strengthening cultural ties and global visibility for Naga heritage.
152. The Sixteenth Finance Commission, led by Dr. Arvind Panagariya, submitted its 2026–31 fiscal recommendations to the President, shaping India's future tax-sharing and financial framework.

153. According to the 2025 Global Methane Status Report, global methane emissions are rising, driven mainly by agriculture and waste, reaching 352 million tonnes in 2020 and projected to hit 369 million tonnes by 2030.
154. Iran ends visa-free entry for Indians from November 22, 2025, after rising cases of job fraud and kidnapping involving Indian travelers.
155. Bangladesh's former PM Sheikh Hasina has been sentenced to death in absentia for the 2024 protest crackdown, intensifying India–Bangladesh diplomatic tensions.
156. Marco Bezzecchi's Valencia victory seals a historic first-ever top-three MotoGP championship finish for Aprilia.
157. India scripts history at the Asian Archery Championships 2025, topping the medal tally with a record 10 medals, including 6 golds.
158. Ravindra Jadeja becomes only the fourth cricketer worldwide – and the second Indian – to achieve the elite 4000 Test runs and 300 wickets milestone.
159. India and the UK begin the 8th edition of Joint Military Exercise 'AJEYA WARRIOR-25' in Rajasthan to boost counter-terror interoperability and defence cooperation.
160. Tom Cruise honoured with the prestigious Honorary Academy Award at the 16th Governors Awards.
161. India slips to 23rd rank in the Global Climate Change Performance Index 2026 due to the lack of a coal phase-out plan and continued coal block auctions.
162. Government of India launches 'YUVA AI for ALL', a free national course to equip 1 crore citizens with essential AI skills.
163. Lund University tops the QS Sustainability Rankings 2026, while IIT Delhi leads India at rank 205 among 103 institutions.
164. India signed its first structured LPG import deal with the US to secure 2.2 MTPA supply for 2026, boosting energy security and reducing dependence on West Asia.
165. The Ministry of Statistics and Programme Implementation celebrated 75 years of the National Sample Survey by launching the National Industrial Classification 2025 and the Data Innovation Lab Portal to strengthen India's data-driven governance.
166. Piyush Goyal launches Trade Intelligence & Analytics (TIA) Portal to empower businesses with transparent, data-driven trade insights.
167. Keerthy Suresh has been appointed UNICEF India's new celebrity advocate to champion child rights and promote mental health awareness nationwide.
168. Dr. Jitendra Singh chairs the first meeting of the Earth System Science Council, promoting integrated governance and coordinated Earth science research.

169. The world marked its first World Cervical Cancer Elimination Day, calling for urgent action to achieve WHO's 90-70-90 targets and end a preventable cancer.
170. Raulane is a 5,000-year-old mystical Himalayan festival in Himachal Pradesh celebrating nature, local folklore, and protective fairy spirits.
171. India Post launches its first youth-themed revamped campus post office at IIT Delhi, marking a major step in modernizing postal services.
172. PM Modi inaugurates the South India Natural Farming Summit in Coimbatore, honoring farmers and releasing the ₹18,000 crore PM-KISAN installment.
173. India has been unanimously re-elected to the Codex Executive Committee, strengthening its leadership in global food standards until 2027.
174. Turkey to host COP31 UN Climate Summit in 2026, while Australia will lead international climate negotiations under a landmark compromise.
175. HDFC Bank reclaimed the title of India's most valuable brand in 2025 with a soaring brand value of \$44.9 billion.
176. Southern Railway launches India's first coast-to-coast Parcel Express, revolutionizing fast, eco-friendly freight connectivity between Tamil Nadu and Kerala.
177. Former Chilean President Michelle Bachelet received the 2025 Indira Gandhi Prize for Peace, Disarmament and Development for her lifelong contribution to human rights and gender equality.
178. Leonardo DiCaprio will be honored with the Desert Palm Achievement Award 2026 for his compelling performance in One Battle After Another.
179. India marked World Toilet Day 2025 by launching new sanitation campaigns and advancing from Open Defecation Free (ODF) to ODF++ under Swachh Bharat Mission–Urban (SBM-U) 2.0.
180. 'Parasocial' chosen as Cambridge Dictionary's Word of the Year 2025, reflecting rising one-sided emotional bonds in the digital age.
181. The Ministry of Jal Shakti launched the nationwide 'Hamara Shauchalaya, Hamara Bhavishya' campaign on World Toilet Day 2025 to strengthen rural sanitation and promote clean, functional toilets across India.
182. WAVES Film Bazaar 2025 opened in Goa as a powerful hub of global film collaboration, young talent, and cutting-edge cinematic technology.
183. U.S. strengthens its strategic ties by naming Saudi Arabia a Major Non-NATO Ally, opening doors to deeper defense and investment cooperation.

184. Seychelles becomes the 6th member of the Colombo Security Conclave, boosting regional security cooperation in the Indian Ocean.
185. GeM and UN Women join hands to boost women entrepreneurs' participation in India's public procurement system.
186. India sets a new record in 2024-25 with 357.73 million tons of foodgrain, marking a historic 8% growth in agriculture.
187. India bags four golds as women boxers dominate the World Boxing Cup Finals 2025.
188. Mexico's Fatima Bosch wins Miss Universe 2025 amid intense controversies and divided global reactions.
189. World Fisheries Day 2025 highlights India's Blue Transformation, strengthening value addition and global impact in seafood exports.
190. UNESCO marked World Philosophy Day 2025 with Prof. Ingrid Robeyns' visionary keynote on reimagining the values of future societies.
191. Supreme Court clarifies that Presidents and Governors have discretionary powers on state bills, and courts cannot impose deadlines or deem assent.
192. The UAE has been ranked the world's third-largest humanitarian donor for 2025, contributing \$1.46 billion to global relief efforts as per updated UN data.
193. India has recorded a sharp 0.9°C temperature rise between 2015–2024, intensifying heatwaves, glacier loss and extreme weather across the country.
194. Australia becomes the first country to ban social media accounts for children under 16 from 10 December to curb online harms.
195. Arunachal Pradesh's traditional hand-forged 'Dao' blade has received the GI tag, recognising its rich tribal craftsmanship and cultural heritage.
196. IAF Tejas fighter jet crashed during an aerobatic display at the Dubai Air Show, marking only the second such accident in 24 years.
197. Azim Premji has been honoured with the ISB Research Catalyst Award for his outstanding contribution to strengthening India's research and knowledge ecosystem.
198. Astronomers have spotted a possible ancient "primordial cluster" beyond Neptune, offering fresh clues to the early Solar System.
199. World Television Day, celebrated on 21 November, highlights TV's enduring role in shaping global awareness and public communication.
200. Larry Page becomes the world's third-richest person as Google's AI model Gemini 3 boosts Alphabet stock.
201. India and Canada resume CEPA negotiations to double bilateral trade to USD 50 billion by 2030.
202. India and Israel plan to implement their proposed FTA in two phases to provide early benefits to trade communities.

203. Tropical Cyclone Fina, a Category 3 storm, threatens Australia's Northern Territory with heavy rains, strong winds, and potential flooding.
204. India, Australia, and Canada launch ACITI Partnership to boost collaboration in emerging technologies and sustainable innovation.
205. India defeated Nepal by seven wickets to win the first edition of the Blind T20 Women's World Cup.
206. The Indian Navy commissioned INS Mahe, the first Mahe-class anti-submarine warfare shallow water craft, enhancing coastal defence and undersea warfare capabilities.
207. Justice Surya Kant takes oath as India's 53rd Chief Justice, prioritizing judicial efficiency and reducing case backlogs.
208. Rabih Alameddine and Patricia Smith won top honors at the 2025 National Book Awards for fiction and poetry.
209. Oman launches its first national communications satellite, OmanSat-1, boosting digital sovereignty and regional connectivity.
210. Uranium detected in Bihar mothers' breast milk raises concerns over infant health risks.
211. India strengthens textile and sericulture ties with Georgia, showcasing innovations and expanding bilateral cooperation.
212. The 2025 G20 Summit in Johannesburg marked Africa's first hosting, focusing on solidarity, equality, sustainability, and advancing global financial and climate initiatives.
213. Ethiopia's Hayli Gubbi volcano erupted after 12,000 years, sending ash clouds to India and disrupting flights amid worsening air quality.
214. Lakshya Sen clinched his first title of 2025 by winning the Australian Open Super 500, marking a strong comeback on the BWF World Tour.
215. 10-year-old Bodhana Sivanandan made history by winning the UK Women's Blitz Chess Championship with a stunning 13.5/15 score.
216. India's women's kabaddi team clinches the World Cup title for the second time, showcasing unmatched dominance on the global stage.
217. BEL and Safran formed a 50:50 joint venture to manufacture the HAMMER precision-guided weapon system in India, boosting defence indigenisation and India-France strategic cooperation.
218. Sandip Pradhan has been appointed as a Whole-Time Member of SEBI for a three-year term, strengthening its leadership in market regulation and governance.
219. Justice Vikram Nath appointed Executive Chairman of NALSA, boosting India's legal aid and access-to-justice reforms.
220. The International Day for the Elimination of Violence Against Women is observed on 25 November, launching the 16 Days of Activism with the theme "Unite to End Digital Violence Against All Women and Girls."

221. PM Modi honoured Guru Tegh Bahadur Ji's 350th Shaheedi Diwas in Kurukshetra by unveiling a commemorative stamp, coin, and new cultural landmarks reflecting India's spiritual legacy.
222. Gavi and UNICEF cut the price of the R21 malaria vaccine to ensure life-saving protection for millions of children.
223. PM Modi attended the IBSA Leaders' Meeting at the G20 Summit in Johannesburg, focusing on sustainable growth, critical minerals, and global economic cooperation.
224. Meerut Bugle gets GI tag, safeguarding heritage and enhancing its market value.
225. India implements four new labour codes to modernize worker rights and labour governance.
226. Rohit Sharma has been appointed as the ambassador for the ICC Men's T20 World Cup 2026, to be held in India and Sri Lanka.
227. ICG's two-day Sagar Kavach exercise strengthened coastal security and inter-agency coordination along Maharashtra and Goa.
228. Exercise Suryakiran XIX - 2025 strengthens India-Nepal defense cooperation and enhances tactical capabilities.
229. India celebrated the 76th Constitution Day in 2025 with nationwide events highlighting the Preamble and the theme "Hamara Samvidhan – Hamara Swabhiman".
230. Assam has introduced a landmark bill to criminalise polygamy, aiming to protect women's rights and impose strict legal and civic penalties on offenders.
231. Supreme Court panel proposes phased creation of Goa Tiger Reserve to balance wildlife conservation and community interests.
232. India launches Nayi Chetna 4.0 to empower rural women and combat gender-based violence.
233. India celebrates Constitution Day by unveiling Dr. B.R. Ambedkar's bust at UNESCO, honoring his global legacy.
234. Iran initiates cloud seeding to tackle its most severe drought in decades.
235. India and UAE's bilateral trade crosses USD 100 billion as the third CEPA Joint Committee meeting strengthens strategic partnership.
236. Uzbek grand master Javokhir Sindarov made history by becoming the youngest-ever winner of the FIDE World Cup.
237. Indian Army officially commemorates Operation Pawan, honoring the brave soldiers who sacrificed their lives in 1987.
238. India's Chief Election Commissioner Gyanesh Kumar to chair International IDEA in 2026, promoting global electoral reforms.
239. Belagavi's Rani Channamma Mahila Cooperative Bank wins the Best Profit-Making Bank Award for FY 2024-25, recognising its outstanding performance and focus on women empowerment.

240. India will establish four advanced quantum fabrication hubs worth ₹720 crore to boost quantum innovation and strengthen technological self-reliance.
241. Uttar Pradesh and Maharashtra have declared that Aadhaar is no longer valid as proof of birth, enforcing stricter verification to curb document fraud.
242. Jakarta surpasses Tokyo as the world's most populous city, highlighting Asia's rapid urban growth.
243. India and Indonesia strengthened their strategic defence partnership by advancing cooperation on Indo-Pacific security, defence industry, and military ties at the 3rd Defence Ministers' Dialogue in New Delhi.
244. Sheikh Hasina's 21-year sentence deepens Bangladesh's political unrest ahead of the 2026 elections.
245. UAE launches "TM Market Place," the region's first digital platform for trading trademarks.
246. Legendary Bharatanatyam dancer Kumari Kamala, a pioneer of the Vazhuvoor style, passes away at 91.
247. Kerala's geography and scientific heritage have been immortalized on Mars through craters named after its places and geologist M.S. Krishnan.
248. China's underground neutrino lab (JUNO) is fully operational, while India's planned neutrino lab (INO) is still delayed.
249. PM Modi launches Skyroot's Infinity Campus and Vikram-I, boosting India's private space and aviation sectors.
250. Punjab launches "Easy Registry" to make property registration simple, fast, and corruption-free.
251. Election Commission extends SIR form submission deadline from 04 December to 11 December